

Attachment B



MONTEREY COUNTY COUNTY ADMINISTRATIVE OFFICE

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October 09, 2019

Taryn Ravazzini, Deputy Director of
Statewide Groundwater Management
California Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Eileen Sobeck, Executive Director
California Water Boards
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Via email Attachment and U.S. Mail

Dear Ms. Ravazzini and Ms. Sobeck:

On behalf of Monterey County, we write to inform you that the County will consider becoming the Groundwater Sustainability Agency (GSA) for an approximately 450-acre area, locally known as the CEMEX property, in the County of Monterey, within the City of Marina. The County Board of Supervisors (Supervisors) may exercise its right to become the presumptive GSA pursuant to Water Code Section 10724 for this small "overlap" area within the 180/400-foot Subbasin (180/400 Subbasin) in Monterey County. The Supervisors may also consider becoming the GSA for the entire 180/400 Subbasin only if it appears necessary to avoid the 180/400 Subbasin being unmanaged, or if the necessity is unclear.

This overlap area is within the City of Marina, and the overlapping GSAs are the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) and the City of Marina Groundwater Sustainability Agency (MGSA). The Department of Water Resources (Department) and State Water Board (Board) interpret GSA overlap areas to be "unmanaged," and the Sustainable Groundwater Management Act (SGMA) presumes that the County will be the GSA for unmanaged areas upon notification to the Department. The County is in the process of preparing the required notification materials for consideration by the Monterey County Board of Supervisors, and by this letter hereby informs the Department and Board of this plan.

1. Basis for County GSA Notification pursuant to Water Code Section 10724

On April 27, 2017, the Department posted the SVBGSA's timely GSA notice to become the GSA for the entire 180/400 Subbasin, including the CEMEX property. Approximately twelve months later, the Department posted the City of Marina's GSA notice for the CEMEX property. The Department has informed the SVBGSA and the City of the Marina that the Department: (1) considers GSA overlap to exist

for the CEMEX property (i.e., the Department considers the area unmanaged under SGMA); and (2) will not accept a groundwater sustainability plan (GSP) for the 180/400 Subbasin as long as the overlap exists.

Given the Department's position on the existence of overlap in the 180/400 Subbasin and the potential consequences, the County Board of Supervisors will consider becoming the GSA for the minimum acreage necessary to avoid overlap consequences including the CEMEX property or the entire 180/400 Subbasin pursuant to Water Code Section 10724 as described below. The SVBGSA is also considering a request for the County to become the GSA.

2. County Process for Becoming the GSA for the CEMEX Property

In accordance with SGMA, the County would hold a noticed (per Government Code Section 6066) public hearing regarding its decision to become the GSA for the CEMEX property. Following the public hearing, the County would consider a resolution to become the GSA for the CEMEX property and to authorize County staff to submit the required GSA documentation to the Department through the Department's SGMA Portal. Upon adoption of its GSA resolution, County staff will submit the following information to the Department via the Department's SGMA Portal:

- The County's Government Code Section 6066 notice.
- Evidence showing that the County held a public hearing in Monterey County.
- Documentation showing the County's GSA submissions occurred within thirty days of its decision to become a GSA.
- A map showing: (1) the County's service area boundaries; (2) the boundaries of the CEMEX property for which the County will serve as a GSA; and (3) any other agencies managing or proposing to manage groundwater within the basin.
- GIS shapefiles showing the County's service area boundaries and GSA boundaries.
- A copy of the County resolution forming the GSA for the CEMEX property.
- A list of "interested persons" and an explanation of how their interests will be considered in the development and operation of the GSA and GSP.

Concurrent with formation of the County GSA for the overlap area, the County GSA will consider entering into a SGMA management agreement with the SVBGSA whereby the County will manage the CEMEX property pursuant to the SVBGSA's GSP for the 180/400. The SVBGSA's GSP is near completion and will be timely filed with the State and covers the CEMEX property.

3. Related issues

In the process of exploring the viability of becoming the GSA for the CEMEX property, several questions have come to the County's attention. First, there is a question about whether the County can exercise its authority under Section 10724 given that it is a party to the joint powers agreement forming SVBGSA, and thus may have contributed to the overlap in the 180/400 Subbasin at the CEMEX property. As a threshold matter, the County is unaware of any legal limitation on the County's exercise of authority under Section 10724. Moreover, it was the City's late GSA notification, and the Department's recognition of that GSA notification, that led to the overlap. In any event, although the County is a party to the SVBGSA joint exercise of powers agreement, the SVBGSA is a legally distinct entity from the County, the County is only 1 of 11 voting members, and thus the County is not causing the overlap at the CEMEX property. Second, and

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perhaps most importantly, the GSA overlap at issue would exist even if the County was not a party to the SVBGSA joint powers agreement because the Monterey County Water Resources Agency (MCWRA) also is a member of the SVBGSA, and the MCWRA's jurisdictional boundaries include the entire 180/400-foot Subbasin, including the CEMEX property.

Third, there have been questions about whether the County would need to become a GSA for the entire 180/400 Subbasin, as opposed to the 450-acre CEMEX property. The County does not believe that SGMA and Section 10724 require the County become the GSA for the entire 180/400 Subbasin, rather, Section 10724 authorizes counties to become GSAs for "overlap" areas, which in this case is the CEMEX property. Of course, the SVBGSA and County GSA will need to submit GIS shape files demonstrating that the entire 180/400-foot Subbasin is covered by a GSA with no overlaps. SGMA compliance is best served by the County only exercising its authority under Section 10724 for the CEMEX property, and entering into an agreement with the SVBGSA for management under the SVBGSA's GSP. Out of an abundance of caution, however, the County is prepared to take appropriate action to become the GSA for all unmanaged areas.

Finally, it is our understanding that upon acceptance of the Notice by DWR, the County immediately becomes the exclusive GSA for the unmanaged area and that there is no 90-day waiting period. See State Water Board's FAQ document, FAQ # 3, p. 4 (which is cross referenced in DWR's FAQ document, FAQ #12, p. 4).

Because GSP submittal deadlines are approaching, your prompt attention to this matter is appreciated. Please let us know at your earliest convenience if you disagree with our conclusions or have concerns about the County's plans to become a GSA for the CEMEX property, as outlined herein. We are also available to discuss these issues at your convenience.

Respectfully,



Charles J. McKee
County Administrative Officer

cc via email attachment to:

Monterey County Board of Supervisors
Mark Norberg, DWR
SVBGSA Board of Directors
Gary Peterson, SVBGSA GM
Layne Long, City Manager, City of Marina
Wendy Strimling, SVBGSA Counsel
Brian Briggs, Monterey County Deputy County Counsel
Robert Donlon, Ellis & Schneider