

Attachment D



CALIFORNIA DEPARTMENT OF WATER RESOURCES

SUSTAINABLE GROUNDWATER MANAGEMENT OFFICE

901 P Street, Room 313-B | Sacramento, CA 95814 | P.O. Box 942836 | Sacramento, CA 94236-0001

November 5, 2019

Charles J. McKee
Monterey County Administrative Officer
168 West Alisal St., 3rd Floor
Salinas, Calif. 93901-5792

Dear Mr. McKee,

This is in response to your letter of October 9, 2019, in which you raised several issues related to a possible assumption by Monterey County of unmanaged area in the 180/400 Foot Aquifer subbasin. We have paraphrased questions to which the Department is able to respond as follows:

May the County become the Groundwater Sustainability Agency (GSA) for an area that is unmanaged due to overlap that was created in part by SVBGSA of which it is a member?

May the County become the GSA for some of the unmanaged area within the basin, or must it become the GSA for all unmanaged areas?

Would the County immediately become the exclusive GSA for any area for which it provided notice, or would the County only become exclusive after a 90-day period?

Our response below does not address other issues discussed in the letter, including methods of adoption of the Groundwater Sustainability Plan (GSP) or a possible agreement between the County and the Salinas Valley Basin GSA regarding management of the 450-acre parcel within the City of Marina referred to as the CEMEX property. As we indicated in a phone conversation on October 21, 2019, these are separate from questions related to GSA formation and the resolution of overlap and should be addressed by the local agencies. Please bear in mind, however, that submitted GSP's must purport to cover the entire basin and demonstrate that the legal authority necessary to implement the GSP exists.

May the County become the GSA for an area that is unmanaged due to overlap that was created in part by SVBGSA of which it is a member?

The Department believes that Monterey County can exercise the authority granted by Water Code Section 10724 to become the GSA for an area that is unmanaged due to overlap, provided that the County did not cause the overlap.

If an area within a high- or medium-priority basin is not within the management area of a GSA, Water Code Section 10724 presumes the county within which that unmanaged area lies will be the GSA for that area. Section 10724 specifies that if a county has notified the Department of its intent to be the GSA for unmanaged areas of a basin within its jurisdiction, those areas will not be subject to the groundwater reporting requirements of Water Code Section 5200 et seq. As such, Section 10724 appears designed to prompt counties to serve as the “backstop” to prevent the existence of unmanaged areas that would be required to report groundwater extractions after June 30, 2017. Although the law clearly covers situations in which no other agency has formed a GSA for part of the basin, unmanaged areas may be created as a result of overlap pursuant to Section 10723.8, and the Department understands Section 10724 to allow a county to take responsibility for those areas when appropriate. However, the Department determined that it would be inappropriate to accept a Section 10724 notice from a county that had deliberately created the overlap that led to the existence of an unmanaged area with the purpose of doing so, and simply waited out other actual or potentially overlapping agencies. But this narrow exception does not apply if the county is not the cause of the overlap.

Thus far, twenty-two counties have filed fifty-eight separate GSA notices, in many cases claiming areas that would otherwise have been unmanaged but doing so before the 2017 deadline. However, only two counties relied on Section 10724. One declared itself to be the GSA for unmanaged areas no other GSA had claimed, the other claimed areas left unmanaged due to overlap. In the second case, the local agencies that filed overlapping notices support the county’s action. No county has yet sought to use Section 10724 to form a GSA against the wishes of agencies within their jurisdiction.

Although the Department does not recognize as valid a Section 10724 notice from a county to become the GSA for an unmanaged area when the county itself deliberately prevented the area from being managed by filing an overlapping GSA notice, your letter indicates that County staff do not believe that the County was responsible for the overlap. Information supporting that contention should be made part of the official findings and included in the resolution submitted to the Department. The Department requests that the County provide information related to the decision-making role of the County as part of the SBVGSA, and the intent of the SBVGSA in filing the notice that resulted in overlap.

May the County become the GSA for some of the unmanaged area within the basin, or must it become the GSA for all unmanaged areas?

The Department agrees with the County that there is no requirement to become the GSA for all unmanaged areas in a basin. Section 10724 presumes that a county will be the GSA for all unmanaged areas in a high- or medium-priority basin, but nothing in the law specifies that a county is required to form a GSA for all of the area for which it is presumed to be the GSA. Furthermore, the county must still elect to become the GSA and notify the Department of its decision. Section 10724 thus allows a county to serve as the GSA for all unmanaged area in a basin within its jurisdiction or none, and

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nothing in the law appears to prevent the county from managing some of that area. As a result, the Department agrees that the County need not become the GSA for the entire 180/400 Foot Aquifer subbasin. However, the Department requests that the County indicate which areas of the subbasin for which it does not intend to become a GSA, in accord with Section 10724(b).

Would the County immediately become the exclusive GSA for any area for which it provided notice, or would the County only become exclusive after a 90-day period?

If the County decides to become the GSA for an unmanaged area, the Department will post that notice upon determining that the notice is complete and that the County has demonstrated that it did not cause the overlap creating the unmanaged area. Upon posting, the Department will immediately categorize the GSA as exclusive. Water Code Section 10723.8 establishes a 90-day window after the initial submission of a GSA notice during which time other agencies may file overlapping notices. The Department does not believe the 90-day period to apply in certain circumstances, as when an agency that has been deemed exclusive pursuant to Water Code Section 10723 notifies the Department of its intention to serve as the GSA. Because no other agency is eligible to overlap the area of an exclusive GSA the 90-day waiting period served no purpose, and so the Department posts such notices upon determining that they are complete and immediately identifies the GSA as exclusive. Likewise, when a county files a notice pursuant to Water Code Section 10724 to serve as the GSA for an unmanaged area after June 30, 2017, the Department practice has been to immediately declare the GSA exclusive. The Department adopted that practice on the assumption that counties would be taking responsibility for areas in which no other agency had any interest, but the same logic applies for notices filed in areas that are unmanaged as a result of the overlapping GSA notices of other entities.

If you have any questions, please contact me at (916) 653-4781.

Sincerely,



Taryn Ravazzini
Deputy Director

cc: Monterey County Board of Supervisors
SVBGSA Board of Directors
Gary Peterson, SVBGSA GM
Layne Long, City Manager, City of Marina
Wendy Strimling, SVBGSA Counsel
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Eileen Sobeck, State Water Resources Control Board