

STAFF MEMORANDUM

DATE: September 25, 2023

TO: CMA GSA Committee

FROM: CMA GSA Agency Staff Members

SUBJECT: Joint Powers Agreement for CMA

The purpose of this memorandum is to provide the background and rationale for the the Western Management Area GSA (CMA GSA) to convert from a Memorandum of Agreement (MOA) to a Joint Powers Authority (JPA).

Background

The CMA GSA was formed by the January 11, 2017, MOA between the City of Buellton, Santa Ynez River Water Conservation District, and the Santa Barbara County Water Agency. The MOA describes the formation and organization of the CMA GSA and establishes the governing body, powers, and proportional funding contribution from each agency, and the voting structure for decision making.

Under this MOA, the CMA GSA successfully prepared, approved, and submitted its GSP to the California Department of Water Resources (DWR) on January 18, 2022, as required by the SGMA. Since then, groundwater management activities have included monitoring and data collection, annual reporting to DWR, and projects and management actions. The conduct of these activities has been implemented in coordination with the other two GSAs, as consistent with the Intra-Basin Administrative Agreement (IBAA).

The CMA GSA entered into the IBAA for the purpose of coordinating with the other two GSAs in the basin for implementing the sustainable groundwater management act, and the three GSPs in the Santa Ynez River Valley Groundwater Basin (Basin). The IBAA was adopted by the three GSAs effective January 1, 2022. The IBAA's primary purpose is to facilitate a cooperative and ongoing working relationship between the three GSAs in the basin. The IBAA also described the possibility of forming one or more new joint powers authorities (JPA) by the three GSAs.

The CMA GSA is the sole GSA for its management area. The existing CMA GSA established under the 2017 MOU would reorganize as a separate entity under the Joint Exercise of Powers Act in order to implement the CMA GSP and sustainably manage the CMA under SGMA.

Discussion of Joint Powers Agreements

A "Joint Powers Agreement" (JPA) is an agreement between two or more government agencies to combine their powers and resources for some common project. A JPA may also create a separate legal entity, commonly called a Joint Powers Authority (JPA), to work on common problem(s), in this case SGMA compliance and GSP implementation. Public agencies

voluntarily create a JPA, and the JPA can exercise only those powers that are common to their member agencies. Their meetings are open to the public and subject to the Ralph M. Brown Act. Further, JPAs must follow the Public Records Act, the Political Reform Act, and other public interest laws that ensure political transparency. The JPA must also arrange for an annual audit; many public agencies audit their own JPA.

As a separate agency, a JPA must have its own board of directors (Board) which will appoint officers as provided for in its JPA, in this case a chair, vice chair, treasurer, and secretary. The board will consist of representatives of each member. Certain functions may be delegated by the Board to the staff of a member agency, or an outside consultant. For example, the Treasurer's duties may be delegated to a certified public accountant.

There are financial resources needed to implement projects and management actions identified in the GSP to maintain SGMA compliance. Without outside funding sources, such as grants, these activities will be supported fully by CMA GSA member agencies and require the imposition of some form of fee structure.

A JPA, formed as a legal entity separate from its members, would shield the general funds of its members from having to pay liabilities if the JPA is unable to generate sufficient revenue to pay its liabilities. In contrast, counsel for the CMA members are concerned that the existing MOA structure may not provide the same protection for its members. Finally, a JPA can combine services and share the resources of the member agencies to save time, reduce (or eliminate) overlapping services, increase efficiencies, and cut costs for their taxpayers.

From a practical perspective, the core provisions of the existing CMA MOA were integrated into the draft CMA JPA, so in effect the JPA is consistent with the MOA while simultaneously providing protection for the member agencies from the GSAs debts or other liabilities.

Fiscal Impact

There are several vehicles for the CMA GSA to capture costs for implementing SGMA pursuant to Water Code sections 10730, *et seq.* The Board of Directors may pursue funding through any means allowable by law, including but not limited to fees and/or charges, which reduces the financial obligations of the member agencies. To the extent other funds are not available to pay CMA GSA expenses, under the JPA each Member's obligation remains unchanged from their current obligation under the MOA. Moreover, if the JPA is unable to pay its liabilities, as a separate legal entity the JPA can shield the general funds of its members from having to pay those liabilities. The adoption of fees and charges must be compliant with all applicable laws including Propositions 218 and 26.

Recommendation:

The Staff recommendation is for the CMA GSA Committee to endorse the reformation of the CMA GSA through a Joint Powers Agreement.

Recommended Motion: *The CMA GSA committee endorses the CMA's draft Joint Powers Agreement for consideration by each of the CMA GSA member agencies board.*