

RESOLUTION NO. 2020-02

A RESOLUTION OF THE CITY COUNCIL-GROUNDWATER SUSTAINABILITY
AGENCY RECEIVING A PRESENTATION AND ADOPTING THE FINAL
GROUNDWATER SUSTAINABILITY PLAN (“GSP”) FOR A PORTION OF THE 180/400
FOOT AQUIFER SUBBASIN AND/OR PROVIDING DIRECTION TO STAFF AS TO
CHANGES REQUIRED PRIOR TO ADOPTION

WHEREAS, the Sustainable Groundwater Management Act of 2014, Water Code Sections 10720 – 10736.6 (“SGMA”) was signed into law on September 16, 2014; and

WHEREAS, SGMA requires that each California groundwater basin or subbasin be managed by a single Groundwater Sustainability Agency (“GSA”) or by a combination of GSAs and that such management be implemented pursuant to an approved Groundwater Sustainability Plan (“GSP”) or multiple coordinated GSPs; and

WHEREAS, the legislative intent of SGMA is to provide for the sustainable management of groundwater subbasins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, the City’s jurisdictional boundaries overlie a portion of the 180/400 Foot Aquifer Subbasin of the Salinas Valley Groundwater Basin; and

WHEREAS, the City and its residents depend entirely on groundwater resources in the 180/400 Foot Aquifer Subbasin and the adjacent Monterey Subbasin; therefore, sustainable management of 180/400 Foot Aquifer Subbasin is critical issue to the City; and

WHEREAS, the City is committed to the sustainable management of groundwater within the Salinas Valley Groundwater Basin 180/400 Foot Aquifer Subbasin and intends to coordinate with the other GSAs and affected parties and consider the interests of all beneficial users and uses of groundwater within the 180/400 Foot Aquifer Subbasin; and

WHEREAS, on March 20, 2018, the City Council of the City of Marina held a public hearing and passed Resolution 2018-25 forming the Marina Groundwater Sustainability Agency (“MGSA”) to undertake sustainable groundwater management for a portion of the Salinas Valley Groundwater Basin 180/400 Foot Aquifer Subbasin within the City’s jurisdiction; and

WHEREAS, MGSA is required to assess the conditions in its local subbasin and adopt a locally-based SGMA-compliant GSP for its portion the critically over-drafted 180/400 Foot Aquifer Subbasin by January 31, 2020; and

WHEREAS, MGSA filed an Initial Notification of its intent to prepare a GSP for its jurisdiction within the 180/400 Foot Aquifer Subbasin on July 31, 2019; and

WHEREAS, on October 8, 2019, MGSA released its Draft GSP; and

WHEREAS, MGSA issued a Notice of Intent to Adopt a GSP for its jurisdiction within the 180/400 Foot Aquifer Subbasin on October 9, 2019; and

WHEREAS, the Draft GSP was available for public review and MGSA received comments on the plan through November 25, 2019;

WHEREAS, MGSA responded to all the comments it received and made changes to the GSP as appropriate;

WHEREAS, on August 20, 2019, the Marina City Council, on behalf of MGSA, approved a coordination agreement and instructed City staff to convey it to the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) for review and approval;

WHEREAS, SVBGSA never responded with any requested revisions to this agreement, thereafter refused to negotiate in good faith with MGSA on a coordination agreement, and instead supported efforts by the County of Monterey to take over MGSA’s jurisdictional area;

WHEREAS, MGSA’s GSP seeks to ensure sustainable groundwater management in the City’s coastal area, support regional efforts to address seawater intrusion and other undesirable results, and return the 180/400 Foot Aquifer Subbasin to sustainable groundwater management;

WHEREAS, MGSA’s GSP contains the necessary elements prescribed by SGMA and its regulations, and this GSP supports locally-based sustainable groundwater management in this portion of the Subbasin; and

WHEREAS, MGSA’s GSP addresses gaps in SVBGSA’s GSP’s regional approach to the management of the 180/400 Foot Aquifer Subbasin by (1) incorporating the newest and best science, such as recent airborne electromagnetic studies of the 180/400 Foot Aquifer Subbasin, (2) protecting against ongoing or worsening seawater intrusion, (3) managing the Dune Sand Aquifer as a principal aquifer; (4) protecting groundwater-dependent ecosystems, such as wetlands and vernal pools in and around the City; (5) considering state and federal protections for habitats and species in the coastal area; and (6) including an adequate monitoring network in the coastal portion of the 180/400 Foot Aquifer Subbasin.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that does hereby

- 1) Receive a presentation on the preparation of the Final Groundwater Sustainability Plan for MGSA’s portion of the 180/400 Foot Aquifer Subbasin,
- 2) Provides direction to staff on any needed changes to the Final Groundwater Sustainability Plan,
- 3) Approves the Final Groundwater Sustainability Plan, and
- 4) Directs staff to file the Final Groundwater Sustainability Plan by January 31, 2020 with the Department of Water Resources along with any necessary or appropriate explanation or documentation regarding the filing.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 14th day of January 2020, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, O'Connell, Morton, Delgado

NOES: COUNCIL MEMBERS: None

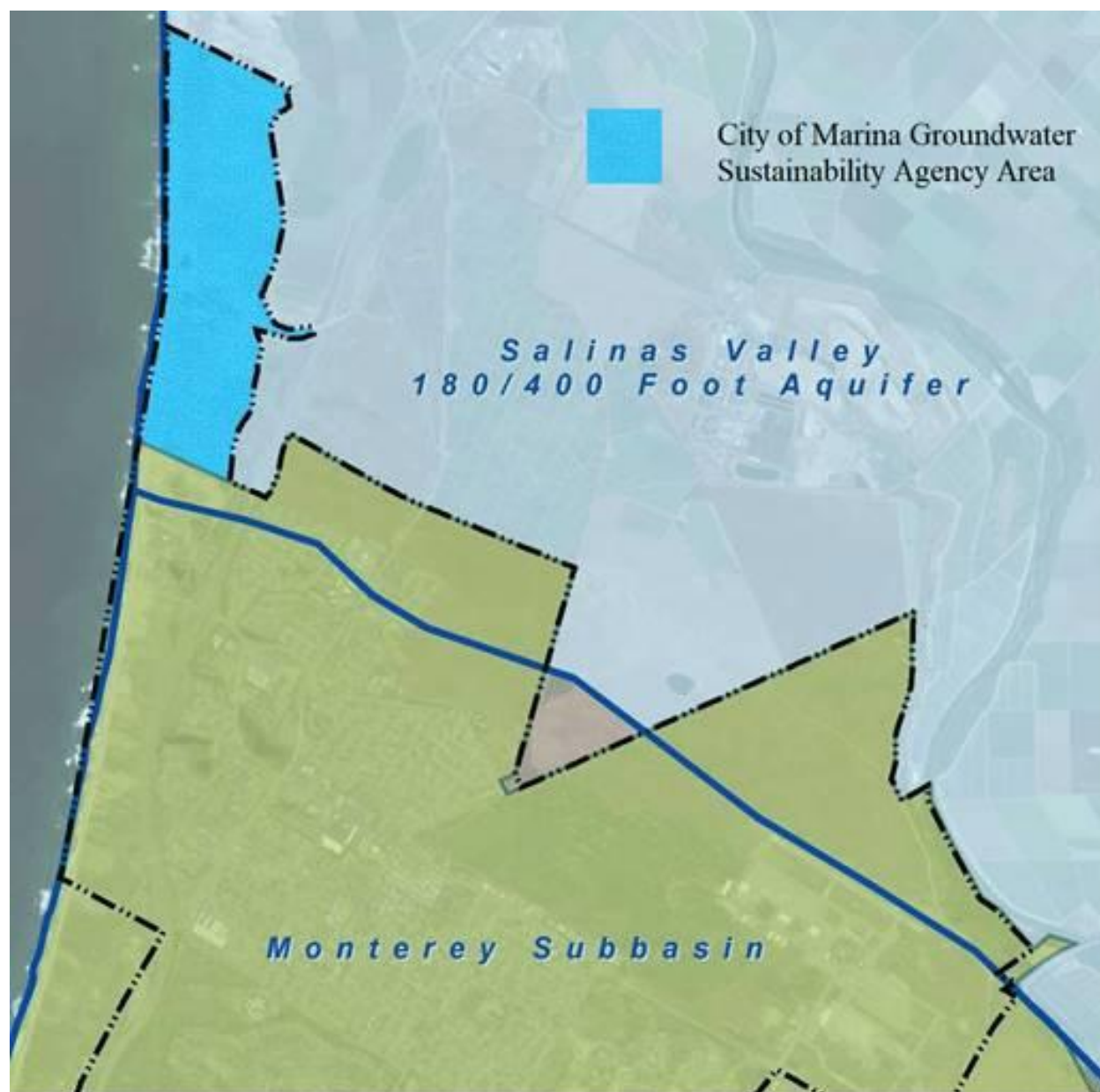
ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Urrutia

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



**CITY OF MARINA**

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 Marina, CA 93933
 831-884-1278; FAX 831-384-9148
www.cityofmarina.org

VIA EMAIL AND U.S. MAIL
Mark.Nordberg@water.ca.gov

July 31, 2019

Mr. Mark Nordberg
 GSA Project Manager
 California Department of Water Resources
 901 P Street, Room 213A
 P.O. Box 942836
 Sacramento, California 94236-0001

Subject: Initial Notification To Prepare Groundwater Sustainability Plan for a Portion of the 180/400-Foot Subbasin of the Salinas Valley Groundwater Basin

Dear Mr. Nordberg:

In accordance with California Water Code § 10727.8 and the Title 23, Section 353.6 of the California Code of Regulations, the City of Marina Groundwater Sustainability Agency (“MGSA”) hereby gives notice that the MGSA intends to initiate preparation of a Groundwater Sustainability Plan (“GSP”) within a portion of the 180/400-foot Aquifer Subbasin (DWR Basin Number 3-004.01).

On March 20, 2018, the City Council of the City of Marina formed the MGSA. On April 16, 2018, the MGSA notified the California Department of Water Resources (“DWR”), pursuant to Water Code § 10723.8(a), of its intent to become the exclusive GSA in an area within its jurisdictional limits, but which lies outside the jurisdictional limits of the Marina County Water District (“MCWD”) GSA. The MGSA boundaries include Monterey County Assessor Parcel Numbers (“APN”) 203-011-001; 203-011-019; 203-011-020; and portions of APN 203-011-023; 175-011-046; 175-011-031; and 203-011-011 (Figure 1).

Recent research work in this area of the 180/400-Foot Subbasin¹ has demonstrated that it includes significant freshwater resources within otherwise seawater-intruded portions of the Dune Sand and 180-Foot Aquifers, and that the water quality of the underlying 400-Foot and 900-Foot Aquifers is potentially vulnerable to water quality degradation from additional seawater intrusion

¹ See for example the following references:

Goebel, Pidlisecky, and Knight, 2017. Resistivity imaging reveals complex pattern of saltwater intrusion along Monterey coast. *Journal of Hydrology* (manuscript accepted February 17).
 Gottschalk, Ian, R. Knight and others, 2018. Interpretation of Hydrostratigraphy and Water Quality from AEM Data Collected in the Northern Salinas Valley, CA. Prepared for Marina Coast Water District. March 15.
 Monterey County Water Resources Agency, 2017. Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin. Special Reports Series 17-01. October.
 Pidlisecky, Moran, Hansen, and Knight, 2016. Electrical resistivity imaging of seawater intrusion into the Monterey Bay aquifer system. *Groundwater*, Vol. 54, No. 2, p. 255-261.

as a result of local conditions. Development of a locally-focused GSP is therefore warranted to coordinate with the GSP currently under preparation for the remainder of the 180/400-Foot Subbasin by the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”). The MGSA locally-focused GSP will establish the MGSA GSP Area, define local hydrogeologic conditions, and establish local sustainable management criteria to protect the beneficial uses and users of groundwater in the area, and assure sustainable groundwater management in accordance with 23 C.C.R. § 350.4(e).

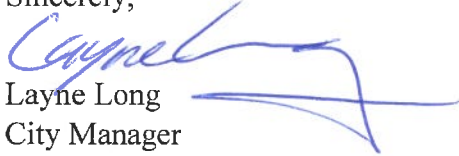
The GSP will be developed by MGSA staff and its consultants using information compiled by the SVBGSA and the MCWD GSA for preparation of their respective GSPs, supplemented by local investigation, monitoring data and other relevant information. The MGSA will work to establish an intra-basin coordination agreement with the SVBGSA pursuant to Water Code § 10727.6 and 23 C.C.R. § 357.4, and an inter-basin coordination agreement or equivalent document with the MCWD GSA to assure that preparation and implementation of the two GSPs in the 180/400-Foot Subbasin is effectively coordinated, subbasin sustainability goals are met, and the interests of all beneficial water users and uses in the subbasin are recognized and protected.

Interested parties are encouraged to participate in this GSP development. Specific avenues of participation that are or will be available pursuant to Water Code §§ 10723.2, 10723.4 and 10727.8(a) include, but are not limited to, the following:

- Interested parties can comment on this notification in accordance with 23 C.C.R. § 353.8 by posting their comments on the DWR SGMA Portal (<https://sgma.water.ca.gov/portal/gsp/init/all>);
- Interested parties can comment on the GSP for a 45-day public comment period after it is released in early October 2019;
- Interested parties can attend and provide comments at public meetings/workshops convened by the MGSA in the City Council chambers, currently scheduled on August 7 and October 29, 2019, which will be noticed and conducted in accordance with the Ralph M. Brown Act (Government Code §§ 54950, *et seq.*) and Water Code § 10727.5(a);
- MGSA will post information regarding GSP preparation and the draft GSP on its SGMA webpage at: <https://cityofmarina.org/918/Groundwater-Sustainability-Plan>, where parties can get additional information, sign up for the interested stakeholder email list, see materials for past or upcoming meetings related to the GSP development, and access a public review draft of the GSP;
- MGSA will distribute information regarding GSP preparation and related activities to a list of interested parties maintained in accordance with Water Code § 10723.4 and § 10723.8(a)(4);
- Interested parties can attend and provide public comment at MGSA hearings to adopt the draft GSP in or before January 2020 that will be noticed and conducted in accordance with the Brown Act and Water Code § 10727.5(a); and
- Marina City Council meetings are open to the public and include multiple opportunities for public comment. Presentations by technical specialists will occur as needed as the GSP preparation process continues.

A GSP Plan Manager and single point of contact for the GSPs in the 180/400-Foot Aquifer Subbasin will be designated in the Coordination Agreement that will be developed with the SVBGSA in accordance with 23 C.C.R. § 357.4 and Water Code § 10727.6. The MGSA has designated Brian McMinn, Public Works Director for the City of Marina, as the manager for its GSP preparation efforts. Please contact Mr. McMinn regarding any questions regarding this notification or if you would like additional information. He may be reached at bmcminn@cityofmarina.org or (831) 884-1212.

Sincerely,



Layne Long
City Manager
City of Marina



October 8, 2019

Charles McKee
County Administrative Officer
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

SUBJECT: NOTICE OF INTENT TO ADOPT A GROUNDWATER SUSTAINABILITY PLAN

On behalf of the City of Marina Groundwater Sustainability Agency (MGSA), pursuant to California Water Code Section 10728.4, MGSA hereby gives notice to the legislative body of any City, County, or Public Utilities Commission-regulated company within the geographic area covered by the pending MGSA portion of the Salinas Valley Ground Water Basin 180/400 Foot Aquifer Subbasin Groundwater Sustainability Plan (GSP) that MGSA intends to adopt the GSP for the MGSA portion of the Salinas Valley Ground Water Basin 180/400 Foot Aquifer Subbasin (Basin No. 3-004.01). A map of the GSP area is included herein.

Interested parties may provide comments on the Public Draft GSP during the scheduled public comment period, October 8, 2019 through November 25, 2019. Information regarding the Draft GSP has been posted on the MGSA website at. The Draft Plan can be viewed on the website homepage <https://cityofmarina.org/918/Groundwater-Sustainability-Plan>. According to Water Code Section §10728.4: "A groundwater sustainability agency may adopt or amend a groundwater sustainability plan after a public hearing, held at least 90 days after providing notice to a city or county within the area of the proposed plan or amendment. The groundwater sustainability agency shall review and consider comments from any city or county that receives notice pursuant to this section and shall consult with a city or county that requests consultation within 30 days of receipt of the notice."

No sooner than 90 days from the date of this Notice, MGSA will hold a public hearing and consider adopting the GSP. For meeting information and public hearing dates, please refer to the MGSA website.

Should you have any questions about this notice, please contact me by email at bmccminn@cityofmarina.org or by phone at (831) 884-1212.

Sincerely,

Layne Long
City Manager
City of Marina



PAUL P. SPAULDING, III
 sspaulding@fbm.com
 D 415.954.4918

December 10, 2019

Via Hand Delivery

Monterey County Board of Supervisors
 168 West Alisal Street, First Floor
 Salinas, California 93901

**Re: Formation of Groundwater Sustainability Agency and Related Actions
County Board of Supervisors December 11, 2019 Meeting, Agenda Item #4**

Dear Chair Phillips and Honorable Monterey County Supervisors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of a resolution by Monterey County ("County") to become the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin") and to take related actions.

INTRODUCTION

The City of Marina and MGSA strongly object to Monterey County's unlawful effort to subvert the intent and explicit text of the Sustainable Groundwater Management Act ("SGMA"). The County proposes to undertake a "hostile takeover" of MGSA's entire groundwater area and then turn over the management of this groundwater to its affiliate, the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA").

The County is hopelessly conflicted and therefore disqualified from taking these actions. It was the moving force in founding SVBGSA, has provided 60% of its funding so far and, until only two months ago, provided all legal services for SVBGSA's SGMA activities and management, including the preparation of SVBGSA's draft groundwater sustainability plan ("GSP"). The County is masquerading as a "neutral" agency coming in to resolve a local agency "overlap" in jurisdiction, but in fact, its sole motivation is to eliminate MGSA and supplant MGSA's GSP in favor of the SVBGSA GSP that it supervised and approved as the most prominent SVBGSA member.

Notably, the County's proposed resolution fails to consider MGSA's GSP, recognize the need for sustainable groundwater management in and near the MGA Area, or make any findings on the merits of SVBGSA's GSP to address these needs. Instead, the proposed resolution demonstrates that the County's true motivation is not collaborative management of the Subbasin,

but rather is to strip the City of Marina of any voice in the management of groundwater within its own jurisdiction.

MGSA is a validly formed SGMA GSA. It took all required SGMA steps and filed all appropriate notices with the Department of Water Resources (“DWR”) for MGSA’s formation and GSP preparation, and DWR accepted these notices and posted them on its website.¹ MGSA authorized a \$275,000 contract for preparation of the GSP and continues to expend these funds as its GSP preparation proceeds. MGSA issued a draft GSP on October 8, 2019, and accepted comments on it until November 25, 2019. Responses to comments and any necessary revisions to the GSP will be completed in the next few weeks, and the GSP is scheduled for MGSA consideration in January 2020. Thus, it is “on track” to be submitted to DWR by the January 31, 2020 deadline prescribed in SGMA.

These actions by the County have been orchestrated by California-American Water Company (“CalAm”), which has encouraged the SVBGSA Board and Committees to eliminate the City of Marina and the MGSA by requesting that the County attempt to “take over” MGSA’s groundwater area. CalAm, of course, has no interest in sustainable groundwater management – rather, its sole goal is to eliminate any potential impediments to its foundering Monterey Peninsula Water Supply Project (“MPWSP” or “Project”).² CalAm does not want the City of Marina to have any groundwater management role in this area, primarily because they prefer the “hands off” approach of SVBGSA. Once SVBGSA made this request to the County, the County immediately notified DWR of its “takeover” plans in a letter and has now published the proposed resolution.

This proposed County action has no precedent under SGMA. The statutory sections which the County relies on are intended to apply only to areas that are “unmanaged” because *no* GSA has filed to manage the groundwater in that area (rather than the situation here where two agencies have filed for the same area). In the only other case where a County has stepped in to

¹ The County and SVBGSA have tried to create the incorrect impression that MGSA is not a valid GSA because it supposedly did not file to be a GSA by a deadline in SGMA. However, this contention has been completely debunked and has never been supported by DWR. We enclose as Exhibit “1” hereto and incorporate herein a copy of a letter dated August 28, 2019 sent to DWR on behalf of MGSA that explains why this contention lacks any merit.

² CalAm has suffered severe, and potentially fatal, setbacks in its efforts to obtain agency permits and authorizations for the MPWSP. After the City of Marina (the certified local coastal agency) denied the primary Coastal Development Permit (“CDP”) for the Project, California Coastal Commission Staff recommended that both the appealed CDP application and the CDP application within its original jurisdiction be denied. The Coastal Commission will not consider these permits until March 2020 or later. In the meantime, as the result of a lawsuit brought by Marina Coast Water District, a Monterey County Superior Court Judge has entered an Order enjoining any construction of the Project’s desalination plant until at least March 2020. CalAm has also failed to apply for or pursue other key federal and state permits necessary for the Project. If the Project is ever fully approved and constructed, it will be many years behind schedule.

resolve an overlap in jurisdiction, the local agencies *supported* the county action. According to DWR: “No county has yet sought to use Section 10724 [the SGMA section relied on by the County] to form a GSA against the wishes of agencies within their jurisdiction.”

Monterey County appears to be adopting the simplistic position that DWR has supposedly blessed this action through a letter dated November 5, 2019 (“DWR Letter”). However, the County is making a serious mistake. DWR actually said that the County might be able to do so if certain conditions are satisfied. Ultimately, a court will determine whether SGMA allows the County to take this action in the current context. And under California administrative law, courts give no deference to inconsistent agency statutory interpretations. *See, e.g., Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 13 (1998) (“*Yamaha*”). DWR has taken inconsistent positions over time on this issue, and the County’s current position directly contradicts its position only two months ago. Indeed, on the crucial “creating or contributing” test discussed below, the County’s action would violate the published guidance of the State Water Resources Control Board (“State Board”) on this issue. Moreover, the latest DWR advice runs directly counter to SGMA’s text and purpose. Given the lack of case precedent and the shifting DWR positions, it would be extremely risky for the County to adopt this resolution.

This dispute must be viewed against the larger backdrop of the MGSA and SVBGSA GSPs. The SVBGSA GSP is a regional approach to the management of the Subbasin which is primarily oriented to protecting the interests of the agricultural producers north of the Salinas River and inland from the coastal region. The GSP ignores or disregards the recent site-specific studies by a Stanford University research team and others, based on state-of-the-art airborne electromagnetic (“AEM”) techniques, that have resulted in three-dimensional maps and cross-sections of the Subbasin groundwater, which forms the best scientific information on Subbasin groundwater conditions.

The SVBGSA GSP contains a wholly deficient monitoring network south of the Salinas River. No meaningful monitoring of any kind is proposed within several miles of the coast, leaving the area effectively unmanaged under SGMA. The SVBGSA GSP also fails to consider and manage groundwater resources in the Dune Sand Aquifer that are designated by the State Board to be protected, and fails to acknowledge or protect the interconnected surface water features such as the vernal pools and wetlands in and near the City of Marina. Thus, the County’s proposed takeover of the MGSA as an “unmanaged area” will have exactly the opposite effect – it will perpetuate a lack of management of groundwater resources in this area by failing to protect local beneficial uses and users of groundwater in favor of the policy preferences of a select group of inland beneficial users.

In contrast, MGSA has prepared a locally-focused GSP that uses the best available science and information to ensure sustainable groundwater management in the MGSA Area, to protect local beneficial users and property, and to support regional efforts to address seawater intrusion and other undesirable results. Unlike the SVBGSA GSP, the MGSA GSP characterizes, monitors and manages the Subbasin groundwater resources south of the Salinas

River in the coastal region and recognizes the important municipal, domestic, groundwater dependent ecosystem, and other beneficial uses and users in this area, including the urban and other users who depend on this drinking water source in the Subbasin and the adjacent Monterey Subbasin.

Five independent reasons, discussed below, prevent Monterey County from invoking Section 10724 in attempt to become the new GSA for the overlap portion of the Subbasin:³

- Because Monterey County is creating and/or contributing to the overlap, it cannot invoke Section 10724;
- Section 10724 does not authorize a county to file a GSA notice for areas covered by multiple GSA notices;
- Monterey County's decision to invoke Section 10724 is premature and would unlawfully circumvent SGMA's explicit local agency coordination requirements and GSP resolution provisions;
- Monterey County's resolution to become the GSA for the overlapping area cannot nullify MGSA's GSA notice or solve the underlying coordination problem; and
- Monterey County cannot become the GSA for the overlap portion in time to submit a GSP before SGMA's January 31, 2020 deadline.

The County should be clear that the City of Marina and MGSA view this proposed action and resolution as a direct and unlawful attempt to eliminate the City's SGMA rights and responsibilities and that the City and MGSA will take all necessary steps to protect their SGMA jurisdiction. The City strongly advises Monterey County not to undertake this misguided action.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximately 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries that is not under the jurisdiction of a local water agency. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). Here, DWR has not recognized an exclusive GSA for the Subbasin. See DWR SGMA Portal, *All Posted GSA*

³ We enclose as Exhibit "2" hereto and incorporate herein a copy of a October 21, 2019 letter on behalf of MGSA to DWR explaining these factual and legal issues.

*Notices.*⁴ SGMA instructs the local agencies to “seek to reach agreement to allow prompt designation of a groundwater sustainability agency.” Cal. Water Code § 10723.8(c). SGMA further requires GSAs “intending to develop and implement multiple groundwater sustainability plans” to “coordinate with other agencies preparing a groundwater sustainability plan within the basin.” *Id.* § 10727.6. The GSAs must “jointly submit” their GSPs with a coordination agreement “to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin.” *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357. 2.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. MGSA and SVBGSA must file their GSPs and coordination agreement for the Subbasin by January 31, 2020.

LEGAL AND FACTUAL ANALYSIS

I. Monterey County Cannot Invoke Section 10724 Because It Is A Creator And Contributor To This GSA Overlap.

A county cannot invoke Section 10724 if it “is creating or contributing to the [GSA] overlap.” State Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017) (“SWRCB FAQs”). The State Board’s limitation on Section 10724 prevents counties that contribute to overlapping areas from circumventing SGMA’s GSA collaboration requirements.

Here, the County is indisputably creating and contributing to the GSA overlap as a member, majority funder, and architect of SVBGSA and its GSP. As a result, the State Board’s limitation precludes the County’s proposed resolution, which weaponizes Section 10724 in an attempt to install its affiliate’s GSP and disregard a properly-formed GSA with jurisdiction over the MGSA Subbasin area. The necessary implications of SGMA’s GSA coordination requirements mandate that the County cannot override MGSA’s GSP and deny MGSA the opportunity to collaborate with SVBGSA on the management of groundwater within Marina’s jurisdiction.

A. Based On Its Close Affiliation with SVBGSA, The County Is Creating Or Contributing To The Overlap Area.

As discussed in Section II, the Legislature intended counties to use Section 10724 as a backstop to protect groundwater users from facing Water Code Section 5202(a)(2)’s reporting requirements. The County’s proposed resolution would attempt to improperly exploit this backstop to install a GSP commissioned by the County as a member of SVBGSA.

The County was the moving force behind SVBGSA’s formation and even “pushed for the establishment of the Joint Powers Authority” (“JPA”). SVBGSA Minutes at 2 (Sept. 19, 2019). Section 10.4 of the JPA Agreement for SVBGSA shows that the County has provided almost

⁴ Available at <https://sgma.water.ca.gov/portal/gsa/all>.

60% of all initial funding for SVBGSA during the 2017–19 period, totaling \$1.34 million. Monterey County remains a member of SVBGSA, and the County Administrative Officer position (who authored the County’s October 9, 2019 letter to DWR) is designated as the official County representative to SVBGSA. *See* Exhibit A to SVBGSA’s JPA Agreement. Further, the County played an integral role in the development of SVBGSA’s GSP. The Monterey County Counsel’s office has served as the attorney for SVBGSA as it filed GSA and GSP notices and prepared the GSP that the County’s resolution seeks to adopt after it overrides MGSA.

In short, contrary to the resolution’s purported findings, the County, as a member, majority funder, and driving force in the SVBGSA, is indisputably creating and contributing to the overlap situation. The County therefore cannot credibly pose as a disinterested county coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies. This is precisely the kind of conflict situation that disqualifies a county from attempting to invoke Section 10724 under the “creating or contributing” limitation.

B. The County’s Proposed Resolution Would Represent A Bad Faith Attempt To Circumvent SGMA’s Coordination Requirements And Implement The GSP Of Its Close Affiliate.

Monterey County’s proposed resolution vividly illustrates the dangers of a county misusing Section 10724 to override a local agency instead of cooperating with it. The County’s proposed resolution responds to a request by an affiliated entity (SVBGSA) to prevent the City of Marina from exercising its GSA authority. Monterey County then seeks to adopt the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to even consider adopting any part of MGSA’s GSP, addressing SGMA management gaps identified by MGSA, or providing any justification for adopting SVBGSA’s GSP. The County likewise fails to present any groundwater management justification for asserting control over the overlap area.

It is striking that the County actually has no intention of managing the overlap area, which is exactly what it would be required to do under Section 10724. Rather, the County blatantly announces its intention to instead delegate management authority to SVBGSA, whose GSP provides no framework for sustainable groundwater management in or near the MGSA Area, and does not consider the needs and rights of coastal beneficial groundwater users and uses. These County actions lead to only one conclusion. The County’s resolution seeks to use Section 10724 to do what the County’s affiliate SVBGSA cannot: adopt only the SVBGSA GSP for the MGSA jurisdictional area without coordinating with MGSA and its GSP. Indeed, the intent appears to be retain the area as essentially unmanaged under SGMA, leaving CalAm to implement the MPWSP unhindered by any requirements for sustainable groundwater management for the benefit of beneficial users in inland portions of the Subbasin. The State Board’s guidance aims to quash these exact types of bad-faith maneuvers.

While the County’s proposed resolution blames the overlap on Marina’s GSA notice, the County and SVBGSA continue to contribute to the overlap by refusing to collaborate with MGSA. The County and SVBGSA are engaging in this waiting game at the behest of CalAm,

which has encouraged these actions to promote its Project. In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to “defer any action on a coordination agreement” with MGSA and instead advocates that the County should become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County’s help so that it can build the Project. CalAm is not a GSA, and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process, attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, CalAm wanted to artificially create an impasse in hopes of a County takeover. And by acquiescing to CalAm’s demands, the County and SVBGSA have needlessly created this situation.

We note that the MGSA has been working in good faith to negotiate a Coordination Agreement with SVBGSA and, in August 2019, prepared, approved and transmitted to SVBGSA a draft agreement based on a template provided by SVBGSA. Since that time, SVBGSA staff has not negotiated in good faith with MGSA to reach agreement. In contrast, in the last month, SVBGSA has developed a Coordination Agreement with the County, which is being considering for adoption at the SVBGSA Board meeting on December 12, 2019. This backroom Coordination Agreement effort with the County vividly illustrates that SVBGSA knows how to negotiate such an Agreement when it really wants to.

SGMA, in contrast, “requires the agencies to resolve” boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a backstop, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County’s proposed resolution uses Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This bad-faith effort contravenes SGMA’s emphasis on and processes for local agency cooperation and basin management.

C. DWR’s Latest Inconsistent Interpretation Of Section 10724 Does Not Apply.

DWR has articulated inconsistent standards for when a county is disqualified from invoking Section 10724. First, DWR guidance authored in May 2019 prohibits a county who “is responsible for creating the overlap” from becoming a GSA under Section 10724. DWR, *GSA Frequently Asked Questions*, at 4 (May 10, 2019) (“DWR FAQs”). A DWR representative (Tom Berg) expanded on DWR’s position at the September 19, 2019 SVBGSA Advisory Committee meeting, stating to SVBGSA that:

Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement. The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the

entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created their overlap conflict, and they were prevented from becoming the GSA as a result.**

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Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**⁵

Id. at 3–4 (emphasis added).

As you can see, the requirements for County use of Section 10724 articulated by DWR at this meeting contains several important elements. First, the County would need to remove itself as a member of the SVBGSA before undertaking any action under Section 10724 to eliminate the conflict of interest and associated County contribution to the overlap. Second, the County is barred from creating the GSA “with the intent to take over Marina’s portion.” Third, if the County does not take over management of the entire Subbasin, it would contravene SGMA because it is clearly only trying to take out Marina. The County’s resolution fails to address and follow these DWR requirements. It plans to remain a member of the SVBGSA, its transparent intent is to take over Marina’s portion, and it is not installing itself as the GSA for the entire Subbasin.

Despite recently articulating these positions, DWR’s November 5, 2019 letter attempts to constrict the standard for precluding a county from invoking Section 10724. The DWR Letter states, “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.”⁶ DWR

⁵ The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

⁶ Even under its narrower test, DWR also appears to share concerns about Monterey County’s contribution to the overlap. In particular, the DWR Letter requests further “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” if the County decides to submit a GSA notification. DWR Letter at 2.

Letter at 2. This standard purports to narrow and change the exception that DWR previously recognized in its own guidance and articulated to SVBGSA. And unlike the State Board's "creating or contributing" standard (SWRCB FAQs at 3), DWR's new standard potentially only guards against situations where a county files a GSA notice after another GSA. However, as the County's current actions demonstrate, a county can act in bad faith even if it or its affiliate filed its GSA notice first by refusing to coordinate with the other GSP and invoking Section 10724 to install its affiliate's GSP.

DWR's failure to consistently articulate its standard for precluding bad-faith actions under Section 10724 undermines the weight a reviewing court will grant it. Although California courts consider an agency's interpretation of a statute, "the binding power of an agency's interpretation of a statute or regulation is contextual . . . and depend[s] on the presence or absence of factors that support the merit of the interpretation." *Yamaha*, 19 Cal. 4th at 7. When applying this standard, courts further recognize that an agency's "vacillating position . . . is entitled to no deference." *United Artists Theatre Circuit, Inc. v. Reg'l Water Quality Control Bd.*, No. A152988, 2019 WL 6337763, at *18 (Cal. Ct. App. Nov. 27, 2019) (quoting *Yamaha*, 19 Cal. 4th at 13) (internal quotation marks omitted).

Here, the DWR Letter attempts to change its previous standard and limit its Section 10724 exception to situations where a county or its affiliate files its GSP notice after another GSA. This limitation contradicts DWR's previously issued guidance and statements to SVBGSA. Further, the DWR's Letter fails to explain or even acknowledge this switch. DWR likewise offers no justification for the fact that its new standard potentially only covers one of many scenarios in which a county could use Section 10724 in bad faith to override an overlapping GSA and circumvent SGMA's coordination requirements. DWR's interpretation warrants even less deference given the unprecedented nature of the County's actions. DWR Letter at 2 (noting that "[n]o county has yet sought to use Section 10724 to form a GSA against the wishes of agencies within their jurisdiction"). Accordingly, a Court will likely disregard DWR's latest articulated standard, and that standard cannot serve as the basis for the County's proposed resolution.

D. The County's Bad Faith Intentions Also Preclude It From Invoking Section 10724.

As described in Section I(A), the County's failure to (1) offer a groundwater management justification for invoking Section 10724, (2) consider adopting any part of MGSA's GSP, or (3) support its decision to adopt SVBGSA's GSP, demonstrate that the County's intention in adopting the proposed resolution is only to adopt its affiliate's GSP without coordinating with MGSA. The County's plan to delegate management of the overlap area to SVBGSA provides further evidence of its bad faith intentions. Indeed, the County's plan to adopt the SVBGSA GSP will leave the coastal area south of the Salinas River without a monitoring and management framework for sustainable groundwater management in violation of SGMA and its own General Plan policies. These intentions contravene SGMA's purpose of promoting collaborative groundwater basin management, and as result, they cannot be permitted.

As DWR's representative stated to SVBGSA, the County "can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion." SVBGSA Minutes at 3 (Sept. 19, 2019). For example, a determination that Kern County created its overlap conflict prevented it from becoming the GSA. *Id.* Only one county has successfully relied on Section 10724 to become a GSA for an area with overlapping GSAs. DWR Letter at 2. And unlike the current situation, the overlapping GSAs there *supported* the county's decision. *Id.* Indeed, no county has ever attempted to form a GSA using Section 10724 "against the wishes of agencies within their jurisdiction." DWR Letter at 2. Therefore, Monterey County is the first county to invoke Section 10724 as part of a strategy to veto the GSP of a valid GSA within its jurisdiction. Moreover, the proposed resolution creates a dangerous precedent, not intended by SGMA, that enables counties to ignore and override the actions of GSAs within their county area.

II. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision applies here. As SGMA's legislative history reflects,⁷ the Legislature intended Section 10724 to cover situations where *no* GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. Indeed, the DWR Letter characterizes Section 10724 as a "backstop" to prevent Section 5202(a)(2)'s reporting requirements from applying. DWR Letter at 2. Section § 5202(a)(2) requires persons who extract groundwater within a high- or medium-priority basin on or after July 1, 2017, to file a report of groundwater extraction if (1) the area "is not within the management area of a groundwater sustainability agency" and (2) "the county does not assume responsibility to be the groundwater sustainability agency" for that area. This implicitly provides that the overlapping GSA notices did not render the area unmanaged under

⁷ The Legislature intended Section 10724 to apply "in the case of an area where no local agency has *assumed* management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area—not whether the local agency has become the exclusive GSA.

Section 5202(a)(2).⁸ The overlapping GSA notices likewise do not render the Subbasin unmanaged under Section 10724. Indeed, because no reporting requirements currently apply to the Subbasin, no need exists for the County to intervene to prevent the triggering of Section 5202(a)(2)'s reporting requirements.

The County's interpretation of Section 10724 inaccurately conflates the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, SGMA deems the areas "unmanaged." Section 10724(a) does not address disputes arising under the process for determining an exclusive GSA under Section 10723.8, and the purpose of Section 10724 weighs against reading Sections 10723.8 and 10724 together in this manner. Rather, these GSA and GSP provisions are best understood as operating at the same time on parallel tracks. Consistent with this interpretation, the plain language of Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Therefore, where multiple GSAs file to manage the same basin area, Section 10724(a)'s text cuts against the County's ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlapping areas until the January 31, 2020 GSP submittal deadline.

Accordingly, when multiple GSAs adopt GSPs to manage a basin, that area falls within the management area of several GSAs, and Section 10724 does not apply. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.⁹

III. Monterey County's Resolution Is Premature And Would Fatally Undermine SGMA's Required GSA Collaboration Process.

SGMA establishes a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes if GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs "180 days to remedy the deficiency," and "[t]he board may appoint a mediator or other facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the

⁸ Although State Board guidance suggests that overlapping GSA notices would trigger Section 5202(a)(2)'s reporting requirements, this has not been the case in practice. State Board, Frequently Asked Questions on GSAs, at 5 (Nov. 22, 2017) ("SWRCB FAQs").

⁹ MGSA acknowledges that one guidance document from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. SWRCB FAQs at 3. However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law.

deficiency.” *Id.* § 10735.4(a). This provision covers disagreements over overlapping portions of the basin.

The County’s resolution seeks to strip MGSA of its authority over the overlap area and to intervene as the exclusive GSA. In doing so, the County is misusing Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA’s dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. Monterey County Cannot Use Section 10724 To Nullify MGSA’s GSA Notice Or The Need For MGSA And SVBGSA To Resolve The Overlap.

The County appears to assume that by invoking Section 10724 and becoming the GSA for the overlap area, the County will nullify MGSA’s GSA notice. However, nothing in SGMA or its regulations provides that a county or other local agency can nullify the GSA notice of another. Indeed, SGMA specifically provides that to resolve an overlapping area, a GSA “notification [must be] withdrawn or modified to eliminate any overlap in the areas proposed to be managed”—not overridden by another local agency. Cal. Water Code § 10723.8(c). Similarly, Section 10724 does not change this fundamental premise or grant a county the power to nullify a GSA notification. Accordingly, even if the County attempts to become the GSA for the overlap area, MGSA’s GSA notification will remain valid.

Section 10724 also does not give the County the power to designate another local agency as an exclusive GSA. Instead, DWR has responsibility for posting GSA notifications. *See* § 10723.8(b). On the SGMA portal, DWR currently does not list either MGSA or SVBGSA as the exclusive GSA for any portion of the Subbasin. *See* DWR SGMA Portal, All Posted GSA Notices; DWR SGMA Portal, Salinas Valley Basin GSA - 180/400 Foot Aquifer Map.¹⁰ DWR instead identifies the GSA notices of both MGSA and SVBGSA as overlapping. *Id.* DWR will not recognize MGSA’s and SVBGSA’s notices until they resolve their conflict,¹¹ and the County’s intervention under Section 10724 for the overlapping portion will not change this. Both MGSA’s and SVBGSA’s notices will remain valid, but non-exclusive, GSA notifications. Accordingly, the only way for SVBGSA to become the exclusive GSA for any part of the Subbasin is for MGSA and SVBGSA to reach a coordination agreement.

The fact that SVBGSA and MGSA will remain nonexclusive GSAs even if the County invokes Section 10624 raises additional logistical issues. Under SGMA, a GSP or set of GSPs must “cover[] the entire basin.” Cal. Water Code § 10727(b); *see also* Cal. Code Regs. tit. 23,

¹⁰ This map is available at <https://sgma.water.ca.gov/portal/gsa/print/461.P>

¹¹ Indeed, State Board guidance provides that “[i]f two local agencies file notices with DWR to be a GSA for the basin, and all or a portion of their proposed management areas overlap as of June 30, 2017, neither of the local agencies will become a GSA. As a result, the proposed management areas of both local agencies will be unmanaged.” SWRCB FAQs at 4; *see also* DWR FAQs at 4 (“If overlap exists, the decision to become a GSA will not take effect unless the overlap is eliminated.”).

§ 355.4(a)(3); Cal. Water Code § 10733.4(b)) (“If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin, the submission” of a GSP “shall not occur until the entire basin is covered by groundwater sustainability plans”). Thus, if the County maintains that only GSAs who DWR has designated as exclusive GSAs may file a GSP, then SVBGSA and MGSA will not be able to file GSPs. The County likewise will not be able to file a GSP for the overlapping area because the GSP would not cover the entire basin. As a result, the County would instead have to become the GSA and submit a GSP for SVBGSA’s entire jurisdiction in the Subbasin. The County would then have to manage the entire Subbasin until MGSA and SVBGSA resolve the overlap. This would cause needless and extensive organizational and financial harm to all the parties involved and would completely undercut SGMA’s goals. Therefore, the County’s attempt to become the GSA for only the overlap area will not result in efficient or effective management of the Subbasin or relieve SVBGSA of the need to coordinate with MGSA to resolve the overlap.

V. The County Must Wait 90 Days For Its GSA Notice To Take Effect, So It Cannot Meet SGMA’s January 31, 2020 Deadline.

Although the DWR Letter asserts that the County would immediately become the exclusive GSA when DWR posts the County’s GSA notice, DWR fails to cite any legal authority for instantly granting a county exclusive GSA status.¹² DWR Letter at 3. Instead, DWR states that its “practice has been to immediately declare the GSA exclusive.” DWR Letter at 3. However, this statement contradicts DWR’s statement earlier in the letter that no other county has attempted to use Section 10724 despite opposition from a GSA within its jurisdiction – so, in fact, DWR has *never* immediately posted a county notice letter in this situation. *Id.* at 2.

The DWR Letter also states that it “adopted that practice on the assumption that counties would be taking responsibility for areas in which no other agency had any interest,” and that “same logic applies for notices filed in areas that are unmanaged as a result of the overlapping GSA notices of other entities.” *Id.* at 3. However, the same logic does not apply because SGMA provides a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b).

Further, in an overlap situation, multiple GSA’s have an “interest” in an area and applying the 90-day notice period allows the overlapping GSAs to engage in the coordination process before the county’s GSA notice takes effect. This interpretation promotes SGMA’s collaboration process. It also recognizes the fact that given the opportunity, GSAs may resolve an overlap situation without the need for county intervention, which aligns with Section 10724’s purpose of serving as a backstop for when SGMA’s other processes fail. As a result, the County must wait 90 days before becoming a GSA for the overlapping area to allow SVBGSA and MGSA to resolve the overlap and collaborate on a GSP or set of GSPs. The County therefore could not submit a GSP before the January 31, 2020 deadline.

¹² MGSA acknowledges that State Board guidance also states that “[t]here is no 90-day waiting period for the county’s intent to become the GSA to take effect” in this scenario. SWRCB FAQs at 4.

CONCLUSION

For the foregoing reasons, the County cannot lawfully invoke Section 10724 to become the GSA for the overlap portion of the Subbasin. Bending to the will of CalAm and its reluctance to be governed and monitored by the government entity with the overlying interest (or to be subject to negotiation under sustainable management criteria at all), is fatally inconsistent with SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina formed MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction in this Subbasin and is completely consistent with the spirit and language of SGMA.

MGSA is complying in all respects with SGMA and MGSA is prepared to take the necessary steps to protect its jurisdiction over the CEMEX site. In the first instance, this means continuing its efforts to finalize and submit its GSP for the overlapping area by the January 31, 2020 deadline. By committing significant financial resources and following the prescribed SGMA process, MGSA has been doing exactly what the law requires and is entitled to complete the process.

The proposed resolution by which the County would attempt to take over MGSA's jurisdictional area and to install its affiliate SVBGSA as the manager of this area using SVBGSA's GSP is a bad faith attempt to misuse SGMA to eliminate MGSA and achieve a hostile takeover of its area. This action, which was conceived and encouraged by CalAm and SVBGSA, would violate SGMA and deprive the City of Marina and MGSA of their SGMA rights, leaving the area effectively unmanaged under SGMA. The City and MGSA strongly oppose this resolution and encourage the County not to pursue this misguided course of action.

Sincerely,



Paul P. "Skip" Spaulding, III

PPS:jl

cc: Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
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Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)

EXHIBIT 1

August 28, 2019

Via SGMA Portal and E-Mail

Ms. Taryn Ravazzini (taryn.ravazzini@water.ca.gov)
Deputy Director of Statewide Groundwater Management
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

**Re: City of Marina GSA Groundwater Sustainability Plan
Response to California-American Water Company Comment Letter**

Dear Ms. Ravazzini:

We submit this letter on behalf of the City of Marina Groundwater Sustainability Agency (“MGSA”), which recently filed an initial notification of its intent to prepare a Groundwater Sustainability Plan (“GSP”) for a portion of the 180/400 Foot Aquifer Subbasin (“Subbasin”) as authorized by the Sustainable Groundwater Management Act (“SGMA”). This letter responds to the August 12, 2019 comment letter submitted by the Ellison Schneider law firm on behalf of California-American Water Company (“CalAm”).

In this “comment letter,” CalAm requests that the Department of Water Resources (“DWR”) “reject” MGSA’s Groundwater Sustainability Agency (“GSA”) formation notice and its GSP initial notification. However, CalAm has no legal standing under SGMA to make the request and lacks any legal authority or precedent to obtain the relief it seeks. In fact, CalAm’s letter is no more than a misguided attempt by a third party to short-circuit the processes prescribed by SGMA for resolution of local groundwater management issues. Moreover, CalAm has mischaracterized the underlying facts and invented non-existent policy reasons to support its unprecedented request. DWR is not required to respond to or to take any action in response to this letter. See 23 C.C.R. § 353.8(f). However, if DWR does respond, it must deny CalAm’s request in all respects.

BACKGROUND FACTS

The MGSA was validly formed in full compliance with SGMA. On March 20, 2018, the Marina City Council adopted a resolution forming the MGSA to “undertake sustainable groundwater management within the portion of the Salinas Valley Ground Water Basin 180/400

Foot Aquifer Subbasin within the City and outside of the Marina Coast Water District service area.” On April 16, 2018, MGSA properly filed a notice of its GSA formation with DWR pursuant to Water Code Section 10723.8. DWR duly accepted and posted MGSA’s notice of GSA formation on its SGMA Portal.

On July 31, 2019, pursuant to Water Code Section 10727.8(a), the City filed an initial notification of intent to prepare a GSP for its jurisdictional area. This notice provides a written statement describing the manner in which interested parties may participate in the development and implementation of the GSP and contains the other required elements for this initial notice. MGSA also provided the notice to all required persons. MGSA is proceeding forward rapidly with preparation of the GSP and, in its initial notice, specifically identified the MGSA meeting dates and other opportunities for the public to provide comments and other input on the GSP. MGSA’s GSP is expected to be completed and submitted to DWR by January 31, 2020.

**CALAM’S COMMENT LETTER LACKS ANY LEGAL, FACTUAL
OR POLICY BASES TO SUPPORT ITS “REJECTION” REQUESTS.**

CalAm’s comment letter makes a series of unsupported legal contentions in which it attempts to question the validity of MGSA’s formation and to argue that the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) must or should be the exclusive GSA for the entire Subbasin. However, not only do these arguments lack any factual and legal support, but they improperly attempt to undermine decisions already made by DWR and to thwart the ongoing collaborative local processes that are embedded in SGMA.

For the reasons explained below, CalAm’s arguments should be disregarded in their entirety. Instead, the processes contemplated by SGMA should continue without the partisan interference reflected in CalAm’s letter. We will address each CalAm argument in turn.

A. The MGSA Was Validly Formed In A Timely Manner And There Is No Factual Or Legal Basis For Attempting To “Reject” Its GSA Formation Notice.

CalAm contends that the MGSA should not be recognized as a valid GSA because it was not formed before June 30, 2017. However, CalAm has made several fundamental analytical errors that have led to this spurious contention.

First, SGMA does not contain a mandatory final deadline for the formation of all GSAs, even for medium and high priority basins. The only SGMA mention of the June 30, 2017 date in this context is in Water Code Section 10735.2 (a)(1), which relates to the circumstances under which the State Water Resources Control Board (“State Board”) can designate a basin as a probationary basin and thereafter take steps to develop its own interim groundwater sustainability plan for that basin. See Water Code §§ 10735.4-10736.6. The June 30, 2017 date is only the trigger date for a potential probationary basin finding if one or more GSAs, or a local agency “alternative” plan, has not been noticed for an entire basin. Contrary to CalAm’s contention, it is not a drop-dead date for all GSAs to have been formed and it is not true that no additional GSAs can form in a basin after that date.

Second, CalAm attempts to buttress its erroneous analysis with a quotation, taken out of context from DWR’s website, that supposedly stands for the proposition that June 30, 2017 is the absolute deadline for forming a GSA. To the contrary, DWR characterizes the June 30, 2017 date on its website as only an “initial planning milestone” and recognizes that new GSAs can, will and have been formed thereafter as SGMA implementation continues. This portion of the DWR website states in full (emphasis added):

SGMA required Groundwater Sustainability Agencies (GSAs) to form in the State’s high- and medium- priority basins and subbasins by June 30, 2017. Over 260 GSAs in over 140 basins were formed by *SGMA’s initial planning milestone*. However, as *SGMA continues to be implemented* and the priorities and boundaries of some basins change, *new GSAs will be formed*, and existing GSAs may want to reorganize, consolidate, or withdraw from managing in all of part of a basin. All GSA notifications are managed on DWR’s SGMA Portal.¹

Thus, the GSA formation process was expected to and has in fact continued after June 30, 2017 as SGMA continues to be implemented. Indeed, after June 30, 2017, at least ten other new GSA formation notices were posted, including those for the Fresno County Pleasant Valley GSA Area, City of Coalinga GSA, Vina GSA, Montecito Groundwater Basin GSA, Owens Valley Groundwater Authority GSA (for two different basin areas), Castaic Basin GSA, Triangle T Water District GSA, Santa Barbara County Water Agency GSA – Goleta Fringe Areas, and Corning Subbasin GSA. It appears that all but one of these post-June 30, 2017 GSA formations cover high or medium priority basins.

In sum, CalAm’s assertion that MGSA’s GSA formation notice should be rejected because it was filed after June 30, 2017 has no factual or SGMA legal basis. There was not an absolute June 30, 2017 deadline for forming GSAs because this process is intended to be fluid and not frozen in time. Rather, it was an initial planning milestone for determining what basins may qualify for probationary status. Indeed, this has consistently been DWR’s position. Although CalAm would like to override both SGMA and DWR’s judgment on this point for its own private financial purposes, it cannot do so here.

B. The SVBGSA Never Became The Exclusive GSA For The 180/400 Foot Subbasin.

CalAm makes a tortured and wholly frivolous argument that SVBGSA became the exclusive GSA for the 180/400 Foot Aquifer Subbasin on July 26, 2017, thereby supposedly preventing the City of Marina from forming a GSA or preparing a GSP for any portion of the Subbasin. However, once again, this argument defies the considered judgment of DWR and

¹ This website page is found at <https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainable-Agencies>.

lacks any factual or legal basis.

CalAm's line of reasoning is that, on April 27, 2017, DWR posted the notice of SVBGSA to become the GSA for the entire Subbasin and that, in its view, no other GSA filed a valid GSA notice for this Subbasin within 90 days, thereby essentially resulting in SVBGSA becoming the exclusive GSA for this Subbasin.²

In making this argument, CalAm relies on Water Code Section 10723.8, which provides that a local agency notice to become a GSA for a particular basin/subbasin "shall take effect" 90 days after posting if no other local agency has filed a notification of its intent to undertake groundwater management in all or a portion of the same area prior to expiration of this 90-day period. If another agency has such a notice posted before the expiration of this period, the GSA notice shall *not* take effect.

CalAm's first critical error in making this argument is that another local agency – Marina Coast Water District ("MCWD") – did file a GSA formation notice for a portion of the 180/400 Foot Aquifer Subbasin area that SVBGSA claimed in its GSA notice. It is undisputed that, on February 6, 2017, MCWD formed a GSA for the Fort Ord portion of this Subbasin and, on March 14, 2017, DWR posted the notice of this formation (even before SVBGSA filed its notice). Thus, since MCWD filed a GSA formation notice for a portion of the same Subbasin area that SVBGSA's later notice covered, SGMA Section 10723.8 prescribes that SVBGSA's notice did not take effect and SVBGSA never became the exclusive GSA for the Subbasin area it claimed.

CalAm attempts to explain away this complete roadblock to its Section 10723.8 contention by making a convoluted set of arguments that MCWD GSA's notice supposedly was not valid or effective and therefore should be completely ignored for SGMA purposes. It cites to a November 2, 2017 letter authored by a State Board attorney (attached as Exhibit G to its comment letter) that supposedly supports this argument. However, CalAm is mistaken and its citation is misleading.

At the outset, CalAm misrepresents the nature of the State Board letter by implying that it is somehow a dispositive determination by the State Board regarding the status of MCWD's GSA March 14, 2017 formation notice. To the contrary, the letter explicitly states that it is "merely advisory" and that "[t]hese opinions [in the letter] are not a declaratory decision and do not bind the State Water Board in any future determination." Moreover, CalAm also attempts to create the erroneous impression that the letter found that MCWD's GSA notice was void and must be disregarded by DWR. However, in so arguing, CalAm has entirely missed the central point of the letter. Rather than attempting to void MCWD's notice, the State Board letter was

² MCWD also formed a separate GSA for another portion of the 180/400 Foot Aquifer Subbasin (Marina Coast Water District GSA – Marina) at the same time and DWR posted notice of this GSA formation on February 24, 2017. This area was excluded from the area SVBGSA claimed in its own GSA formation notice.

explicitly intended to encourage SVBGSA and MCWD GSA to meet and work out their differences: “By way of this letter, I would like to encourage local resolution of the conflicts over groundwater management in Salinas Valley.”

Indeed, that is exactly what occurred here. MCWD GSA and SVBGSA negotiated an agreement that resolved most of their various conflicting issues regarding the 180/400 Foot Aquifer Subbasin and Monterey Subbasin. In addition, in the advisory letter, the State Board attorney suggested that, if MCWD could expand its jurisdictional boundaries by annexation to include Fort Ord, it could become the “exclusive GSA” for the Fort Ord area. MCWD thereafter did annex this area with the final approval occurring in or about July 2019. Thus, rather than the MCWD GSA – Fort Ord notice being void (as CalAm contends), this notice eventually led to MCWD establishing its SGMA jurisdiction for the area covered by the GSA formation notice in the 180/400 Foot Aquifer Subbasin.

Notably, DWR does not agree with CalAm’s argument regarding SVBGSA’s alleged Subbasin exclusivity. To the contrary, DWR has consistently informed all parties that SVBGSA never achieved exclusive GSA status for the Subbasin under Section 10723.8 because of the timely filings of MCWD GSA for this Subbasin. Consistent with the local and collaborative policies contained in SGMA, DWR has encouraged the various GSAs in the Subbasin to work together to resolve any GSP conflicts. And, as prescribed by SGMA, DWR has clearly stated to all parties that no GSPs for Subbasin overlap areas will be accepted until such a resolution has occurred.

Thus, in light of this law and factual context, CalAm’s demand that DWR “reject” MGSA’s GSA formation and GSP preparation notices based on SVBGSA’s alleged “exclusivity” is baseless. CalAm is not trying to further the purposes of SGMA or promote more effective groundwater management. Rather, it is only trying to promote its own narrow corporate agenda.

C. Contrary To CalAm’s Innuendos, There Is Every Reason To Believe That MGSA’s Sustainable Management of Groundwater In Its Subbasin Area Can And Will Be Effective.

CalAm attempts to create the erroneous impression that MGSA will not be successful in meeting the requirements of SGMA for its jurisdictional area. CalAm states that the covered area is “extremely small,” that some of the technical information MGSA may rely on in forming its GSP is supposedly discredited, and that it is unlikely that MGSA will meet the January 31, 2020 deadline for completing the GSP. However, this is no more than the SGMA equivalent of throwing spaghetti against the wall to see if any will stick.

First, SGMA does not contain any minimum or maximum basin size for sustainable groundwater management. Rather, it implicitly recognizes that these sizes may vary substantially. Indeed, some of the GSA formation notices cover very small areas of larger basins. See, e.g., Santa Barbara County Water Agency GSA -- Fringe Areas notice, posted on the SGMA Portal on September 22, 2017. Rather, one of the hallmarks of SGMA is its

recognition that local agencies will be in the best position to determine initially who should manage basins, to analyze local conditions, and to apply SGMA's sustainability criteria to these conditions. SGMA envisions local flexibility and has not mandated any artificial GSA jurisdictional area size requirements.

Second, CalAm complains (incorrectly) that some of the technical data and reports that MGSA may rely on in preparing its GSP "conflicts with the weight of the modeling and science supporting the MPWSP and has been repeatedly rejected by regulatory bodies and courts...." Although CalAm does not identify what reports it means, MGSA assumes that it refers to the Stanford University research studies regarding groundwater basin conditions that cover this exact area of the Subbasin. Unfortunately, CalAm misleads DWR regarding this technical information.

The Stanford University studies used well-accepted scientific methodologies (including state-of-the-art electrical resistance tomography ("ERT") and airborne electromagnetic ("AEM") techniques) to create two- and three-dimensional images of the actual hydrostratigraphic and groundwater quality conditions, and seawater intrusion characteristics, in portions of the 180/400 Foot Aquifer Subbasin, including the MGSA jurisdictional area. In brief, the studies found that there are significant areas of higher quality groundwater in areas of some seawater intrusion, identified an existing freshwater wedge that was retarding seawater intrusion, and identified gaps in the soil layers (aquitards) that are allowing vertical migration of saline water to the deeper aquifers. This is valuable data, gathered by one of our country's leading educational institutions, that should be utilized, along with all other available data, to prepare a GSP for this area.

It is significant that the northward extension of the same datasets are being used by other agencies for SGMA groundwater sustainability planning purposes. For example, in its recent draft GSP for the Santa Cruz Mid-County Subbasin, the Santa Cruz Mid-County Groundwater Agency (MGA) notes the following:

In May 2017, the MGA successfully completed an offshore Airborne Electromagnetic (AEM) geophysical survey to assess groundwater salinity levels and map the approximate location of the saltwater/freshwater interface in the offshore groundwater aquifers. This important data will inform the assessment of the extent and progress of seawater intrusion into the Basin and the management responses. The MGA anticipates repeating the AEM survey on a five-year interval (2022) to identify movement of the interface and assess seawater intrusion.

This is only one example of the use of this state-of-the-art technology for sustainable groundwater management planning in California.

CalAm appears to be making a ridiculous argument that this Stanford data must be ignored in preparation of the GSP. However, a GSA is not a court of law. Rather, it is a groundwater management agency that has an obligation to gather and evaluate all water basin

data potentially relevant to SGMA's sustainability criteria. By trying to inject an issue regarding what data supposedly supports or contravenes "the weight of the modeling and science" for CalAm's particular project, CalAm is misperceiving the purpose and function of a GSA that is in the midst of preparing a GSP. Further, CalAm's has misled DWR by stating that this technical information "has been repeatedly rejected by . . . courts." In fact, no court has rejected this technical information. Indeed, the one regulatory agency that even considered a small early subset of this data – the California Public Utilities Commission – did not "reject" it.

Third, CalAm asserts that one "practical" ground for rejecting MGSA's GSP preparation notice is that MGSA supposedly will not be able to meet SGMA's January 31, 2020 deadline for submitting a GSP. To the contrary, MGSA has a schedule in place that meets all of SGMA's requirements for public notice and comment, MGSA consideration and decision on the GSP, and timely submittal of the GSP to DWR. Even so, CalAm's uninformed speculation about completion of the GSP is not, of course, a credible ground for rejecting a GSP preparation notice. SGMA does not prescribe any minimum time period for the actual preparation of a GSP. Indeed, given the focused nature of the GSP here, there is every reason to believe that it will be completed in a timely manner.

Finally, CalAm's letter displays a dismissive attitude toward the City of Marina³ and questions the legitimacy of its interest in managing the groundwater in this Subbasin. In so doing, CalAm ignores the City's long-standing track record in protecting groundwater at the property (sometimes referred to as the "CEMEX" property) that is the subject of the MGSA notices. For example, in 1996, the City entered into an extensive Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands ("Annexation Agreement") with several other parties, including the CEMEX property owner. The expressed purpose of the Annexation Agreement is "to help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin through voluntary commitments by the Parties to limit, conserve and manage the use of groundwater from the Salinas River groundwater basin. . . ." The groundwater conditions on the CEMEX property were one main focus of the Annexation Agreement.

The City also worked closely with the California Coastal Commission and the State Lands Commission in a series of combined enforcement actions in 2016-17 to end the current sand mining operation on the CEMEX site by December 31, 2020. After decades of efforts to end this environmentally destructive use, this termination was achieved through a settlement approved by all three agencies. In addition to terminating this mining use at the end of next year and gaining full restoration of the site, the settlement requires CEMEX to transfer the entire site at a reduced purchase price to a non-profit organization or government entity approved by the Coastal Commission and the City. As part of this conveyance, a deed restriction will be put in

³ The City of Marina has a working class, ethnically diverse population, many of whom do not speak English. Marina is a recognized "disadvantaged community" at state, federal and local government levels. The groundwater under the City is an important and valuable community resource because it provides a clean, local and affordable groundwater source for City residents.

place to protect the CEMEX property and limit its potential uses to public access, conservation, low-impact passive recreation, and public education.

In sum, the City has a demonstrated interest and a 25-year track record in taking action to identify and protect this groundwater under MGSA's jurisdiction. MGSA expects to file a GSP with DWR by January 31, 2020 that fully complies with the groundwater sustainability requirements of SGMA and results in effective and sustainable groundwater management for many years.

D. CalAm's Articulated "Policy" Reasons For Rejecting MGSA's GSP Notice Are Contrived And Unpersuasive.

CalAm argues that rejection of MGSA's GSP notice is required to eliminate "uncertainty" about SVBGSA's GSA and GSP status and that MGSA's notice of GSP preparation supposedly could cause "significant damage" (unspecified) to the work that SVBGSA has undertaken. This is no more than empty rhetoric. The "uncertainty" that CalAm refers to is inherent in the structure of SGMA and has not been created by MGSA, SVBGSA or DWR. SGMA contemplates that there will be overlapping GSA jurisdictional claims and GSP notices and it contains built-in incentives and provisions for the involved parties to resolve these claims on the local level and, if these are unsuccessful, a resolution process at the State level. At this point, these processes are just beginning and they will be concluded in the manner SGMA contemplates.

Contrary to CalAm's rhetoric, MGSA's notices are not causing any damage, much less "significant damage," to SVBGSA's work. By all appearances, SVBGSA is moving forward in preparing and completing its GSP. Regardless of the outcome of the overlap in the jurisdictional area, SVBGSA's work will be valuable and important to completing its GSP. There is no indication that SVBGSA has violated or will violate the terms of the grants it has received, so CalAm's assertion that SVBGSA could potentially lose or need to return such funds is wholly unsupported and unrealistic.

In contrast, the action that CalAm seeks in its letter (DWR rejection of MGSA's GSA and GSP notices) would be catastrophic to MGSA. MGSA has properly formed, begun preparation of a GSP and committed all of the funds necessary to complete and file its GSP by January 31, 2020. CalAm's request is no more than an unlawful attempt to disenfranchise MGSA of its SGMA rights and would plainly thwart the goals of SGMA.

**CALAM'S ATTEMPTED INTERVENTION INTO THE GSA/GSP
PROCESS WOULD UNDERMINE SGMA'S LOCAL
COLLABORATIVE GSP PROCESSES.**

CalAm is a private party with its own narrow corporate interest in promoting a project that it would like to build in Monterey County. It is not a GSA and it is not preparing a GSP to sustainably manage groundwater in the 180/400 Foot Aquifer Subbasin. Rather, it is a member of the public that has been and will be provided with many opportunities under SGMA (which is

notable for its robust public participation provisions) to participate in the preparation of GSPs for the Subbasin and to participate in other ways as the SGMA process proceeds. Apparently not content with this role, CalAm is trying to interfere in and short-circuit the SGMA process. However, this interference is unauthorized and cannot be allowed.

One bedrock set of principles in SGMA is its structural recognition of local control and cooperative local management of groundwater. Its overall goal is to “enhance local management of groundwater.” Water Code § 10720.1(b). SGMA also contemplates that state intervention only occur when absolutely necessary. SGMA articulates the Legislature’s intent to “manage groundwater basins through the actions of local government agencies to the greatest extent feasible, *while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.*” *Id.*, § 10720.1(h)(emphasis added). Moreover, “[i]t is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdiction.” *Id.*, § 10750(a).

These themes of local management, minimization of state intervention, and local agency cooperation run throughout SGMA. This is especially the case with regard to formation of GSAs and to basin management through GSPs. SGMA recognizes that multiple GSAs can be formed and multiple GSPs can be prepared to manage a single groundwater basin or subbasin. *See, e.g., id.*, § 10720.7(a)(1)(recognizing that subbasins can be managed by “coordinated groundwater sustainability plans”); *id.*, § 10727(b)(recognizing that multiple GSP’s can be used to manage a basin pursuant to a “single coordination agreement”). The SGMA mechanism for achieving this coordination is a coordination agreement, which means “a legal agreement adopted between two or more GSAs that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin.” *Id.* § 10721(d).

SGMA envisions that, when there are jurisdictional overlaps in a basin, the GSAs first negotiate in good faith with one another to resolve the overlap. If these overlaps are not resolved and both GSAs submit a GSP for the overlap area, the GSPs will not be accepted (as DWR has confirmed). MGSA staff has met with SVBGSA staff and is working in good faith to negotiate a coordination agreement and will continue to do so.

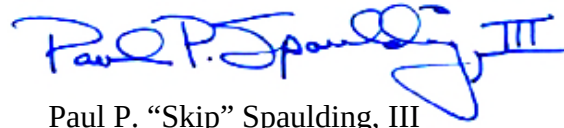
CalAm is attempting to precipitate premature state action to undermine the SGMA collaborative local GSP processes. This would violate the legislative directive to minimize State intervention “to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.” *Id.*, § 10720.1(h). At this stage of the process, the MGSA and SVBGSA GSPs have not been prepared and submitted to DWR, and no determination can yet be made as to whether they ensure sustainable groundwater management. CalAm cannot be allowed to subvert these important, ongoing SGMA processes.

CONCLUSION

For all of the reasons set forth above, MGSA respectfully requests that DWR take no action in response to the CalAm August 12, 2019 comment letter. As DWR’s regulations state, DWR “is not required to respond to comments, but shall consider comments as part of its

evaluation of a Plan.” 23 C.C.R. § 353.8(f). However, if DWR believes that any response is necessary, it should deny in its entirety CalAm’s request to “reject” MGSA’s GSA formation notice and/or GSP preparation notice.

Very truly yours,



Paul P. “Skip” Spaulding, III

PPS:jl

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EXHIBIT 2

October 21, 2019

Via E-mail and Mail

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**Re: Monterey County's October 9, 2019 SGMA Letter
Marina Sustainable Groundwater Agency Jurisdictional Area**

Dear Ms. Ravazzini and Ms. Sobeck:

On behalf of the City of Marina Groundwater Sustainability Agency ("MGSA"), we are responding to Monterey County's October 9, 2019 letter informing the Department of Water Resources ("DWR") and the State Water Resources Control Board ("State Board") of its intent to consider becoming the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin").¹

INTRODUCTION

In brief, Monterey County ("County") apparently plans to supplant MGSA and become the exclusive GSA for MGSA's jurisdictional area because MGSA and the Salinas Valley Basin GSA ("SVBGSA") have filed overlapping GSA notices for the approximate 400-acre portion of the Subbasin within the City of Marina. DWR and the State Board should firmly reject any County effort to usurp MGSA's GSA authority. The Sustainable Groundwater Management Act ("SGMA") provides for a local agency resolution process to resolve overlapping GSA notices and uncoordinated Groundwater Sustainability Plans ("GSPs"). MGSA and SVBGSA have until January 31, 2020 to negotiate and submit a coordination agreement. Then, if an overlap has not been resolved, SGMA specifies a resolution process implemented by the State Board, which includes a mandatory 180-day negotiation/mediation provision.

¹ In its letter, the County states in several places that it "will consider" taking actions to become the GSA for this property. However, at the end of the letter, the County requests that the agencies let them know if they "have concerns about **the County's plans** to become a GSA for the CEMEX property, as outlined above." (Emphasis added.)

Four independent reasons compel cessation of any Monterey County efforts to become the GSA for this overlap portion of the Subbasin:

- SGMA Section 10724 does not provide a platform for Monterey County to replace MGSA for this area;
- Since it is creating and/or contributing to the overlap, Monterey County cannot invoke Section 10724;
- If it tried to invoke Section 10724, Monterey County would be unlawfully circumventing the explicit local agency coordination requirements and GSP resolution provisions in SGMA; and
- Intervention by DWR or the State Board in support of Monterey County would be premature and inappropriate.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximate 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). SGMA instructs the local agencies to "seek to reach agreement to allow prompt designation of a groundwater sustainability agency." *Id.* SGMA further requires GSAs "intending to develop and implement multiple groundwater sustainability plans" to "coordinate with other agencies preparing a groundwater sustainability plan within the basin." *Id.* § 10727.6. The GSAs must "jointly submit" their GSPs with a coordination agreement "to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin." *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. The GSPs and coordination agreement between MGSA and SVBGSA for the Subbasin must be filed by January 31, 2020.

MGSA is complying in all respects with SGMA. It properly formed its GSA, provided the requisite notice of its intent to prepare a GSP, issued a draft GSP on October 8, 2019 and is on schedule to file an approved GSP with DWR by the January 31, 2020 deadline. By

committing the necessary (and significant) financial resources and following the prescribed SGMA process, MGSA has been doing exactly what the law requires and it is entitled to complete this process.

I. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision is applicable here. As SGMA's legislative history reflects,² Section 10724 is intended to cover situations where no GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. When multiple GSAs adopt GSPs to manage such an area, the area is within the management area of several GSAs. Section 10724 comes into play when no local agency shows an interest in a particular basin area (thereby making it "unmanaged") and a county is thereafter given the option to become the GSA of that area. If the county declines, the area will instead be managed by the State Board. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.

The County argues that this provision should also be applied in a multiple GSA situation. The County attempts to conflate the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, the areas should be deemed to be "unmanaged." However, the County inaccurately reads Section 10724(a) as addressing disputes arising under the process for determining an exclusive GSA under Section 10723.8 and incorrectly presumes that where overlapping GSAs jurisdictional claims exist, there is no GSA to manage an area.

MGSA acknowledges that one guidance statement from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. State Board, Frequently Asked

² The Legislature intended Section 10724 to apply "in the case of an area where no local agency has *assumed* management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area – not whether the local agency has become the exclusive GSA.

Questions on GSAs, at 3 (Nov. 22, 2017) (“SWRCB FAQs”). However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law. Even so, the State Board attaches an important caveat to this interpretation: if a county is “creating or contributing to the overlap, the county does not become the presumptive GSA.” As explained in the next section, this rule disqualifies Monterey County from taking such an action.

In sum, it is not a reasonable interpretation of SGMA to read Sections 10723.8 and 10724 together in this manner, nor does SGMA define its use of the term “unmanaged.” Rather, these GSA and GSP provisions are best read as operating at the same time on parallel tracks. Consistent with this interpretation, Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Where multiple GSAs file to manage the same basin area, the clear text in Section 10724(a) does not support Monterey County’s ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlap areas until the January 31, 2020 GSP submittal deadline.

II. Since Monterey County Is Creating And/Or Contributing To This GSA Overlap, It Is Disqualified From Invoking Section 10724.

Guidance from the State Board and DWR places a very important limitation on Monterey County’s authority to become a GSA for an unmanaged area under Section 10724: “If a county is creating or contributing to the overlap, the county does not become the presumptive GSA.” SWRCB FAQs at 3; *see also* DWR, *GSA Frequently Asked Questions*, at 4 (May 10, 2019).

The County argues that it is a completely separate entity from SVBGSA and thus could not be creating or contributing to the overlap. However, the facts do not support this claim. Monterey County was a moving force behind SVBGSA’s formation and even “pushed for the establishment of the Joint Powers Authority” (“JPA”). SVBGSA Minutes at 2 (Sept. 19, 2019). Monterey County is a member of SVBGSA and the County Administrative Officer position (who authored the County’s October 9, 2019 letter) is designated as the official County representative to SVBGSA. (*See* Exhibit A to SVBGSA’s JPA Agreement.) Section 10.4 of the JPA Agreement for SVBGSA reflects that the County has provided almost 60% of all initial funding for SVBGSA during the 2017–19 period, totaling \$1.34 million. The Monterey County Counsel’s office has served as the attorney for SVBGSA as it filed GSA and GSP notices and even prepared the GSP that the County now proposes to adopt after it eliminates MGSA. Indeed, the law reflects that a JPA agreement allows “two or more public agencies by agreement [to] jointly exercise any power common to the contracting parties.” Cal. Gov’t Code § 6502.

In short, it is wholly unpersuasive for the County to assert that it is a separate entity from SVBGSA and therefore is not creating or contributing to the overlap situation. In actuality, the County, as a member, majority funder and driving force in the SVBGSA, is indisputably creating and/or contributing to the overlap situation and cannot masquerade as a disinterested county

agency coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies.

This is exactly the kind of conflict situation envisioned by the DWR/State Board guidance where a county is disqualified from attempting to invoke Section 10724. Monterey County's contemplated actions here vividly illustrate these dangers. The County is responding to a request by an affiliated entity (SVBGSA) of which it is the primary funder, to consider using its powers to prevent the City of Marina from exercising its GSA authority. Monterey County has announced its intention to adopt SVBGSA's GSP for the overlap area – the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to present any groundwater management justification for asserting control over the overlap area. It is exactly to prevent such county conflicts that the “creating or contributing” limitation was adopted.

SVBGSA and the County are being encouraged by California-American Water Company (“CalAm”) to take these actions to promote its Monterey Peninsula Water Supply Project (“Project”). In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to “defer any action on a coordination agreement” with MGSA and instead requests that the County become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County so it can build the Project. CalAm is not a GSA and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, it is also trying to artificially create an impasse in hopes of a County takeover or state intervention.

As a DWR representative has already informed SVBGSA, the County would need to withdraw from the SVBGSA if it intends to take any action under Section 10724. According to the minutes of the September 19, 2019 SVBGSA Advisory Committee meeting, a DWR representative (Tom Berg) stated to SVBGSA:

Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement. The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created**

their overlap conflict, and they were prevented from becoming the GSA as a result.

* * *

Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**³

Id. at 3–4 (emphasis added).

There are explicit withdrawal provisions in Sections 11.6 and 11.8 of SVBGSA’s JPA Agreement that the County could utilize to accomplish this withdrawal. Moreover, after withdrawal, the County would need to assert jurisdiction over all overlap areas in the Subbasin. This would, of course, cause needless and extensive organizational and financial harm to all GSAs with overlapping claims and would completely undercut SGMA’s goals.

In actuality, “SGMA requires the agencies to resolve” boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a safety valve, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County would be using Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This effort would contravene SGMA’s emphasis on and processes for local agency cooperation and basin management.

III. Monterey County’s Potential Action Would Fatally Undermine SGMA’s GSA Collaboration Process.

SGMA specifies a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes, in the event that GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs “180 days to remedy the deficiency,” and “[t]he board may appoint a mediator or other

³ The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the deficiency.” *Id.* § 10735.4(a). Disagreements over overlapping portions of the basin are covered by this provision.

If it tried to eliminate MGSA’s authority over the overlapping area and intervene as the exclusive GSA, the County would be improperly using Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA’s dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. DWR And State Board Intervention Is Premature And Legally Unauthorized.

MGSA and SVBGSA are entering a critical time for collaboration to meet the January 31, 2020 GSP submission deadline. Monterey County’s potential plan to assert itself as the GSA for the MGSA jurisdictional area threatens to derail this process. Intervention by DWR or the State Board to support Monterey County would similarly quash any possibility of compromise between the two GSAs. Unfortunately, CalAm is urging a strategy to promote its own narrow agenda, likely because it does not want to comply with the GSP of MGSA or with MGSA oversight of its potential groundwater source. However, MGSA and SVBGSA must negotiate in good faith and be given the opportunity to complete the local agency coordination process prescribed by SGMA. The Water Code specifically provides for State Board intervention if MGSA and SVBGSA cannot meet the January 31, 2020 deadline. See Cal. Water Code § 10735.2(a)(2). Any actions that interfere with or undermine these SGMA processes are premature and inappropriate.

CONCLUSION

For the foregoing reasons, DWR and the State Board must immediately inform Monterey County that Section 10724 is not applicable in this situation. The County, as the moving force, member, primary funder and general legal advisor to SVBGSA, has created and or contributed to the overlap situation and is therefore disqualified from using this provision. Supporting CalAm’s reluctance to be governed and monitored by the government entity with the overlying interest, does not support SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina’s formation of MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction is consistent with the spirit and language of SGMA.

Thank you for giving MGSA the opportunity to provide comments on this important issue. We are certainly available to discuss these issues with you.

Very truly yours,



Paul P. “Skip” Spaulding, III

Taryn Ravazzini
Eileen Sobeck
October 21, 2019
Page 8

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December 12, 2019

By Hand Delivery

Board of Directors
 Salinas Valley Basin Groundwater
 Sustainability Agency
 1411 Schilling Place
 Salinas, California 93901

**Re: Finalizing Groundwater Sustainability Plan and Adopting Cooperation Agreement with the County of Monterey–SVBGSA Board of Directors
December 12, 2019 Meeting, Agenda Items # 7.a and # 7.b**

Dear Salinas Valley Basin Groundwater Sustainability Agency Board of Directors:

On behalf of the City of Marina (“City” or “Marina”) and the Marina Groundwater Sustainability Agency (“MGSA”), we submit these comments opposing the adoption of two proposed resolutions on the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) Board of Directors’ December 12, 2019 Agenda: (1) the resolution adopting SVBGSA’s final groundwater sustainability plan (“GSP”) for the 180/400 Foot Aquifer Subbasin (“Subbasin”); and (2) the resolution adopting a cooperation agreement between SVBGSA and the County of Monterey (“County”) for management of an approximately 400-acre parcel within the Subbasin.

INTRODUCTION

The City and MGSA oppose both resolutions before the SVBGSA Board of Directors’ for different reasons. First, the City recognizes the hard work that has gone into the preparation of SVBGSA’s GSP. As required by the Sustainable Groundwater Management Act (“SGMA”), SVBGSA circulated its Draft GSP for a 45-day public comment period, and we understand that SVBGSA received a considerable volume of comments. However, according to the Staff Report, SVBGSA has no intention to respond to the timely comments it received after mid-November or to make any changes to its Draft GSP based on those comments. Rather, SVBGSA’s proposed resolution seeks to approve its Final GSP without taking these comments into account.

SVBGSA’s approach violates SGMA and essentially nullifies the important public comment process. The City and MGSA submitted comments on November 25, 2019 (within the public comment period), but SVBGSA is disregarding these comments and making no changes

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to its GSP based on them. This procedural misstep by SVBGSA fundamentally impairs the due process rights of all commenters who filed comments after mid-November. It also undermines the integrity and validity of SVBGSA's Final GSP because it does not address the crucial factual, technical, and scientific issues that MGSA and the City raised in their comments. Accordingly, SVBGSA's Board cannot legally approve the Final GSP without first completing the comment review, response, and GSP revision processes. The Final GSP is thus deficient in its current form.

Second, the City and MGSA oppose the resolution approving a cooperation agreement between SVBGSA and the County of Monterey. SVBGSA failed to negotiate in good faith with MGSA over the terms of a coordination agreement for four months and instead requested that the County take over MGSA's jurisdictional area. This is no less than a "hostile takeover" of MGSA's entire groundwater area. Pursuant to this plan, on December 11, 2019, the County adopted a resolution to utilize Water Code Section 10724 to pursue becoming the groundwater sustainability agency ("GSA") for the approximately 400-acre parcel within the Subbasin where MGSA and SVBGSA have filed overlapping GSA notifications.

However, the County cannot lawfully invoke Section 10724, in part because as a member, majority funder, and architect of SVBGSA and its GSP, the County "is creating or contributing to the [GSA] overlap" it allegedly seeks to solve by becoming a GSA. State Water Resources Control Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017). The County thus has no legal basis for disregarding MGSA, a properly-formed GSA with jurisdiction over the MGSA area. Furthermore, the County's efforts to install SVBGSA's GSP and to delegate management of the overlapping area expose the County's real motive. Together, SVBGSA and the County seek to contravene SGMA's GSA coordination requirements and effectively designate SVBGSA as the exclusive GSA for the Subbasin through a prohibited "backdoor" maneuver. These actions violate SGMA and attempt to unlawfully block the City of Marina and MGSA from exercising their rights under SGMA.¹

Both of these resolutions would undermine the efforts of the City and MGSA to contribute to the sustainable management of the Subbasin and protect the critical coastal areas in the City's jurisdiction. Accordingly, the City strongly urges SVBGSA not to adopt either proposed resolution and instead begin coordinating with MGSA to develop a GSP or set of GSPs to sustainably manage the Subbasin.

I. SVBGSA's Proposed Resolution To Finalize Its GSP Unlawfully Disregards Timely Filed Public Comments And Has Resulted In A Deficient Final GSP.

The City and MGSA oppose SVBGSA's proposed resolution to adopt its Final GSP after only considering and addressing a portion of the public comments on it. The deadline to submit

¹ The City and MGSA provided a detailed description of these issues in their December 10, 2019 joint opposition letter to the County's GSA Resolution, which is enclosed herewith as Attachment 1 and incorporated herein by reference.

public comments on SVBGSA's GSP was November 25, 2019.² Now, after that deadline has passed, SVBGSA seeks to impose an earlier comment deadline by failing to consider and address public comments received "[b]etween mid-November and prior to the closing comment date of November 25, 2019." SVBGSA Board Agenda, *Staff Report on Agenda Item 7a* at 63.

SVBGSA openly admits that "not all" public comments "will be initially addressed individually in the comment matrix." *Id.* SVBGSA plans instead to wait until after it approves and submits its Final GSP before addressing all of the comments. It tries to justify this deferral by stating that it can take the comments into account "as the GSP is implemented and refined." *Id.* Because of SVBGSA's newly announced mid-November comment cutoff, the unaddressed comments include the City and MGSA's November 25, 2019 comment letter and matrix.³

SVBGSA's failure to consider the City and MGSA's comments violates SGMA, which mandates that a GSA "shall review and consider comments from any city or county" within its GSP's area. Cal. Water Code § 10728.4; *see also* Cal. Code Regs. tit. 23, § 354.10(c) (requiring a GSP to include the public comments on the GSP "and a summary of any responses by the [GSA]"). SVBGSA's failure to consider and address these comments undermines the purpose of the public comment process and potentially deprives local governments, beneficial users, and interested parties of the opportunity to provide input on the GSP. *See* Cal. Water Code § 10727.8. Accordingly, SVBGSA's efforts to adopt its GSP without considering or addressing the City and MGSA's comments present a clear violation of SGMA.

Failing to consider the City and MGSA's comments also leaves critical gaps in SVBGSA's GSP unaddressed. These gaps include the GSP's failure to (1) utilize the newest and best available science; (2) designate, protect, and manage the Dune Sand Aquifer as a principal aquifer; (3) provide sufficient protections against ongoing or worsening seawater intrusion; (4) meaningfully recognize, address, monitor, and manage groundwater-dependent ecosystems as a beneficial groundwater use; (5) consider state and federal protections for habitats and species in and near the MGSA area; and (6) include an adequate monitoring network in the coastal portion of the Subbasin. These and the other deficiencies delineated in the City and MGSA's comments only heighten the harm from SVBGSA's refusal to consider them. Adopting SVBGSA's GSP without addressing these issues will fail to protect the Subbasin's coastal areas as well as local beneficial uses and users of groundwater.

When taken together, SVBGSA's instigation of the County's new effort to become a GSA and failure to consider the City's public comments would deny the City of its right to contribute to the management of the MGSA area as either a DWR-recognized GSA or a local government entity. In correspondence with MGSA, SVBGSA has confirmed that it will only

² *See* SVBGSA, *Public Notice Release of Groundwater Sustainability Plan 180-400 Foot Aquifer Subbasin*, available at <https://svbgsa.org/groundwater-sustainability-plan/180-400-ft-aquifer/>.

³ City of Marina and MGSA, *Comments on SVBGSA Draft Groundwater Sustainability Plan* (Nov. 25, 2019).

agree to meet with MGSA to coordinate on a GSP if MGSA “agrees to give up its GSA.”⁴ Relinquishing its GSA status would leave the City with only the public comment process to influence groundwater management in its jurisdiction. However, SVBGSA has thus far failed to consider MGSA’s public comments before finalizing its GSP. These efforts collectively would deprive the City and MGSA of their ability to ensure sustainable management of the Subbasin and protect the City’s coastal areas.

II. The County And SVBGSA’s Proposed Cooperation Agreement Confirms SVBGSA’s Role As The County’s Affiliate In The County’s GSA Takeover.

SVBGSA’s proposed resolution adopting a cooperation agreement with the County to install SVBGSA’s GSP and manage the overlap area demonstrates SVBGSA’s role in the County’s proposed unlawful GSA takeover. Indeed, both SVBGSA’s proposed resolution and the cooperation agreement provide further proof of the unlawful nature of the County’s efforts and SVBGSA’s status as the County’s affiliate. The City and MGSA oppose the adoption of this proposed cooperation agreement because it formalizes the County and SVBGSA’s joint effort to exclude MGSA from the management of the MGSA area.

First, the cooperation agreement evidences the County’s and SVBGSA’s shared intent to deny MGSA the opportunity to collaborate on groundwater management issues in the Subbasin and circumvent SGMA’s coordination requirements. SVBGSA’s Staff Report demonstrates that SVBGSA had no intention of coordinating with MGSA and instead has sought ways to work with the County to implement its GSP. Only two days after MGSA released its Draft GSP on October 8, 2019, the SVBGSA Board voted to “request[] that Monterey County take all necessary steps to become the GSA for either the entire 180/400 Foot Aquifer Subbasin or the CEMEX site.” SVBGSA Board Agenda, *Staff Report on Agenda Item 7b* at 502. This motion included a request that the County also adopt SVBGSA’s GSP. *Id.* Thus, before MGSA and SVBGSA even submitted comments on each other’s GSPs, SVBGSA already solicited the unlawful intervention of its member and majority funder to override MGSA and implement its GSP.

Second, SVBGSA and the County’s proposed cooperation agreement also confirms their plan to have the County become a GSA, not to manage the overlap area, but instead to effectively install SVBGSA as the exclusive GSA for the MGSA area. In particular, Section 5.2 assigns SVBGSA the responsibility of “comply[ing] with SGMA at the CEMEX Site, including taking actions to review, adopt and implement the GSP.” SVBGSA and Monterey County Cooperation Agreement at 4. Section 5.3 then provides that the “County GSA authorizes SVBGSA to exercise any and all legal authorities in compliance with applicable law for the CEMEX Site.” *Id.* These provisions demonstrate that the County has no interest in acting as the GSA for the overlap area. The County instead only seeks to use Section 10724 to remove MGSA, so its affiliate, SVBGSA, can manage the site. In other words, the County’s resolution

⁴ See Letter from Layne Long to Gary Petersen (Nov. 21, 2019) (stating SVBGSA’s position) (enclosed as Attachment 2).

and the cooperation agreement aim to use Section 10724 to do what SVBGSA cannot on its own—adopt SVBGSA’s GSP for the MGSA area without coordinating with MGSA and its GSP.

Third, as explained in the City and MGSA’s letter opposing the County’s GSA resolution, the County is indisputably creating and contributing to the overlap situation, as a member, majority funder, and driving force in the SVBGSA. The proposed cooperation agreement further links the County and SVBGSA through provisions like Section 14.13’s joint defense provision. It provides that SVBGSA and the County may “further coordinate and cooperate by undertaking joint defense, including utilizing a common interest/joint defense agreement” to defend against “any challenge to the Subbasin GSP as it relates to the CEMEX Site.” *Id.* at 10. The County created and contributed to the overlap with MGSA through SVBGSA. Now, the two affiliates seek to jointly defend their bad faith takeover of the MGSA area against a potential legal challenge from the City and MGSA. This confirms the County and SVBGSA’s affiliation as joint actors and further cements the County’s status as a creator and contributor to the overlap area.

CONCLUSION

For the reasons outlined above, the City and MGSA oppose SVBGSA’s proposed resolutions. Together, SVBGSA’s resolutions threaten to silence MGSA both as a local agency participating in the public comment process and as a DWR-recognized GSA. Accordingly, the City and MGSA strongly urge SVBGSA not to adopt either resolution and instead begin working with MGSA to coordinate on a GSP or set of GSPs to sustainably manage the Subbasin.

Sincerely,



Paul P. “Skip” Spaulding, III

PPS:jl
Enclosures

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ATTACHMENT 1



December 10, 2019

Via Hand Delivery

Monterey County Board of Supervisors
168 West Alisal Street, First Floor
Salinas, California 93901

**Re: Formation of Groundwater Sustainability Agency and Related Actions
County Board of Supervisors December 11, 2019 Meeting, Agenda Item #4**

Dear Chair Phillips and Honorable Monterey County Supervisors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of a resolution by Monterey County ("County") to become the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin") and to take related actions.

INTRODUCTION

The City of Marina and MGSA strongly object to Monterey County's unlawful effort to subvert the intent and explicit text of the Sustainable Groundwater Management Act ("SGMA"). The County proposes to undertake a "hostile takeover" of MGSA's entire groundwater area and then turn over the management of this groundwater to its affiliate, the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA").

The County is hopelessly conflicted and therefore disqualified from taking these actions. It was the moving force in founding SVBGSA, has provided 60% of its funding so far and, until only two months ago, provided all legal services for SVBGSA's SGMA activities and management, including the preparation of SVBGSA's draft groundwater sustainability plan ("GSP"). The County is masquerading as a "neutral" agency coming in to resolve a local agency "overlap" in jurisdiction, but in fact, its sole motivation is to eliminate MGSA and supplant MGSA's GSP in favor of the SVBGSA GSP that it supervised and approved as the most prominent SVBGSA member.

Notably, the County's proposed resolution fails to consider MGSA's GSP, recognize the need for sustainable groundwater management in and near the MGA Area, or make any findings on the merits of SVBGSA's GSP to address these needs. Instead, the proposed resolution demonstrates that the County's true motivation is not collaborative management of the Subbasin,

but rather is to strip the City of Marina of any voice in the management of groundwater within its own jurisdiction.

MGSA is a validly formed SGMA GSA. It took all required SGMA steps and filed all appropriate notices with the Department of Water Resources (“DWR”) for MGSA’s formation and GSP preparation, and DWR accepted these notices and posted them on its website.¹ MGSA authorized a \$275,000 contract for preparation of the GSP and continues to expend these funds as its GSP preparation proceeds. MGSA issued a draft GSP on October 8, 2019, and accepted comments on it until November 25, 2019. Responses to comments and any necessary revisions to the GSP will be completed in the next few weeks, and the GSP is scheduled for MGSA consideration in January 2020. Thus, it is “on track” to be submitted to DWR by the January 31, 2020 deadline prescribed in SGMA.

These actions by the County have been orchestrated by California-American Water Company (“CalAm”), which has encouraged the SVBGSA Board and Committees to eliminate the City of Marina and the MGSA by requesting that the County attempt to “take over” MGSA’s groundwater area. CalAm, of course, has no interest in sustainable groundwater management – rather, its sole goal is to eliminate any potential impediments to its foundering Monterey Peninsula Water Supply Project (“MPWSP” or “Project”).² CalAm does not want the City of Marina to have any groundwater management role in this area, primarily because they prefer the “hands off” approach of SVBGSA. Once SVBGSA made this request to the County, the County immediately notified DWR of its “takeover” plans in a letter and has now published the proposed resolution.

This proposed County action has no precedent under SGMA. The statutory sections which the County relies on are intended to apply only to areas that are “unmanaged” because *no* GSA has filed to manage the groundwater in that area (rather than the situation here where two agencies have filed for the same area). In the only other case where a County has stepped in to

¹ The County and SVBGSA have tried to create the incorrect impression that MGSA is not a valid GSA because it supposedly did not file to be a GSA by a deadline in SGMA. However, this contention has been completely debunked and has never been supported by DWR. We enclose as Exhibit “1” hereto and incorporate herein a copy of a letter dated August 28, 2019 sent to DWR on behalf of MGSA that explains why this contention lacks any merit.

² CalAm has suffered severe, and potentially fatal, setbacks in its efforts to obtain agency permits and authorizations for the MPWSP. After the City of Marina (the certified local coastal agency) denied the primary Coastal Development Permit (“CDP”) for the Project, California Coastal Commission Staff recommended that both the appealed CDP application and the CDP application within its original jurisdiction be denied. The Coastal Commission will not consider these permits until March 2020 or later. In the meantime, as the result of a lawsuit brought by Marina Coast Water District, a Monterey County Superior Court Judge has entered an Order enjoining any construction of the Project’s desalination plant until at least March 2020. CalAm has also failed to apply for or pursue other key federal and state permits necessary for the Project. If the Project is ever fully approved and constructed, it will be many years behind schedule.

resolve an overlap in jurisdiction, the local agencies *supported* the county action. According to DWR: “*No county has yet sought to use Section 10724 [the SGMA section relied on by the County] to form a GSA against the wishes of agencies within their jurisdiction.*”

Monterey County appears to be adopting the simplistic position that DWR has supposedly blessed this action through a letter dated November 5, 2019 (“DWR Letter”). However, the County is making a serious mistake. DWR actually said that the County might be able to do so if certain conditions are satisfied. Ultimately, a court will determine whether SGMA allows the County to take this action in the current context. And under California administrative law, courts give no deference to inconsistent agency statutory interpretations. *See, e.g., Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 13 (1998) (“*Yamaha*”). DWR has taken inconsistent positions over time on this issue, and the County’s current position directly contradicts its position only two months ago. Indeed, on the crucial “creating or contributing” test discussed below, the County’s action would violate the published guidance of the State Water Resources Control Board (“State Board”) on this issue. Moreover, the latest DWR advice runs directly counter to SGMA’s text and purpose. Given the lack of case precedent and the shifting DWR positions, it would be extremely risky for the County to adopt this resolution.

This dispute must be viewed against the larger backdrop of the MGSA and SVBGSA GSPs. The SVBGSA GSP is a regional approach to the management of the Subbasin which is primarily oriented to protecting the interests of the agricultural producers north of the Salinas River and inland from the coastal region. The GSP ignores or disregards the recent site-specific studies by a Stanford University research team and others, based on state-of-the-art airborne electromagnetic (“AEM”) techniques, that have resulted in three-dimensional maps and cross-sections of the Subbasin groundwater, which forms the best scientific information on Subbasin groundwater conditions.

The SVBGSA GSP contains a wholly deficient monitoring network south of the Salinas River. No meaningful monitoring of any kind is proposed within several miles of the coast, leaving the area effectively unmanaged under SGMA. The SVBGSA GSP also fails to consider and manage groundwater resources in the Dune Sand Aquifer that are designated by the State Board to be protected, and fails to acknowledge or protect the interconnected surface water features such as the vernal pools and wetlands in and near the City of Marina. Thus, the County’s proposed takeover of the MGSA as an “unmanaged area” will have exactly the opposite effect – it will perpetuate a lack of management of groundwater resources in this area by failing to protect local beneficial uses and users of groundwater in favor of the policy preferences of a select group of inland beneficial users.

In contrast, MGSA has prepared a locally-focused GSP that uses the best available science and information to ensure sustainable groundwater management in the MGSA Area, to protect local beneficial users and property, and to support regional efforts to address seawater intrusion and other undesirable results. Unlike the SVBGSA GSP, the MGSA GSP characterizes, monitors and manages the Subbasin groundwater resources south of the Salinas

River in the coastal region and recognizes the important municipal, domestic, groundwater dependent ecosystem, and other beneficial uses and users in this area, including the urban and other users who depend on this drinking water source in the Subbasin and the adjacent Monterey Subbasin.

Five independent reasons, discussed below, prevent Monterey County from invoking Section 10724 in attempt to become the new GSA for the overlap portion of the Subbasin:³

- Because Monterey County is creating and/or contributing to the overlap, it cannot invoke Section 10724;
- Section 10724 does not authorize a county to file a GSA notice for areas covered by multiple GSA notices;
- Monterey County's decision to invoke Section 10724 is premature and would unlawfully circumvent SGMA's explicit local agency coordination requirements and GSP resolution provisions;
- Monterey County's resolution to become the GSA for the overlapping area cannot nullify MGSA's GSA notice or solve the underlying coordination problem; and
- Monterey County cannot become the GSA for the overlap portion in time to submit a GSP before SGMA's January 31, 2020 deadline.

The County should be clear that the City of Marina and MGSA view this proposed action and resolution as a direct and unlawful attempt to eliminate the City's SGMA rights and responsibilities and that the City and MGSA will take all necessary steps to protect their SGMA jurisdiction. The City strongly advises Monterey County not to undertake this misguided action.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximately 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries that is not under the jurisdiction of a local water agency. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). Here, DWR has not recognized an exclusive GSA for the Subbasin. *See* DWR SGMA Portal, *All Posted GSA*

³ We enclose as Exhibit "2" hereto and incorporate herein a copy of a October 21, 2019 letter on behalf of MGSA to DWR explaining these factual and legal issues.

*Notices.*⁴ SGMA instructs the local agencies to “seek to reach agreement to allow prompt designation of a groundwater sustainability agency.” Cal. Water Code § 10723.8(c). SGMA further requires GSAs “intending to develop and implement multiple groundwater sustainability plans” to “coordinate with other agencies preparing a groundwater sustainability plan within the basin.” *Id.* § 10727.6. The GSAs must “jointly submit” their GSPs with a coordination agreement “to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin.” *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357. 2.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. MGSA and SVBGSA must file their GSPs and coordination agreement for the Subbasin by January 31, 2020.

LEGAL AND FACTUAL ANALYSIS

I. Monterey County Cannot Invoke Section 10724 Because It Is A Creator And Contributor To This GSA Overlap.

A county cannot invoke Section 10724 if it “is creating or contributing to the [GSA] overlap.” State Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017) (“SWRCB FAQs”). The State Board’s limitation on Section 10724 prevents counties that contribute to overlapping areas from circumventing SGMA’s GSA collaboration requirements.

Here, the County is indisputably creating and contributing to the GSA overlap as a member, majority funder, and architect of SVBGSA and its GSP. As a result, the State Board’s limitation precludes the County’s proposed resolution, which weaponizes Section 10724 in an attempt to install its affiliate’s GSP and disregard a properly-formed GSA with jurisdiction over the MGSA Subbasin area. The necessary implications of SGMA’s GSA coordination requirements mandate that the County cannot override MGSA’s GSP and deny MGSA the opportunity to collaborate with SVBGSA on the management of groundwater within Marina’s jurisdiction.

A. Based On Its Close Affiliation with SVBGSA, The County Is Creating Or Contributing To The Overlap Area.

As discussed in Section II, the Legislature intended counties to use Section 10724 as a backstop to protect groundwater users from facing Water Code Section 5202(a)(2)’s reporting requirements. The County’s proposed resolution would attempt to improperly exploit this backstop to install a GSP commissioned by the County as a member of SVBGSA.

The County was the moving force behind SVBGSA’s formation and even “pushed for the establishment of the Joint Powers Authority” (“JPA”). SVBGSA Minutes at 2 (Sept. 19, 2019). Section 10.4 of the JPA Agreement for SVBGSA shows that the County has provided almost

⁴ Available at <https://sgma.water.ca.gov/portal/gsa/all>.

60% of all initial funding for SVBGSA during the 2017–19 period, totaling \$1.34 million. Monterey County remains a member of SVBGSA, and the County Administrative Officer position (who authored the County’s October 9, 2019 letter to DWR) is designated as the official County representative to SVBGSA. *See* Exhibit A to SVBGSA’s JPA Agreement. Further, the County played an integral role in the development of SVBGSA’s GSP. The Monterey County Counsel’s office has served as the attorney for SVBGSA as it filed GSA and GSP notices and prepared the GSP that the County’s resolution seeks to adopt after it overrides MGSA.

In short, contrary to the resolution’s purported findings, the County, as a member, majority funder, and driving force in the SVBGSA, is indisputably creating and contributing to the overlap situation. The County therefore cannot credibly pose as a disinterested county coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies. This is precisely the kind of conflict situation that disqualifies a county from attempting to invoke Section 10724 under the “creating or contributing” limitation.

B. The County’s Proposed Resolution Would Represent A Bad Faith Attempt To Circumvent SGMA’s Coordination Requirements And Implement The GSP Of Its Close Affiliate.

Monterey County’s proposed resolution vividly illustrates the dangers of a county misusing Section 10724 to override a local agency instead of cooperating with it. The County’s proposed resolution responds to a request by an affiliated entity (SVBGSA) to prevent the City of Marina from exercising its GSA authority. Monterey County then seeks to adopt the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to even consider adopting any part of MGSA’s GSP, addressing SGMA management gaps identified by MGSA, or providing any justification for adopting SVBGSA’s GSP. The County likewise fails to present any groundwater management justification for asserting control over the overlap area.

It is striking that the County actually has no intention of managing the overlap area, which is exactly what it would be required to do under Section 10724. Rather, the County blatantly announces its intention to instead delegate management authority to SVBGSA, whose GSP provides no framework for sustainable groundwater management in or near the MGSA Area, and does not consider the needs and rights of coastal beneficial groundwater users and uses. These County actions lead to only one conclusion. The County’s resolution seeks to use Section 10724 to do what the County’s affiliate SVBGSA cannot: adopt only the SVBGSA GSP for the MGSA jurisdictional area without coordinating with MGSA and its GSP. Indeed, the intent appears to be retain the area as essentially unmanaged under SGMA, leaving CalAm to implement the MPWSP unhindered by any requirements for sustainable groundwater management for the benefit of beneficial users in inland portions of the Subbasin. The State Board’s guidance aims to quash these exact types of bad-faith maneuvers.

While the County’s proposed resolution blames the overlap on Marina’s GSA notice, the County and SVBGSA continue to contribute to the overlap by refusing to collaborate with MGSA. The County and SVBGSA are engaging in this waiting game at the behest of CalAm,

which has encouraged these actions to promote its Project. In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to “defer any action on a coordination agreement” with MGSA and instead advocates that the County should become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County’s help so that it can build the Project. CalAm is not a GSA, and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process, attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, CalAm wanted to artificially create an impasse in hopes of a County takeover. And by acquiescing to CalAm’s demands, the County and SVBGSA have needlessly created this situation.

We note that the MGSA has been working in good faith to negotiate a Coordination Agreement with SVBGSA and, in August 2019, prepared, approved and transmitted to SVBGSA a draft agreement based on a template provided by SVBGSA. Since that time, SVBGSA staff has not negotiated in good faith with MGSA to reach agreement. In contrast, in the last month, SVBGSA has developed a Coordination Agreement with the County, which is being considering for adoption at the SVBGSA Board meeting on December 12, 2019. This backroom Coordination Agreement effort with the County vividly illustrates that SVBGSA knows how to negotiate such an Agreement when it really wants to.

SGMA, in contrast, “requires the agencies to resolve” boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a backstop, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County’s proposed resolution uses Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This bad-faith effort contravenes SGMA’s emphasis on and processes for local agency cooperation and basin management.

C. DWR’s Latest Inconsistent Interpretation Of Section 10724 Does Not Apply.

DWR has articulated inconsistent standards for when a county is disqualified from invoking Section 10724. First, DWR guidance authored in May 2019 prohibits a county who “is responsible for creating the overlap” from becoming a GSA under Section 10724. DWR, *GSA Frequently Asked Questions*, at 4 (May 10, 2019) (“DWR FAQs”). A DWR representative (Tom Berg) expanded on DWR’s position at the September 19, 2019 SVBGSA Advisory Committee meeting, stating to SVBGSA that:

Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement. The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the

entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created their overlap conflict, and they were prevented from becoming the GSA as a result.**

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Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**⁵

Id. at 3–4 (emphasis added).

As you can see, the requirements for County use of Section 10724 articulated by DWR at this meeting contains several important elements. First, the County would need to remove itself as a member of the SVBGSA before undertaking any action under Section 10724 to eliminate the conflict of interest and associated County contribution to the overlap. Second, the County is barred from creating the GSA “with the intent to take over Marina’s portion.” Third, if the County does not take over management of the entire Subbasin, it would contravene SGMA because it is clearly only trying to take out Marina. The County’s resolution fails to address and follow these DWR requirements. It plans to remain a member of the SVBGSA, its transparent intent is to take over Marina’s portion, and it is not installing itself as the GSA for the entire Subbasin.

Despite recently articulating these positions, DWR’s November 5, 2019 letter attempts to constrict the standard for precluding a county from invoking Section 10724. The DWR Letter states, “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.”⁶ DWR

⁵ The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

⁶ Even under its narrower test, DWR also appears to share concerns about Monterey County’s contribution to the overlap. In particular, the DWR Letter requests further “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” if the County decides to submit a GSA notification. DWR Letter at 2.

Letter at 2. This standard purports to narrow and change the exception that DWR previously recognized in its own guidance and articulated to SVBGSA. And unlike the State Board's "creating or contributing" standard (SWRCB FAQs at 3), DWR's new standard potentially only guards against situations where a county files a GSA notice after another GSA. However, as the County's current actions demonstrate, a county can act in bad faith even if it or its affiliate filed its GSA notice first by refusing to coordinate with the other GSP and invoking Section 10724 to install its affiliate's GSP.

DWR's failure to consistently articulate its standard for precluding bad-faith actions under Section 10724 undermines the weight a reviewing court will grant it. Although California courts consider an agency's interpretation of a statute, "the binding power of an agency's interpretation of a statute or regulation is contextual . . . and depend[s] on the presence or absence of factors that support the merit of the interpretation." *Yamaha*, 19 Cal. 4th at 7. When applying this standard, courts further recognize that an agency's "vacillating position . . . is entitled to no deference." *United Artists Theatre Circuit, Inc. v. Reg'l Water Quality Control Bd.*, No. A152988, 2019 WL 6337763, at *18 (Cal. Ct. App. Nov. 27, 2019) (quoting *Yamaha*, 19 Cal. 4th at 13) (internal quotation marks omitted).

Here, the DWR Letter attempts to change its previous standard and limit its Section 10724 exception to situations where a county or its affiliate files its GSP notice after another GSA. This limitation contradicts DWR's previously issued guidance and statements to SVBGSA. Further, the DWR's Letter fails to explain or even acknowledge this switch. DWR likewise offers no justification for the fact that its new standard potentially only covers one of many scenarios in which a county could use Section 10724 in bad faith to override an overlapping GSA and circumvent SGMA's coordination requirements. DWR's interpretation warrants even less deference given the unprecedented nature of the County's actions. DWR Letter at 2 (noting that "[n]o county has yet sought to use Section 10724 to form a GSA against the wishes of agencies within their jurisdiction"). Accordingly, a Court will likely disregard DWR's latest articulated standard, and that standard cannot serve as the basis for the County's proposed resolution.

D. The County's Bad Faith Intentions Also Preclude It From Invoking Section 10724.

As described in Section I(A), the County's failure to (1) offer a groundwater management justification for invoking Section 10724, (2) consider adopting any part of MGSA's GSP, or (3) support its decision to adopt SVBGSA's GSP, demonstrate that the County's intention in adopting the proposed resolution is only to adopt its affiliate's GSP without coordinating with MGSA. The County's plan to delegate management of the overlap area to SVBGSA provides further evidence of its bad faith intentions. Indeed, the County's plan to adopt the SVBGSA GSP will leave the coastal area south of the Salinas River without a monitoring and management framework for sustainable groundwater management in violation of SGMA and its own General Plan policies. These intentions contravene SGMA's purpose of promoting collaborative groundwater basin management, and as result, they cannot be permitted.

As DWR's representative stated to SVBGSA, the County "can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion." SVBGSA Minutes at 3 (Sept. 19, 2019). For example, a determination that Kern County created its overlap conflict prevented it from becoming the GSA. *Id.* Only one county has successfully relied on Section 10724 to become a GSA for an area with overlapping GSAs. DWR Letter at 2. And unlike the current situation, the overlapping GSAs there *supported* the county's decision. *Id.* Indeed, no county has ever attempted to form a GSA using Section 10724 "against the wishes of agencies within their jurisdiction." DWR Letter at 2. Therefore, Monterey County is the first county to invoke Section 10724 as part of a strategy to veto the GSP of a valid GSA within its jurisdiction. Moreover, the proposed resolution creates a dangerous precedent, not intended by SGMA, that enables counties to ignore and override the actions of GSAs within their county area.

II. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision applies here. As SGMA's legislative history reflects,⁷ the Legislature intended Section 10724 to cover situations where *no* GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. Indeed, the DWR Letter characterizes Section 10724 as a "backstop" to prevent Section 5202(a)(2)'s reporting requirements from applying. DWR Letter at 2. Section § 5202(a)(2) requires persons who extract groundwater within a high- or medium-priority basin on or after July 1, 2017, to file a report of groundwater extraction if (1) the area "is not within the management area of a groundwater sustainability agency" and (2) "the county does not assume responsibility to be the groundwater sustainability agency" for that area. This implicitly provides that the overlapping GSA notices did not render the area unmanaged under

⁷ The Legislature intended Section 10724 to apply "in the case of an area where no local agency has *assumed* management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area—not whether the local agency has become the exclusive GSA.

Section 5202(a)(2).⁸ The overlapping GSA notices likewise do not render the Subbasin unmanaged under Section 10724. Indeed, because no reporting requirements currently apply to the Subbasin, no need exists for the County to intervene to prevent the triggering of Section 5202(a)(2)'s reporting requirements.

The County's interpretation of Section 10724 inaccurately conflates the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, SGMA deems the areas "unmanaged." Section 10724(a) does not address disputes arising under the process for determining an exclusive GSA under Section 10723.8, and the purpose of Section 10724 weighs against reading Sections 10723.8 and 10724 together in this manner. Rather, these GSA and GSP provisions are best understood as operating at the same time on parallel tracks. Consistent with this interpretation, the plain language of Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Therefore, where multiple GSAs file to manage the same basin area, Section 10724(a)'s text cuts against the County's ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlapping areas until the January 31, 2020 GSP submittal deadline.

Accordingly, when multiple GSAs adopt GSPs to manage a basin, that area falls within the management area of several GSAs, and Section 10724 does not apply. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.⁹

III. Monterey County's Resolution Is Premature And Would Fatally Undermine SGMA's Required GSA Collaboration Process.

SGMA establishes a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes if GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs "180 days to remedy the deficiency," and "[t]he board may appoint a mediator or other facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the

⁸ Although State Board guidance suggests that overlapping GSA notices would trigger Section 5202(a)(2)'s reporting requirements, this has not been the case in practice. State Board, Frequently Asked Questions on GSAs, at 5 (Nov. 22, 2017) ("SWRCB FAQs").

⁹ MGSA acknowledges that one guidance document from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. SWRCB FAQs at 3. However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law.

deficiency.” *Id.* § 10735.4(a). This provision covers disagreements over overlapping portions of the basin.

The County’s resolution seeks to strip MGSA of its authority over the overlap area and to intervene as the exclusive GSA. In doing so, the County is misusing Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA’s dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. Monterey County Cannot Use Section 10724 To Nullify MGSA’s GSA Notice Or The Need For MGSA And SVBGSA To Resolve The Overlap.

The County appears to assume that by invoking Section 10724 and becoming the GSA for the overlap area, the County will nullify MGSA’s GSA notice. However, nothing in SGMA or its regulations provides that a county or other local agency can nullify the GSA notice of another. Indeed, SGMA specifically provides that to resolve an overlapping area, a GSA “notification [must be] withdrawn or modified to eliminate any overlap in the areas proposed to be managed”—not overridden by another local agency. Cal. Water Code § 10723.8(c). Similarly, Section 10724 does not change this fundamental premise or grant a county the power to nullify a GSA notification. Accordingly, even if the County attempts to become the GSA for the overlap area, MGSA’s GSA notification will remain valid.

Section 10724 also does not give the County the power to designate another local agency as an exclusive GSA. Instead, DWR has responsibility for posting GSA notifications. *See* § 10723.8(b). On the SGMA portal, DWR currently does not list either MGSA or SVBGSA as the exclusive GSA for any portion of the Subbasin. *See* DWR SGMA Portal, All Posted GSA Notices; DWR SGMA Portal, Salinas Valley Basin GSA - 180/400 Foot Aquifer Map.¹⁰ DWR instead identifies the GSA notices of both MGSA and SVBGSA as overlapping. *Id.* DWR will not recognize MGSA’s and SVBGSA’s notices until they resolve their conflict,¹¹ and the County’s intervention under Section 10724 for the overlapping portion will not change this. Both MGSA’s and SVBGSA’s notices will remain valid, but non-exclusive, GSA notifications. Accordingly, the only way for SVBGSA to become the exclusive GSA for any part of the Subbasin is for MGSA and SVBGSA to reach a coordination agreement.

The fact that SVBGSA and MGSA will remain nonexclusive GSAs even if the County invokes Section 10624 raises additional logistical issues. Under SGMA, a GSP or set of GSPs must “cover[] the entire basin.” Cal. Water Code § 10727(b); *see also* Cal. Code Regs. tit. 23,

¹⁰ This map is available at <https://sgma.water.ca.gov/portal/gsa/print/461.P>

¹¹ Indeed, State Board guidance provides that “[i]f two local agencies file notices with DWR to be a GSA for the basin, and all or a portion of their proposed management areas overlap as of June 30, 2017, neither of the local agencies will become a GSA. As a result, the proposed management areas of both local agencies will be unmanaged.” SWRCB FAQs at 4; *see also* DWR FAQs at 4 (“If overlap exists, the decision to become a GSA will not take effect unless the overlap is eliminated.”).

§ 355.4(a)(3); Cal. Water Code § 10733.4(b)) (“If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin, the submission” of a GSP “shall not occur until the entire basin is covered by groundwater sustainability plans”). Thus, if the County maintains that only GSAs who DWR has designated as exclusive GSAs may file a GSP, then SVBGSA and MGSA will not be able to file GSPs. The County likewise will not be able to file a GSP for the overlapping area because the GSP would not cover the entire basin. As a result, the County would instead have to become the GSA and submit a GSP for SVBGSA’s entire jurisdiction in the Subbasin. The County would then have to manage the entire Subbasin until MGSA and SVBGSA resolve the overlap. This would cause needless and extensive organizational and financial harm to all the parties involved and would completely undercut SGMA’s goals. Therefore, the County’s attempt to become the GSA for only the overlap area will not result in efficient or effective management of the Subbasin or relieve SVBGSA of the need to coordinate with MGSA to resolve the overlap.

V. The County Must Wait 90 Days For Its GSA Notice To Take Effect, So It Cannot Meet SGMA’s January 31, 2020 Deadline.

Although the DWR Letter asserts that the County would immediately become the exclusive GSA when DWR posts the County’s GSA notice, DWR fails to cite any legal authority for instantly granting a county exclusive GSA status.¹² DWR Letter at 3. Instead, DWR states that its “practice has been to immediately declare the GSA exclusive.” DWR Letter at 3. However, this statement contradicts DWR’s statement earlier in the letter that no other county has attempted to use Section 10724 despite opposition from a GSA within its jurisdiction – so, in fact, DWR has *never* immediately posted a county notice letter in this situation. *Id.* at 2.

The DWR Letter also states that it “adopted that practice on the assumption that counties would be taking responsibility for areas in which no other agency had any interest,” and that “same logic applies for notices filed in areas that are unmanaged as a result of the overlapping GSA notices of other entities.” *Id.* at 3. However, the same logic does not apply because SGMA provides a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b).

Further, in an overlap situation, multiple GSA’s have an “interest” in an area and applying the 90-day notice period allows the overlapping GSAs to engage in the coordination process before the county’s GSA notice takes effect. This interpretation promotes SGMA’s collaboration process. It also recognizes the fact that given the opportunity, GSAs may resolve an overlap situation without the need for county intervention, which aligns with Section 10724’s purpose of serving as a backstop for when SGMA’s other processes fail. As a result, the County must wait 90 days before becoming a GSA for the overlapping area to allow SVBGSA and MGSA to resolve the overlap and collaborate on a GSP or set of GSPs. The County therefore could not submit a GSP before the January 31, 2020 deadline.

¹² MGSA acknowledges that State Board guidance also states that “[t]here is no 90-day waiting period for the county’s intent to become the GSA to take effect” in this scenario. SWRCB FAQs at 4.

CONCLUSION

For the foregoing reasons, the County cannot lawfully invoke Section 10724 to become the GSA for the overlap portion of the Subbasin. Bending to the will of CalAm and its reluctance to be governed and monitored by the government entity with the overlying interest (or to be subject to negotiation under sustainable management criteria at all), is fatally inconsistent with SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina formed MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction in this Subbasin and is completely consistent with the spirit and language of SGMA.

MGSA is complying in all respects with SGMA and MGSA is prepared to take the necessary steps to protect its jurisdiction over the CEMEX site. In the first instance, this means continuing its efforts to finalize and submit its GSP for the overlapping area by the January 31, 2020 deadline. By committing significant financial resources and following the prescribed SGMA process, MGSA has been doing exactly what the law requires and is entitled to complete the process.

The proposed resolution by which the County would attempt to take over MGSA's jurisdictional area and to install its affiliate SVBGSA as the manager of this area using SVBGSA's GSP is a bad faith attempt to misuse SGMA to eliminate MGSA and achieve a hostile takeover of its area. This action, which was conceived and encouraged by CalAm and SVBGSA, would violate SGMA and deprive the City of Marina and MGSA of their SGMA rights, leaving the area effectively unmanaged under SGMA. The City and MGSA strongly oppose this resolution and encourage the County not to pursue this misguided course of action.

Sincerely,



Paul P. "Skip" Spaulding, III

PPS:jl

cc: Layne Long, Marina City Manager
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EXHIBIT 1

August 28, 2019

Via SGMA Portal and E-Mail

Ms. Taryn Ravazzini (taryn.ravazzini@water.ca.gov)
Deputy Director of Statewide Groundwater Management
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

**Re: City of Marina GSA Groundwater Sustainability Plan
Response to California-American Water Company Comment Letter**

Dear Ms. Ravazzini:

We submit this letter on behalf of the City of Marina Groundwater Sustainability Agency (“MGSA”), which recently filed an initial notification of its intent to prepare a Groundwater Sustainability Plan (“GSP”) for a portion of the 180/400 Foot Aquifer Subbasin (“Subbasin”) as authorized by the Sustainable Groundwater Management Act (“SGMA”). This letter responds to the August 12, 2019 comment letter submitted by the Ellison Schneider law firm on behalf of California-American Water Company (“CalAm”).

In this “comment letter,” CalAm requests that the Department of Water Resources (“DWR”) “reject” MGSA’s Groundwater Sustainability Agency (“GSA”) formation notice and its GSP initial notification. However, CalAm has no legal standing under SGMA to make the request and lacks any legal authority or precedent to obtain the relief it seeks. In fact, CalAm’s letter is no more than a misguided attempt by a third party to short-circuit the processes prescribed by SGMA for resolution of local groundwater management issues. Moreover, CalAm has mischaracterized the underlying facts and invented non-existent policy reasons to support its unprecedented request. DWR is not required to respond to or to take any action in response to this letter. See 23 C.C.R. § 353.8(f). However, if DWR does respond, it must deny CalAm’s request in all respects.

BACKGROUND FACTS

The MGSA was validly formed in full compliance with SGMA. On March 20, 2018, the Marina City Council adopted a resolution forming the MGSA to “undertake sustainable groundwater management within the portion of the Salinas Valley Ground Water Basin 180/400

Foot Aquifer Subbasin within the City and outside of the Marina Coast Water District service area.” On April 16, 2018, MGSA properly filed a notice of its GSA formation with DWR pursuant to Water Code Section 10723.8. DWR duly accepted and posted MGSA’s notice of GSA formation on its SGMA Portal.

On July 31, 2019, pursuant to Water Code Section 10727.8(a), the City filed an initial notification of intent to prepare a GSP for its jurisdictional area. This notice provides a written statement describing the manner in which interested parties may participate in the development and implementation of the GSP and contains the other required elements for this initial notice. MGSA also provided the notice to all required persons. MGSA is proceeding forward rapidly with preparation of the GSP and, in its initial notice, specifically identified the MGSA meeting dates and other opportunities for the public to provide comments and other input on the GSP. MGSA’s GSP is expected to be completed and submitted to DWR by January 31, 2020.

**CALAM’S COMMENT LETTER LACKS ANY LEGAL, FACTUAL
OR POLICY BASES TO SUPPORT ITS “REJECTION” REQUESTS.**

CalAm’s comment letter makes a series of unsupported legal contentions in which it attempts to question the validity of MGSA’s formation and to argue that the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) must or should be the exclusive GSA for the entire Subbasin. However, not only do these arguments lack any factual and legal support, but they improperly attempt to undermine decisions already made by DWR and to thwart the ongoing collaborative local processes that are embedded in SGMA.

For the reasons explained below, CalAm’s arguments should be disregarded in their entirety. Instead, the processes contemplated by SGMA should continue without the partisan interference reflected in CalAm’s letter. We will address each CalAm argument in turn.

A. The MGSA Was Validly Formed In A Timely Manner And There Is No Factual Or Legal Basis For Attempting To “Reject” Its GSA Formation Notice.

CalAm contends that the MGSA should not be recognized as a valid GSA because it was not formed before June 30, 2017. However, CalAm has made several fundamental analytical errors that have led to this spurious contention.

First, SGMA does not contain a mandatory final deadline for the formation of all GSAs, even for medium and high priority basins. The only SGMA mention of the June 30, 2017 date in this context is in Water Code Section 10735.2 (a)(1), which relates to the circumstances under which the State Water Resources Control Board (“State Board”) can designate a basin as a probationary basin and thereafter take steps to develop its own interim groundwater sustainability plan for that basin. See Water Code §§ 10735.4-10736.6. The June 30, 2017 date is only the trigger date for a potential probationary basin finding if one or more GSAs, or a local agency “alternative” plan, has not been noticed for an entire basin. Contrary to CalAm’s contention, it is not a drop-dead date for all GSAs to have been formed and it is not true that no additional GSAs can form in a basin after that date.

Second, CalAm attempts to buttress its erroneous analysis with a quotation, taken out of context from DWR’s website, that supposedly stands for the proposition that June 30, 2017 is the absolute deadline for forming a GSA. To the contrary, DWR characterizes the June 30, 2017 date on its website as only an “initial planning milestone” and recognizes that new GSAs can, will and have been formed thereafter as SGMA implementation continues. This portion of the DWR website states in full (emphasis added):

SGMA required Groundwater Sustainability Agencies (GSAs) to form in the State’s high- and medium- priority basins and subbasins by June 30, 2017. Over 260 GSAs in over 140 basins were formed by *SGMA’s initial planning milestone*. However, as *SGMA continues to be implemented* and the priorities and boundaries of some basins change, *new GSAs will be formed*, and existing GSAs may want to reorganize, consolidate, or withdraw from managing in all of part of a basin. All GSA notifications are managed on DWR’s SGMA Portal.¹

Thus, the GSA formation process was expected to and has in fact continued after June 30, 2017 as SGMA continues to be implemented. Indeed, after June 30, 2017, at least ten other new GSA formation notices were posted, including those for the Fresno County Pleasant Valley GSA Area, City of Coalinga GSA, Vina GSA, Montecito Groundwater Basin GSA, Owens Valley Groundwater Authority GSA (for two different basin areas), Castaic Basin GSA, Triangle T Water District GSA, Santa Barbara County Water Agency GSA – Goleta Fringe Areas, and Corning Subbasin GSA. It appears that all but one of these post-June 30, 2017 GSA formations cover high or medium priority basins.

In sum, CalAm’s assertion that MGSA’s GSA formation notice should be rejected because it was filed after June 30, 2017 has no factual or SGMA legal basis. There was not an absolute June 30, 2017 deadline for forming GSAs because this process is intended to be fluid and not frozen in time. Rather, it was an initial planning milestone for determining what basins may qualify for probationary status. Indeed, this has consistently been DWR’s position. Although CalAm would like to override both SGMA and DWR’s judgment on this point for its own private financial purposes, it cannot do so here.

B. The SVBGSA Never Became The Exclusive GSA For The 180/400 Foot Subbasin.

CalAm makes a tortured and wholly frivolous argument that SVBGSA became the exclusive GSA for the 180/400 Foot Aquifer Subbasin on July 26, 2017, thereby supposedly preventing the City of Marina from forming a GSA or preparing a GSP for any portion of the Subbasin. However, once again, this argument defies the considered judgment of DWR and

¹ This website page is found at <https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainable-Agencies>.

lacks any factual or legal basis.

CalAm's line of reasoning is that, on April 27, 2017, DWR posted the notice of SVBGSA to become the GSA for the entire Subbasin and that, in its view, no other GSA filed a valid GSA notice for this Subbasin within 90 days, thereby essentially resulting in SVBGSA becoming the exclusive GSA for this Subbasin.²

In making this argument, CalAm relies on Water Code Section 10723.8, which provides that a local agency notice to become a GSA for a particular basin/subbasin "shall take effect" 90 days after posting if no other local agency has filed a notification of its intent to undertake groundwater management in all or a portion of the same area prior to expiration of this 90-day period. If another agency has such a notice posted before the expiration of this period, the GSA notice shall *not* take effect.

CalAm's first critical error in making this argument is that another local agency – Marina Coast Water District ("MCWD") – did file a GSA formation notice for a portion of the 180/400 Foot Aquifer Subbasin area that SVBGSA claimed in its GSA notice. It is undisputed that, on February 6, 2017, MCWD formed a GSA for the Fort Ord portion of this Subbasin and, on March 14, 2017, DWR posted the notice of this formation (even before SVBGSA filed its notice). Thus, since MCWD filed a GSA formation notice for a portion of the same Subbasin area that SVBGSA's later notice covered, SGMA Section 10723.8 prescribes that SVBGSA's notice did not take effect and SVBGSA never became the exclusive GSA for the Subbasin area it claimed.

CalAm attempts to explain away this complete roadblock to its Section 10723.8 contention by making a convoluted set of arguments that MCWD GSA's notice supposedly was not valid or effective and therefore should be completely ignored for SGMA purposes. It cites to a November 2, 2017 letter authored by a State Board attorney (attached as Exhibit G to its comment letter) that supposedly supports this argument. However, CalAm is mistaken and its citation is misleading.

At the outset, CalAm misrepresents the nature of the State Board letter by implying that it is somehow a dispositive determination by the State Board regarding the status of MCWD's GSA March 14, 2017 formation notice. To the contrary, the letter explicitly states that it is "merely advisory" and that "[t]hese opinions [in the letter] are not a declaratory decision and do not bind the State Water Board in any future determination." Moreover, CalAm also attempts to create the erroneous impression that the letter found that MCWD's GSA notice was void and must be disregarded by DWR. However, in so arguing, CalAm has entirely missed the central point of the letter. Rather than attempting to void MCWD's notice, the State Board letter was

² MCWD also formed a separate GSA for another portion of the 180/400 Foot Aquifer Subbasin (Marina Coast Water District GSA – Marina) at the same time and DWR posted notice of this GSA formation on February 24, 2017. This area was excluded from the area SVBGSA claimed in its own GSA formation notice.

explicitly intended to encourage SVBGSA and MCWD GSA to meet and work out their differences: “By way of this letter, I would like to encourage local resolution of the conflicts over groundwater management in Salinas Valley.”

Indeed, that is exactly what occurred here. MCWD GSA and SVBGSA negotiated an agreement that resolved most of their various conflicting issues regarding the 180/400 Foot Aquifer Subbasin and Monterey Subbasin. In addition, in the advisory letter, the State Board attorney suggested that, if MCWD could expand its jurisdictional boundaries by annexation to include Fort Ord, it could become the “exclusive GSA” for the Fort Ord area. MCWD thereafter did annex this area with the final approval occurring in or about July 2019. Thus, rather than the MCWD GSA – Fort Ord notice being void (as CalAm contends), this notice eventually led to MCWD establishing its SGMA jurisdiction for the area covered by the GSA formation notice in the 180/400 Foot Aquifer Subbasin.

Notably, DWR does not agree with CalAm’s argument regarding SVBGSA’s alleged Subbasin exclusivity. To the contrary, DWR has consistently informed all parties that SVBGSA never achieved exclusive GSA status for the Subbasin under Section 10723.8 because of the timely filings of MCWD GSA for this Subbasin. Consistent with the local and collaborative policies contained in SGMA, DWR has encouraged the various GSAs in the Subbasin to work together to resolve any GSP conflicts. And, as prescribed by SGMA, DWR has clearly stated to all parties that no GSPs for Subbasin overlap areas will be accepted until such a resolution has occurred.

Thus, in light of this law and factual context, CalAm’s demand that DWR “reject” MGSA’s GSA formation and GSP preparation notices based on SVBGSA’s alleged “exclusivity” is baseless. CalAm is not trying to further the purposes of SGMA or promote more effective groundwater management. Rather, it is only trying to promote its own narrow corporate agenda.

C. Contrary To CalAm’s Innuendos, There Is Every Reason To Believe That MGSA’s Sustainable Management of Groundwater In Its Subbasin Area Can And Will Be Effective.

CalAm attempts to create the erroneous impression that MGSA will not be successful in meeting the requirements of SGMA for its jurisdictional area. CalAm states that the covered area is “extremely small,” that some of the technical information MGSA may rely on in forming its GSP is supposedly discredited, and that it is unlikely that MGSA will meet the January 31, 2020 deadline for completing the GSP. However, this is no more than the SGMA equivalent of throwing spaghetti against the wall to see if any will stick.

First, SGMA does not contain any minimum or maximum basin size for sustainable groundwater management. Rather, it implicitly recognizes that these sizes may vary substantially. Indeed, some of the GSA formation notices cover very small areas of larger basins. See, e.g., Santa Barbara County Water Agency GSA -- Fringe Areas notice, posted on the SGMA Portal on September 22, 2017. Rather, one of the hallmarks of SGMA is its

recognition that local agencies will be in the best position to determine initially who should manage basins, to analyze local conditions, and to apply SGMA's sustainability criteria to these conditions. SGMA envisions local flexibility and has not mandated any artificial GSA jurisdictional area size requirements.

Second, CalAm complains (incorrectly) that some of the technical data and reports that MGSA may rely on in preparing its GSP "conflicts with the weight of the modeling and science supporting the MPWSP and has been repeatedly rejected by regulatory bodies and courts...." Although CalAm does not identify what reports it means, MGSA assumes that it refers to the Stanford University research studies regarding groundwater basin conditions that cover this exact area of the Subbasin. Unfortunately, CalAm misleads DWR regarding this technical information.

The Stanford University studies used well-accepted scientific methodologies (including state-of-the-art electrical resistance tomography ("ERT") and airborne electromagnetic ("AEM") techniques) to create two- and three-dimensional images of the actual hydrostratigraphic and groundwater quality conditions, and seawater intrusion characteristics, in portions of the 180/400 Foot Aquifer Subbasin, including the MGSA jurisdictional area. In brief, the studies found that there are significant areas of higher quality groundwater in areas of some seawater intrusion, identified an existing freshwater wedge that was retarding seawater intrusion, and identified gaps in the soil layers (aquitards) that are allowing vertical migration of saline water to the deeper aquifers. This is valuable data, gathered by one of our country's leading educational institutions, that should be utilized, along with all other available data, to prepare a GSP for this area.

It is significant that the northward extension of the same datasets are being used by other agencies for SGMA groundwater sustainability planning purposes. For example, in its recent draft GSP for the Santa Cruz Mid-County Subbasin, the Santa Cruz Mid-County Groundwater Agency (MGA) notes the following:

In May 2017, the MGA successfully completed an offshore Airborne Electromagnetic (AEM) geophysical survey to assess groundwater salinity levels and map the approximate location of the saltwater/freshwater interface in the offshore groundwater aquifers. This important data will inform the assessment of the extent and progress of seawater intrusion into the Basin and the management responses. The MGA anticipates repeating the AEM survey on a five-year interval (2022) to identify movement of the interface and assess seawater intrusion.

This is only one example of the use of this state-of-the-art technology for sustainable groundwater management planning in California.

CalAm appears to be making a ridiculous argument that this Stanford data must be ignored in preparation of the GSP. However, a GSA is not a court of law. Rather, it is a groundwater management agency that has an obligation to gather and evaluate all water basin

data potentially relevant to SGMA's sustainability criteria. By trying to inject an issue regarding what data supposedly supports or contravenes "the weight of the modeling and science" for CalAm's particular project, CalAm is misperceiving the purpose and function of a GSA that is in the midst of preparing a GSP. Further, CalAm's has misled DWR by stating that this technical information "has been repeatedly rejected by . . . courts." In fact, no court has rejected this technical information. Indeed, the one regulatory agency that even considered a small early subset of this data – the California Public Utilities Commission – did not "reject" it.

Third, CalAm asserts that one "practical" ground for rejecting MGSA's GSP preparation notice is that MGSA supposedly will not be able to meet SGMA's January 31, 2020 deadline for submitting a GSP. To the contrary, MGSA has a schedule in place that meets all of SGMA's requirements for public notice and comment, MGSA consideration and decision on the GSP, and timely submittal of the GSP to DWR. Even so, CalAm's uninformed speculation about completion of the GSP is not, of course, a credible ground for rejecting a GSP preparation notice. SGMA does not prescribe any minimum time period for the actual preparation of a GSP. Indeed, given the focused nature of the GSP here, there is every reason to believe that it will be completed in a timely manner.

Finally, CalAm's letter displays a dismissive attitude toward the City of Marina³ and questions the legitimacy of its interest in managing the groundwater in this Subbasin. In so doing, CalAm ignores the City's long-standing track record in protecting groundwater at the property (sometimes referred to as the "CEMEX" property) that is the subject of the MGSA notices. For example, in 1996, the City entered into an extensive Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands ("Annexation Agreement") with several other parties, including the CEMEX property owner. The expressed purpose of the Annexation Agreement is "to help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin through voluntary commitments by the Parties to limit, conserve and manage the use of groundwater from the Salinas River groundwater basin. . . ." The groundwater conditions on the CEMEX property were one main focus of the Annexation Agreement.

The City also worked closely with the California Coastal Commission and the State Lands Commission in a series of combined enforcement actions in 2016-17 to end the current sand mining operation on the CEMEX site by December 31, 2020. After decades of efforts to end this environmentally destructive use, this termination was achieved through a settlement approved by all three agencies. In addition to terminating this mining use at the end of next year and gaining full restoration of the site, the settlement requires CEMEX to transfer the entire site at a reduced purchase price to a non-profit organization or government entity approved by the Coastal Commission and the City. As part of this conveyance, a deed restriction will be put in

³ The City of Marina has a working class, ethnically diverse population, many of whom do not speak English. Marina is a recognized "disadvantaged community" at state, federal and local government levels. The groundwater under the City is an important and valuable community resource because it provides a clean, local and affordable groundwater source for City residents.

place to protect the CEMEX property and limit its potential uses to public access, conservation, low-impact passive recreation, and public education.

In sum, the City has a demonstrated interest and a 25-year track record in taking action to identify and protect this groundwater under MGSA's jurisdiction. MGSA expects to file a GSP with DWR by January 31, 2020 that fully complies with the groundwater sustainability requirements of SGMA and results in effective and sustainable groundwater management for many years.

D. CalAm's Articulated "Policy" Reasons For Rejecting MGSA's GSP Notice Are Contrived And Unpersuasive.

CalAm argues that rejection of MGSA's GSP notice is required to eliminate "uncertainty" about SVBGSA's GSA and GSP status and that MGSA's notice of GSP preparation supposedly could cause "significant damage" (unspecified) to the work that SVBGSA has undertaken. This is no more than empty rhetoric. The "uncertainty" that CalAm refers to is inherent in the structure of SGMA and has not been created by MGSA, SVBGSA or DWR. SGMA contemplates that there will be overlapping GSA jurisdictional claims and GSP notices and it contains built-in incentives and provisions for the involved parties to resolve these claims on the local level and, if these are unsuccessful, a resolution process at the State level. At this point, these processes are just beginning and they will be concluded in the manner SGMA contemplates.

Contrary to CalAm's rhetoric, MGSA's notices are not causing any damage, much less "significant damage," to SVBGSA's work. By all appearances, SVBGSA is moving forward in preparing and completing its GSP. Regardless of the outcome of the overlap in the jurisdictional area, SVBGSA's work will be valuable and important to completing its GSP. There is no indication that SVBGSA has violated or will violate the terms of the grants it has received, so CalAm's assertion that SVBGSA could potentially lose or need to return such funds is wholly unsupported and unrealistic.

In contrast, the action that CalAm seeks in its letter (DWR rejection of MGSA's GSA and GSP notices) would be catastrophic to MGSA. MGSA has properly formed, begun preparation of a GSP and committed all of the funds necessary to complete and file its GSP by January 31, 2020. CalAm's request is no more than an unlawful attempt to disenfranchise MGSA of its SGMA rights and would plainly thwart the goals of SGMA.

**CALAM'S ATTEMPTED INTERVENTION INTO THE GSA/GSP
PROCESS WOULD UNDERMINE SGMA'S LOCAL
COLLABORATIVE GSP PROCESSES.**

CalAm is a private party with its own narrow corporate interest in promoting a project that it would like to build in Monterey County. It is not a GSA and it is not preparing a GSP to sustainably manage groundwater in the 180/400 Foot Aquifer Subbasin. Rather, it is a member of the public that has been and will be provided with many opportunities under SGMA (which is

notable for its robust public participation provisions) to participate in the preparation of GSPs for the Subbasin and to participate in other ways as the SGMA process proceeds. Apparently not content with this role, CalAm is trying to interfere in and short-circuit the SGMA process. However, this interference is unauthorized and cannot be allowed.

One bedrock set of principles in SGMA is its structural recognition of local control and cooperative local management of groundwater. Its overall goal is to “enhance local management of groundwater.” Water Code § 10720.1(b). SGMA also contemplates that state intervention only occur when absolutely necessary. SGMA articulates the Legislature’s intent to “manage groundwater basins through the actions of local government agencies to the greatest extent feasible, *while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.*” *Id.*, § 10720.1(h)(emphasis added). Moreover, “[i]t is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdiction.” *Id.*, § 10750(a).

These themes of local management, minimization of state intervention, and local agency cooperation run throughout SGMA. This is especially the case with regard to formation of GSAs and to basin management through GSPs. SGMA recognizes that multiple GSAs can be formed and multiple GSPs can be prepared to manage a single groundwater basin or subbasin. *See, e.g., id.*, § 10720.7(a)(1)(recognizing that subbasins can be managed by “coordinated groundwater sustainability plans”); *id.*, § 10727(b)(recognizing that multiple GSP’s can be used to manage a basin pursuant to a “single coordination agreement”). The SGMA mechanism for achieving this coordination is a coordination agreement, which means “a legal agreement adopted between two or more GSAs that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin.” *Id.* § 10721(d).

SGMA envisions that, when there are jurisdictional overlaps in a basin, the GSAs first negotiate in good faith with one another to resolve the overlap. If these overlaps are not resolved and both GSAs submit a GSP for the overlap area, the GSPs will not be accepted (as DWR has confirmed). MGSA staff has met with SVBGSA staff and is working in good faith to negotiate a coordination agreement and will continue to do so.

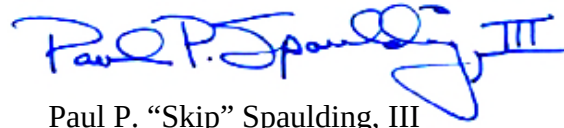
CalAm is attempting to precipitate premature state action to undermine the SGMA collaborative local GSP processes. This would violate the legislative directive to minimize State intervention “to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.” *Id.*, § 10720.1(h). At this stage of the process, the MGSA and SVBGSA GSPs have not been prepared and submitted to DWR, and no determination can yet be made as to whether they ensure sustainable groundwater management. CalAm cannot be allowed to subvert these important, ongoing SGMA processes.

CONCLUSION

For all of the reasons set forth above, MGSA respectfully requests that DWR take no action in response to the CalAm August 12, 2019 comment letter. As DWR’s regulations state, DWR “is not required to respond to comments, but shall consider comments as part of its

evaluation of a Plan.” 23 C.C.R. § 353.8(f). However, if DWR believes that any response is necessary, it should deny in its entirety CalAm’s request to “reject” MGSA’s GSA formation notice and/or GSP preparation notice.

Very truly yours,



Paul P. “Skip” Spaulding, III

PPS:jl

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EXHIBIT 2

October 21, 2019

Via E-mail and Mail

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**Re: Monterey County's October 9, 2019 SGMA Letter
Marina Sustainable Groundwater Agency Jurisdictional Area**

Dear Ms. Ravazzini and Ms. Sobeck:

On behalf of the City of Marina Groundwater Sustainability Agency ("MGSA"), we are responding to Monterey County's October 9, 2019 letter informing the Department of Water Resources ("DWR") and the State Water Resources Control Board ("State Board") of its intent to consider becoming the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin").¹

INTRODUCTION

In brief, Monterey County ("County") apparently plans to supplant MGSA and become the exclusive GSA for MGSA's jurisdictional area because MGSA and the Salinas Valley Basin GSA ("SVBGSA") have filed overlapping GSA notices for the approximate 400-acre portion of the Subbasin within the City of Marina. DWR and the State Board should firmly reject any County effort to usurp MGSA's GSA authority. The Sustainable Groundwater Management Act ("SGMA") provides for a local agency resolution process to resolve overlapping GSA notices and uncoordinated Groundwater Sustainability Plans ("GSPs"). MGSA and SVBGSA have until January 31, 2020 to negotiate and submit a coordination agreement. Then, if an overlap has not been resolved, SGMA specifies a resolution process implemented by the State Board, which includes a mandatory 180-day negotiation/mediation provision.

¹ In its letter, the County states in several places that it "will consider" taking actions to become the GSA for this property. However, at the end of the letter, the County requests that the agencies let them know if they "have concerns about **the County's plans** to become a GSA for the CEMEX property, as outlined above." (Emphasis added.)

Four independent reasons compel cessation of any Monterey County efforts to become the GSA for this overlap portion of the Subbasin:

- SGMA Section 10724 does not provide a platform for Monterey County to replace MGSA for this area;
- Since it is creating and/or contributing to the overlap, Monterey County cannot invoke Section 10724;
- If it tried to invoke Section 10724, Monterey County would be unlawfully circumventing the explicit local agency coordination requirements and GSP resolution provisions in SGMA; and
- Intervention by DWR or the State Board in support of Monterey County would be premature and inappropriate.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximate 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). SGMA instructs the local agencies to "seek to reach agreement to allow prompt designation of a groundwater sustainability agency." *Id.* SGMA further requires GSAs "intending to develop and implement multiple groundwater sustainability plans" to "coordinate with other agencies preparing a groundwater sustainability plan within the basin." *Id.* § 10727.6. The GSAs must "jointly submit" their GSPs with a coordination agreement "to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin." *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. The GSPs and coordination agreement between MGSA and SVBGSA for the Subbasin must be filed by January 31, 2020.

MGSA is complying in all respects with SGMA. It properly formed its GSA, provided the requisite notice of its intent to prepare a GSP, issued a draft GSP on October 8, 2019 and is on schedule to file an approved GSP with DWR by the January 31, 2020 deadline. By

committing the necessary (and significant) financial resources and following the prescribed SGMA process, MGSA has been doing exactly what the law requires and it is entitled to complete this process.

I. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision is applicable here. As SGMA's legislative history reflects,² Section 10724 is intended to cover situations where no GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. When multiple GSAs adopt GSPs to manage such an area, the area is within the management area of several GSAs. Section 10724 comes into play when no local agency shows an interest in a particular basin area (thereby making it "unmanaged") and a county is thereafter given the option to become the GSA of that area. If the county declines, the area will instead be managed by the State Board. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.

The County argues that this provision should also be applied in a multiple GSA situation. The County attempts to conflate the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, the areas should be deemed to be "unmanaged." However, the County inaccurately reads Section 10724(a) as addressing disputes arising under the process for determining an exclusive GSA under Section 10723.8 and incorrectly presumes that where overlapping GSAs jurisdictional claims exist, there is no GSA to manage an area.

MGSA acknowledges that one guidance statement from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. State Board, Frequently Asked

² The Legislature intended Section 10724 to apply "in the case of an area where no local agency has *assumed* management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area – not whether the local agency has become the exclusive GSA.

Questions on GSAs, at 3 (Nov. 22, 2017) (“SWRCB FAQs”). However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law. Even so, the State Board attaches an important caveat to this interpretation: if a county is “creating or contributing to the overlap, the county does not become the presumptive GSA.” As explained in the next section, this rule disqualifies Monterey County from taking such an action.

In sum, it is not a reasonable interpretation of SGMA to read Sections 10723.8 and 10724 together in this manner, nor does SGMA define its use of the term “unmanaged.” Rather, these GSA and GSP provisions are best read as operating at the same time on parallel tracks. Consistent with this interpretation, Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Where multiple GSAs file to manage the same basin area, the clear text in Section 10724(a) does not support Monterey County’s ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlap areas until the January 31, 2020 GSP submittal deadline.

II. Since Monterey County Is Creating And/Or Contributing To This GSA Overlap, It Is Disqualified From Invoking Section 10724.

Guidance from the State Board and DWR places a very important limitation on Monterey County’s authority to become a GSA for an unmanaged area under Section 10724: “If a county is creating or contributing to the overlap, the county does not become the presumptive GSA.” SWRCB FAQs at 3; *see also* DWR, *GSA Frequently Asked Questions*, at 4 (May 10, 2019).

The County argues that it is a completely separate entity from SVBGSA and thus could not be creating or contributing to the overlap. However, the facts do not support this claim. Monterey County was a moving force behind SVBGSA’s formation and even “pushed for the establishment of the Joint Powers Authority” (“JPA”). SVBGSA Minutes at 2 (Sept. 19, 2019). Monterey County is a member of SVBGSA and the County Administrative Officer position (who authored the County’s October 9, 2019 letter) is designated as the official County representative to SVBGSA. (*See* Exhibit A to SVBGSA’s JPA Agreement.) Section 10.4 of the JPA Agreement for SVBGSA reflects that the County has provided almost 60% of all initial funding for SVBGSA during the 2017–19 period, totaling \$1.34 million. The Monterey County Counsel’s office has served as the attorney for SVBGSA as it filed GSA and GSP notices and even prepared the GSP that the County now proposes to adopt after it eliminates MGSA. Indeed, the law reflects that a JPA agreement allows “two or more public agencies by agreement [to] jointly exercise any power common to the contracting parties.” Cal. Gov’t Code § 6502.

In short, it is wholly unpersuasive for the County to assert that it is a separate entity from SVBGSA and therefore is not creating or contributing to the overlap situation. In actuality, the County, as a member, majority funder and driving force in the SVBGSA, is indisputably creating and/or contributing to the overlap situation and cannot masquerade as a disinterested county

agency coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies.

This is exactly the kind of conflict situation envisioned by the DWR/State Board guidance where a county is disqualified from attempting to invoke Section 10724. Monterey County's contemplated actions here vividly illustrate these dangers. The County is responding to a request by an affiliated entity (SVBGSA) of which it is the primary funder, to consider using its powers to prevent the City of Marina from exercising its GSA authority. Monterey County has announced its intention to adopt SVBGSA's GSP for the overlap area – the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to present any groundwater management justification for asserting control over the overlap area. It is exactly to prevent such county conflicts that the “creating or contributing” limitation was adopted.

SVBGSA and the County are being encouraged by California-American Water Company (“CalAm”) to take these actions to promote its Monterey Peninsula Water Supply Project (“Project”). In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to “defer any action on a coordination agreement” with MGSA and instead requests that the County become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County so it can build the Project. CalAm is not a GSA and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, it is also trying to artificially create an impasse in hopes of a County takeover or state intervention.

As a DWR representative has already informed SVBGSA, the County would need to withdraw from the SVBGSA if it intends to take any action under Section 10724. According to the minutes of the September 19, 2019 SVBGSA Advisory Committee meeting, a DWR representative (Tom Berg) stated to SVBGSA:

Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement. The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created**

their overlap conflict, and they were prevented from becoming the GSA as a result.

* * *

Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**³

Id. at 3–4 (emphasis added).

There are explicit withdrawal provisions in Sections 11.6 and 11.8 of SVBGSA’s JPA Agreement that the County could utilize to accomplish this withdrawal. Moreover, after withdrawal, the County would need to assert jurisdiction over all overlap areas in the Subbasin. This would, of course, cause needless and extensive organizational and financial harm to all GSAs with overlapping claims and would completely undercut SGMA’s goals.

In actuality, “SGMA requires the agencies to resolve” boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a safety valve, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County would be using Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This effort would contravene SGMA’s emphasis on and processes for local agency cooperation and basin management.

III. Monterey County’s Potential Action Would Fatally Undermine SGMA’s GSA Collaboration Process.

SGMA specifies a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes, in the event that GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs “180 days to remedy the deficiency,” and “[t]he board may appoint a mediator or other

³ The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the deficiency.” *Id.* § 10735.4(a). Disagreements over overlapping portions of the basin are covered by this provision.

If it tried to eliminate MGSA’s authority over the overlapping area and intervene as the exclusive GSA, the County would be improperly using Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA’s dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. DWR And State Board Intervention Is Premature And Legally Unauthorized.

MGSA and SVBGSA are entering a critical time for collaboration to meet the January 31, 2020 GSP submission deadline. Monterey County’s potential plan to assert itself as the GSA for the MGSA jurisdictional area threatens to derail this process. Intervention by DWR or the State Board to support Monterey County would similarly quash any possibility of compromise between the two GSAs. Unfortunately, CalAm is urging a strategy to promote its own narrow agenda, likely because it does not want to comply with the GSP of MGSA or with MGSA oversight of its potential groundwater source. However, MGSA and SVBGSA must negotiate in good faith and be given the opportunity to complete the local agency coordination process prescribed by SGMA. The Water Code specifically provides for State Board intervention if MGSA and SVBGSA cannot meet the January 31, 2020 deadline. See Cal. Water Code § 10735.2(a)(2). Any actions that interfere with or undermine these SGMA processes are premature and inappropriate.

CONCLUSION

For the foregoing reasons, DWR and the State Board must immediately inform Monterey County that Section 10724 is not applicable in this situation. The County, as the moving force, member, primary funder and general legal advisor to SVBGSA, has created and or contributed to the overlap situation and is therefore disqualified from using this provision. Supporting CalAm’s reluctance to be governed and monitored by the government entity with the overlying interest, does not support SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina’s formation of MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction is consistent with the spirit and language of SGMA.

Thank you for giving MGSA the opportunity to provide comments on this important issue. We are certainly available to discuss these issues with you.

Very truly yours,



Paul P. “Skip” Spaulding, III

Taryn Ravazzini
Eileen Sobeck
October 21, 2019
Page 8

PPS:jl

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ATTACHMENT 2



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November 21, 2019

Gary Petersen
General Manager
Salinas Valley Basin Groundwater Sustainability Agency

Re: MGSA/SVBGSA Coordination Agreement Discussions

Gary,

I wanted to follow up on our previous discussions regarding a coordination agreement with SVBGSA and next steps to move this forward. I understand from our last telephone conversation that you have received direction that the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) will only agree to meet with the Marina Groundwater Sustainability Agency if MGSA “agrees to give up its GSA.” From MGSA’s viewpoint, this is not a negotiation on a coordination agreement; rather, it is a request that MGSA go out of existence, which is of course not acceptable.

We continue to be ready to have a discussion on a coordination agreement that will comply with the Sustainable Groundwater Management Act. We strongly encourage SVBGSA to negotiate in good faith to achieve this goal.

Sincerely,

Layne Long
City Manager/Executive Director
City of Marina-Marina Groundwater Sustainability Agency

DRAFT 2020 GROUNDWATER SUSTAINABILITY PLAN

<https://www.cityofmarina.org/DocumentCenter/View/10737/City-of-Marina-GSP-VOLUME-I>

<https://www.cityofmarina.org/DocumentCenter/View/10738/City-of-Marina-GSP-VOLUME-II>

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 14, 2020

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2020-,
RECEIVING A PRESENTATION AND ADOPTING THE FINAL GROUNDWATER
SUSTAINABILITY PLAN (“GSP”) FOR A PORTION OF THE 180/400 FOOT
AQUIFER SUBBASIN AND/OR PROVIDING DIRECTION TO STAFF AS TO
CHANGES REQUIRED PRIOR TO ADOPTION**

REQUEST:

It is requested that the City Council:

1. Adopt Resolution No. 2020-, receive a presentation on the adoption of the Final Groundwater Sustainability Plan for MGSA’s portion of the 180/400 Foot Aquifer Subbasin,
2. Provide direction to staff on any needed changes to the Final Groundwater Sustainability Plan,
3. Approve the Final Groundwater Sustainability Plan, and
4. Direct staff to file the Final Groundwater Sustainability Plan by January 31, 2020, with the California Department of Water Resources along with any necessary or appropriate explanation or documentation regarding the filing.

BACKGROUND:

Groundwater Sustainability Plan

On March 20, 2018, City Council passed Resolution 2018-25, forming the Marina Groundwater Sustainability Agency (“MGSA”) to undertake sustainable groundwater management within the portion of the Salinas Valley Ground Water Basin 180/400 Foot Aquifer Subbasin (“Subbasin”) within the City and outside of the Marina Coast Water District (“MCWD”) service area (“MGSA Area”). A map of the GSA Boundary and MGSA Area is attached as **EXHIBIT A**. On April 16, 2018, MGSA notified the California Department of Water Resources (“DWR”), pursuant to Water Code § 10723.8(a), of MGSA’s intent to become the GSA for this area. DWR accepted this filing, but because it overlaps with a filing by the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) for the entire Subbasin, no exclusive groundwater sustainability agency (“GSA”) has been determined for the Subbasin.

MGSA is required to assess the groundwater conditions in the Subbasin and adopt a locally-based groundwater sustainability plan (“GSP”). The cornerstone of the Sustainable Groundwater Management Act (“SGMA”) is the development and adoption of a GSP by a GSA or coordinated GSPs by a collection of GSAs. MGSA and SVBGSA must adopt a SGMA-compliant GSP or set of GSPs for the critically over-drafted 180/400 Foot Aquifer Subbasin by January 31, 2020, or be subject to State Water Resources Control Board intervention pursuant to Water Code § 10735.2(a)(2). SGMA requires a GSA to design its GSP to achieve basin sustainability within 20 years of adoption.

SGMA defines sustainable groundwater management as managing and using groundwater in a way “that can be maintained during the planning and implementation horizon without causing undesirable results.” *Id.* § 10721(v). Sustainable yield is defined as the amount of groundwater that can be withdrawn annually over the long term without causing “significant and unreasonable” impacts related to any of the following “undesirable results:” chronically lowering groundwater levels, reduction of groundwater storage, causing seawater intrusion, degrading water quality, causing land subsidence, or depleting interconnected surface water such as creeks, streams, rivers, and wetlands. *Id.* § 10721(w), (x).

On July 31, 2019, MGSA filed an initial notification with DWR of its intent to prepare a GSP for the MGSA Area of the Subbasin. A copy of the notification is attached as **EXHIBIT B**.

On August 7, 2019, City Council received a presentation and public comment on the MGSA GSA area and provided direction on the preparation of the GSP.

On October 8, 2019, MGSA released the Draft GSP and opened a 45-day public comment period. Also, on October 8, 2019, City Council received a presentation and public comments on the Draft GSP and adopted a Notice of Intent to Adopt a GSP. The Notice of Intent to Adopt a GSP was then issued on October 9, 2019, and a copy is attached as **EXHIBIT C**. During the comment period, the public had the following opportunities to review the Draft GSP and provide comments:

- Interested parties provided comments on the Initial Notification that MGSA filed on the DWR SGMA Portal (<https://sgma.water.ca.gov/portal/gsp/init/all>);
- Interested parties provided comments at public meetings/workshops convened by the MGSA in the City Council chambers on August 7, October 8, and October 29, 2019;
- Staff posted information and updates regarding GSP preparation and the Draft GSP on the City webpage (<https://cityofmarina.org/918/Groundwater-Sustainability-Plan>) where interested parties could get additional information, sign up for the interested stakeholder email list, see materials for past or upcoming meetings related to the GSP development, and access the public review draft of the GSP;
- Hard copies of the public review draft of the GSP were available for review at the City of Marina City Hall, 211 Hillcrest Avenue; the City of Marina Annex, 209 Cypress Avenue; and the Marina Branch Library, 188 Seaside Circle.

MGSA received comment letters from SVBGSA, Monterey County Water Resources Agency, RMC Pacific Materials, LLC (CEMEX), three individuals who call themselves the Hydrogeologic Working Group, and California American Water Company during the comment period. Comments have been included in the table attached as **EXHIBIT D** and made available to the public at the City webpage <https://www.cityofmarina.org/918/Groundwater-Sustainability-Plan>. MGSA has reviewed and responded to all of the public comment letters. EXHIBIT D contains MGSA's responses and any corresponding changes to the GSP.

Coordination Agreement

When multiple GSAs file notifications with overlapping boundaries, SGMA prevents the GSA notifications from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Water Code § 10723.8(c). SGMA instructs the local agencies to "seek to reach agreement to allow prompt designation of a groundwater sustainability agency." *Id.* SGMA further requires GSAs "intending to develop and implement multiple groundwater sustainability plans" to "coordinate with other agencies preparing a groundwater sustainability plan within the basin." *Id.* § 10727.6. The GSAs must "jointly submit" their GSPs with a coordination agreement "to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin." *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357.

Because MGSA's GSA notification overlaps with SVBGSA's GSA notification for the Subbasin, MGSA and SVBGSA must negotiate with each other in good faith and submit a coordination agreement with their GSPs. The City Council approved a draft intra-basin coordination agreement, which was prepared pursuant to Water Code § 10727.6 and Cal. Code Regs. tit. 23, § 357.4. If approved by SVBGSA, the agreement would help to assure that the preparation and implementation of the two GSPs in the Subbasin are effectively coordinated, Subbasin sustainability goals are met, and the interests of all beneficial water users and uses are recognized and protected.

The SVBGSA refused to enter into this or any coordination agreement with MGSA. Rather, the following sequence of events occurred:

- The Executive Committee, on August 22, 2019, postponed recommendation on the coordination agreement and asked for the County of Monterey to reaffirm its willingness to be a GSA in any unmanaged areas.
- The Board of Directors, on September 12, 2019, moved consideration of coordination to the Advisory Committee and Executive Committee for consideration.
- The Advisory Committee, on September 19, 2019, with comments forwarded to the Executive Committee and Board of Directors for consideration.
- The Executive Committee, on September 26, 2019, recommended that the Board of Directors request that the County take all necessary actions to become the GSA and adopt the SVBGSA GSP.
- The Board of Directors, on October 10, 2019, asked that Monterey County take all necessary steps to (1) become the GSA for either the entire Subbasin or the MGSA area and (2) adopt the SVBGSA GSP.
- The Board of Directors, on December 12, 2019, considered a cooperation agreement with the County of Monterey in the event that the County applies for GSA status, and DWR declares the County a GSA over the MGSA area. The Board of Directors did not take action to approve the draft agreement.

On September 24, 2019, the Monterey County Board of Supervisors made a referral to County staff to determine and begin the process and steps by which the County could become the GSA for either all or part of the Subbasin as needed to “resolve” the overlap between MGSA and SVBGSA. The Board of Supervisors instructed the County staff to report back on these efforts.

On December 11, 2019, the Monterey County Board of Supervisors voted to file for GSA status for the MGSA Area to supposedly “resolve” the MGSA/SVBGSA overlap. A representative of DWR expressed that if the County filed for GSA status, DWR would expedite public posting of their application and that Water Code § 10723.8’s 90-day waiting period would not apply since the only other agencies that could file for GSA status over the area have already done so, creating the overlap at issue. On December 18, 2019, DWR posted Monterey County’s GSA notification for the MGSA Area. The DWR posting also indicates that the Monterey County GSA was determined to be an “Exclusive” GSA; however, the MGSA and SVBGSA postings still indicate that they have overlapping GSA notifications. City staff is informed and believes that these County and DWR decisions and actions do not comply with SGMA and other applicable law.

Submittal and Acceptance of a GSP

MGSA must adopt and submit a SGMA-compliant GSP for the critically over-drafted Subbasin by January 31, 2020, or be subject to State Water Resources Control Board intervention pursuant to Water Code § 10735.2(a)(2). Because the MGSA Area overlaps the SVBGSA area, a coordination agreement between the two GSAs is necessary. *Id.* § 10733.4(b).

Upon submittal of an approved GSP to DWR, DWR will conduct an initial review to determine if the submittal is complete. If deemed complete, DWR will conduct a thorough review within two years, which will find the GSP to be in compliance with SGMA, in need of revisions as directed, or non-compliant. *Id.* § 10733.4(d).

ANALYSIS:

The Final GSP was developed by staff and consultants in part by using information compiled by the SVBGSA and MCWD for the preparation of their respective GSPs, supplemented by local investigation, monitoring data, and other relevant information. Based on comments and other information, revisions have been made to the Draft GSP where appropriate and final revisions to be made will be presented for City

Council consideration prior to acceptance of the Final GSP and prior to transmittal and uploading of the documents to DWR for review.

Since receipt of MGSA's approved and proposed coordination agreement in August 2019, SVBGSA has not negotiated in good faith or responded with any requested revisions to the draft coordination agreement. Staff followed up on October 9, 2019 with a letter of inquiry as to any action by the SVBGSA Board and conveyed that MGSA was open and available for dialogue. Informal communications from SVBGSA staff asserted that MGSA must withdraw its notice of GSA status (essentially go out of existence) before SVBGSA would consider coordination discussions. Staff transmitted a letter of record on November 21, 2019, which stated our understanding of SVBGSA's demand that MGSA's withdrawal as a GSA is a threshold condition for any discussion of coordination. SVBGSA staff confirmed its position in a November 21, 2019 response letter.

Based upon the actions of the SVBGSA Board of Directors and the Monterey County Board of Supervisors to attempt to designate the County as a GSA and attempt to adopt SVBGSA's GSP for the MGSA area, staff does not anticipate any further progress on a coordination agreement. Given the lack of a coordination agreement between agencies submitting GSPs for the 180/400 Foot Aquifer Subbasin, if MGSA submits the GSP by the January 31, 2019 deadline, DWR may find the submission to be incomplete and reject the plan outright. The City and MGSA are taking legal action to address this situation.

Letters were submitted on the record at the December 11, 2019, the Monterey County Board of Supervisors public hearing on its resolution to form a GSA and file for GSA status (**EXHIBIT E**), and the December 12, 2019 SVBGSA Board of Directors hearing to consider entering into a cooperation agreement with Monterey County (**EXHIBIT F**). The letters outline why MGSA finds that the portion of the Water Code cited as authority for Monterey County to apply for GSA status over the MGSA Area (Water Code § 10724) does not apply here. On December 30, 2019, the City and MGSA filed a petition for a writ of mandate and complaint challenging the County's actions and DWR's apparent designation of the Monterey County GSA as the exclusive GSA for the MGSA Area.

Pursuant to Water Code § 10728.6, Division 13 (commencing with Section 21000) of the Public Resources Code, the provisions of the California Environmental Quality Act do not apply to the preparation and adoption of GSPs pursuant to SGMA.

FISCAL IMPACT:

Funding for the completion of the GSP and submittal to DWR are included in the current budget. Additional funding will be required in the future to implement the GSP. The Draft GSP includes a preliminary estimate of plan implementation costs.

CONCLUSION:

This request is submitted for City Council consideration and comment.

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Public Works Director/City Engineer
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina