



Salinas Valley Basin

Groundwater Sustainability Agency

AGENCY MEETING DATE: June 8, 2017

AGENDA ITEM: 11

SUBJECT: Update on Status of GSA NOI filings with the Department of Water Resources and consideration of request to State Water Resources Control Board to advise with respect to overlaps with Marina Coast Water District and the Arroyo Seco Groundwater Sustainability Agency and other Salinas Valley GSA's that may be forming with the intention to extend their basin management beyond jurisdictional boundaries.

RECOMMENDATION: Authorize staff to send letter to the State Board requesting an expedited decision on overlap areas in the Salinas Valley

BACKGROUND

In consultation with legal counsel, staff believes that it is in the best interest of the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA"), to request that the State Water Resources Control Board ("State Board") provide guidance on overlap issues that have arisen in the Salinas Valley Groundwater Basin ("Basin") under the Sustainable Groundwater Management Act ("SGMA"). Specifically, we believe it is necessary for the SVBGSA to request that the State Board determine:

1. If the Marina Coast Water District ("District") may act as a Groundwater Sustainability Agency ("GSA") over an area outside its jurisdictional boundaries;
2. If the Arroyo Seco Groundwater Sustainability Agency ("ASGSA"), a joint powers authority formed by the City of Greenfield ("City") and the Clark Colony Mutual Water Company ("Clark Colony"), may act as a GSA over the area served by Clark Colony but outside the jurisdictional boundaries of the City; and
3. If other GSA's that may be forming in the SVBGSA may serve areas outside their jurisdictional boundaries but included in the posting of the NOI.

DISCUSSION

A draft letter to the Chief Counsel of the State Board requesting the its views with respect the these issues is enclosed for the Board's consideration.

In addition, the SVBGSA Board has indicated a willingness to seek cooperative solutions with other entities that have formed GSAs or are creating JPA's for the purpose of forming GSAs.

These efforts include ongoing dialogue with the District about potential joint management of areas they have identified as their service area.

In the case of Arroyo Seco/Greenfield JPA a cooperation agreement has been proposed by the attorney active in forming this agency with a request for the SVBGSA Board to become a signatory. (Document attached)

It is clear that the District and the Arroyo Seco GSA's believe they are within their legal rights to create service areas that extend beyond the jurisdictional boundaries of the GSA eligible agency participating in the formation of multiple GSA's. In voting to approve the filing of the Notice of Intent to form a GSA in April of 2017, the SVBGSA board made it clear that they did not agree with this interpretation of SGMA. This position supported by a letter from Sam Boland-Brien, Chief of the State Board's Groundwater Management Program, that concurred in our analysis.

With the District declining to accept Mr. Boland-Brien's letter as definitive, and with the current stance of the District and Arroyo Seco JPA opposing the position of the SVBGSA board, it is difficult to understand how a useful cooperative agreement can be reached until a definitive resolution on overlaps is provided.

To that end the attached letter is being proposed to be sent to the Chief Counsel of the Department of Water Resources requesting an expedited decision.

The proposed coordination agreement offered by Arroyo Seco reads in part:

As such, through this Agreement, the Cooperating Agencies agree to work together and support each other towards preparing and adopting coordinated multiple groundwater sustainability plans for the Basin as allowed under SGMA section 10727(b)(3).

This provision requires that your board acknowledge the formation and legitimacy of the Arroyo Seco GSA by agreeing to multiple groundwater sustainability plans. Until which time as the legal decision has been obtained, staff and legal counsel would not recommend entering into the proposed agreement.

enclosures (2)

**Before the Board of Directors of the
Salinas Valley Basin Groundwater Sustainability Agency**

Resolution No.

Resolution authorizing the Interim General)
Manager to execute and transmit a letter to the)
Chief Counsel of the State Water Resources)
Control Board requesting that the State Board)
advise with respect to overlaps with Marina)
Coast Water District, the Arroyo Seco)
Groundwater Sustainability Agency, and other)
Salinas Valley GSA's that may be forming)
with the intention to extend their basin)
management beyond jurisdictional boundaries.)

WHEREAS, the Salinas Valley Basin Groundwater Sustainability Agency ("Agency") was formed by a Joint Exercise of Powers Agreement ("JPA Agreement") effective December 22, 2017; and

WHEREAS, the Agency issued a Notice of Intent ("NOI") to from a Groundwater Sustainability Agency ("GSA") in April of this year; and

WHEREAS, this formation created an overlap situation with Marina Coast Water District ("District") who had filed an NOI that include areas beyond their jurisdictional boundaries; and

WHEREAS, based on interpretation of the Sustainable Groundwater Management Act ("SGMA"), as supported by staff of the State Water Resources Control Board ("State Board"), the Agency believes that the District's NOI is not in compliance with SGMA; and

WHEREAS, the Clark Colony Mutual Water Company and the City of Greenfield have purported to form a JPA or utilize an MOU to form the Arroyo Seco GSA, and filed an NOI that include areas beyond the jurisdictional boundaries of the City of Greenfield; and

WHEREAS, the Clark Colony Mutual Water Company is not a GSA eligible entity under SGMA, and does not have the common power to form or be part of a JPA; and

WHEREAS, based on interpretation of the SGMA, as supported by information on the website of the State Board, the Agency believes that the Arroyo Seco GSA's NOI is not in compliance with SGMA; and

WHEREAS, it is in the best interest of all parties to seek an expedited decision by the State Board to resolve these overlap issues; NOW, THEREFORE,

BE IT RESOLVED, by the Board of Directors of the Salinas Valley Basin Groundwater Sustainability Agency as follows:

1. The Interim General Manager is authorized to execute for and on behalf of the Agency, and transmit, a letter to the Chief Counsel of the State Board requesting that the State Board provide an expedited opinion that will resolve multiple GSA overlap issues in the Salinas Valley Groundwater Basin.
2. That the letter be amended as necessary to include other GSA's that may be forming with the intention of extending groundwater management beyond the jurisdictional boundaries of the respective GSA eligible entity.

PASSED AND ADOPTED on this ____ day of _____, _____, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

I, Crissy White , Temporary Clerk of the Board of Directors of the Salinas Valley Basin Groundwater Sustainability Agency, hereby certify that the foregoing is the true original resolution of said Board of Directors duly adopted and entered in the minutes thereof for the meeting on June 8, 2017.

Dated:



Attachment 1

Salinas Valley Basin

Groundwater Sustainability Agency

June __, 2017

VIA ELECTRONIC AND U.S. MAIL

Michael A.M. Lauffer, Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828
michael.lauffer@waterboards.ca.gov

Re: Overlap Issues Regarding the Salinas Valley Basin Groundwater Sustainability Agency, Marina Coast Water District Groundwater Sustainability Agency, and the Arroyo Seco Groundwater Sustainability Agency

Dear Mr. Lauffer:

On behalf of the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”), I am writing to request that the State Water Resources Control Board (“State Board”) provide guidance on two overlap issues that have arisen in the Salinas Valley Groundwater Basin (“Basin”) under the Sustainable Groundwater Management Act (“SGMA”). Specifically, the SVBGSA requests the State Board to determine:

4. May the Marina Coast Water District (“District”) act as a Groundwater Sustainability Agency (“GSA”) over an area outside its jurisdictional boundaries; and
5. May the Arroyo Seco Groundwater Sustainability Agency (“ASGSA”), a joint powers authority formed by the City of Greenfield (“City”) and the Clark Colony Mutual Water Company (“Clark Colony”), act as a GSA over the area served by Clark Colony but outside the jurisdictional boundaries of the City.

As set forth below, the SVBGSA believes the answer to both these questions is “no.” It is critical that the State Board provide the requested guidance as these issues are at the forefront of efforts in the Basin to comply with SGMA.

A Notice of Intent (“NOI”) for the SVBGSA was posted on April 27, 2017. That NOI covered an area including the Basin within Monterey County but not including the adjudicated Seaside sub-basin, or the jurisdictional boundaries of the District and City. A copy of the NOI is enclosed as attachment A. The posting on the DWR website indicates “overlap” with both the District for areas outside its jurisdictional boundaries, and for the ASGSA for areas outside the jurisdictional boundaries of the City.

ANALYSIS

Marina Coast Water District

The District is a County Water District formed pursuant to the provisions of California Water Code section 30000 et seq. Pursuant to Government Code sections 56036, 56100 and 56425 the District is subject to the jurisdiction of the Local Agency Formation Commission of Monterey County (“LAFCo”) with respect to the determination of its boundaries, annexations and sphere of influence. The District is a “local agency” and GSA eligible entity pursuant to Water Code sections 10721 (n) and 10723 (a). The District has defined jurisdictional boundaries.

For many years Monterey County was the home of a U.S. Army military installation, Fort Ord. In 1991 Fort Ord was selected to be closed as part of the Base Realignment and Closure process, and was officially closed in 1994, although the Army retained jurisdiction over certain aspects of Fort Ord. In 1994 the Fort Ord Reuse Authority (“FORA”) was created by the state legislature (See Government Code section 67650 et seq.). Pursuant to Government Code section 67651, FORA is charged with, among other things, managing the turnover of the former Fort Ord lands to various local jurisdictions including the County and the cities of Seaside and Marina. Certain lands were conveyed to the California State University system and the University of California system.

In 1998 the District entered into a contract with FORA to provide service to the former Fort Ord. The agreement did not expand the District’s jurisdictional boundaries, but merely allowed it to serve an area outside of its boundaries pursuant to contract.

On or about September 19, 2016, a Notice of Intent (“NOI”) for the District was posted. In that NOI the District proposed to become a GSA over an area including a portion of its jurisdictional boundaries but also including an area outside of its jurisdictional boundaries, consisting of a portion of the area now known, pursuant to an approved basin boundary adjustment, as the Monterey sub-basin of the Salinas Valley Basin. The District has subsequently modified its NOI to separately identify different areas. On February 24, 2017, a modified NOI and a new NOI were posted for the District covering the entirety of the District’s jurisdictional boundaries. Also on February 24, 2017 (subsequently amended on April 27, 2017) and on March 14, 2017, NOIs were posted for the District covering areas outside its jurisdictional boundaries. Copies of these NOIs are enclosed as Attachments B – E.

The proposal to become a GSA for an area outside the District’s jurisdictional boundaries appears to be contrary to SGMA. Water Code section 10723.8 provides for the filing of a Notice of Intent with the Department. In relevant part subsection (a) provides:

Within 30 days of deciding to become or form a [GSA], the local agency . . . shall notify the department The notification shall include the following information, as applicable:

(1) The service area boundaries

Subsection (d) goes on to provide:

Except as provided . . . , the [GSA] shall be presumed to be the exclusive [GSA] within the area of the basin within the service area of the local agency that the local agency is managing as described in the notice.

Each of these sections uses the term “service area” however the term is not defined. As noted above, the District is providing service to the area of the former Fort Ord, but that service is pursuant to contract and not as part of the jurisdictional boundaries of the District.

In 2015, as part of clean-up legislation for SGMA, Water Code section 10726.8 (b) was amended to read:

Nothing in this part shall be construed as authorizing a local agency to . . . *impose fees or regulatory requirements on activities outside the boundaries of the local agency* (emphasis added).

It appears that the legislature understood the ambiguity in the use of the phrase “service area” and sought to clarify the intent of SGMA in the amendment to section 10726.8. That amendment appears to make clear that a local agency cannot be a GSA outside its jurisdictional boundaries; accordingly, the District cannot impose fees or regulatory requirements over that area of the former Fort Ord and the Monterey sub-basin that is outside its jurisdictional boundaries. It would seem incongruous for the District to be allowed to do so because the imposition of fees and other regulatory requirements is critical for a GSA to achieve sustainability under a Groundwater Sustainability Plan. Because of this limitation, the District could never achieve the goals of SGMA.

In response to an inquiry from the SVBGSA’s interim general counsel (the Monterey County Counsel’s Office), Sam Boland-Brien, Chief of the State Board’s Groundwater Management Program, concurred in our analysis. A copy of Mr. Boland-Brien’s letter is enclosed as Attachment F.

In conclusion, we believe that the District cannot statutorily act as a GSA outside its jurisdictional boundaries.

Arroyo Seco Groundwater Sustainability Agency

On April 27, 2017, an NOI for the ASGSA was posted. A copy of that NOI is enclosed as Attachment G. The NOI indicates that it includes the jurisdictional area of the City and the “service area” of Clark Colony, which includes an area outside the jurisdictional boundaries of the City. The ASGSA purports to be a joint powers authority (“JPA”) formed by the City and Clark Colony, formed pursuant to the Joint Exercise of Powers Act, Government Code section 6500 et seq. (“JEPA”).

For the same reasons as discussed above, the City cannot act as a GSA outside its jurisdictional boundaries. In addition, a JPA that includes a mutual water company cannot act as

a GSA outside the jurisdictional boundaries of an entity statutorily eligible to be a GSA, thus the ASGSA cannot act as a GSA outside the jurisdictional boundaries of the City.

SGMA provides that only “local agencies” may be GSA. A “local agency” is defined as “a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin” (Water Code sections 10721 (m) and 10723 (a)). A mutual water company, such as Clark Colony, is not a “local public agency” but is a private corporation, and is thus not eligible to be a GSA.

SGMA allows a JPA to function as a GSA (Water Code section 10723.6 (a) (1)), but, unlike water corporations regulated by the Public Utilities Commission, mutual water companies are not authorized to participate in a GSA (Water Code section 10723.6 (b)).

The JEPA allows mutual water companies to be members of a JPA but only to “jointly exercise any power common to the contracting parties” (Government Code section 6525 (a)). As discussed above, while the City may be a GSA, a mutual water company such as Clark Colony, is not eligible to be a GSA; therefore, there is no power in common by which the City and Clark Colony can form a JPA for the purpose of being a GSA. Accordingly, the ASGSA cannot be a GSA outside the jurisdictional boundaries of the City, in particular the service area of Clark Colony outside those boundaries. A response to a “frequently asked questions” page on the State Board’s SGMA website concurs in this analysis.

http://www.waterboards.ca.gov/water_issues/programs/gmp/docs/eligibility/gsa_faq.pdf
(question and answer no. 7).

As mentioned in the introduction to this letter, the SVBGSA requests that the State Board provide guidance on these issues as they are important for compliance with SGMA as June 30, 2017, approaches.

Thank you for your consideration of our request. Please contact me if you have questions or need any further information.

Sincerely,

Gary Petersen
Interim General Manager

enclosures (7)

Attachment 2

Coordination Agreement for Groundwater Sustainability Planning for Salinas Valley Groundwater Basin

I. STATEMENT OF MUTUAL BENEFITS AND INTEREST

This Coordination Agreement for Groundwater Sustainability Planning for Salinas Valley Groundwater Basin (“Agreement”) is hereby made and entered into by and among the Arroyo Seco Groundwater Sustainability Agency (“ASGSA”) and _____ with management responsibilities within the Salinas Valley Groundwater Basin and its subbasins (collectively, “Basin”) under the Sustainable Groundwater Management Act (“SGMA”) (collectively, the “Cooperating Agencies” or “Parties”; individually, “Cooperating Agency” or “Party”).

II. PURPOSE

The Cooperating Agencies share a common interest and mission with respect to maintaining a sustainable groundwater basin. The Cooperating Agencies recognize that this common interest and mission can be better accomplished if their efforts are communicated, coordinated and facilitated. As such, through this Agreement, the Cooperating Agencies agree to work together and support each other towards preparing and adopting coordinated multiple groundwater sustainability plans for the Basin as allowed under SGMA section 10727(b)(3).

III. AGREEMENT

The Cooperating Agencies agree to:

1. Recognize and support the position that each GSA will prepare a separate groundwater sustainability plan by sharing of data and methodologies as required under section 10727.6 of SGMA.
2. Assist any effort that may further the purpose of this Agreement to the extent practicable.
3. Attend regular meetings held by the Cooperating Agencies to monitor sustainability planning and to identify opportunities that may further the purpose of this Agreement.
4. Maintain effective and consistent communication and collaboration between and among the Cooperating Agencies.
5. To the greatest extent feasible, carry out the Cooperating Agencies’ separate activities in a coordinated and mutually beneficial manner in furtherance of this Agreement and the purposes and requirements of SGMA.

IV. PARTY AUTONOMY

1. Parties to this Agreement, and their respective agencies and offices, will implement the activities of this Agreement in a manner that defines, supports, and maintains their autonomy and utilize their own resources in pursuing these objectives.
2. Parties to this Agreement are not obligated to make expenditures of funds or provide services in order to implement this Agreement.
3. This instrument in no way restricts the Cooperating Agencies, or any cooperating third parties, from participating in similar activities with other public or private agencies, organizations, and individuals or from implementing groundwater sustainability planning in accordance with SGMA and other applicable statutes, regulations, or policies.
4. Cooperating Agencies acknowledge that this Agreement shall not give rise to any Cooperating Agency's claim against any other Party for compensation for any loss, damage, personal injury or death arising from or in any way connected with the performance of this Agreement; and each Party hereto expressly waives any such claims.
5. It is expressly declared that this Agreement hereby does not constitute a partnership, joint venture, agency or contract of employment between the Cooperating Agencies or any of them.
6. It is agreed and understood by the Parties hereto that this Agreement has been arrived at through negotiation and that no Party is to be deemed the Party which prepared this Agreement within the meaning of Civil Code section 1654.

V. NONBINDING AGREEMENT

This Agreement creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The Parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose of this Agreement. Nothing in this Agreement authorizes any of the Parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the Parties require execution of separate agreements, and the negotiation, execution, and administration of these separate agreements must comply with all applicable law.

VI. TERM

This Agreement will become effective with and upon the last date appearing opposite the signatures below by the Cooperating Agencies ("Effective Date") and shall remain in effect for a maximum period of five (5) years from the Effective Date, or until such time as the Agreement is dissolved by mutual agreement.

VII. AMENDMENT

Any amendment to the Agreement must be made by mutual consent of the Parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials of the Cooperating Agencies, prior to any changes becoming effective.

VIII. TERMINATION

At any time within the term of the Agreement, any signatory may withdraw from participating in this Agreement after thirty (30) days advance written notice to the other signatories. The remaining approving signatories may continue the provisions of this Agreement until the expiration of its term. The Agreement may also be dissolved by mutual agreement of the Cooperating Agencies.

IN WITNESS whereof, the Parties hereto have executed this Coordination Agreement for Groundwater Sustainability Planning of the Salinas Valley Groundwater Basin as of the last date appearing opposite the signatures below.

Agency Name

Signature

By:_____

Date:_____

Its authorized representative

Agency Name

Signature

By:_____ Date:_____

Its authorized representative

Agency Name

Signature

By:_____ Date:_____

Its authorized representative

Agency Name

Signature

By:_____ Date:_____

Its authorized representative

Agency Name

Signature

By:_____ Date:_____

Its authorized representative

Agency Name

Signature

By:_____ Date:_____

Its authorized representative
