

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Environmental Resources

BOARD AGENDA #: *B-5

AGENDA DATE: January 24, 2017

SUBJECT:

Approval to Set a Public Hearing for February 14, 2017, at 9:10 a.m. to Consider Adoption of the Memorandum of Understanding Forming the Eastside San Joaquin Groundwater Sustainability Agency

BOARD ACTION AS FOLLOWS:

No. 2017-29

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended


2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:


ELIZABETH A. KING, Clerk of the Board of Supervisors

File No. GSA-2-1

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Environmental Resources
Urgent Routine

BOARD AGENDA #: *B-5

AGENDA DATE: January 24, 2017

CEO CONCURRENCE: *phx*

4/5 Vote Required: Yes No

SUBJECT:

Approval to Set a Public Hearing for February 14, 2017, at 9:10 a.m. to Consider Adoption of the Memorandum of Understanding Forming the Eastside San Joaquin Groundwater Sustainability Agency

STAFF RECOMMENDATIONS:

1. Set the Public Hearing on February 14, 2017, at 9:10 a.m. for consideration of adoption of the Memorandum of Understanding forming the Eastside San Joaquin Groundwater Sustainability Agency.
2. Authorize the Clerk of the Board to publish notice of public hearing as required by State law.

DISCUSSION:

In September of 2014, Governor Edmund G. Brown signed into law the Sustainable Groundwater Management Act of 2014 (SGMA), which changed the landscape of groundwater management in California. SGMA is a comprehensive package of legislation that sets the framework for statewide sustainable groundwater management and declares that such authority be given to local public agencies that have either water supply or land use authority, or both. SGMA requires, among other items, the formation of a Groundwater Sustainability Agency (GSA) and the preparation of Groundwater Sustainability Plans (GSPs) with a focus on long-term groundwater sustainability.

Formation of a GSA must occur no later than June 30, 2017. The Eastern San Joaquin Subbasin (ESJ Subbasin) has been listed by the Department of Water Resources (DWR) as a "critically overdrafted" basin since 1980. Pursuant to SGMA, groundwater basins in this category of overdraft are required to develop and adopt GSPs by January 2020, as opposed to January 2022, which is the requirement for other groundwater basins not so designated.

Stanislaus County has a long-standing history of working with local groundwater management agencies, such as the groundwater associations that have been in place for more than 20 years in the Turlock and Modesto subbasins. However, this has not been the case for all areas of the County, particularly that area of the County that extends into the eastside of the ESJ Subbasin (commonly referred to as the Northern Triangle) located north of the Stanislaus River. SGMA mandates that all areas of any particular groundwater subbasin must have full

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coverage by one or more GSAs. That is, the Northern Triangle section of the County cannot be overlooked without jeopardizing the County's compliance with SGMA. Towards that end, over the last two years, County staff have actively participated in seeking partnerships to provide GSA coverage for this part of the ESJ Subbasin. Because there is no existing governance structure in place from which to build upon, a GSA for this part of the basin represents the creation of an entirely new entity that will then coordinate long-term groundwater management activities within the basin with other GSAs that have been created further to the west.

SGMA empowers GSAs and local agencies to use a number of new management tools to achieve "sustainability" in the affected groundwater basins, including authorities required in order to manage groundwater in a sustainable manner. GSAs are the local agencies responsible for the development and implementation of the GSPs, ultimately aimed at ensuring groundwater sustainability over a 50 year planning horizon. As stated earlier, the deadline for developing a GSP in the ESJ Subbasin is January 31, 2020.

SGMA requires that formal procedures be followed in order to become a GSA. First, each of the local agencies electing to be a GSA must hold a noticed Public Hearing to receive public comment on the local agency's decision to become the GSA for the Basin. The public agencies that will be members of the Eastside San Joaquin GSA at this time are:

Calaveras County Water District
Rock Creek Water District
Stanislaus County

The proposed Memorandum of Understanding (MOU) includes a provision that allows for the inclusion of other public agency members to join the GSA in the future. At the conclusion of this Public Hearing, it is anticipated that the governing body for each local public agency will authorize the execution of the attached GSA MOU and adopt a resolution forming the Eastside San Joaquin Groundwater Sustainability Agency for that specific part of the Eastern San Joaquin Groundwater Subbasin.

In order to be recognized by the State as a GSA, a filing deadline of June 30, 2017, must be met. The attached MOU, when executed along with the timely filing of a notice of determination with the California DWR, will ensure that all deadlines and obligations under SGMA are met.

It is recognized that the governance structure for the Eastside San Joaquin GSA will likely transition into a more formal structure, such as a Joint Powers Authority, in the future for the purposes of GSP develop and implementation. Any such proposed action would be brought before the Board of Supervisors for consideration of approval at the appropriate time.

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POLICY ISSUE:

This proposed action is in compliance with State legislation known as the “Sustainable Groundwater Management Act” which mandates that the formation of such described Groundwater Sustainability Agency’s be created by June 30, 2017. Failure to create a GSA would result in the groundwater resources of the basin being subject to regulation by the State of California.

FISCAL IMPACT:

There is no fiscal impact associated with the creation of the Eastside San Joaquin Groundwater Sustainability Agency. The GSA members will be working with other GSAs within the Eastern San Joaquin Groundwater Subbasin towards the development and implementation of a single, integrated GSP for the entire groundwater basin. Funding for such work will need to come from the member agencies as agreed upon and described in the MOU. At this time, staff is working to obtain the estimated cost to Stanislaus County so that the funding mechanism can be identified and addressed at a future budget cycle.

BOARD OF SUPERVISORS’ PRIORITY:

Approval of these actions are consistent with the Board’s priorities of a Safe Community, a Healthy Community, a Strong Local Economy, Effective Partnerships, and a Well Planned Infrastructure System by ensuring a coordinated approach towards regional groundwater resources management.

STAFFING IMPACT:

Existing staff will continue to oversee the work associated with this item.

CONTACT PERSON:

Jami Aggers, Director, Department of Environmental Resources	Telephone: 209-525-6770
Walter Ward, Water Resources Manager	Telephone: 209-525-6710

ATTACHMENT(S):

1. Memorandum of Understanding (MOU) forming the Eastside San Joaquin Groundwater Sustainability Agency
2. Public Hearing Notice

Attachment 1



**MEMORANDUM OF UNDERSTANDING
FOR IMPLEMENTATION OF THE
SUSTAINABLE GROUNDWATER MANAGEMENT ACT
IN THE EASTERN SAN JOAQUIN GROUNDWATER SUBBASIN
BY SUPPORTING FORMATION OF THE
EASTSIDE SAN JOAQUIN GROUNDWATER SUSTAINABILITY AGENCY**

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") between the County of Stanislaus ("Stanislaus"), Rock Creek Water District ("Rock Creek"), and Calaveras County Water District ("CCWD"), each of which is referred to as a "Party" and collectively "Parties," is made and effective as of the last date on which all of the Parties listed below have executed this MOU.

RECITALS

A. The State of California has enacted the Sustainable Groundwater Management Act (contained in SB 1168, AB 1739 and SB 1319), referred to in this MOU as the "Act," pursuant to which certain local agencies and parties to a memorandum of understanding or other legal agreement may become "groundwater sustainability agencies" and adopt "groundwater sustainability plans" in order to manage and regulate groundwater in underlying groundwater basins, as identified and defined in California Department of Water Resources Bulletin 118. The Parties are local agencies qualified to become a groundwater sustainability agency and adopt a groundwater sustainability plan under the Act.

B. Multiple local agencies overlying a single groundwater basin or subbasin may adopt individual groundwater sustainability plans if those plans are coordinated, or may join together to adopt a single plan. The Parties all overlie portions of the Eastern San Joaquin Subbasin as defined by the California Department of Water Resources (the "Basin") and wish to participate in the implementation of the Act within the Basin or specific portions thereof. As a result, coordination and cooperation between the Parties is necessary in order to determine their respective roles and the manner in which they will implement the Act. In addition, other agencies that are qualified to become groundwater sustainability agencies overlie the Basin and have expressed interest in implementation of the Act in the Basin, and the Parties acknowledge the importance of involving those other agencies in the management of groundwater resources in the Basin under the Act. The Parties desire to by this agreement create the Eastside San Joaquin Groundwater Sustainability Agency ("GSA").

C. The Parties wish to establish an agreement and framework for cooperative efforts relative to formation of a GSA in order to implement the Act in the Basin to help

ensure that the Act is implemented in the Basin effectively, efficiently, fairly, and at the lowest reasonable cost.

THEREFORE, in consideration of the mutual promises set forth below and to implement the goals described above, the Parties hereto agree as follows:

1. **Purposes of MOU.** The purposes of this MOU are to (i) facilitate a cooperative and ongoing working relationship among the Parties and other stakeholders and water users to establish a GSA in order to develop and implement mutually beneficial approaches and strategies for implementing the Act in the Basin; and (ii) facilitate contacts with other agencies, both current and prospective, overlying the Basin so that they can coordinate with the GSA to implement a GSP and to satisfy the requirements of the Act.

2. **Intent to Form GSA; Implementation of the GSP.** This MOU is to express the intent of the Parties to jointly file as a multiagency GSA for the area located in the Eastern San Joaquin subbasin and under the jurisdiction of the Parties. The Parties shall regularly confer with regard to those efforts.

3. **Outreach to Other Agencies.** In recognition of the importance of involving all interested agencies in the Basin that are or will be involved in efforts to establish the GSA and the GSP in the management of the Basin in coordination with other agencies in the Basin, as an initial activity under this MOU, the Parties shall develop and implement an outreach plan pursuant to which the Parties will contact other agencies within or near their respective boundaries that may become groundwater sustainability agencies and adopt groundwater sustainability plans under the Act, to invite their participation in activities undertaken in connection herewith.

4. **Initial Administrative Costs.** Each Party shall bear all costs it incurs with respect to its activities under this MOU, including without limitation, costs relative to the formation of the GSA and activities in which that Party wishes to participate.

5. **Financing.** The Parties will develop a coordinated financing plan and cost share agreement for GSA activities that will include, without limitation, seeking bond funding, state loan funds, and imposing appropriate fees and assessments.

6. **Actions of the GSA.** The Parties intend to support and advocate for the GSA, which would have, among others set forth in the Act, the following authorities and obligations:

a) The GSA would adopt actions for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the territory of the GSA.

b) An action adopted by the GSA would become effective on the last date on which all of the respective boards of the Parties has approved of the action.

c) All actions would be adopted at noticed public hearings by the Parties' respective boards.

d) Calaveras County Water District would be designated as the contracting agent for the GSA and would have the authority to contract as necessary to accomplish the purposes of the GSA, subject to approval by the Parties.

e) The GSA would have the authority to enter into a coordination agreement with other local agencies for purposes of coordinating the GSA's plan with other agencies or groundwater sustainability plans within the basin.

7. **Savings Provisions.** This MOU shall not operate to validate or invalidate, modify or affect any Party's water rights or any Party's obligations under any agreement, contract or memorandum of understanding/agreement entered into prior to the effective date of this MOU. Nothing in this MOU shall operate to convey any new right to groundwater to either Party. Each Party to this MOU reserves any and all claims and causes of action respecting its water rights and/or any agreement, contract or memorandum of understanding/agreement; any and all defenses against any water rights claims or claims under any agreement, contract or memorandum of understanding/agreement. Further, nothing in this MOU is intended to interfere with any county's exercise of its land-use authority under its police power or to interfere with the operation of any county's existing groundwater ordinance, as of the date of this MOU.

8. **Authority.** Each signatory of this MOU represents that s/he is authorized to execute this MOU on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this MOU and to perform all obligations under this MOU.

9. **Amendment.** This MOU may be amended or modified only by a written instrument executed by each of the Parties to this MOU.

10. **Jurisdiction.** This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules.

11. **Headings.** The paragraph headings used in this MOU are intended for convenience only and shall not be used in interpreting this MOU or in determining any of the rights or obligations of the Parties to this MOU.

12. **Construction and Interpretation.** This MOU has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this MOU. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this MOU.

13. **Entire Agreement.** This MOU constitutes the entire agreement of the Parties with respect to the subject matter of this MOU and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this MOU.

14. **Partial Invalidity.** If, after the date of execution of this MOU, any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this MOU, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

15. **Successors and Assigns.** This MOU shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this MOU. No Party may assign its interests in or obligations under this MOU without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

16. **Waivers.** Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU and forbearance to enforce one or more of the remedies provided in this MOU shall not be deemed to be a waiver of that remedy.

17. **Attorneys' Fees and Costs.** The prevailing Party in any litigation or other action to enforce or interpret this MOU shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.

18. **Necessary Actions.** Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this MOU.

19. **Compliance with Law.** In performing their respective obligations under this MOU, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

20. **Third Party Beneficiaries.** This MOU shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.

21. **Counterparts.** This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

22. **Notices.** All notices, requests, demands or other communications required or permitted under this MOU shall be in writing unless provided otherwise in this MOU and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by electronic mail or facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

County of Stanislaus
Attn: Manager
1010 10th Street
Modesto, CA 95354

Rock Creek Water District
Attn: General Manager
9601 East Highway 4
Farmington, 95230

Calaveras County Water District
Attn: General Manager
P.O. Box 846
San Andreas, CA 95249

MEMORANDUM OF UNDERSTANDING
Forming the Eastside San Joaquin Groundwater Sustainability Agency

IN WITNESS WHEREOF, the Parties hereto execute this Agreement on the last date written beside each Party representative's signature.

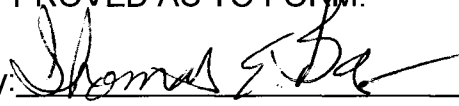
COUNTY OF STANISLAUS

By: _____
Vito Chiesa
Chairman of the Board of Supervisors

ATTEST:

By: _____
Elizabeth A. King
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By:  _____
Thomas Boze
~~Deputy~~ County Counsel
Assistant

Attachment 2

STANISLAUS COUNTY
NOTICE OF PUBLIC HEARING


NOTICE IS HEREBY GIVEN that on Tuesday, February 14, 2017, at 9:10 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th Street, Modesto, CA, pursuant to California Water Code Section 10723, to consider approval of the of the "Memorandum of Understanding Forming the Eastside San Joaquin Groundwater Sustainability Agency" for a portion of the Eastern San Joaquin Groundwater Subbasin.

NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Written comments may be submitted to Stanislaus County at Attn: Walter Ward, Water Resources Manager, 3800 Cornucopia Way, Suite C, Modesto, CA, or at ward@envres.org.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: January 24, 2017

ATTEST: ELIZABETH A. KING, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY: 
Pam Villarreal, Assistant Clerk

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of THE MODESTO BEE, printed in the City of MODESTO, County of STANISLAUS, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of STANISLAUS, State of California, Under the date of February 25, 1951, Action No. 46453; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Jan 30, 2017, Feb 06, 2017

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

February 6th, 2017

(By Electronic Facsimile Signature)

Cynthia A. Villarreal

STANISLAUS COUNTY
NOTICE OF PUBLIC HEARING
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NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Written comments may be submitted to Stanislaus County at Attn: Walter Ward, Water Resources Manager, 3800 Cornucopia Way, Suite C, Modesto, CA, or at wward@envres.org.
BY ORDER OF THE BOARD OF SUPERVISORS. DATED: January 24, 2017
ATTEST: ELIZABETH A. KING, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Pam Villarreal, Assistant Clerk.
Pub Dates Jan 30, Feb 6, 2017

PROOF OF PUBLICATION

(2015.5 C. C. P.)

STATE OF CALIFORNIA,

County of Stanislaus

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of twenty-one years, and not a party to or interested in the above entitled matter. I am the principal clerk of THE OAKDALE LEADER, 122 South Third Avenue, Oakdale, California, a newspaper of general circulation, published in Oakdale, California in the City of Oakdale, County of Stanislaus, and which newspaper has been adjudged a newspaper of general circulation, by the Superior Court of the County of Stanislaus, State of California. That the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

January 25, February 1, in the year 2017

I certify or declare under penalty of perjury that the foregoing is true and correct.

Dated at Oakdale,

This 1st day of February 2017.



Signature

This space is for the County Clerk's Filing Stamp

Proof of Publication of

PUBLIC HEARING EASTERN SAN JOAQUIN GROUNDWATER SUBBASIN

PUBLIC NOTICE
STANISLAUS COUNTY
NOTICE OF PUBLIC HEARING
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Written comments may be submitted to Stanislaus County at Attn: Walter Ward, Water Resources Manager, 3800 Cornucopia Way, Suite C, Modesto, CA, or at ward@envresl.org. BY ORDER OF THE BOARD OF SUPERVISORS: DATED: January 24, 2017 ATTEST: ELIZABETH A. KING, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Pam Villarreal, Assistant Clerk.
January 25, February 1, 2017
OL #17-012