



Delta-Sierra Group
Mother Lode Chapter
P.O. Box 9258, Stockton CA 95208

4.27.18

San Joaquin County Board of Supervisors 1 and Eastern San Joaquin Groundwater Authority 2
44 North San Joaquin Street
Sixth Floor, Suite 627
Stockton, CA 95202

RE: Use of Zone 2 Money to Fund California Water Service's Groundwater Basin Authority JPA assessment for the San Joaquin County Groundwater Sustainability Agency #2

The Delta-Sierra Group within the Sierra Club Mother Lode Chapter objects to the use of public funds, specifically Water Investigation Zone 2 money to fund any part of California Water Service's financial obligation in accordance with the San Joaquin County-California Water Service Memorandum of Agreement that created San Joaquin County GSA #2 and which afforded California Water Service with voting rights for the Eastern San Joaquin Groundwater Authority.

Background

On May 23, 2017 the San Joaquin County Board of Supervisors adopted A-17-146 a Memorandum of Agreement (MOA) between San Joaquin County and California Water Service to allow California Water Service to have voting rights, with restrictions, for the Eastern San Joaquin Groundwater Authority (ESJGA) which is a Joint Powers Authority (JPA) of 17 Groundwater Sustainability Agencies (GSAs). The JPA was formed to coordinate the development of a Groundwater Sustainability Plan for the Subbasin between 17 GSAs. San Joaquin County Board of Supervisors with the adoption of the MOA formed San Joaquin County GSA #2 to allow California Water Service, a privately owned utility to participate beyond just as a stakeholder but as a voting member representing a GSA. According to SGMA³ "A water corporation regulated by the Public Utilities Commission or a mutual water company may participate in a groundwater sustainability agency if the local agencies approve through a memorandum of agreement or other legal agreement." The MOA also specified how the San Joaquin County GSA #2 was to be funded. Below is an excerpt of the MOA between San Joaquin County and the California Water Service forming the San Joaquin County GSA #2 which is sometimes referred to as the Cal-Water County GSA or California Water Service GSA:

Cal Water shall be responsible for all operating and administrative costs, expenses, and financial obligations of the Cal Water-County GSA. The obligation of Cal Water to make payments under the terms and provision of this Agreement is an individual and several obligation and not a joint obligation with those of the County. Cal Water shall remain responsible for its proportionate share of any obligation or liability duly incurred by the JPA and apportioned to the Cal Water County GSA.

1 Transmitted via email All Board Members allboardmembers@sjgov.org Clerk of the Board mduzenski@sjgov.org

2 ESJgroundwater@sjgov.org

3 https://www.water.ca.gov/LegacyFiles/cagroundwater/docs/2014%20Sustainable%20Groundwater%20Management%20Legislation%20_with%202015%20amends%2011-10-2015_clean-2.pdf

Each Party shall otherwise be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Party shall be the agent or have the right or power to bind the other Party without such Party's express written consent, except as expressly provided in this Agreement. Contributions of grant funding, State, Federal, or County funding may be provided as funding or a portion of funding on behalf of a Party.

The MOA agreement was covered by a recommendation letter dated May 2, 2017, signed by Kris Balaji, Director of Public Works and reviewed by Les Tyler, County Administrator's Office and Larry Meyers, County Counsel Office. This recommendation letter included the following statements:

FISCAL IMPACT: Costs to Public Works consists of staff time to process the proposed Agreement and is funded by existing appropriations in the 2016-17 Water Investigation Zone No. 2 Budget. The proposed MOA is expected to reduce future County costs for SGMA compliance by shifting the County's financial obligations within the Cal Water-County GSA boundaries to Cal Water.

Use of Property Assessments to pay for California Water Service's share of costs

At the February 14, 2018 meeting the Eastern San Joaquin Groundwater Authority approved the use of San Joaquin County Water Investigation Zone No 2 money to pay part of California Water Service's financial assessment under the JPA for 1/17th of the annual cost for the 2020 Groundwater Sustainability Plan. At the same meeting the GBA did not approve the use of Zone 2 money to pay for part of the Eastside GSA because that was out of the county (Calaveras and Stanislaus County GSAs). The Water Investigation Zone No. 2 money is a property assessment paid by all property owners in San Joaquin County. In 2017, the San County Flood Control and Water Conservation District stated ⁴ that the Water Investigation Zone 2 money was to be used to:

This fee is used to support efforts to carry out the "Strategic Plan to Meet Water Needs" adopted by the Board of Supervisors, which includes the following goals and objectives: Preserve water rights; Manage groundwater in Eastern San Joaquin County; Protect water quality; Maintain and enhance southwest County water supplies; Develop funding programs; and Support watershed education programs.

The people of San Joaquin did not agree to pay for California Water Service's Eastern San Joaquin Groundwater Authority voting privileges and the San Joaquin County staff recommendation for the Cal Water MOA specifically stated that the expectation is that County costs for SGMA would be reduced not increased as is the case with Water Investigation Zone 2 money being used to fund a portion of California Water Service's financial obligation.

Prior to the vote approving use of Zone 2 money, I objected to giving Zone 2 money to California Water Service because the MOA between San Joaquin County and California Water Service stated that California Water Service would be responsible for all costs associated with the San Joaquin County GSA #2. The initial minutes prepared and made available for the March 14, 2018 meeting did not include my reference to the Memorandum of Agreement between San Joaquin County and California Water Service. I requested during the March 14, 2018 that the February 14, 2018 meeting minutes be amended to specifically reference the formal agreement between San Joaquin County and California Water Service.

⁴ http://www.sjwater.org/Documents/ZONE2/2017/ZONE%202%20FAQs%202017-18%20-%20FINAL_05252017.pdf

California Constitution: Use of Public Money

Set forth in Cal. Const., art. XVI, § 6 b. Prohibits the giving or lending public funds to any person or entity, public or private i. Prohibition includes aid, making of gift, pledging of credit, payment of liabilities 1. Encompasses the giving of monetary funds and any “thing of value” ii. “Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever”⁵

Summary

The Board of Supervisors or their delegate should direct the Eastern San Joaquin Groundwater Authority to revoke the use of Zone 2 money for California Water Service and use the money to provide extra outreach to disadvantaged communities particularly those having irrigation or water supply wells.

Sincerely,



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⁵ https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual_Forboth_Gift-of-Public-Funds_Spoile.aspx