

December 17, 2020

VIA E-MAIL AND
FIRST CLASS MAIL

Mr. Keene Simonds, Executive Officer
San Diego County Local Agency Formation
Commission (LAFCO)
9335 Hazard Way, Suite 200
San Diego, CA 92123

Dear Mr. Simonds:

This letter is submitted on behalf of the three members of the Pauma Valley Groundwater Sustainability Agency (“PVGSA”¹), Yuima Municipal Water District (“Yuima”), Pauma Valley Community Services District (“PVCSD”), and the Upper San Luis Rey Resource Conservation District (“USLRCD”). We write to thank LAFCO staff for the professional and thorough job that LAFCO staff did in conducting and presenting to the Commission on December 7, 2020, the recent Municipal Service Review (“MSR”) for Resource Conservation Districts (“RCDs”) in San Diego County. Our agencies appreciated the opportunity to provide input to the Commission regarding USLRCD, a water and riparian habitat management agency which farmers and other local agencies in the San Luis Rey Valley greatly rely upon

We also write to address what our agencies would contend are inaccurate statements made by legal counsel for the San Luis Rey Indian Water Authority (“SLRIWA”), and the General Manager of the Rainbow Municipal Water District²(“RMWD”). We briefly address some of those assertions below.

¹ PVGSA was formed in 2017 by memorandum of understanding (“MOU”) per the requirements of the Sustainable Groundwater Management Act (“SGMA”). The primary purpose of the PVGSA is to ensure that groundwater in the Upper San Luis Rey is sustainably managed—in order to protect a diverse array of current and future uses in the Upper San Luis Rey Valley. All three current members of the PVGSA are original signatories to the 2017 MOU that created the GSA.

² RMWD’s comments were puzzling for our agencies. RMWD exercises no LAFCO approved groundwater management functions itself and only has approximately ten acres (out of over 19,000) within its service area that overlie the Upper San Luis Rey Valley Sub-Basin, and that portion was only added at the behest of SLRIWA earlier this year. Thus, RMWD overlies a tiny fragment of the Sub-Basin (.0005%), in a portion of the Sub-Basin that has no groundwater production. Thus, it is difficult to understand why RMWD would actively seek to prevent USLRCD and PVGSA from developing a Groundwater Sustainability Plan (“GSP”) that ensures

USLRRCD Has Ample Authority to Manage Groundwater Under the Sustainable Groundwater Management Act (“SGMA”)

PVGSA is well on its way to developing a legally compliant and protective GSP that will be timely submitted to DWR—as SGMA requires—before January 2022. The GSP will address all of the required elements identified in the SGMA GSP regulations, and contrary to SLRIWA’s contentions, the GSP will fully respect Federal Reserved Water Rights (“FRWR”).³ SLRIWA and Mr. Kennedy contended before the Commission on December 7 that USLRRCD does not have authority as a “local agency”⁴ to manage groundwater per SGMA—their reasons for so asserting are not entirely clear. However, as the State Water Resources Control Board has opined on at least two occasions in opinion letters to Sonoma County RCD and Eastern Kern County RCD, letters attached hereto as Exhibit 1, RCDs, much like other local agencies that have not heretofore directly managed groundwater (such as municipal water districts like RMWD), have under their organic statutes the legal authority to manage groundwater for purposes of SGMA. SGMA provides the authority—provided the local agency has statutory authority under its organic act to engage in water management.

Wastewater and stormwater agencies, like RCDs, have statutory authority to manage water; as such the SWRCB has opined that they too meet the criteria under SGMA to become a GSA, individually or in combination with other SGMA eligible local agencies. No LAFCO action is needed. Indeed, we are aware of no instance since the passage of SGMA where a LAFCO “activated” a latent groundwater management power for any special district, while in the meantime hundreds of such agencies have elected to become GSAs. If the organic statute provides authority to manage water, and the RCD Act clearly does per the SWRCB, then a special district, such as USLRRCD is GSA eligible.

RCDs, with similar functions and current management activities as USLRRCD, are managing groundwater basins per SGMA throughout California. RCDs currently serve as GSAs, individually or in combination with other agencies, in Santa Rosa (Gold Ridge RCD), Kern County (East Kern County RCD), Sonoma County (Sonoma County RCD), Amador County (Sloughhouse RCD), Dixon (Solano County RCD), and Santa Barbara County (Cachuma RCD), and there are

sustainable groundwater management for all users in the Sub-Basin while at the same time ensuring local control of groundwater resources in the Upper San Luis Rey.

³ PVGSA will not, however, adjudicate or seek to quantify the FRWR asserted by the Tribes, which the SLRIWA contends is the entire flow and all groundwater resources of the San Luis Rey River below Henshaw Dam. PVGSA has no power to do so, and the USLRIWA knows this. Adjudication of FRWR and other asserted water rights is the job of a court, not a GSA. Indeed, SGMA specifically cautions that SGMA does not change or otherwise modify whatever water rights a groundwater producer claims to have.

⁴ Per SGMA, Water Code Sections 10721(n) and 10723(a), only a local agency with water management, water supply, or land use authority is eligible to elect to become a GSA.

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no doubt others. None have had local LAFCOs “activate” water management authorities, and all perform similar functions as USLRRCD.

Moreover, USLRRCD clearly engages in “water management” activity within its service area, and it has done so for a very long time. The MSR correctly observes that USLRRCD actively engages in water conservation activities and education (water management), manages conservation easements to create and sustain riparian habitat in the San Luis Rey riverbed (water management), and educates farmers in the USLR on matters related to preventing runoff from their farms that can lead to water quality problems in the groundwater and the San Luis Rey River (water management). All of these things are in addition to USLRRCD acting as part of a GSA in the Upper San Luis Rey, until recently without objection, since 2017.

SLRIWA Has Repeatedly Been Asked to Join the PVGSA in Whatever Manner It Feels Comfortable Participating

The SLRIWA has repeatedly been asked to join PVGSA, as a voting or non-voting member, and it has repeatedly declined to do so—based upon its assertion that the GSA is invalid. However in the spirit of SGMA and ensuring that Tribal stakeholders of the Upper San Luis Rey have a robust voice in the SGMA process in the Upper San Luis Rey, PVGSA will continue to invite Tribal representatives to all meetings of the PVGSA Executive Team. Moreover, the joint powers authority (“JPA”) that the current members of PVGSA are working to form will have two voting seats dedicated to Tribal representatives if the SLRIWA is willing to participate in the JPA. The door is wide open for Tribal participation. They need only walk through it.

We are happy to provide any additional information you would find helpful to LAFCO in concluding the well done and thoughtful initial draft of the MSR for RCDs.

Sincerely,



Amy Reeh
Interim General Manager
Yuima Municipal Water District
Lead Agency - Pauma Valley GSA

cc: LAFCO Board of Directors
Ms. Linda Heckenkamp

State Water Resources Control Board

June 22, 2016

Mr. Don J. McKernan
President
Eastern Kern County Resource
Conservation District
300 South Richmond Road
Ridgecrest, CA 93555

Dear Mr. McKernan:

I am responding to your request of May 13, 2016, for advice from the State Water Resources Control Board (State Water Board) regarding the eligibility of Eastern Kern County Resource Conservation District to serve as a groundwater sustainability agency pursuant to the terms of the Sustainable Groundwater Management Act, Water Code section 10750, et seq.

Definition of “Local Agency”

Any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin. (Wat. Code, § 10723, subd. (a).) A “local agency” is defined by the Act as a “local public agency that has water supply, water management, or land use responsibilities within a groundwater basin.” (Wat. Code, § 10721, subd. (n).)

As you know, resource conservation districts are locally governed special districts. They are considered agencies of the state only for the purpose of contracting with other state agencies. (Pub. Res. Code, § 9003.) The formation of a resource conservation districts must be locally proposed and locally approved. (Pub. Res. Code, §§ 9161-68, 9181, & 9182.) The legislature has also characterized resource conservation districts as local public agencies or local government entities in several different statutory contexts.¹

Resource conservation districts are non-regulatory agencies with planning, management, operation, and informational functions. A resource conservation district may be formed for the control of runoff, the prevention or control of soil erosion, the development and distribution of water, and the improvement of land capabilities. (Pub. Res. Code, § 9151.) Resource conservation districts are authorized to make improvements or conduct operations in furtherance of the prevention or control of soil erosion, water conservation and distribution,

¹ See Delta Protection Act of 1992 (Pub. Res. Code, §29724), Rangeland, Grazing Land, and Grassland Protection Act (Pub. Res. Code, § 10332), Fish and Wildlife Habitat Enhancement Act of 1984 (Fish & Game Code, § 2602, subd. (c)), and the Agricultural Protection Planning Grant Program (Pub. Res. Code, § 10280.5, subd. (e)).

agricultural enhancement, wildlife enhancement, and erosion stabilization. (Pub. Res. Code, § 9409.) The districts are also specifically authorized to disseminate information relating to soil and water conservation and erosion stabilization, (Pub. Res. Code, § 9411), and to manage any soil conservation, water conservation, water distribution, flood control, erosion prevention, or erosion stabilization project located within the district, (Pub. Res. Code, § 9415).

With your inquiry, you attached several documents as evidence of the water management functions of Eastern Kern County Resource Conservation District, indicating that the District is vested with the full range of functions authorized by the Public Resources Code.

Probationary Status and Reporting Requirements

The State Water Board is authorized by the Sustainable Groundwater Management Act to designate a basin as probationary if the board finds that none of the following have occurred after June 30, 2017: (A) a local agency has elected to be a groundwater sustainability agency that intends to develop a groundwater sustainability plan for the entire basin; (B) a collection of local agencies has formed a groundwater sustainability agency or prepared agreements to develop one or more groundwater sustainability plans that will collectively serve as a groundwater sustainability plan for the entire basin; or (C) a local agency has submitted an alternative that has been approved or is pending approval pursuant to section 10733.6. (Wat. Code, § 10735.2, subd. (a)(1).)

The State Water Board considers Eastern Kern County Resource Conservation District to be a local agency for purposes of Water Code section 10735.2, based on the documentation that you provided to us. Therefore, the board would not designate a basin as probationary under Water Code section 10735.2, subdivision (a)(1), if Eastern Kern County Resource Conservation District, or a collection of local agencies that includes Eastern Kern County Resource Conservation District, has satisfied one of the three conditions described.

In addition, the State Water Board would not consider the reporting requirements of Water Code section 5202, subdivision (a)(2), to apply to a person who extracts groundwater within the management area of Eastern Kern County Resource Conservation District, if the District assumed responsibility to be a groundwater sustainability agency.

This letter offers a non-binding, advisory opinion. It is not a declaratory decision and does not bind the State Water Board in any future determination.

Sincerely,



Erik Ekdahl
Director, Office of Research , Planning, and Performance

cc: Via Email
David Gutierrez
Department of Water Resources

State Water Resources Control Board

April 12, 2016

Ms. Kara Heckert
Executive Director
Sonoma Resource Conservation District
1221 Farmers Lane, Suite F
Santa Rosa, CA 95405

Dear Ms. Heckert:

I am responding to your request of March 16, 2016, for advice from the State Water Resources Control Board (State Water Board) regarding the eligibility of Sonoma Resource Conservation District to serve as a groundwater sustainability agency pursuant to the terms of the Sustainable Groundwater Management Act, Water Code section 10750, et seq.

Definition of "Local Agency"

Any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin. (Wat. Code, § 10723, subd. (a).) A "local agency" is defined by the Act as a "local public agency that has water supply, water management, or land use responsibilities within a groundwater basin." (Wat. Code, § 10721, subd. (n).)

As you know, resource conservation districts are locally governed special districts. They are considered agencies of the state only for the purpose of contracting with other state agencies. (Pub. Res. Code, § 9003.) The formation of a resource conservation districts must be locally proposed and locally approved. (Pub. Res. Code, §§ 9161-68, 9181, & 9182.) The legislature has also characterized resource conservation districts as local public agencies or local government entities in several different statutory contexts.¹

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The State Water Board considers Sonoma Resource Conservation District to be a local agency for purposes of Water Code section 10735.2, absent evidence that the District is not vested with the full range of functions authorized by the Public Resources Code. Therefore, the State Water Board would not designate a basin as probationary under Water Code section 10735.2, subdivision (a)(1), if Sonoma Resource Conservation District, or a collection of local agencies that includes Sonoma Resource Conservation District, has satisfied one of the three conditions described.

In addition, the State Water Board would not consider the reporting requirements of Water Code section 5202, subdivision (a)(2), to apply to a person who extracts groundwater within the management area of Sonoma Resource Conservation District, if the District assumed responsibility to be a groundwater sustainability agency.

This letter offers a non-binding, advisory opinion. It is not a declaratory decision and does not bind the State Water Board in any future determination.

Sincerely,



Erik Ekdahl
Director, Office of Research, Planning, and Performance

cc: VIA E-mail
David Gutierrez
Department of Water Resources