

SPECIAL MEETING AGENDA

November 12, 2021

10:00 AM

2222 M Street, Board Room

Merced, CA

Join Zoom Meeting

<https://us02web.zoom.us/j/83502666343?pwd=OUFhOHhCQk1QbnZLM2lmUlpDaVZYQT09>

Meeting ID: 835 0266 6343

Dial in: +1 669 900 6833

Passcode: 726245

IMPORTANT NOTICE: Due to the ongoing COVID-19 Crisis, and as authorized by Assembly Bill 361, this meeting will be broadcast via conference call in addition to the meeting's physical location. Members of the public who wish to provide comment or observe the meeting may join in person or on the conference call.

Lloyd Pareira, Jr., County of Merced

Chair

Nic Marchini, Western White Area Representative

Vice Chair

Michael Gallo, Eastern White Area Representative

Kole Upton, Le Grand-Athlone Water District

Gino Pedretti, Sandy Mush Mutual Water Company

Eric Swenson, Merquin County Water District

1. CALL TO ORDER/ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. STATE OF EMERGENCY TELECONFERENCE FINDINGS

Action Item: The Merced Subbasin GSA Governing Board will consider the circumstances of the State of Emergency and determine whether to make the following findings that any of the circumstances exist per AB 361:

1. The State of Emergency continues to directly impact the ability of the members to meet safely in person and/or
2. State or Local Officials continue to impose or recommend measures to promote social distancing.

4. PUBLIC COMMENT PERIOD

Public opportunity to speak on any matter of public interest within the Board's jurisdiction including items on the Board's agenda. Testimony limited to three minutes per person.

5. APPROVAL OF MINUTES

Action to approve the meeting minutes from the Governing Board meeting on October 14, 2021.

6. TWO PHASED GSP IMPLEMENTATION APPROACH RESOLUTION

Action to adopt a resolution on the Two Phased Approach to Groundwater Sustainability Plan implementation within the Merced Subbasin GSA.

7. LEGAL COUNSEL CONTRACT AMENDMENT

Action to adopt an amendment to the Herum, Crabtree, Suntag contract increasing the compensation by \$33,490 to \$200,000 for the total term of the contract ending in August 2023.

8. SUSTAINABLE GROUNDWATER MANAGEMENT GRANT PROPOSAL SOLICITATION PACKAGE (PSP)

Discussion and possible action on the PSP and identifying projects in the Merced basin and the Merced Subbasin GSAs.

9. MSGSA GROUNDWATER WELL CONSISTENCY AD HOC COMMITTEE REPORT Report from the Ad Hoc committee on determining consistency of groundwater well applications with the GSP.

10. STAFF REPORT

11. BOARD REPORTS

12. NEXT REGULAR MEETING

13. ADJOURNMENT

Alternate formats of this agenda will be made available upon request by qualified individuals with disabilities. Appropriate interpretive services for this meeting will be provided if feasible upon advance request by qualified individuals with disabilities. Please contact the Secretary at (209) 385-7654 for assistance and allow sufficient time to process and respond to your request. Copies of agendas and minutes will be available at the Merced County Community and Economic Development Department and at www.countyofmerced.com/MercedSubbasinGSA.

**MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY JOINT POWERS
AUTHORITY (JPA)
GOVERNING BOARD**

MINUTES FOR MEETING OF OCTOBER 14, 2021

The agenda, original minutes, and all supporting documentation (for reference purposes only) of the Merced Subbasin Groundwater Sustainability Agency Governing Board meeting of October 14, 2021 are available online at www.countyofmerced.com/MercedSubbasinGSA.

I. CALL MEETING TO ORDER

The special public meeting of the Merced Subbasin Groundwater Sustainability Agency Joint Powers Authority Governing Board was called to order at 2:02 p.m., on October 14, 2021, in person and via conference call due to the ongoing COVID-10 crisis and as authorized by the Governor's Executive Order N-29-20.

II. ROLL CALL OF BOARD MEMBERS

Board Members Present:

Kole Upton	(Le Grand-Athlone Water District)
Eric Swenson	(Merquin County Water District)
Supervisor Lloyd Pareira	Chairman (Merced County)
Michael Gallo	(Eastern White Area Representative)
Nic Marchini	Vice Chair (Western White Area)

Board Members absent:

Gino Pedretti	(Sandy Mush Mutual Water Company)
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Staff Present:

Mark Hendrickson	Secretary
Lacey McBride	Water Resources Manager
Desiree Dobbs	Recording Secretary

III. PUBLIC COMMENT PERIOD

Public comment open/close

IV. APPROVAL OF MINUTES

Action to approve the meeting minutes from the Governing Board meeting on September 16, 2021.

MOTION: M/S GALLO – UPTON, AND CARRIED BY A VOTE OF 5 – 0, THE BOARD APPROVES THE MINUTES FROM THE SEPTEMBER 16, 2021 MEETING WITH EDITS TO THE DATE ON PAGE ONE ITEM I, TO READ “AUGUST 12, 2021” AND PARAGRAPH TWO ON PAGE 4 TO INCLUDE CLARIFYING VERBIAGE OF “10 THOUSAND (10, 000) TOTAL DISTRICT ACREAGE AND SEVENTEEN THOUSAND (17, 000) PER YEAR ACRE FEET OF LONG TERM REDUCTION.”

V. **WELL CONSISTENCY POLICY FOR GROUNDWATER WELL PERMITS**

Lacey McBride presented the Board with agenda item to seek direction and not action on well consistency policies.

Remote presentation by Greg Young. Mr. Young presented that there are two areas being considered for consistency determination and commented that recommendation by the ad hoc committee is to continue existing ordinance policy on new wells. Mr. Young addressed the second area of well replacement policy and commented that approaches to consider are to continue existing County policy, “like-for-like” replacement or modify County policy by addressing areas of pumping concern to limit pumping above/below the Corcoran Clay to minimize subsidence impacts.

Board Member Upton commented that modifications to wells will be expensive and inquired if policy changes will apply to all wells or wells permitted after policy establishment and moving forward.

Mr. Young commented that potential considerations are to decide limitations where conditions are exceeding GSP objectives and urged the Board to consider how will policy be implemented.

Board Member Upton urged caution in this approach and suggested shared reduction responsibility.

Board Member Gallo suggested having a workshop to help Board members understand the current policy and suggested maintaining current policy until changes can be considered and applied by the board.

Chairman Pareira inquired if SGMA restrictions prohibit the Board from making the basin worse before better.

Jeanne Zolezzi Legal Counsel, commented that nothing prohibits the Board from making the basin worse, but findings must be made under CEQA to support the action. Ms. Zolezzi commented that the Board would need to consider if an agency reaching for sustainability should allow more pumping and suggested the decision would not be easy.

Chairman Pareira commented that if a new well is allowed, the well could be restricted to allocation amount and not overdraft.

Vice Chairman Marchini inquired if the department of environmental health can use a GSA determined set of criteria to issue well permits.

Steve Maxey, Deputy Director of Merced County Planning commented that any well application considered consistent by the GSA would be treated by the County as ministerial and not as discretionary. The County cannot maintain ministerial

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GOVERNING BOARD JPA
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authority referencing GSA policies or changing County policy to reflect the GSA polices and further commented that with potential for GSA policy change, this approach is not something the County would like to assume.

Chairman Pareira commented that additionally the County has more than one GSA, having multiple processes would be difficult for the county to maintain, if they issued wells with provided criteria.

Ms. Zolezzi commented that the ultimate goal would be to have a standard policy, after adoption of allocation, a checklist could then be provided, but this would not likely be in the near future.

Mr. Swenson commented that there are parts of the current County policy which need to be evaluated.

Mrs. McBride clarified that the demand reduction Ad Hoc committee and staff were not suggesting that the GSA adopt the County's Groundwater Ordinance as policy as is, but to provide policy direction and have staff return with policy details.

Ms. Zolezzi reiterated Mrs. McBride's point, that staff is requesting direction, comments and details to help the GSA develop and adopt a policy.

Board Member Swenson commented the Merquin County Water District is in the process of trying to replace old wells and is having difficulty locating new locations within a quarter mile of existing wells because land owners do not want to put wells in. Mr. Swenson recommended flexibility with water district well exemptions.

Public Comment Open/Close

Bob Kelley commented that he would like the board to recall the GSP adoption, the undesirable conditions and measurable objectives and commented that standards should be applied evenly and encourage the Board to consider if any new or replacement well will have undesirable consequences.

Vice Chair Marchini commented that he would be comfortable providing guidance for Environmental Health but that he doesn't believe the GSA will be prepared with staff in the near future to accept the responsibility.

Mr. Maxey commented that SGMA gives the GSA authority to regulate extraction. Mr. Maxey commented that if the County gets rid of ordinance and permits all wells, GSAs will have to curtail well pumping in the near future. Mr. Maxey suggested the best approach for now is to have GSA review each proposed well, on a case by case basis to catch issues before they start.

Board Member Gallo commented that the GSA will need staff to help GSA work through well applications and suggested discussing staff as part of the Prop. 218 process to prepare for staffing cost and funding.

Board member Swenson suggested having two board members work with staff before action, to develop language, for adoption of the resolution by the whole Board.

Chairman Pereira commented that he agrees with board member Swenson's request and asked board members to provide staff direction for new and replacement well policy and agreed to establish an ad hoc committee to direct staff on resolution verbiage, before adoption.

Board Member Swenson suggested temporarily continue existing well replacement policy until allocation has been established.

Board member Upton suggested maintaining existing County policy on replacement wells and agrees to vote on direction but not on changing the policy. Mr. Upton commented that the replacement well policy seems to work and that the policy meets with the SGMA goal of reduction.

Chairman Pereira asked if Board Member Upton would like to join the Ad Hoc committee to help determine modified policy.

Board Member Upton agreed to join the ad hoc committee.

Public comment open/close

MOTION: M/S SWENSON – GALLO, AND CARRIED BY A VOTE OF 5 – 0, THE BOARD ESTABLISHES AN AD HOC COMMITTEE AND DIRECTS STAFF TO WORK WITH THE AD HOC COMMITTEE ON DEVELOPING POLICY TEMPORARILY CONTINUING EXISTING COUNTY POLICY FOR NEW WELLS UNTIL EXTRACTION LIMITATIONS HAVE BEEN ESTABLISHED AND MODIFYING REPLACEMENT WELL POLICY.

AMENDMENT TO MOTION: M/S SWENSON – GALLO, THE BOARD MOVES TO APPOINT BOARD MEMBERS ERIC SWENSON AND GINO PEDRETTI, AS AD HOC COMMITTEE MEMBERS, TO WORK WITH STAFF TO DEVELOP POLICY.

AMENDMENT #2 TO MOTION: M/S SWENSON – GALLO, THE BOARD MOVES TO APPOINT BOARD MEMBER KOLE UPTON AS AD HOC COMMITTEE MEMBER, TO WORK WITH STAFF TO DEVELOP POLICY.

VI. TECHNICAL ADVISORY COMMITTEE REPORT AND RECOMMENDATIONS

Bob Kelley provided TAC update for the September 29, 2021 Technical Advisory Committee Meeting and recommendation to the Board.

The TAC has recommended the Two Phased GSP Implementation Approach and exploring alternatives on per acre-based fees for the Proposition 218 fee, however, the TAC has recommended that if no other options are viable the per acre fee incorporates a sunset clause. Additionally, the TAC has recommended a land owner survey to develop an informed land repurposing program.

Mr. Kelley urged the GSA to start implementation

Board Member Upton inquired about the separate Prop. 218 fee and expressed concern for land owners having two separate Prop. 218 fees.

Public Comment Open/Close

NO ACTION TAKEN

VII. TWO PHASED GSP IMPLEMENTATION APPROACH

Continued discussion from the September Board meeting, item to return in November for resolution.

Mrs. McBride presented the Two Phased GSP Implementation Approach and commented that the summary presented will be reflected in the November resolution and requested feedback and revision by the board for preparation of the resolution.

Board Member Swenson commented that he encourages inclusion of sunset into the resolution, regarding the Phase I fee and revising the Phase II fee summary to include, "replacement", to include the sunset clause of Phase I.

Additionally, Mr. Swenson commented that he would like to see other items included in the proposed Prop. 218 funding, a domestic well impact mitigation program and money to fund data gaps plan. Mr. Swenson commented that additionally, Board Member Gallo has suggested adding staff to be funded by the proposed Prop. 218 fee and commented that he supports adding this recommendation to the resolution, as well.

Greg Young commented that the TAC discussed having the Phase II Proposition 218 fee as a structured replacement and the ongoing expense would be incorporated into the new funding mechanism.

Public comment open

Fred Oliveria, land owner, spoke against continuing a per acre Prop. 218 fee for land owners in unaffected areas and suggested following the extraction fee direction.

Chair Pareira, in response to Mr. Oliveria, commented that Board direction seems

to be moving in the direction of sunsetting the per acre fee for another fee method, in Phase II.

Michael Brazil, Stevinson farmer, spoke against the per acre fee and expressed concern for paying farmers to idle land. Additionally, Mr. Brazil urged the board to focus on not penalizing those with water rights.

Public comment close

NO ACTION TAKEN. DIRECTION GIVEN TO STAFF TO UPDATE THE TWO PHASED APPROACH IN THE UPCOMING NOVEMBER RESOLUTION.

VIII. GSP IMPLEMENTATION OUTREACH

Presentation by Mrs. McBride on the importance of stakeholder outreach as part of GSA implementation. Mrs. McBride commented that two public outreach activities are anticipated before the end of 2021. Mrs. McBride presented a proposed public workshop scheduled for mid-November, with a second outreach activity - a land owner poll/survey - to be distributed to water users and available at the workshop with a return date no later than end of December 2021.

Mrs. McBride requested Board direction on both outreach activities.

Board Member Swenson suggested scheduling the public workshop in the evening when participants are free to attend and inquired about venue and publishing of meeting for those unable to attend.

Mrs. McBride commented that she has been seeking a venue with equipment that can accommodate remote attendance and approximately 80 in person participants.

Mr. Swenson suggested accommodating more than 80 in person participants.

Chairman Pereira, in agreement with Board Member Swenson, commented that the venue should host more than 80 attendants.

Board Member Swenson suggested church venues

Public comment open/close

MOTION: M/S MARCHINI – GALLO, AND CARRIED BY A VOTE OF 5 – 0, THE BOARD MOVES TO DIRECT STAFF TO MOVE FORWARD WITH THE PUBLIC OUTREACH ACTIVITIES AS PROPOSED.

IX. STAFF REPORT

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SUSTAINABILITY AGENCY
GOVERNING BOARD JPA
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Staff reports provided by Mrs. McBride:

- 1.) November 18, 2021 board meeting to be rescheduled for public workshop accommodation that evening and board availability
 - a. Board meeting rescheduled to November 12, 2021 from 10AM-12PM.
- 2.) Revisions and updates to the GSA webpage: <https://mercedsubbasingsa.org/>
 - b. Calendar creation for GSA dates
- 3.) Le Grand Athlone Water District intertie project's first public meeting is scheduled for on October 21, 2021.
- 4.) Coordination Committee Meeting is scheduled for October 25, 2021.
- 5.) Stakeholder Committee meeting is scheduled for Monday, November 8, 2021.

I. BOARD REPORTS

None

XI. NEXT REGULAR MEETING

Next meeting will be held on Friday November 12, 2021.

XII. ADJOURNMENT

There being no further business, the meeting adjourned at 3:39 p.m.

BOARD ACTION ITEM

TO: MEMBERS OF MERCED SUBBASIN GSA GOVERNING BOARD
FROM: MARK HENDRICKSON, SECRETARY
DATE: NOVEMBER 12, 2021

SUBJECT: STATE OF EMERGENCY TELECONFERENCE FINDINGS

SUMMARY:

In March 2020 Governor Newsom issued an Executive Order N-29-20 proclaiming a State of Emergency in California as a result of the threat of COVID-19. Under this executive order, local legislative bodies were authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or electronically to all members of the public seeking to address the local legislative body. Requirements of the Brown Act to meet physically in person and certain requirements for teleconferencing were waived.

In September 2021, the California legislature passed AB 361. Under this legislation a local agency is authorized to use teleconferencing without complying with teleconferencing requirements under the Brown Act, when a local agency holds a meeting during a declared state of emergency. Under this legislation, every 30 days, the legislative body is required to consider the circumstances of the state of emergency and make findings that a state of emergency continues to directly impact the ability of the members to meet safely in person and/or state or local officials continue to impose or recommend measures to promote social distancing. This provision is in effect until January 1, 2024.

REQUEST/RECOMMENDATION/ACTION NEEDED:

Action to consider the circumstances of the State of Emergency and make the finding that the State of Emergency continues to directly impact the ability of the members to meet safely in person.

BOARD ACTION ITEM

TO: MEMBERS OF MERCED SUBBASIN GSA GOVERNING BOARD
FROM: MARK HENDRICKSON, SECRETARY
DATE: NOVEMBER 12, 2021

SUBJECT: TWO PHASED GSP IMPLEMENTATION APPROACH

SUMMARY:

The Merced Subbasin GSA Governing Board has been discussing the recommended Two Phased Implementation Approach since the September 2021 Board meeting. The action for consideration is to adopt a resolution to achieve the Water Year 2025 and 2040 Objective through the following Two Phased Groundwater Sustainability Plan Implementation Approach:

Phase 1 – Starting 2021 through end of Water Year 2025

1. Pursue and achieve the Water Year 2025 Objective to reduce consumptive use of groundwater by 15,000 acre-feet per year, consistent with the July 8, 2021 resolution.
2. Focus primarily on land repurposing/fallowing and importing surface water into the GSA (flood waters or purchased water) to achieve the Water Year 2025 Objective.
3. Use remote sensing services contracted by the MSGSA to develop and, by summer of 2022, release year-to-year water budgets that provide water use information by parcel for recent years and each subsequent year through Water Year 2025, to be provided to growers to raise awareness.
4. Design and adopt by summer of 2022 an additional Phase I Proposition 218 fee to fund mechanisms for implementation of the Water Year 2025 Objective (**Phase I Funding Mechanism**).
5. Immediately initiate a process to work with stakeholders to develop elements and approaches to reductions in pumping as one mechanism to achieve the 2040 Objective through establishment of a potential limit or “cap” on the overall amount of groundwater that is removed from the subbasin, and potential methods for assigning portions of the capped amount to groundwater pumpers in the form of a pumping allocation (**Allocation Approach**).

Phase 2 – Starting in 2026

1. Adopt, by the end of Water Year 2025, and implement starting in 2026, the Allocation Approach in combination with potential expansion of the Phase I tools of continued land repurposing/fallowing and importing surface water into the GSA.
2. Design and adopt an additional Phase 2 Proposition 218 fee to fund continued and expanded Phase I programs, and to fund projects and programs developed during Phase I, potentially through a per acre extraction fee (**Phase 2 Funding Mechanism**).

The resolution identifies additional activities the Governing Board may consider to be funded

through the Phase I funding mechanism and resolves that the Phase I funding mechanism is intended to sunset and be replaced by the Phase 2 Funding Mechanism, as directed by the Board in the October 2021 Board meeting.

REQUEST/RECOMMENDATION/ACTION NEEDED:

Action to adopt a resolution on the Two Phased Approach to Groundwater Sustainability Plan implementation within the Merced Subbasin GSA.

**MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY
RESOLUTION NO. 2021-02**

**RESOLUTION OF THE MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY
ON A TWO PHASED GROUNDWATER SUSTAINABILITY PLAN IMPLEMENTATION
APPROACH**

WHEREAS, the Sustainable Groundwater Management Act (**SGMA**) was signed into law on September 16, 2014 and adopted as California Water Code, section 10720, *et. seq.*; and

WHEREAS, the purpose of SGMA is to provide sustainable management of groundwater basins and enhance local management of groundwater through empowering local management agencies with authority necessarily to sustainably manage groundwater; and

WHEREAS, the Merced Subbasin Groundwater Sustainability Agency (**GSA**) was formed on March 15, 2017 as a joint powers authority pursuant to Government Code section 6500, *et seq.*, by agencies that qualify to be groundwater sustainability agencies; and

WHEREAS, three GSAs in the Merced Groundwater Subbasin (Basin Number 5-22.04) have coordinated on the development of a single Groundwater Sustainability Plan (**GSP**) pursuant to Water Code section 10727(a); and

WHEREAS, the Merced Subbasin GSP was submitted to the California Department of Water Resources (DWR) on January 28, 2020; and

WHEREAS, the Merced Subbasin GSP identifies a Merced Subbasin GSA Groundwater Demand Reduction Management Action (Merced Subbasin GSP Section 6.2.2) to “gradually reduce pumping at a consistent annual rate during the 20-year implementation period in order to reach the Native Groundwater allocation objective by 2040”, hereafter the “**2040 Objective**”; and

WHEREAS, on July 8, 2021 the Merced Subbasin GSA Governing Board adopted a Water Year 2025 objective to reduce the consumptive use of groundwater within the Merced Subbasin GSA by a minimum of 15,000 acre feet annually (“**Water Year 2025 Objective**”), with this minimum to be increased annually thereafter; and

WHEREAS, reduction of consumptive use of groundwater within the Merced Subbasin GSA may be achieved through multiple available methods including, but not limited to, additional surface water use in lieu of groundwater, land repurposing or fallowing, land-use based fee structures, and establishing pumping allocations and/or extraction fees; and

**MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY
RESOLUTION NO. 2021-02**

NOW, THEREFORE, BE IT RESOLVED, by the Governing Board of the Merced Subbasin GSA that achieving the Water Year 2025 Objective and the 2040 Objective will be achieved through the following Two Phased Groundwater Sustainability Plan Implementation Approach:

Phase 1 – Starting 2021 through end of Water Year 2025

1. Pursue and achieve the Water Year 2025 Objective to reduce consumptive use of groundwater by 15,000 acre-feet per year, consistent with the July 8, 2021 resolution.
2. Focus primarily on land repurposing/fallowing and importing surface water into the GSA (flood waters or purchased water) to achieve the Water Year 2025 Objective.
3. Use remote sensing services contracted by the MSGSA to develop and, by summer of 2022, release year-to-year water budgets that provide water use information by parcel for recent years and each subsequent year through Water Year 2025, to be provided to growers to raise awareness.
4. Design and adopt by summer of 2022 an additional Phase I Proposition 218 fee to fund mechanisms for implementation of the Water Year 2025 Objective (**Phase I Funding Mechanism**).
5. Immediately initiate a process to work with stakeholders to develop elements and approaches to reductions in pumping as one mechanism to achieve the 2040 Objective through establishment of a potential limit or “cap” on the overall amount of groundwater that is removed from the subbasin, and potential methods for assigning portions of the capped amount to groundwater pumpers in the form of a pumping allocation (**Allocation Approach**).

Phase 2 – Starting in 2026

1. Adopt, by the end of Water Year 2025, and implement starting in 2026, the Allocation Approach in combination with potential expansion of the Phase I tools of continued land repurposing/fallowing and importing surface water into the GSA.
2. Design and adopt an additional Phase 2 Proposition 218 fee to fund continued and expanded Phase I programs, and to fund projects and programs developed during Phase I, potentially through a per acre extraction fee (**Phase 2 Funding Mechanism**).

BE IT FURTHER RESOLVED, that the Merced Subbasin GSA Governing Board may consider any of the following items to be funded through the Phase I Funding Mechanism:

1. A land repurposing program to achieve up to the objective of 15,000 acre feet annually of reduced groundwater consumption.
2. Development of year-to-year parcel based water budgets
3. Domestic well assistance study or activities
4. Activities to fill data gaps identified in the Merced GSP Data Gaps Plan
5. Water rights application costs to beneficiaries
6. Merced Subbasin GSA staff augmentation and consulting support services

**MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY
RESOLUTION NO. 2021-02**

BE IT FURTHER RESOLVED, by the Merced Subbasin GSA Governing Board that the Phase I Funding Mechanism is intended to sunset and be replaced by the Phase 2 Funding Mechanism.

PASSED AND ADOPTED at a special meeting of the Governing Board at Merced, California, this 12th day of November 2021, by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

MERCED SUBBASIN GROUNDWATER
SUSTAINABILITY AGENCY

By: _____
Chair

ATTEST:

Secretary

BOARD ACTION ITEM

TO: MEMBERS OF MERCED SUBBASIN GSA GOVERNING BOARD
FROM: MARK HENDRICKSON, SECRETARY
DATE: NOVEMBER 12, 2021

SUBJECT: LEGAL COUNSEL CONTRACT AMENDMENT

SUMMARY:

The Merced Subbasin GSA has received legal counsel support from Jeanne Zolezzi with the firm Herum Crabtree Suntag since 2017. The original contract was for a compensation amount of \$100,000. In 2019 the Governing Board approved an amendment to increase the compensation amount and re-set it back to \$100,000. At the time \$66,510 had been expended, for a total contract amount of \$166,510.

The County of Merced, as the Treasurer of the Merced Subbasin GSA, processes all invoices according to the approved contracts and amendments. In 2021, the County Auditor informed the GSA that the 2019 amendment increasing the compensation was unclear and requested a modification to the language to clearly state the total contract amount was \$166,510.

Due to the current rate at which the GSA is utilizing legal counsel expertise in FY 2021-2022, staff had anticipated bringing the legal counsel contract back before the Governing Board to increase the compensation later in 2022. In FY 2020-2021 the GSA spent \$18,483 on legal counsel services, in the first three months of FY 2021-2022 the GSA has spent \$15,549.

Since this correction is being required by the Merced County Auditor's office in order to process the invoices, staff is recommending the GSA at this time also increase the total compensation on the legal counsel contract to not exceed \$200,000. Which leaves \$66,710 remaining for the rest of the term of this contract, which expires in August 2023. This could require staff to return to the Board with a future amendment before the end of the contract term to adjust the compensation due to the rate of spending.

REQUEST/RECOMMENDATION/ACTION NEEDED:

Action to adopt an amendment to the Herum, Crabtree, Suntag contract increasing the compensation by \$33,490 to \$200,000 for the total term of the contract ending in August 2023.

**FIFTH AMENDMENT
TO
CONTRACT NO. 2017-01
BETWEEN
MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY
AND
HERUM CRABTREE SUNTAG**

THE FIFTH AMENDMENT TO CONTRACT NO. 2017-01 for Special Services to the Merced Subbasin Groundwater Sustainability Agency is made and entered into by and between the Merced Subbasin GSA, a joint powers authority of the State of California, (hereinafter referred to as "GSA"), and Herum Crabtree Suntag, a California Professional Corporation, located at 5757 Pacific Avenue, #222, Stockton, CA 95207 (hereinafter referred to as "CONSULTANT").

WHEREAS, the parties entered into a contract for special services on August 18, 2017 to perform special services which consist of general counsel legal services including public agency governance and water law (Contract No. 2017-01); and,

WHEREAS, the GSA and CONSULTANT approved a First Amendment to Contract No. 2017-01 to amend Section 2, entitled "TERM" on July 12, 2018, a Second Amendment to amend Section 2, entitled "TERM" and Section 3, entitled "COMPENSATION" on July 11, 2019; a Third Amendment to Section 2 entitled "TERM" on July 13, 2020 and a Fourth Amendment to Section 2 entitled "TERM" on July 12, 2021; and

WHEREAS, the GSA and CONSULTANT in this Fifth Amendment desire to amend Section 3 of Contract No. 2017-01, as amended, entitled "COMPENSATION"; and,

WHEREAS, this Fifth Amendment is hereby annexed to and made part of the printed part of the Agreement to which it is attached, or modifies the existing Agreement between the parties. In each instance in which the provisions of this Amendment shall contradict or be inconsistent with the provisions of the printed portion of the original Agreement, the provisions of this Fifth Amendment shall prevail and govern and the contradicted or inconsistent provisions shall be deemed amended accordingly. Both parties agree that there is new and adequate consideration for this Fifth Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree to the following amendments to the contract:

MODIFICATIONS:

- 1) Section 3 of Contract 2017-01, entitled "COMPENSATION," is amended to read as follows:

GSA agrees to pay CONSULTANT an hourly rate for Jeanne Zolezzi, and other attorneys at the rates specified in EXHIBIT C, Standard Rates, for hours actually engaged in the performance of such work, as are more specifically set forth under Section "SCOPE OF SERVICES", whether said work be performed at GSA premises or elsewhere, but such compensation shall not be paid for time necessary to travel from CONSULTANT'S location to GSA premises. This fee includes, but is not limited to, CONSULTANT'S time on-site, preparation time associated with this Agreement, and all out-of-pocket expenses. No other fees or expenses of any kind shall be paid to CONSULTANT in addition to those rates or expenses listed herein. In no event shall the total services to be performed by CONSULTANT hereunder exceed a Total Contract Price of \$200,000.00.

- 2) Exhibit C to Contract 2017-01 is hereby replaced with the Revised Exhibit C attached to this Fifth Amendment.

Except as herein modified, all terms and conditions in said Agreement as heretofore approved remain unchanged and in full force and effect.

GSA:
Merced Subbasin GSA

CONSULTANT:
Herum Crabtree Suntag

Lloyd Pareira
Chairman

Date

Date

REVISED EXHIBIT C

**HERUM\CRABTREE\SUNTAG
STANDARD BILLING RATES**

Steve Herum	\$395
Jeanne Zolezzi	\$395
Dana Suntag	\$385
Steven Crabtree	\$375
Karna Harrigfeld	\$375
Joshua Stevens	\$350
Lilliana Selke	\$250
Amy Seilliere	\$250
Paralegals	\$150

BOARD ACTION ITEM

TO: MEMBERS OF MERCED SUBBASIN GSA GOVERNING BOARD
FROM: MARK HENDRICKSON, SECRETARY
DATE: NOVEMBER 12, 2021

SUBJECT: SUSTAINABLE GROUNDWATER MANAGEMENT GRANT PROPOSAL SOLICITATION PACKAGE (PSP)

SUMMARY:

DWR has released a Sustainable Groundwater Management Grant Program SGMA Implementation Proposal Solicitation Package draft. This program will release \$171 million in grant awards, \$152 million will be available for critically overdrafted basins. Round 1 is set aside for critically overdrafted basins and has a projected deadline of January 2022. It is not competitive amongst basins, the total amount will be split evenly to provide approximately \$7.6 million in funding per critically overdrafted basin. There are some requirements for the use of the funding, \$3.7 million shall be used for geophysical investigations, implementation of flood management plans, or floodplain expansion. Other eligible projects may include recharge projects, modifications to a GSP, or projects associated with planning, among others. Under Round 2 of the Program medium and high priority basins, not receiving money in Round 1, will be eligible.

This PSP was discussed by the Coordination Committee at the October meeting. The Coordination Committee gave direction for the three GSAs to work together on a comment letter on the PSP to DWR requesting an extension of the deadline and flexibility on eligible projects, to include projects that may not have been contemplated in the GSP.

Additionally, the Coordination Committee recommended putting together a small committee of representatives from the GSAs to work on identifying projects to include in the proposal. The recommendation is for staff to work with Board Members to identify potential projects and to work with the other GSAs in the basin to identify the list of potential projects in the application. Staff will return to the Board for prioritizing basin-wide projects in the spending plan.

REQUEST/RECOMMENDATION/ACTION NEEDED:

Discussion and possible action on the Proposal Solicitation Package and identifying projects in the Merced basin and the Merced Subbasin GSAs.