

From: Pellman, Lloyd W.
Sent: Sunday, January 31, 2021 10:04 AM
To: Blom, Erica
Cc: Simonds,Keene; Bob Pelcyger
Subject: Regarding Items 6a and 7b on Monday's Agenda

These comments are directed to agenda items 6a and 7b.

I am an attorney with Nossaman LLP and have 35 years of experience with the statutes governing LAFCOs and their procedures. I am assisting attorney Bob Pelcyger and submit these comments on behalf of the San Luis Rey Indian Water Authority.

We agree with the statement of determinations for the final Municipal Service Review in determination 6 (i): "Additional analysis is needed to determine Upper San Luis Rey RCD's legal standing under LAFCO statute to provide groundwater management and participate in a GSA". However, we disagree that a proper Groundwater Sustainability Plan will be finalized ahead of the schedule under the Groundwater Sustainability Management Act as stated in agenda item 7b.

As your staff has accurately reported, the San Luis Rey Indian Water Authority objects to the inclusion of the Upper San Luis Rey Resource Conservation District in a Groundwater Sustainability Agency without first having received approval from LAFCO at a noticed public hearing to activate its latent water distribution power.

As your staff has accurately reported, the Upper San Luis Rey Resource Conservation District has not received approval from LAFCO at a noticed public hearing to activate its latent power of water distribution.

It does not matter that the district would have the power if it were to later gain approval from LAFCO when it lacked the power at the time of the purported formation of a GSA.

It does not matter that uninformed or misinformed state water agencies relied on the provisions of the district's principal act instead of the active powers of this district.

It does not matter that resource conservation districts in other counties participate in Groundwater Sustainability Agencies.

It does not matter that the Indian Water Authority has been invited to attend the meetings of the purported GSA.

What does matter is that the Upper San Luis Rey Resource Conservation District has not received approval from LAFCO at a noticed public hearing to activate its latent power of water distribution. It continues to have only its activated powers of water conservation and wildlife enhancement. Those limited powers do not qualify the RCD to be a participant in a GSA and no provision of the Groundwater Sustainability Management Act either excuses the requirements of Cortese-Knox- Hertzberg Act or expressly provides the authority of the State Water Control Board to itself determine what powers an entity has.

In fact the June 22, 2016 non-binding advisory opinion of the State Water Resources Control Board to Eastern Kern County Resource Conservation District found at pages 120 and 121 of the Municipal Service Review is based on the District being "vested with the full range of functions authorized by the Public Resources Code." And the non-binding April 12, 2016 advisory opinion of the State Water Resources Control Board to the Sonoma Resource Conservation District found at pages 122 and 123 of

the Municipal Service Review indicates that approval is based on the district being “vested with the full range of functions authorized by the Public Resources Code.” That is simply not the case with Upper San Luis Rey Resource Conservation District which only has activated powers of water conservation and wildlife enhancement. Without approvals by LAFCO at a noticed public hearing, there is no way that the State Water Resources Control Board could find the Upper San Luis Rey Resource Conservation District was vested with the full range of functions when it purported to participate in the formation of a GSA because it did not have the power of water distribution and it does not have the full range of functions today.

Consequently, the purported GSA was not legally and properly formed and any Groundwater Sustainability Plan resulting from those efforts will be a legal and practical nullity, leaving the basin without a lawfully created Groundwater Sustainability Agency. As a result The State Water Resources Control Board should establish a management plan and assume enforcement powers.

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