

## State Water Resources Control Board

Updated November 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- or 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/sqm/gsa.cfm>).

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**1. What are the roles of the Department of Water Resources and the State Water Board in reviewing groundwater sustainability agency notices of intent?**

The Department of Water Resources (DWR) posts notices of a local agency's intent to become a GSA on DWR's 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 an agency's notice 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. These determinations will occur after the deadline on December 15, 2017, for reporting groundwater extractions made during the previous water year.

**2. Can a local agency manage groundwater outside of its jurisdictional boundaries?**

No. Water Code section 10726.8(b) states that SGMA does not authorize a local agency to impose regulatory requirements or fees on activities outside of the agency's jurisdictional boundaries. Although a 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 is not authorized to undertake groundwater management outside of its jurisdictional boundaries because the agency lacks the authority to regulate.

Below are three examples applying the jurisdictional provisions of Water Code section 10726 in different scenarios:

Examples A: An area in which one local agency has filed to be the GSA for an area outside of the agency's jurisdictional boundaries.

An agency cannot undertake groundwater management under SGMA outside of its jurisdictional boundaries. The Board will consider the area outside of the agency's jurisdictional boundaries to be unmanaged and subject to reporting requirements under Water Code section 5202 if the County or another eligible agency does not elect to include the area in a GSA.

Example B: An area in which two local agencies have filed to be the GSA for an area over which only one of the agencies has jurisdiction.<sup>1</sup>

SGMA only grants authority to impose regulatory requirements or fees to the agency with jurisdiction over the area. The Board considers the area to be managed by the agency with jurisdiction pursuant to Water Code section 10723.8(c), and not subject to reporting requirements under Water Code section 5202.

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<sup>1</sup> Please see question below pertaining to overlapping notices and proposed management areas.

Example C: An area in which an entity formed by a local agency and a mutual water company has filed to be the GSA over an area served by a mutual water company but outside the jurisdiction of the local agency.

A local agency and a mutual water company can create a GSA through a memorandum of agreement (MOA) or other legal agreement, but the GSA will have the authority to undertake groundwater management only within the jurisdictional boundaries of the local agency. 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.<sup>2</sup> Therefore, a local agency cannot undertake groundwater management outside of its jurisdictional boundaries through a legal agreement with a mutual water company.

**3. 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 GSA<sup>3</sup>. 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

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<sup>2</sup> Please see question below pertaining to how a mutual water company can participate in a GSA.

<sup>3</sup> Please see question below pertaining to Senate Bill 13 (SB 13) and overlap that occurred prior to January 1, 2016.

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 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.

**4. 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.

**5. 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.

**6. 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)).

**7. 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).

**8. 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](http://www.waterboards.ca.gov/water_issues/programs/gmp/eligibility.shtml). Wat. Code, §§ 10721, 10723, 10723.6, 10723.8, & 10726.8.

**9. 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.

**10. 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).