



County of Lassen
Department of Planning and Building Services

• Planning

• Building Permits

• Code Enforcement

• Surveyor

• Surface Mining

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November 10, 2020

Zoning & Building
Inspection Requests
Phone: 530 257-5263

TO: Board of Supervisors
Agenda Date: November 17, 2020

FROM: Maurice L. Andersons, Director

MAM
FOR:

SUBJECT: Follow-up letter from the Board to Governor Gavin Newsom requesting a response to the Board's August 11, 2020, letter requesting that the January 31, 2022, deadline to prepare a Groundwater Sustainability Plan for the Big Valley Groundwater Basin be extended as a result of difficulties the Groundwater Sustainability Agency is having conducting public outreach during the COVID-19 pandemic.

ACTION REQUESTED:

Authorize the Chairman to sign.

Summary:

On August 11, 2020, the Board of Supervisors authorized the Chairman to sign a letter to the Governor (attached) regarding preparation of a Groundwater Sustainability Plan for the Big Valley Groundwater Basin. To date, there has not been a response of any type to said letter (by telephone, letter or email).

A draft letter is attached for consideration by the Board to request a response to the Board's August 11, 2020, letter.

MLA:gfn

Enclsoures: Draft letter to the California Governor
August 11, 2020, signed letter from the Board of Supervisors to the Governor

County of Lassen
Board of Supervisors



CHRIS GALLAGHER

District 1

DAVID TEETER

District 2

JEFF HEMPHILL

District 3

AARON ALBAUGH

District 4

TOM HAMMOND

District 5

County Administration Office
221 S. Roop Street, Suite 4
Susanville, CA 96130
Phone: 530-251-8333
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November 17, 2020

CERTIFIED MAIL/RETURN RECEIPT

7017 1070 0000 7544 8450

Gavin Newsom

Governor, State of California

1303 10th Street

Sacramento, CA 95814

RE: Inquiry Regarding an August 11, 2020, Letter Requesting an Extension for Submittal of a Groundwater Sustainability Plan for the Big Valley Groundwater Basin (DWR Bulletin 118 Basin 5-004)

Dear Governor Gavin Newsom:

This letter is to request a response from you to our letter to you dated August 11, 2020 (attached), in regard to preparation of the Groundwater Sustainability Plan (GSP) required to be submitted to the Department of Water Resources by January 31, 2022, pursuant to the Sustainable Groundwater Management Act of 2014 (SGMA), for the Big Valley Groundwater Basin. To date, we have not received communication of any type regarding said letter (by telephone, letter or email).

As stated in more detail in our previous letter, COVID-19 has drastically limited our ability, and the public's willingness, to have the in-person public meetings necessary to prepare the required GSP. This has left both the Lassen and Modoc Groundwater Sustainability Agencies (GSAs) with few options. Many around the state have turned to internet-based meetings during this pandemic. However, conducting meetings through the internet is a poor substitution in Big Valley because there is not sufficient internet access. Further, we do not have sufficient resources to conduct internet-based meetings in a meaningful way. Again, our letter to you describes our challenges in great detail.

Even though the GSP deadline is still a little over a year away, it is clear that we do not have enough time to prepare a GSP supported by the level of public participation a plan of this

magnitude deserves. Lassen County and the residents of Big Valley have accepted the responsibility required by SGMA to prepare the GSP when no one else would. Neither Lassen County or Modoc County were required by SGMA to accept the responsibility (financially and in terms of land use responsibility) to serve as the GSAs for Big Valley, but that is exactly what we have done. We have more than demonstrated our willingness to meet the challenges presented by SGMA head-on. That said, if we are going to prepare this GSP, it is in the interest of everyone, including you, that it be done right.

This was a serious enough subject to warrant passage of SGMA and signature by the prior Governor. We can assure you that preparation of the GSP for the Basin is certainly a matter of direct concern to the citizens of Big Valley. As such, this Board deserves an answer to our letter, and, even more so, the citizens of Big Valley deserve the courtesy of an answer, even if the answer is contrary to our request. To give the GSP the service it truly deserves, we simply need a little more time. That's all.

Thank you for considering our request and we look forward to your prompt response.

Thank you in advance,

David Teeter, Chairman
Lassen County Board of Supervisors

DT:MLA:gfn

cc: Brian Dahle, Senator, California Senate
Megan Dahle, Assembly Member, California State Assembly
Modoc County Board of Supervisors as the Big Valley Modoc GSA
Big Valley Groundwater Basin Advisory Committee
Department of Water Resources

County of Lassen Board of Supervisors



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August 11, 2020

Gavin Newsom
Governor, State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

RE: Request for Extension for Submittal of a Groundwater Sustainability Plan for the Big Valley
Groundwater Basin

Dear Governor Newsom:

COVID-19 has had (and continues to have) a monumental impact on the ability of State and local government to conduct the people's business. Accordingly, as the Governor of the State of California, you have, on multiple occasions, exercised authority granted to you pursuant to the State's police power and through the Emergency Services Act to issue Executive Orders in response to the COVID-19 emergency. As discussed herein, these orders have often altered the implementation of various Statutes and Regulations. This letter is to request that you use your authority to extend the January 31, 2022, deadline to submit a Groundwater Sustainability Plan (GSP) to the Department of Water Resources (DWR) for the Big Valley Groundwater Basin (DWR Bulletin 118 Basin 5-004) as required by the Sustainable Groundwater Management Act (SGMA).

The Big Valley Groundwater Basin is located in two counties (Lassen and Modoc), and the counties have stepped forward to act as the Groundwater Sustainability Agencies (GSAs) for their respective portions of the Basin. Big Valley is a rural, agricultural area where ranching and farming make up the bulk of the economy by producing alfalfa, hay, wild rice, pasture and range. Ranching and farming have a long history in Big Valley and many current, active ranchers are the same families that homesteaded here. In addition, there is a state wildlife refuge in the middle of the Basin that supports important species and acts as part of the Pacific flyway. Big Valley is designated as a disadvantaged community. To say that there is a high level of interest in how the GSP for Big Valley is developed is an understatement.

The GSAs have been unable to successfully conduct the public outreach expected by stakeholders and required by the SGMA during the COVID-19 emergency. Further, the ability to conduct telephonic or web-based participation is highly limited in Big Valley because there is inadequate internet access and in some cases no internet access at all for stakeholders to participate in public meetings.

While the GSP deadline is still 16 months away, it is clear that we do not have enough time to meet the robust public participation requirements found in the SGMA (summarized in this letter) while also meeting the current submittal deadline. The combination of complex GSP Regulations which require highly technical content and the need for public participation mean that the outreach process will take a lot of time for all parties to come to a shared understanding of what the Regulations require and what the content of the GSP means to them. Decisions that will have a huge impact in the Basin will be made and implemented through the GSP.

The public outreach and participation plan we developed prior to COVID-19 requires frequent public meetings between now and January 31, 2022, to prepare a draft GSP that the GSAs can approve and submit to DWR as required by the SGMA. Between now and the due date, we will be working chapter by chapter, requirement by requirement, attempting to develop a shared understanding and make reasoned decisions. Even before COVID-19, the schedule was tight and the GSAs were challenged to accommodate adequate public involvement, which is focused through the Big Valley Groundwater Basin Advisory Committee (BVAC). The BVAC is formed through a memorandum of understanding between the two GSAs and is proving ineffective because COVID-19 requirements and health considerations have made it difficult or impossible to conduct public meetings. Given the realities of the COVID-19 emergency, many will be left out of the conversation unless additional time is provided.

You have responded to difficulties that agencies are experiencing conducting public meetings during COVID-19 by relaxing certain Brown Act meeting requirements. Through Executive Order Numbers N-25-20 and N-29-20, your Administration has taken important steps to ensure that public meetings are able to convene and conduct necessary public business during the COVID-19 emergency. Again, you issued the above and many other executive orders, as authorized by the State's police power and through the Emergency Services Act to maintain proper functioning of state and local governments. In summary, said Executive Orders modified certain requirements for noticing and conducting public meetings, as described in Government Code sections 54950-54963 (Chapter 9, Meetings). In part, provisions of these orders allow remote (web or phone-based) meetings to be conducted from multiple locations, without meeting all of the requirements of the above sections. This includes allowing elected or appointed representatives to participate remotely.

The intent for meeting in this fashion is to allow government to continue functioning while those that need to can maintain isolation. This is necessary and prudent for routine functions, but the SGMA is different. This legislation is new territory for all involved and has wide reaching impacts on stakeholders of all varieties. Because of the long-term nature of the SGMA, the GSAs and stakeholders want to develop a GSP off the bat that stakeholders can live with and reduces the uncertainty that the future holds.

Unfortunately, the above orders are not enough in the Big Valley Groundwater Basin because this remote area of rural, mountainous, northeastern California does not have the digital connectivity required to successfully conduct remote meetings. As discussed herein, attempts to conduct remote meetings in Big Valley have been unsuccessful due to the exceptionally poor internet connectivity. Allowing the public to attend meetings through the internet may be a good strategy for areas that have reliable internet connectivity, but not in rural mountain areas. For internet-based meetings to be successful, infrastructure is needed. This infrastructure is severely lacking in Big Valley and surrounding areas.

In addition to the lack of internet capability, Big Valley is already recognized by the DWR and other State Departments as an economically disadvantaged area. The reality is that many of the citizens in Big Valley do not have the resources, both technical and financial, to access the internet, even if adequate internet connectivity were available. The internet access disparity between urban and rural areas is well-documented. Further, many of the residents are not familiar with the mechanics of participating in meetings electronically. They have had no training or exposure to this technology and meeting venue. Another challenge is staff availability to facilitate internet-based meetings. The two Big Valley Groundwater Basin GSAs, like many rural governments, have very limited staff, especially technical staff.

On July 1, 2020, the GSAs attempted to conduct a combined live and internet-based meeting in lieu of a traditional live-only public outreach meeting. We attempted to conduct the meeting with "Go-To-Webinar" and failed miserably with unintelligible audio. After thirty minutes, one stakeholder who tried to participate from home decided to take the risk of coming to the live portion of the meeting because of the webinar problems even though her spouse has health concerns that make him high risk.

As stated, the fundamental issue we are working through is that, because of COVID-19, there are now two sections of the SGMA that conflict with each other. The legislation provides a deadline, but the same legislation also requires meaningful public involvement. Because of COVID-19, the public in the Big Valley Groundwater Basin has shown a reluctance to attend public meetings to discuss development of the GSP. Further, and again as a direct result of COVID-19, limitations and requirements have been placed on local governments on how public meetings are to be conducted. Below is a summary of some of the public participation requirements found in the SGMA that, as a result of this health emergency, are at odds with the January 31, 2022, deadline:

- In part, Water Code section 10723.2 states "[t]he groundwater sustainability agency shall consider the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing groundwater sustainability plans. These interests include, but are not limited to, all of the following..." Without providing an effective means of participation and in the current COVID-19 environment, it is not possible to consider the interest of all beneficial users or to work with our professional staff on the implementation of whatever plan is ultimately adopted. More time is necessary or an important part of the SGMA will be meaningless. This weakens the resulting GSP, making it more difficult to implement and subjecting the GSP to added scrutiny and challenge. Again, we cannot meet the above public participation requirement while also meeting the January 31, 2022, deadline.
- In part, Water Code section 10727.8 states "Prior to initiating the development of a groundwater sustainability plan, the groundwater sustainability agency shall make available to the public and the department a written statement describing the manner in which interested parties may participate in the development and implementation of the groundwater sustainability plan..." In accordance with said section, the GSA's have adopted a memorandum of understanding that establishes an Advisory Committee. A primary function of the Advisory Committee is to facilitate public comment. A meeting format has been

established to incorporate public comment. In light of COVID-19, the above process has proved itself insufficient to capture and facilitate public comment regarding development of the GSP.

Clearly it was the intent of the legislature in adopting the SGMA that GSPs be prepared with broad public participation. Unfortunately, COVID-19 has restricted the ways in which public meetings can be conducted. The GSP will have a huge impact on the lives of the residents and their children. As such, the SGMA rightfully provides the requirement to include the public in the preparation of the GSP. COVID-19, is jeopardizing the public's participation in the very process that the SGMA assured them they could be part of. It is not realistic to expect the public to be satisfied with our limited ability to conduct internet and phone-based meetings for a process they were assured by the legislature that they would be allowed to participate in. Given the lack of alternatives we have for engaging the public in the GSP development process, it seems clear that we will not be able to meet the January 31, 2022, deadline the legislature established for submittal of the GSP to DWR.

We owe it to the public to provide an opportunity to meaningfully participate. In the end, allowing additional time to prepare the GSP is not likely to have as profound an impact as preparing and submitting a GSP without involving the affected public. The GSP is a major undertaking that will affect the lives of the residents and generations to come. For the GSP to be implemented successfully, the legislature recognized the importance of public participation. Submittal of a plan that will take more than 20 years to implement without the involvement and participation of the very people it will affect is not a good way to start.

As stated, an Executive Order is an appropriate mechanism to grant our request to provide additional time for the GSAs to more fully engage the public in this process as intended by the SGMA. The authority of the Executive to temporarily modify the implementation of Statute and Regulation is demonstrated through the many other Executive Orders you have issued in response to the COVID-19 pandemic. Examples of Statutes affected by Executive Orders you have issued include the Elections Code, Insurance Code, Education Code, Penal Code, Civil Code, Code of Civil Procedure, Vehicle Code, Labor Code, Welfare and Institutions Code, Health and Safety Code, Public Resources Code, Government Code, Unemployment Insurance Code and others. As said, there are also examples of Regulations that have been affected by your Executive Orders.

As a result of this health emergency, you are authorized to issue an Executive Order allowing more time to submit the required GSP to DWR. The COVID-19 emergency has directly hindered our ability to conduct the public outreach and participation required by the SGMA to prepare said GSP. You continue to issue executive orders in response to this pandemic that affect our ability to properly engage the public. Thus, such an order falls under your authority pursuant to the State police power and through the Emergency Services Act. There are various ways in which such an order could implemented:

- You could simply issue an Executive Order extending the deadline to submit a GSP by one year (until January 31, 2023, or further). In summary, support for such an order is demonstrated through the continued quarantine limitations that are in effect and in the continued advice from health professionals for at risk segments of the population to avoid public gatherings. After a year, the need for any further extension could be evaluated based on the status of the COVID-19 pandemic at that time.

- Another (or additional), more specific way, to implement such an Order is through section 10735.2 of the Water Code. Said section requires the Water Resources Control Board to schedule a public hearing to designate Big Valley as a “probationary basin” if the GSP is not submitted by January 31, 2022. In summary, your Executive Order could direct the Water Resources Control Board to postpone scheduling said public hearing, should we not meet the January 31, 2022, GSP submittal deadline.

Thank you for considering our request.

Sincerely,



David Teeter, Chairman
Lassen County Board of Supervisors

DT:MLA:gfn

cc: Toni G. Atkins, President pro Tempore, California Senate
Anthony Rendon, California State Assembly, Speaker
Brian Dahle, Senator, California Senate
Megan Dahle, Assembly Member, California State Assembly
Modoc County Board of Supervisors as the Big Valley Modoc GSA
Big Valley Groundwater Basin Advisory Committee
Department of Water Resources

c/sustainable groundwater management/extend deadline