



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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First District

DIANNE JACOB
Second District

KRISTIN GASPAR
Third District

NATHAN FLETCHER
Fourth District

JIM DESMOND
Fifth District

DATE: **October 16, 2019**

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TO: Board of Supervisors

SUBJECT

AUTHORIZATION FOR THE COUNTY OF SAN DIEGO TO WITHDRAW AS A GROUNDWATER SUSTAINABILITY AGENCY FOR THE BORREGO VALLEY GROUNDWATER BASIN (DISTRICT: 5)

OVERVIEW

On October 19, 2016 (1), the Board of Supervisors (Board) entered into a Memorandum of Understanding (MOU) with the Borrego Water District (BWD) to establish a Groundwater Sustainability Agency (GSA) over the Borrego Valley Groundwater Basin (Basin) (Attachment A) as required by the State of California's Sustainable Groundwater Management Act (SGMA). The purpose of a GSA under SGMA is to develop a Groundwater Sustainability Plan (Sustainability Plan) to achieve long-term groundwater sustainability in a basin.

The MOU defined roles and responsibilities for the County of San Diego (County) and BWD during development of the Sustainability Plan for the Basin. Although BWD is the agency with water supply and water management responsibilities in the Basin, the County provided the initial funding and hired the consultant to develop the Sustainability Plan in collaboration with BWD. The County undertook this effort to support the community and ensure the timely completion of the Sustainability Plan. After a 60-day public comment period, the draft Sustainability Plan was finalized on August 30, 2019; thus, satisfying the objectives of the MOU. SGMA further requires the GSA to adopt and implement the Sustainability Plan by January 31, 2020 unless an alternative is submitted to the California Department of Water Resources (DWR).

As an alternative to the adoption and implementation of a Sustainability Plan by a GSA, SGMA allows water rights holders in the Basin to decide their water rights by agreeing to terms in a Water Rights Holders Stipulated Agreement (Stipulated Agreement). Representatives from agriculture, golf courses, and municipal groundwater pumpers in the Basin have been negotiating terms for a Stipulated Agreement. Although a Stipulated Agreement can occur with or without GSA involvement, BWD has been participating in the Stipulated Agreement process, as both a GSA and a groundwater pumper. A Stipulated Agreement could provide benefits that a GSA-implemented Sustainability Plan does not, including surety of water rights and reduced costs while avoiding an adversarial groundwater adjudication. Like a GSA-implemented Sustainability Plan, a Stipulated Agreement would include water allocations for each groundwater user and requirements to reduce the amount of water pumped from the Basin. The difference is that

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reduction requirements are agreed to by groundwater users in a Stipulated Agreement rather than imposed by a GSA in a Sustainability Plan.

The Stipulated Agreement would provide a comprehensive determination of groundwater rights and requires approval from the Superior Court of California. The Court would then appoint a Watermaster to manage groundwater resources in the Basin. The Watermaster would be tasked with ensuring water is allocated according to established water rights. Any Stipulated Agreement must be consistent with state legislation and would include the Sustainability Plan as the technical basis to guide groundwater management decisions. Groundwater management would be undertaken by the Watermaster with oversight from the court. Since the Sustainability Plan has been finalized and made available for use in the Stipulated Agreement, and because the County does not have water supply or water management responsibilities in the Basin, the County may withdraw its GSA status in advance of the January 31, 2020 SGMA-mandated deadline. If the County withdraws from being a GSA, its role in the Basin would transition to overseeing the integration of groundwater sustainability measures with the County's existing land use and well permitting responsibilities, as a non-GSA agency.

This item is a request for the Board to consider terminating the MOU with the Borrego Water District and withdrawing the County from being a GSA for the Basin without adopting the Sustainability Plan.

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Find that the proposed action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(3) and 15378(b)(5) of the State CEQA Guidelines.
2. Receive this report and authorize the Director of Planning & Development Services (PDS) to withdraw from being a Groundwater Sustainability Agency without adopting the Groundwater Sustainability Plan for the Borrego Valley Groundwater Basin by notifying the California Department of Water Resources in accordance with Section 10723.8(e) of the Sustainable Groundwater Management Act.
3. Authorize the Director of PDS, to submit written notice to the Borrego Water District terminating the provisions of the *Memorandum of Understanding: Development of a Groundwater Sustainability Plan for the Borrego Valley Groundwater Basin* (MOU) in accordance with Section XIII(1) of the MOU.

FISCAL IMPACT

Funds for implementing the Groundwater Sustainability Plan (Sustainability Plan) within the Borrego Valley Groundwater Basin (Basin) are included in the Fiscal Year 2019-20 Operational Plan in Planning & Development Services. Approximately \$2.1 million of remaining funds budgeted for Sustainability Plan implementation activities will fund land use planning efforts in the Basin, including updating the Borrego Springs Community Plan. There will be no change in net General Fund cost and no additional staff years.

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BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

On September 16, 2014, Governor Brown signed the Sustainable Groundwater Management Act (SGMA) which provided a framework to regulate groundwater for the first time in California history. SGMA became effective January 1, 2015, requiring local public agencies to form Groundwater Sustainability Agencies (GSAs) by June 30, 2017.

On October 19, 2016 (1), the Board of Supervisors (Board) entered into a Memorandum of Understanding (MOU) entitled “*Memorandum of Understanding: Development of a Groundwater Sustainability Plan for the Borrego Valley Groundwater Basin*” with the Borrego Water District (BWD). The MOU established the Borrego Valley GSA over a portion of the Borrego Valley Groundwater Basin (Basin) (Attachment A). The purpose of the MOU was to memorialize roles and responsibilities in developing a Groundwater Sustainability Plan (Sustainability Plan) before the SGMA-mandated deadline of June 30, 2017. While BWD is the agency with water supply and water management responsibilities in the Basin, the County provided initial funding and hired the consultant in collaboration with BWD to develop the Sustainability Plan. This provided support to the community and ensured the timely completion of the Sustainability Plan. The Sustainability Plan, which is required to include measures to sustainably manage groundwater in the Basin by 2040, must be developed and adopted by January 31, 2020, unless an alternative is submitted to the California Department of Water Resources (DWR).

Groundwater Sustainability Plan

To aid in development of the Sustainability Plan, the GSA established a nine-member SGMA Advisory Committee to represent specific stakeholder groups in the Basin, provide input and recommendations for the Sustainability Plan, and serve as a conduit for information to the community. The Advisory Committee represents a cross-section of groundwater pumpers, land use and community groups, and the Anza-Borrego Desert State Park. The Advisory Committee provided input and recommendations for the Sustainability Plan during 19 meetings over a two-and-a-half-year period. Upon completion of the Sustainability Plan, the final meeting was held on October 4, 2019 and the Advisory Committee was dissolved.

There are three primary sectors that extract the majority of groundwater in the Basin. Those sectors include (1) agricultural, which accounts for about 75 percent of annual groundwater use; (2) BWD, which serves nearly all of the population and accounts for about eight percent of annual groundwater use; and (3) recreational, which includes six golf courses and accounts for about 16 percent of annual groundwater use. Additionally, other groundwater users include two active small water systems and two non-potable irrigators, which pump less than one percent of the annual groundwater use.

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The Sustainability Plan provides the technical basis needed to quantify the Basin's groundwater resources and define the Basin-specific sustainability goals. It also provides the guidance and framework to enable BWD, groundwater users, and the local community to work together to achieve sustainability. Specific elements of the Sustainability Plan include sustainability goals, projects and management actions (Actions) proposed to achieve each sustainability goal, and a monitoring network to track progress towards reaching those goals. A 60-day public comment period ended on May 21, 2019 and the draft Sustainability Plan was finalized on August 30, 2019 and posted to the County of San Diego's (County's) SGMA website¹.

The Actions identified in the Sustainability Plan include: (1) a Water Trading Program intended to enable groundwater users to purchase needed groundwater resources to maintain economic activities in the Basin; (2) Water Conservation that consists of separate components for each water use sector; (3) a Pumping Reduction Program that quantifies reductions needed to reach sustainability; (4) Voluntary Fallowing of Agricultural Land, which creates a process to convert high water use irrigated land to low water use alternatives; (5) Water Quality Optimization, which is intended to identify future water treatment options for BWD; and (6) Intra-Subbasin Water Transfers, which is meant to identify the effectiveness of constructing new production well sites and pipelines within the Basin. These Actions were identified as concepts to be developed after adoption of the Sustainability Plan. Once implemented, these Actions are anticipated to achieve a nearly 75 percent reduction in groundwater use within 20 years of implementation ensuring the sustainability of the Basin.

SGMA requires the GSA to adopt and implement the Sustainability Plan by January 31, 2020 unless an alternative is submitted to DWR.

GSA Alternative – Stipulated Agreement

Given the likelihood that water rights in some basins subject to SGMA would be adjudicated because of required groundwater reductions needed to meet state mandates, the legislature sought to reform and simplify groundwater adjudications by passing Assembly Bill (AB) 1390 and Senate Bill (SB) 226 in 2015. This legislation, effective January 1, 2016, allows the court to adopt a stipulated agreement to comprehensively determine groundwater rights in a basin, if it is supported by more than 50 percent of groundwater pumpers responsible for at least 75 percent of the groundwater extractions. These laws are intended to complement SGMA by streamlining the typically lengthy groundwater adjudication process while improving existing tools to effectively manage groundwater resources throughout California.

Consistent with AB 1390 and SB 226, representatives from the three primary sectors in the Basin have been negotiating a Water Rights Holders Stipulated Agreement (Stipulated Agreement) with the intent of using the Sustainability Plan as a foundation for the Stipulated Agreement to achieve long-term groundwater sustainability. Once these stipulating parties agree on terms in a Stipulated Agreement, that agreement, including the Sustainability Plan as an attachment, would be submitted to a court for a determination of groundwater rights.

¹ <https://www.sandiegocounty.gov/content/sdc/pds/SGMA/borrego-valley.html>

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The Stipulated Agreement provides a comprehensive determination of groundwater rights and requires approval from the Superior Court. Since a Stipulated Agreement is required to meet the sustainability objectives of SGMA, the Sustainability Plan will be utilized by the stipulating parties as the blueprint for how to achieve the necessary reductions in water use.

After court approval, that judgment is submitted to DWR in lieu of a GSA-adopted Sustainability Plan. Once DWR determines that the Stipulated Agreement satisfies the sustainability objectives of SGMA, that judgment would be considered an alternative submittal and Sustainability Plan adoption by the GSA would not be necessary. The draft Final Sustainability Plan, completed on August 30, 2019, was provided to BWD for use as an attachment to the Stipulated Agreement to fulfill DWR requirements.

Since the Sustainability Plan has been finalized and made available for the Stipulated Agreement, and because the County does not have water supply or water management responsibilities in the Basin, the County may withdraw its GSA status in advance of the January 31, 2020 SGMA-mandated deadline. If the County withdraws as a GSA by notifying DWR, its role in the Basin would transition to overseeing integration of groundwater sustainability measures with the County's existing land use and well permitting responsibilities, as a non-GSA agency. Once a Stipulated Agreement is approved by both the court and DWR, the court-appointed Watermaster would be responsible for SGMA implementation.

Although staff is not recommending adopting or implementing the Sustainability Plan, stipulating parties have suggested other opportunities for County participation. The Stipulated Agreement will likely include the establishment of a Watermaster to manage groundwater use in the Basin. A Watermaster would be a person, entity, or group appointed by the court to manage the court-approved Stipulated Agreement. The Watermaster will ensure that water is allocated according to established water rights as determined by a court and operate similarly to a GSA by collecting fees, imposing reductions on groundwater use, and keeping the long-term reduction schedule. Stipulating parties have proposed the County join as a member of the Watermaster along with one representative from each of the following: Borrego Springs community, BWD, agricultural sector, and the recreation sector (golf courses). Although the County is not a purveyor of water, the Board may consider serving as a member of the court-appointed Watermaster, if requested by the stipulating parties once the Stipulated Agreement has been further defined by the court process and finalized.

The stipulating parties have also considered establishing a technical advisory committee comprised of engineers and hydrogeologists that will advise the Watermaster on technical issues. County staff participation on the technical advisory committee may be considered to ensure integration of the County's land use and well permitting responsibilities with Watermaster activities. This could be considered if requested by the stipulating parties once the Stipulated Agreement has been finalized.

Another important component of the proposed Stipulated Agreement is a water rights trading program, which was identified as a concept in the Sustainability Plan. This trading program is being developed in the Stipulated Agreement to allow groundwater users the ability to purchase needed groundwater shares from willing sellers to avoid groundwater use reductions. Since the

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water trading program is anticipated to also provide an opportunity for those interested in new development to buy needed water shares, the County may consider taking part in this program once approved by the court.

Once information from the Stipulated Agreement becomes available and further defined by the court process, staff will return to the Board with recommendations for future County participation on the Watermaster or technical advisory committee, and options to take part in the water rights trading program.

Should stipulating parties fail to reach terms for a Stipulated Agreement, the Sustainability Plan may be adopted and implemented by BWD as the sole GSA. BWD has water supply and water management responsibilities in the Basin, which would be necessary to implement sustainability projects. If neither a Stipulated Agreement is approved nor a Sustainability Plan adopted, the State Water Resources Control Board (State Water Board) could take over groundwater management. This would result in the State Water Board implementing fees and imposing self-reporting requirements on groundwater pumpers in the Basin.

While staff is not recommending adopting or implementing the Sustainability Plan, staff will submit the draft Final Sustainability Plan to DWR prior to January 31, 2020 to fulfill state grant requirements for reimbursement of up to \$1.5 million in staff and consulting costs that were provided to develop the Sustainability Plan.

ENVIRONMENTAL STATEMENT

The requested actions to terminate the Memorandum of Understanding and withdraw from being a Groundwater Sustainability Agency over the Borrego Valley Groundwater Basin are not projects under CEQA since they are considered administrative activities that do not result in any direct or indirect physical change in the environment, in accordance with Sections 15060(c)(3) and 15378(b)(5) of the State CEQA Guidelines.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed action to withdraw from managing the Borrego Valley Groundwater Basin as a Groundwater Sustainability Agency supports the Sustainable Environments/Thriving Strategic Initiative in the County of San Diego's 2019-2024 Strategic Plan by creating and promoting diverse opportunities for residents to exercise their right to be civically engaged and find solutions to current and future challenges.

Respectfully submitted,



SARAH E. AGHASSI
Deputy Chief Administrative Officer

ATTACHMENT(S)

Attachment A – Borrego Valley Groundwater Basin Map

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AS A GROUNDWATER SUSTAINABILITY AGENCY FOR THE
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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: ☐ Yes ☒ No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

☐ Yes ☒ No

PREVIOUS RELEVANT BOARD ACTIONS:

October 19, 2016 (1), Memorandum of Understanding and Authorization for Funding to Prepare
a Groundwater Sustainability Plan for the Borrego Valley Groundwater Basin

January 6, 2016 (1), Authorization for the County of San Diego to Become a Groundwater
Sustainability Agency over Borrego Valley Groundwater Basin

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

**ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION
NUMBER(S):**

N/A

ORIGINATING DEPARTMENT: Planning & Development Services

OTHER CONCURRENCE(S): Department of Agriculture, Weights and Measures
Department of Environmental Health
Department of Public Works

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