



Board Agenda Item 35

DATE: February 20, 2024

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Memorandum of Agreement with Groundwater Sustainability Agencies for development of a Groundwater Sustainability Plan

RECOMMENDED ACTION(S):

1. **Approve and authorize the Chairman to execute a Memorandum of Agreement with various groundwater sustainability agencies within the Delta-Mendota Subbasin for the preparation of a Groundwater Sustainability Plan that includes Fresno County Management Areas A and B; and**
2. **Approve and authorize the Chairman to execute a Special Project Agreement with the San Luis & Delta Mendota Water Authority and the Special Projects Participants for the coordination and preparation of a single Groundwater Sustainability Plan for the Delta Mendota Subbasin that includes Fresno County Management Areas A and B.**

Approval of the recommended actions will authorize an agreement for coordination of resources between agencies within the Delta-Mendota Subbasin for the preparation of a Groundwater Sustainability Plan (GSP) for Fresno County Management Areas A and B. The plan is required pursuant to Water Code Section 10727. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

Your Board may determine not to approve the recommended actions; however, it would likely result in increased costs and delay of preparing the required GSP. If the GSP is not completed, intervention from the State Water Resources Control Board (State) could occur, which would result in the State managing local groundwater resources in those areas.

FISCAL IMPACT:

There is no additional increase in Net County Cost associated with the Recommended Actions for the remainder of FY 2023-2024. An Agreement will be in place between the County and Luhdorff and Scalmanini, Consulting Engineers for assistance in the GSP preparation as related to the County. Sufficient appropriations and estimated revenues are included in the County Administrative Office's FY 2023-2024 Adopted Budget in Org 2540 (Interest and Miscellaneous Expenditures) to cover the tasks expected to be completed. Additional appropriations will be requested, if needed for the duration of the term to cover the tasks.

DISCUSSION:

The Sustainable Groundwater Management Act (SGMA) provides for the establishment of a local

Groundwater Sustainability Agency (GSA) to manage groundwater sustainability within groundwater subbasins defined by the California Department of Water Resources (DWR). The County of Fresno serves as the exclusive GSA for Management Areas A and B, approved by the Board on May 2, 2017, covering an approximate 24,000-acre portion in the southern part of the Subbasin, located roughly between the San Joaquin River east of the City of Mendota and the unincorporated community of Tranquility.

SGMA was signed into law September 16, 2014, and is codified at California Water Code (Cal. Water Code) sections 10720 through 10737.8. SGMA established a new structure for managing California's groundwater resources at a local level by local agencies. Within the Subbasin, 23 GSAs have been formed by various public agencies. Per Cal. Water Code section 10702, each of the GSAs are required to develop and implement, no later than January 31, 2020, a groundwater sustainability plan (GSP) to ensure a sustainable yield of groundwater, without causing undesirable results. Per Cal. Water Code section 10727, subdivision (b)(3), when more than one GSP is developed to cover a subbasin, the responsible GSAs must coordinate management of the subbasin through an agreement that covers the entire subbasin. Failure to comply with that requirement could result in the State asserting its power to manage local groundwater resources.

Six GSPs were developed and submitted for approval by the required date of January 31, 2020. However, after an approximate two-year review, on January 21, 2022, DWR determined that the coordinated groundwater sustainability plans in the Subbasin were "incomplete," and required that by July 20, 2022, the GSPs be revised to address certain actions. Amended GSPs were re-submitted in a timely manner thereafter; however, on March 2, 2023, the revised GSPs were again deemed inadequate under SGMA by DWR. Because of DWR's inadequate determination of the current GSPs, it is understood that SGMA can authorize the State Water Resources Control Board to seek to intervene and exercise jurisdiction over the affected subbasin.

In lieu of the possible intervention by the State Water Resources Control Board, the GSAs have agreed to adopt one groundwater sustainability plan for the subbasin, instead of submitting multiple plans for each GSA. The GSAs have therefore agreed to enter into a Memorandum of Agreement (MOA) to coordinate the work and management of the Subbasin and to clarify responsibilities of the respective GSAs, in accordance with SGMA. In addition to the MOA, a Special Project Agreement will be entered by the GSAs, to allow for coordinated access to resources, as well as to provide a mechanism for sharing the benefits and expenses of obtaining such resources for the purpose of developing a single GSP. The MOA shall remain binding and in effect until all Parties have approved a single GSP for the Subbasin, at which time the MOA shall automatically terminate.

Fresno County will continue to work with consultant Luhdorff and Scalmanini Engineers (LSCE) to towards the new GSP, on behalf of Fresno County Management Areas A and B. LSCE worked with County on the prior GSP for these Management Areas A and B, and it has developed an understanding of the geology and hydrogeology (conceptual model) of Areas A and B, as well as surrounding areas. The Department has negotiated a contract with LSCE that provides terms matching the Department's expectation of fair and reasonable costs for the project. The services required of the consultant include the preparation and submittal of the GSP.

These agreements deviate in part from the County standard contract language, and the Department of Public Works and Planning (PWP) consulted with Risk Management regarding both the MOA and Special Project Agreement language. Specifically, although standard insurance provisions are excluded, PWP believes that the benefits of the recommended agreement outweigh any potential risk and recommends approval of the agreement as a prudent business decision. Additionally, there is a one-way indemnification of the San Luis & Delta-Mendota Water Authority and non-project participants for the Special Project Agreement. Also, each party will be liable for its own negligence and misconduct as per the MOA. This has the effect of making each party responsible for losses arising from their own negligent or wrongful performance, or failure to perform. Once again, PWP believes the risks associated with the above non-standard language are an acceptable business risk, especially given the importance of the purpose and goals of these two agreements.

REFERENCE MATERIAL:

BAI #11, May 2, 2017

BAI #13, May 2, 2017

BAI #45, August 21, 2018

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Memorandum of Agreement - San Luis & Delta-Mendota Water Authority

On file with Clerk - Special Project Agreement - San Luis & Delta-Mendota Water Authority

CAO ANALYST:

Salvador Espino