

## State Water Resources Control Board

NOV 02 2017

**[all via mail and email]**

Gary Peterson  
Interim General Manager  
Salinas Valley Basin  
Groundwater Sustainability Agency  
200 Lincoln Ave.  
Salinas, CA 93901  
[garyp@ci.salinas.ca.us](mailto:garyp@ci.salinas.ca.us)

Keith Van Der Maaten  
General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933  
[kvandermaaten@mcwd.org](mailto:kvandermaaten@mcwd.org)

Mary F. Lerner, Esq.  
Attorney at Law  
Lozano Smith  
7404 N Spalding Ave.  
Fresno, CA 93720  
[mlerner@lozanosmith.com](mailto:mlerner@lozanosmith.com)

Pamela H. Silkwood, Esq.  
Horan Lloyd Professional Corporation  
26385 Carmel Rancho Blvd., Suite 200  
Carmel, CA 93923  
[psilkwood@horanlegal.com](mailto:psilkwood@horanlegal.com)

Dear Messrs. and Meses.:

**RE: SUSTAINABLE GROUNDWATER MANAGEMENT IN THE SALINAS VALLEY BASIN.**

I am in receipt of your letters regarding the formation of groundwater sustainability agencies (GSAs) in the Salinas Valley Basin pursuant to the Sustainable Groundwater Management Act, Water Code section 10720, et seq. (SGMA): letter dated June 9, 2017, on behalf of the Salinas Valley Basin Groundwater Sustainability Agency (SVB GSA); letter dated June 9, 2017, on behalf of the Clark Colony Mutual Water Company and Upper Valley Association; letter dated June 15, 2017, on behalf of the Marina Coast Water District; and, letter dated June 22, 2017, on behalf of the City of Greenfield. I understand that staff of the State Water Resources Control Board (State Water Board) met with representatives from the Marina Coast Water District on May 23; representatives from the City of Greenfield and Clark Colony Water Company on June 12 and June 21; and representatives from the San Lucas County Water District, the City of Greenfield and Clark Colony Water Company on July 6, of this year.

As noted in several of your letters, SGMA intends that sustainable groundwater management be achieved locally. The State Water Board has a limited role under SGMA, and will intervene in a basin "only when necessary to ensure that local agencies manage groundwater in a sustainable manner." (Wat. Code, § 10720.1, subd. (h).) By way of this letter, I would like to encourage local resolution of the conflicts over groundwater management in Salinas Valley. In furtherance of that end, I have included legal analysis developed by my staff to provide transparency as to the State Water Board's understanding of SGMA as applied to the Salinas Valley.

These opinions are not a declaratory decision and do not bind the State Water Board in any future determination.

*May the Marina Coast Water District (Marina Coast) act as a GSA over an area outside its jurisdictional boundaries?*

This question was addressed by letter dated April 12, 2017, to Mr. Leslie Girard, Chief Assistant County Counsel, from Mr. Sam Boland-Brien, Chief of the Groundwater Management Program at the State Water Board. The position of the State Water Board remains the same as expressed in Mr. Boland-Brien's letter.

SGMA states that the Act does not grant authority to any agency to impose regulatory requirements or fees on activities outside of its jurisdictional boundaries. (Wat. Code, § 10726.8, subd. (b).) Although any local agency or combination of local agencies overlying a groundwater basin may decide to become a GSA for that basin (Wat. Code, § 10723, subd. (a)), a local agency cannot undertake groundwater management outside of its jurisdictional boundaries because the agency lacks the authority to regulate. As a result, if two local agencies file GSA notices for an area over which only one of the agencies has jurisdiction, there is no overlap in areas proposed to be managed pursuant to Water Code section 10723.8, subdivision (c).

It is my understanding that the jurisdictional boundaries of Marina Coast overlay a portion of the Monterey Subbasin. Marina Coast also provides water and sewer services to lands outside of its jurisdictional boundaries within the Fort Ord area. The State Water Board does not consider the notice posted by Marina Coast on March 14, 2017, to overlap the SVB GSA notice because Marina Coast cannot undertake groundwater management in the Fort Ord area. If Marina Coast were to expand its jurisdictional boundaries through annexation to include the Fort Ord area, Marina Coast could become the exclusive GSA for the Fort Ord area upon withdrawal of the SVB GSA.

*May the Arroyo Seco Groundwater Sustainability Agency, an entity formed by the City of Greenfield and the Clark Colony Mutual Water Company, act as a GSA over the area served by the mutual water company but outside the jurisdiction of the city?*

A local agency and a mutual water company can create a GSA through a memorandum of agreement (MOA) or other legal agreement. The GSA so created will have the authority to undertake groundwater management only within the jurisdictional boundaries of the local agency. SGMA does not grant authority to any agency to impose regulatory requirements or fees on activities outside of its jurisdictional boundaries. (Wat. Code, § 10726.8, subd. (b).) A mutual water company may participate in a GSA, (Wat. Code, § 10723.6, subd. (b)), but a mutual water company is not a local agency, does not have regulatory authority or jurisdictional boundaries, and cannot undertake groundwater management pursuant to SGMA. Therefore, a local agency cannot undertake groundwater management outside of its jurisdictional boundaries through a legal agreement with a mutual water company.

The State Water Board does not consider the notice posted by the Arroyo Seco GSA to overlap the SVB GSA notification because the Arroyo Seco GSA cannot undertake groundwater management outside of the City of Greenfield.

*May the San Lucas Water District act as a GSA over an area outside its jurisdictional boundaries?*

As described above, SGMA does not grant authority to any agency to impose regulatory requirements or fees on activities outside of its jurisdictional boundaries. (Wat. Code, § 10726.8, subd. (b).) San Lucas Water District cannot undertake groundwater management under SGMA outside of its jurisdictional boundaries. To the extent that the notice filed by San Lucas Water District includes areas over which the District does not have jurisdiction, there will be no overlap with another local agency in the areas proposed to be managed pursuant to Water Code section 10723.8, subdivision (c).

Based on this legal analysis, there are no overlapping notices of intent to manage groundwater within the Salinas Valley. As a result, the Board considers the entire Valley to be managed and not subject to reporting requirements under Water Code section 5202, subdivision (a)(2). Because there are multiple GSAs in the basins in Salinas Valley, however, cooperation and coordination amongst the GSAs will be necessary to avoid probationary status. Where there are multiple GSAs in a basin, the GSAs must “prepare[] agreements to develop one or more groundwater sustainability plans that will collectively serve as a groundwater sustainability plan for the entire basin.” (Wat. Code, § 10735.2, subd. (a)(1)(B).) If there are multiple plans in a basin, the plans must be “coordinated pursuant to a single coordination agreement that covers the entire basin.” (Wat. Code, § 10727.) “[GSAs] intending to develop and implement multiple groundwater sustainability plans ... shall coordinate with other agencies preparing a groundwater sustainability plan within the basin to ensure that the plans utilize the same data and methodologies ....” (Wat. Code, § 10727.6.) The State Water Board may consider probationary designation if adequate coordination agreements are not adopted within a basin.

*What are the roles of the Department of Water Resources and the State Water Board in reviewing notices of intent?*

Several of the letters that I received assert that the Department of Water Resources (DWR) determines whether a local agency has properly become or formed a GSA by posting the local agency’s notice of intent to the DWR website. The posting of notices by DWR is based solely on a determination that the notice submitted to DWR is complete. The posting is not a determination as to the validity of the agency’s intent to manage groundwater in a particular area. In contrast to DWR’s ministerial role, the State Water Board must consider agencies’ notices of intent for purposes of implementing and enforcing Water Code section 5202, which requires persons who extract groundwater within a high- or medium-priority basin that is “not within the management area of a GSA” to file an annual report of groundwater extraction. (Wat. Code, § 5202, subd. (a)(2).) The Board will determine whether an area is “not within the management area of a GSA” on a case-by-case basis through the issuance of invoices for reporting fees or through enforcement actions for failure to file a required report. (*Ibid.*) These determinations will occur after the reporting deadline on December 15, 2017, for groundwater extractions made during the previous water year.

I appreciate the challenges of establishing an effective governance structure for sustainable groundwater management in the absence of clear precedent interpreting SGMA’s requirements and grants of authority. This letter is intended to provide clarity as to the State Water Board’s understanding of these issues to assist in your efforts. These opinions are merely advisory and provided for your information.

NOV 9 2 2017

If you have additional questions, please contact Nicole Kuenzi, Office of Chief Counsel, State Water Board, at [Nicole.Kuenzi@waterboards.ca.gov](mailto:Nicole.Kuenzi@waterboards.ca.gov), (916) 322-4142.

Sincerely,



Michael A.M. Lauffer  
Chief Counsel

cc: **[via email only]**  
Samuel Boland-Brien, Sr. Engineer  
State Water Resources Control Board  
1001 I Street, 13th Floor  
Sacramento, CA 95814  
[Samuel.Boland-Brien@waterboards.ca.gov](mailto:Samuel.Boland-Brien@waterboards.ca.gov)

**[via email only]**  
Jessica Bean  
State Water Resources Control Board  
1001 I Street, 13th Floor  
Sacramento, CA 95814  
[Jessica.Bean@waterboards.ca.gov](mailto:Jessica.Bean@waterboards.ca.gov)

**[via email only]**  
Kevin O'Brien, Esq.  
Downey Brand LLP  
621 Capitol Mall Fl 18  
Sacramento, CA 95814-4731  
[kobrien@downeybrand.com](mailto:kobrien@downeybrand.com)

**[via email only]**  
Leslie Girard, Esq.  
County Counsel's Office/Monterey County  
168 W Alisal St 3rd Fl  
Salinas, CA 93901  
[girandli@co.monterey.ca.us](mailto:girandli@co.monterey.ca.us)