
State Water Resources Control Board

April 20, 2017

R.E.: GROUNDWATER SUSTAINABILITY AGENCY (GSA) FORMATION DEADLINE

Dear Supervisors:

This is a reminder that the deadline to form groundwater sustainability agencies (GSAs) is fast approaching. Beginning July 1, 2017, the State Water Resources Control Board (State Water Board or Board) can intervene in groundwater basins that contain unmanaged areas. An unmanaged area is a part of a basin that is not managed by a GSA, because: 1) no local agency has formed a GSA; or 2) there are GSA notifications that have not taken effect because of overlap in the management areas proposed by local agencies. Extractors in unmanaged areas will be required to report their groundwater extractions to the State Water Board.

As of April 6, 2017, there were basins in «County» that contained unmanaged areas. To prevent state intervention, the Sustainable Groundwater Management Act (SGMA) requires that these basins be managed, in their entirety, by a GSA or a collection of coordinated GSAs by June 30, 2017. A map showing the location of any unmanaged areas in the County is included as an attachment to this letter. We understand that local agencies are working to meet this deadline, that coverage is changing rapidly, and that the County may already be involved in these efforts. This letter is intended to ensure that County leaders and constituents understand the impacts of state intervention. Current information on GSA formation is available at <http://sgma.water.ca.gov/portal>.

There are several options «County» can take to eliminate unmanaged areas and prevent state intervention. The County can choose to become a GSA for unmanaged areas by accepting its presumptive role described by Water Code section 10724. Alternatively, the County could partner with other local public agencies and develop a multi-agency GSA. SGMA is written to encourage counties to become the GSA for unmanaged areas in their basin, but it does not require them to do so. Accordingly, a county should notify the Department of Water Resources (DWR) whether or not it intends to become the GSA for any unmanaged areas within its jurisdiction prior to July 1, 2017, or as soon as possible thereafter. Additional information on the County's presumptive role as the GSA for unmanaged areas can be found in the FAQ document included with this letter.

After the deadline has passed, if «County» declines to be the GSA for an unmanaged area, groundwater users in that unmanaged area will be required to report their groundwater extractions directly to the State Water Board and pay associated fees. The State Water Board can also begin the process to designate the entire basin as a probationary basin. Probationary status may lead the State Water Board to develop an interim plan that directly manages groundwater extractions in the basin.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

The State Water Board is committed to supporting local groundwater management efforts, and helping local agencies succeed before state intervention is necessary. If intervention does occur, the State Water Board's goal will be to return the basin to local management as soon as local authorities can demonstrate their capability and willingness to manage the basin sustainably.

Included with this letter is information about the state intervention process. If you have any questions, please contact the Groundwater Management Program at Samuel.Boland-Brien@waterboards.ca.gov or 916-322-9633.

Sincerely,

Sam Boland-Brien
Chief, Groundwater Management Program
State Water Resource Control Board

Enclosures

State Intervention – The State Backstop

Sustainable Groundwater Management Act (SGMA)

SGMA and State Intervention

SGMA requires the formation of local groundwater sustainability agencies (GSAs) in California’s high- or medium-priority groundwater basins. GSAs are required to develop groundwater sustainability plans (plans) that make basins sustainable within 20 years of implementation. If locals are unable or unwilling to sustainably manage their basin or subbasin, the State Water Resources Control Board (State Water Board or Board) can step in to protect groundwater using a process called state intervention. State intervention is triggered by one of the following events:

Date	Event
July 1, 2017	Entire basin is not covered by GSA(s).
Feb. 1, 2020	Basin is in critical overdraft and there is either 1) no plan or 2) the Department of Water Resources (DWR) fails the plan.
Feb. 1, 2022	There is either 1) no plan or 2) long-term overdraft and DWR fails the plan.
Feb. 1, 2025	DWR fails plan and basin has significant surface water depletions.

For general SGMA information, visit: www.waterboards.ca.gov/water_issues/programs/gmp/sgma.shtml.

Levels of Intervention

Unmanaged Area

An unmanaged area is a part of a basin not within the management area of a GSA before July 1, 2017. Anyone that extracts groundwater from an unmanaged area must submit an extraction report to the State Water Board each year. The first extraction reports are due by Dec. 15, 2017, and must include well location and capacity, where the water was used, purpose of use, and monthly extraction volumes.

Probationary Basin

If local agencies fail to form a GSA, fail to develop an adequate sustainability plan, or fail to implement the plan successfully, the State Water Board may designate the entire basin probationary. Anyone who extracts groundwater from a probationary basin, including extractors under the management of a GSA, must file extraction reports with the Board unless the Board decides to exclude certain types of extractions. The Board may require the use of a meter to measure extractions and reporting of additional information.

Interim Plan

The State Water Board will allow local agencies time to fix the issues in the basin that led to probation. If local agencies are unable to fix those issues, the Board will develop an interim plan to directly manage groundwater extractions. An interim plan will contain corrective actions, a timeline to make the basin sustainable, and a monitoring plan to ensure corrective actions are working.

Extraction Reports

Well owners must ensure extraction reports are submitted to the State Water Board by Dec. 15 of each year for extractions made during the previous water year (Oct. 1 – Sep. 30). An extraction report is required for each well and must include monthly pumping data. Extractions must be measured by a method satisfactory to the Board. Extraction reports must be submitted online through the Board’s website. For more information about extraction reports, visit www.waterboards.ca.gov/water_issues/programs/gmp/reporting.shtml.

Intervention Fees

Each extraction report must be accompanied by a fee to cover State Water Board intervention costs. The draft fees for state intervention are detailed below.

Fee Category*	Annual Fee	Applicable Parties
Base Filing Fee	\$300 per well	All extractors required to report.
Unmanaged Rate	\$25 per acre-foot	Extractors in unmanaged areas. If extractors use a meter to measure extractions the rate is \$10 per acre-foot.
Probationary Rate	\$40 per acre-foot	Extractors in probationary basins.
Interim Plan Rate	\$55 per acre-foot	Extractors in probationary basins where the Board determines an interim plan is required.
De minimis Fee	\$100 per well	A well owner that extracts two acre-feet or less per year for domestic purposes in a probationary basin, if the Board decides these extractions are significant.
Late Fee	25% of total fee per month	Extractors that do not file reports by the due date.

*Draft fees are subject to change. Additional information available at waterboards.ca.gov/gmp.

Meters and Groundwater Management

The State Water Board can require the installation of meters in a probationary basin. The need for meters will depend on local conditions and the level of intervention required in the basin. The State Water Board is likely to require meters in the development of an interim plan, in order to develop corrective actions and verify compliance with pumping restrictions. Extractors will be responsible for installing and maintaining meters and paying the related costs – although it is unlikely that the Board would require meters for de minimis users (see below).

De minimis Users

A well owner who extracts two acre-feet or less per year from a parcel for domestic purposes is a de minimis user. Domestic purposes do not include commercial activities. A well owner that extracts more than two acre-feet per year from a parcel is not a de minimis user. De minimis users in unmanaged areas are exempt from reporting. However, the State Water Board can require reporting by de minimis users in probationary basins if necessary to manage the basin.

Interim Plans and Groundwater Sustainability Plans

State intervention is intended to temporarily protect groundwater. An interim plan is not intended to permanently manage a basin and is not designed to replace a groundwater sustainability plan. To regain local control, local agencies will have to demonstrate their ability and willingness to manage groundwater sustainably and address the issues that caused state intervention.

For More Information

Additional information on SGMA and state intervention is available at the State Water Board website: www.waterboards.ca.gov/gmp or the DWR website: www.water.ca.gov/groundwater/sgm.

State Water Resources Control Board

Updated March 22, 2017

Frequently Asked Questions on Groundwater Sustainability Agencies State Water Resources Control Board

The 2014 Sustainable Groundwater Management Act (SGMA) requires the formation of groundwater sustainability agencies (GSAs) in high- and medium-priority groundwater basins and subbasins (basins) by June 30, 2017. The following provides general guidance on some frequently asked questions about GSA formation, and will be updated as necessary. This document offers non-binding, advisory opinions. It is not a declaratory decision and does not bind the State Water Resources Control Board (State Water Board or Board) in any future decision. The information provided here supplements additional frequently asked questions about GSAs that the Department of Water Resources (DWR) has responded to (available on DWR’s Sustainable Groundwater Management website: <http://www.water.ca.gov/groundwater/sgm/gsa.cfm>).

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1. Must the county provide notice if it is accepting its presumed status as the groundwater sustainability agency for an unmanaged area?

Yes. Water Code Section 10724 establishes a presumption that the county is the groundwater sustainability agency (GSA) for unmanaged areas of a basin. Unmanaged areas are the non-adjudicated portions of high- or medium-priority basins where, as of June 30, 2017, either no

local agency has filed a GSA formation notice with the Department of Water Resources (DWR), or multiple local agencies filed overlapping notices such that none of the agencies become the GSA¹. A county that does not opt out of its status as the presumed GSA must notify DWR of its intent to be the GSA in the unmanaged areas. The county's decision to become a GSA is effective upon acceptance of a complete GSA formation notice by DWR. The current status of posted GSA notices are shown on DWR's SGMA Portal website:

<http://sgma.water.ca.gov/portal/#gsa>

The county's presumptive role can be summarized as follows:

- If an area is unmanaged, a county should notify DWR whether it wants to be the GSA by July 1, 2017, or soon thereafter.
- If two or more local agencies overlap, the combined area will be deemed unmanaged as of July 1, 2017, and the county can become the exclusive GSA by filing a notice with DWR.
- If a county is creating or contributing to the overlap, the county does not become the presumptive GSA. SGMA requires the agencies to resolve the conflict. Until they do so, the area will be deemed unmanaged.

Below are four examples applying the presumption and notice provisions of Water Code section 10724 in different scenarios:

Example A: An area in which no local agency has filed to be the GSA.

If, as of June 30, 2017, no local agency has filed a notice with DWR of its intent to be the GSA, the area is unmanaged. The county is presumed to be the GSA for the unmanaged area. The county must either opt-out of its presumptive role or file a GSA formation notice with DWR. The notification of intent to be the GSA must include all of the information required by Water Code section 10723.8, subdivision (a). Upon acceptance of the complete notice by DWR, the county becomes the exclusive GSA for the unmanaged area. There is no 90-day waiting period for the county's intent to become the GSA to take effect. Alternatively, the county may opt-out of its presumptive role by notifying DWR that it will not be the GSA for the unmanaged area.

Unless the county becomes the GSA for an unmanaged area by filing a GSA formation notice with DWR, groundwater extractors in the unmanaged area will be required to report extractions and pay fees to the State Water Board pursuant to Water Code Section 5202.

Example B: A local agency and a county have filed to be a GSA and all or a portion of their proposed management areas overlap.

If a local agency and a county both file notices with DWR to be a GSA for a basin, and all or a portion of their proposed management areas overlap as of June 30, 2017, neither the local agency nor the county become a GSA. As a result, the proposed management areas of the county and the local agency are unmanaged.

In this situation, the county cannot immediately act upon the presumption that it is the GSA for the unmanaged area. The county has two alternatives. The county and the local agency may

¹ Please see question below pertaining to Senate Bill 13 (SB 13) and overlap that occurred prior to January 1, 2016.

resolve their conflict and, if necessary, file a new notice with non-overlapping boundaries. Otherwise, the county can withdraw its posted notice so that it may file an amended notice, expressing its intent to be the GSA pursuant to Water Code section 10724. Upon withdrawal or modification of the county's original posted notice, however, overlap with the local agency is eliminated and the local agency will become the exclusive GSA for the area that it proposed to manage if the 90-day waiting period set by Water Code section 10723.8, subdivision (c), has expired. The county may file a new or amended notice with DWR of its intent to manage any remaining unmanaged areas pursuant to Water Code section 10724. Upon acceptance of the county's new or amended notice by DWR, the county becomes the exclusive GSA for the unmanaged area. There is no 90-day waiting period for the county's intent to become the GSA to take effect.

If the overlap is not resolved through withdrawal or amendment of either agency's notice, extractors in the unmanaged area will be required to report extractions and pay fees to the State Water Board pursuant to Water Code Section 5202.

Example C: Two local agencies have filed to be a GSA and all or a portion of their proposed management areas overlap.

If 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.

The county is presumed to be the GSA for the unmanaged area. The county must either opt-out of the presumption or file a GSA formation notice with DWR. The notification of intent to be the GSA must include all of the information required by Water Code section 10723.8, subdivision (a). Upon acceptance of the complete notice by DWR, the county becomes the exclusive GSA for the unmanaged area. There is no 90-day waiting period for the county's intent to become the GSA to take effect. Alternatively, the county may opt-out of the presumption by notifying DWR that it will not be the GSA for the unmanaged area.

Unless the county becomes the GSA for an unmanaged area by filing a GSA formation notice with DWR, extractors in the unmanaged area will be required to report extractions and pay fees to the State Water Board pursuant to Water Code Section 5202.

Example D: Two local agencies and a county have filed to be a GSA and all or a portion of their proposed management areas overlap.

If two local agencies and a county 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 nor the county will become a GSA. As a result, the proposed management areas of both local agencies and the county will be unmanaged.

In this situation, the county cannot immediately act upon the presumption that it is the GSA for the unmanaged area as it already has a notice posted. If the county intends to exercise its presumption pursuant to Water Code section 10724 as the GSA for unmanaged areas, it must first withdraw its posted notice. Because the overlap of the other local agencies is not eliminated by the county's withdrawal, any area within their proposed GSA management areas remains unmanaged as described in Example C.

Unlike Example B, once the county has withdrawn its posted overlapping notice, it is presumed to be the GSA for the unmanaged area and must either opt-out of its presumptive role as the GSA for the area or file a notice with DWR of its intent to be the GSA. The GSA formation notice must include all of the information required by Water Code section 10723.8, subdivision (a). Upon acceptance of the notice by DWR, the county becomes the exclusive GSA for the unmanaged area. There is no 90-day waiting period for the county's intent to become the GSA to take effect.

Alternatively, the county may opt-out of its presumptive role by notifying DWR that it will not be the GSA for the unmanaged area. As in Example C, if the overlap is not resolved through withdrawal or amendment of either agency's notice and the county opts out, extractors in the unmanaged area will be required to report extractions and pay fees to the State Water Board pursuant to Water Code Section 5202.

Recommendation:

SGMA is written to encourage counties to become the GSA for unmanaged areas in their basin, but it does not require them to do so. Accordingly, a county should notify DWR whether or not it intends to become the GSA for any unmanaged areas within its jurisdiction prior to July 1, 2017, or as soon as possible thereafter.

2. How can a county prevent an unmanaged area from being subject to reporting of extractions and payment of fees to the State Water Board if the county cannot determine which areas will be unmanaged as of July 1, 2017?

The Board recognizes the timing constraints associated with publicly noticing a meeting of the county board of supervisors and ensuring the public is appropriately informed. The Board also acknowledges that information on the extent of unmanaged areas may not be available until July 15, 2017 – the date when DWR is required to have posted all the notices it has received to its internet website.

The Board will work with DWR to identify unmanaged areas as soon as possible after July 1, 2017. The Board intends to send a letter to each county notifying it of the presence of unmanaged areas within its jurisdiction. The letter may include a date after which the Board will enforce reporting requirements if the county has not filed a notice pursuant to Water Code Section 10723.8, subdivision (a) of its intent to be the GSA. The Board may also investigate whether to begin proceedings to declare the basin probationary pursuant to Water Code section 10735.2, subdivision (a)(1).

To become the GSA for an unmanaged area, the county must provide notification to DWR that includes the information required by Water Code section 10723.8, subdivision (a). This information includes the county's service area boundaries, the boundaries of the basin or the portion of the basin that the county intends to manage, other agencies managing groundwater within the basin, a copy of any new bylaws, ordinances, or new authorities adopted by the county related to the management of groundwater in the basin, and a list of interested parties with an explanation of how their interests will be considered in the development and operation of the GSA and the development and implementation of the groundwater sustainability plan. This information may require several months to compile, and the State Water Board urges any county that may be the presumptive GSA to begin the process early. Lack of preparation by a county will not prevent the Board from beginning its intervention process. These actions are

being described to ensure counties and local agencies can begin appropriate actions to form GSAs in a timely fashion.

3. Can a county file a notice to be the GSA for unmanaged areas or opt-out of being the GSA for unmanaged areas, prior to July 1, 2017?

The presumption in Water Code 10724 does not take effect until July 1, 2017, but the county can file a notice expressing its intent to be the GSA for unmanaged areas prior to July 1, 2017. If the county files a notice expressing its intent to be the GSA for unmanaged areas prior to July 1, 2017, the county will become the exclusive GSA on July 1, 2017 for those areas for which either: 1) no local agency has filed a notice of intent to be the GSA or 2) more than one local agency has filed a notice of intent to manage all or a portion of the same area. The county may later withdraw its notice and submit a new or amended notice if the county decides to alter the boundaries of the area that it intends to manage, for example, if the county decides to allow another local agency to be the GSA for all or a portion of the area the county was managing.

The county may also file a notice of its intent not to be the GSA for any unmanaged areas prior to July 1, 2017. Extractors in unmanaged areas within the county will be required to report extractions and pay fees to the State Water Board pursuant to Water Code Section 5202. The county may withdraw its notice if it later decides to be the GSA for an unmanaged area.

4. Must a local agency become the GSA for a basin if a local agency has submitted an alternative plan pursuant to Water Code section 10733.6?

SGMA allows an area to forego formation of a GSA if an alternative plan is submitted and approved as meeting the objectives of SGMA. If an alternative is approved by DWR, extractors in the basin are not subject to reporting pursuant to Water Code section 5202.

If an alternative is disapproved by DWR or withdrawn and the area is not within the management area of a GSA, the county is presumed to be the GSA for the unmanaged area. The county must either opt-out of the presumption or file a notice with DWR of its intent to be the GSA. Unless the county becomes the GSA for the area by filing a GSA formation notice with DWR, extractors in the unmanaged area will be subject to extraction reporting requirements and fees pursuant to Water Code Section 5202 upon withdrawal or disapproval of an alternative. The Board may also designate the basin as probationary 180 days after the date the alternative was disapproved. (Wat. Code sect. 10735.2(a)(1)(C)).

5. How will the State Water Board respond regarding GSA overlap that occurred prior to Senate Bill 13 (SB 13) becoming effective?

Prior to January 1, 2016, SGMA did not clearly identify when a local agency's decision to become a groundwater sustainability agency took effect and whether more than one local agency could become a groundwater sustainability agency for the same area. As amended by Senate Bill 13, effective January 1, 2016, Water Code section 10723.8 clarifies that a local agency's decision to become a groundwater sustainability agency does not take effect if, within the 90-day notice period, another local agency submits an overlapping notification of intent to undertake groundwater management in all or a portion of the same area.

Because the statute was not clear prior to its amendment, the State Water Board will consider areas with GSA overlap that occurred prior to the effective date of SB 13 on January 1, 2016, to be groundwater sustainability agencies for the areas identified in notices submitted to DWR. The reporting requirements of Water Code section 5202, subdivision (a)(2), will not apply to a person who extracts groundwater within the management areas of these agencies.

Uncoordinated planning and management of the same area by multiple groundwater sustainability agencies may be the basis for designation of the basin as probationary pursuant to Water Code section 10735.2, subdivision (a)(1)(B). Multiple plans for the same basin that are implemented by multiple groundwater sustainability agencies are also required to be coordinated pursuant to a single coordination agreement to satisfy Water Code section 10727, subdivision (b).

6. Which local agencies are eligible to be GSAs?

Any local public agency that has water supply, water management, or land use responsibilities within a groundwater basin can decide to become a GSA. A single local agency can decide to become a GSA, or a combination of local agencies can decide to form a GSA by using a joint powers agreement, a memorandum of agreement (MOA), or other legal agreement. The State Water Board has sent several letters to entities who requested clarification on GSA eligibility; these letters are available on the State Water Board's website at http://www.waterboards.ca.gov/water_issues/programs/gmp/eligibility.shtml.
Wat. Code, §§ 10721, 10723, 10723.6, 10723.8, & 10726.8.

7. How can a water corporation regulated by the California Public Utilities Commission or a mutual water company participate in a GSA?

Only local public agencies can become or form a GSA. However, a water corporation regulated by the California Public Utilities Commission or a mutual water company may participate in a GSA through a MOA or other legal agreement. The structure of an agreement that allows participation by private water entities is up to the GSA to determine, but that agreement must be in compliance with applicable laws governing agreements between public and private entities. SGMA does not confer any additional powers to a nongovernmental agency.

Some mutual water companies have proposed to participate in a GSA by entering a joint powers agreement with other local agencies. Unlike water corporations, mutual water companies may enter into a joint powers agreement with one or more public agencies for the purpose of jointly exercising any power common to the contracting parties. (Gov. Code, § 6525.) However, only local public agencies are authorized by Water Code section 10723.6 to form a GSA using a joint powers agreement. Furthermore, an agency created by a joint powers agreement holds only those powers that are common to its signatory members. Because a mutual water company does not have the independent authority to become a GSA, a JPA that includes a mutual water company as a signatory member also lacks the authority to become a GSA.

This does not foreclose a mutual water company from participating in a GSA that has been formed by a joint powers agreement. Although it cannot be a signatory member, a mutual water company may participate in the governance of a GSA if the members agree to grant it a seat on the governing board. An example of a joint powers authority that includes representatives of

local mutual water companies on its governing board is the Sacramento Central Groundwater Authority, whose joint powers agreement is available here:

<http://www.scgah2o.org/documents/Sacramento%20Central%20JPA.pdf>.

Note that groundwater extractors not located within a valid GSA as of July 1, 2017, are required to report extractions and pay fees to the State Water Board.

Wat. Code, §§ 5202, 10723 & 10723.6; Gov. Code, § 6525.

8. What happens if the 90-day waiting period to become an exclusive GSA has not expired by June 30, 2017?

The State Water Board will not intervene in a basin in which the entire basin is within the management area of a GSA, even if the 90-day notice period for a GSA to become the exclusive GSA for that area has not expired by June 30, 2017. If another local agency files a notification of decision to become a GSA for all or a portion of the same area within a basin, such that neither decision to become a GSA will take effect after the 90-day notice period, the basin is subject to state intervention. *Wat. Code, §§ 10723.8, subd. (c) & 10735.2(a).*