

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

DEPT: Environmental Resources

BOARD AGENDA #: \*B-6

AGENDA DATE: January 24, 2017

**SUBJECT:**

Approval to Set a Public Hearing for February 14, 2017, at 9:15 a.m. to Consider adoption of the Memorandum of Understanding Forming the Northwestern Delta-Mendota Groundwater Sustainability Agency

**BOARD ACTION AS FOLLOWS:**

No. 2017-30

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-3-1

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

DEPT: Environmental Resources

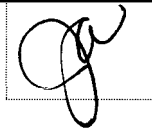
Urgent

Routine

BOARD AGENDA #: \*B-6

AGENDA DATE: January 24, 2017

CEO CONCURRENCE: *phx*



4/5 Vote Required: Yes  No

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**SUBJECT:**

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**STAFF RECOMMENDATIONS:**

1. Set the Public Hearing on February 14, 2017 at 9:15 a.m. for consideration of adoption of the Memorandum of Understanding Forming the Northwestern Delta Mendota 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 Delta-Mendota Subbasin (ESJ Subbasin) has been listed by the Department of Water Resources (DWR) as a "critically overdrafted" basin since 2015 due to concerns regarding land subsidence. 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, for example. However, this has not been the case for all areas of the County, particularly that area of the County that lies west of the San Joaquin River. SGMA mandates that all areas of any particular groundwater subbasin must have full coverage by one or more GSAs. That is, the westside 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 Delta-Mendota Subbasin. Because there is no existing

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governance structure in place from which the County could build upon, a GSA for this part of the basin represents the creation of a new “entity” that will then coordinate the long-term groundwater management activities (GSP implementation) within the basin with the other GSAs that have been created in other parts of the basin.

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 Northwestern Delta-Mendota GSA at this time are:

Merced County  
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 the attached 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 Memorandum of Understanding (MOU), when executed and such notice of determination is timely filed with the California Department of Water Resources, will ensure that all deadlines and obligations under SGMA are met.

It is recognized that the governance structure for the Northwestern Delta-Mendota 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 their consideration of approval at the appropriate time.

**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.

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**FISCAL IMPACT:**

There is no fiscal impact related to the creation of the Northwestern Delta-Mendota Groundwater Sustainability Agency. The GSA members will be working with other GSAs within the Delta Mendota Groundwater Subbasin towards the development and implementation of a single, integrated GSP for the entire basin. Funding for such work will need to come from the member agencies as agreed upon and described in the MOU or other such funding agreements. 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 the Proposed budget cycle.

**BOARD OF SUPERVISORS' PRIORITY:**

Approval of this agenda item is 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 Northwestern Delta Mendota Groundwater Sustainability Agency
2. Public Hearing Notice

# **Attachment 1**



**MEMORANDUM OF UNDERSTANDING  
FOR IMPLEMENTATION OF THE  
SUSTAINABLE GROUNDWATER MANAGEMENT ACT  
IN THE DELTA-MENDOTA GROUNDWATER SUBBASIN  
BY SUPPORTING FORMATION OF THE  
NORTHWESTERN DELTA-MENDOTA GROUNDWATER SUSTAINABILITY  
AGENCY**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") between the County of Stanislaus ("Stanislaus") and the County of Merced ("Merced"), 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**

WHEREAS, on September 16, 2014 Governor Jerry Brown signed into the law Senate Bills 1168 and 1319 and Assembly Bill 1319, known collectively as the Sustainable Groundwater Management Act, referred to in this MOU as the "Act,"; and

WHEREAS, the Act went into effect on January 1, 2015; and

WHEREAS, pursuant to the Act, certain local agencies and parties to a memorandum of understanding or other legal agreement may become groundwater sustainability agencies ("GSA") and adopt groundwater sustainability plans ("GSP") in order to manage and regulate groundwater in underlying groundwater basins or subbasins, as identified and defined in California Department of Water Resources Bulletin 118; and

WHEREAS, each of Parties to this MOU are local agencies with either water supply, water management, or land use responsibilities within the Delta-Mendota Subbasin, DWR Basin number 5-22.07, and are qualified to become a GSA and adopt a GSP under the Act; and

WHEREAS, 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 Subbasin to help ensure that the Act is implemented in the Subbasin effectively, efficiently, fairly, and at the lowest reasonable cost.

WHEREAS, the Parties desire to by this agreement create the Northern Delta-Mendota Groundwater Sustainability Agency.

WHEREAS, the Parties will work collaboratively with other interested agencies to develop and implement a GSP or multiple GSPs to manage the subbasin pursuant to the requirements of the Act; and

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 Subbasin; and (ii) facilitate contacts with other agencies, both current and prospective, overlying the Subbasin so that they can coordinate with the GSA to implement a GSP and to satisfy the requirements of the Act.

2. **Term.** The MOU will take effect on the last date on which all of the Parties listed below have executed this MOU. This MOU shall remain in full force and effective until this Agreement is amended, rescinded, superseded or terminated by action of at least two-thirds of the Parties.

3. **Intent to Form GSA; Implementation of the GSP.** This MOU is to express the intent of the Parties to establish themselves as a single, multi-agency GSA for the portion of the Delta-Mendota Subbasin under the jurisdiction of the Parties, as identified and depicted in Exhibit "A". This MOU is not intended to form a new legal entity. The Parties intend to cooperate to obtain consulting, administrative and management services needed to efficiently establish a multi-agency GSA and to develop and implement a GSP. The Parties each expect to enter into such forms of agreement as may be required to obtain such services; or to each independently or jointly provide services utilizing their own staff or consultants; or to jointly enter into contracts or agreements with any Party or outside service provider to obtain services necessary for the operation of the Northern Delta-Mendota GSA under this MOU.

4. **Outreach to Other Agencies.** In recognition of the importance of involving all interested agencies in the Subbasin that are or will be involved in efforts to establish the GSA and the GSP, the Parties shall work cooperatively with all other GSAs in the Subbasin. 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 GSAs and adopt GSPs under the Act, to invite their participation in activities undertaken in connection herewith.

5. **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.

6. **Financing.** The Parties may 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.

7. **Actions of the GSA.** Each Party represents and warrants that it would qualify to serve as a separate GSA under the provisions of the Act, and that it has the power to comply with the provisions of the Act and other laws. By forming a single, multi-agency GSA under this MOU, the Parties understand that each of them will have

the powers of a GSA as specified in the Act. The Parties agree to coordinate their exercise of those powers for the purposes of the Northern Delta-Mendota GSA. The Northern Delta-Mendota GSA will have, without, in any way, limiting the powers provided to the GSA under 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 pursuant to the requirements set forth in the Act.

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) 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 GSPs within the basin.

8. **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.

9. **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.

10. **Admission of New Parties.** Additional Parties may become signatories of the MOU upon approval by the Parties and execution of this MOU by the new Party's legislative body.

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

12. **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.

13. **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.



14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **Indemnification.** Each Party shall indemnify each of the other Parties and their board members, officers, employees or agents from and against any and all liabilities arising from or in connection with any negligent act or omission or willful misconduct taken by the indemnifying Party, its board members, officers, employees or agents, under or in connection with this MOU. This indemnification provision will continue to bind the Parties after the termination of this MOU.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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:

**To: County of Stanislaus**  
1010 10<sup>th</sup> Street  
Modesto, CA 95354

**To: County of Merced**  
2222 M Street  
Merced, CA 95343

**Memorandum of Understanding  
Forming the Northwestern Delta-Mendota Groundwater Sustainability Agency**

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

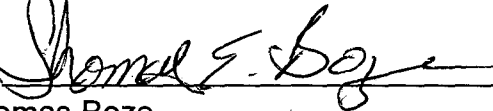
COUNTY OF STANISLAUS

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 9:15 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 10<sup>th</sup> Street, Modesto, CA, pursuant to California Water Code Section 10723, to consider approval of the "Memorandum of Understanding Forming the Northwestern Delta-Mendota Groundwater Sustainability Agency" for a portion of the Delta -Mendota Groundwater Subbasin.

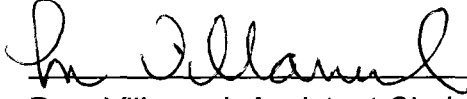
NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Written comments may be submitted to Stanislaus County at Attn: Walter Ward, Water Resources Manager, 3800 Cornucopia Way, Suite C, Modesto, CA, or at [wward@envres.org](mailto:wward@envres.org).

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

**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

STANISLAUS COUNTY  
NOTICE OF PUBLIC HEARING  
NOTICE IS HEREBY GIVEN that on Tuesday, February 14, 2017, at 9:15 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 "Memorandum of Understanding Forming the Northwestern Delta-Mendota Groundwater Sustainability Agency" for a portion of the Delta-Mendota 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 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

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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