

# Dispute Resolution Processes

## Dispute Resolution Processes Thinking through SGMA Implementation

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As Groundwater Sustainability Agencies (GSAs) develop and implement Groundwater Sustainability Plans (GSPs) to achieve sustainability at the basin-scale within 20 years of implementation, many basins will require collaboration. GSAs will have to make many challenging and potentially contentious joint decisions. Having dispute resolution clauses in coordination agreements as required under the California Code of Regulations Title 23 § 375.4(b)(2) may help navigate or prevent conflicts proactively. However, to be effective, dispute resolution clauses should be tailored to the specific governance structures, goals and groundwater conditions in each groundwater basin.

This research assesses the agreements of 74 multi-entity GSAs formed as Joint Powers Authorities (JPA) or through Memorandums of Understanding (MOU), along with semi-structured interviews and email correspondence, to answer the following research questions:

1. Who is included in the GSA decision-making body and how are decisions amongst them made?
2. To what extent do the agreements include a clause related to dispute resolution and what is the range of procedures that these clauses address?
3. What can be learned from the experience of other, non-SGMA water management agencies and from the environmental conflict resolution literature regarding how dispute resolution clauses have been invoked or ignored in practice?

Our review of the agreements of the multi-entity GSAs found that:

1. Most agreements contain dispute resolution clauses; however, roughly one-third of them do not.
2. There is no difference between JPA and MOU agreements in terms of the likelihood of having or not having dispute resolution clauses.
3. The content and complexity of the dispute resolution clauses present in the agreements differ substantially across cases.
4. There are multiple reasons why multi-entity GSAs have or have not included dispute resolution clauses in their agreements. Dispute resolution clauses can help when agreements are being formed between potentially contentious parties. However, in such cases it can be difficult to reach an agreement about the content of such a clause, particularly under tight timelines.
5. In other, non-SGMA JPAs in California, the presence of dispute resolution clauses has not necessarily resulted in their use.

While there may not be a single set of recommendations at the GSA-scale that would fit all cases, we propose the following recommendations for GSAs and the state agencies supporting them.

1. GSAs should consider devoting time and resources to developing local-level dispute resolution processes. Given the likelihood that disagreements among implementing agencies at the local level will occur, local agencies should consider an investment in dispute resolution capacity as a form of insurance.
2. State-sponsored programs supporting alternative dispute resolution should be considered. The state could make the dispute resolution process more efficient through a form of “risk pooling,” i.e., making dispute resolution resources available to GSAs through a statewide program. This program could take the form of retaining a panel of Alternative Dispute Resolution (ADR) practitioners who agree to become familiar with SGMA and with groundwater management issues and serve when needed to mediate and/or arbitrate disputes. The state Water Resources Control Board has contracts in place to provide mediators and facilitators to resolve disputes and help the parties work together effectively. However, the state should consider expanding this program to make it more accessible, both in terms of resources, as well as educating users and training neutrals on mediation of groundwater conflicts.
3. The state should consider working with existing alternative dispute resolution programs to develop messaging around the value of mediation. The U.S. Department of Agriculture and other programs currently provide funding to help growers and others avoid the long and expensive process of litigation. Working with these agencies may provide the data and tools necessary to ascribe economic values to ADR.
4. Courts throughout California should be encouraged to redirect any complaint filings involving GSAs to ADR. Doing so will facilitate use of dispute resolution processes in good faith.

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This summary was created based on information from the original report “[DISPUTE RESOLUTION PROCESSES: THINKING THROUGH SGMA IMPLEMENTATION.](#)”

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