

SPECIAL MEETING AGENDA

June 12, 2020

3:30 PM Closed Session

4:00 PM Special Meeting

IMPORTANT NOTICE: DUE TO THE ONGOING COVID-19 CRISIS, AND AS AUTHORIZED BY THE GOVERNOR'S EXECUTIVE ORDER N-29-20, BOARD MEMBERS OF THE MERCED SUBBASIN GSA WILL PARTICIPATE IN THIS MEETING OFFSITE VIA CONFERENCE CALL. MEMBERS OF THE PUBLIC WHO WISH TO PARTICIPATE ELECTRONICALLY AND/OR OBSERVE A LIVE BROADCAST OF THE MEETING ARE ENCOURAGED TO REVIEW THE GUIDANCE DOCUMENT INCLUDED WITH THIS AGENDA. IF YOU HAVE ANY ISSUES VIEWING OR PARTICIPATING IN THIS MEETING OR REQUIRE REASONABLE ACCOMODATION FOR YOUR PARTICIPATION PLEASE CONTACT THE COUNTY OF MERCED STAFF AT (209) 385-7654.

Bob Kelley, Stevinson Water District

Chair

Nic Marchini, Western White Area Representative

Vice Chair

George Park, Lone Tree Mutual Water Company
Lloyd Pareira, County of Merced

Kole Upton, Le Grand-Athlone Water District
Michael Gallo, Eastern White Area Representative

1. CALL TO ORDER/ROLL CALL

2. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION (Subdivision (b) of Government Code Section 54956.9) 1 potential case

3. 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.

4. WATER RIGHTS AGREEMENT

Consideration to approve an Agreement Regarding the Acquisition of Certain Flood Flow Water Rights and Water Supply Among the Merced Irrigation District, Merced Subbasin Groundwater Sustainability Agency, Turner Island Groundwater Sustainability Agency-1, Le Grand-Athlone Water District, Plainsburg Irrigation District, Amsterdam Water District, Sandy Mush Mutual Water Company, La Paloma Mutual Water Company and Lone Tree Mutual Water Company, and authorize the Chair to sign the Agreement.

5. BOARD REPORTS

6. NEXT REGULAR MEETING

7. 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.

Important Notice Regarding COVID 19

Based on guidance from the California Department of Public Health and the California Governor's Officer, in order to minimize the spread of the COVID 19 virus, please comply with the following:

1. Meeting location(s) will be unavailable to the public in order to limit potential transmission of COVID-19.
2. You are strongly encouraged to observe the live stream of the Merced Subbasin GSA meetings remotely by visiting <https://livestream.com/accounts/21193189/events/8610588>
3. If you wish to make a comment on a specific agenda item, please submit your comment via email by 5:00 p.m. on the Monday prior to the Governing Board meeting. Please submit your comment to the Secretary of the Board at SGMA@countyofmerced.org. Your comment will be placed into the record at the Governing Board meeting.
4. If you are watching the live stream of the Governing Board meeting and wish to make either a general public comment or to comment on a specific agenda item as it is being heard, please submit your comment, limited to 250 words or less, to the Secretary of the Board at SGMA@countyofmerced.org. Every effort will be made to read your comment into the record, but some comments may not be read due to time limitations. Comments received after an agenda item will be made part of the record if received prior to the end of the meeting.

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BOARD ACTION ITEM

TO: MEMBERS OF MERCED SUBBASIN GSA GOVERNING BOARD
FROM: MARK HENDRICKSON, SECRETARY
DATE: JUNE 12, 2020

SUBJECT: FLOODMAR WATER RIGHTS AGREEMENT

SUMMARY:

Over the past few years, the Merced Subbasin GSA has actively and cooperatively worked with neighboring agencies and entities in order to develop Groundwater Sustainability Plans (GSP) for the Merced, and cooperating with the Chowchilla, and Turlock groundwater subbasins. The GSP for the local Merced groundwater subbasin was recently completed and submitted to DWR for review. During the GSP development process, the parties involved identified several opportunities and tools to assist in achieving groundwater use sustainability. One such opportunity involves the use of available surface water to, among other things, replenish, or offset local groundwater use. A number of other local agencies involved in the process identified water that may be available for appropriation and began the process to apply for a permit to appropriate such water from the State Water Resources Control Board (State Water Board).

On December 29, 2019, the Merced Irrigation District (MID) submitted an Application to Appropriate Water from the Merced River and 11 creeks/streams in eastern Merced County (the Application). Generally, the Application relates to water from the Merced River and local creeks/streams that occurs during the winter months and may be put to beneficial use locally. Water may be used as part of potential projects contemplated to achieve multiple benefits (e.g., flood management, environmental use, improved water use efficiency, etc.) In particular, the potential parties to the Agreement anticipate using the water to assist in maximizing conjunctive management activities of surface and groundwater resources. The water will also assist the parties to the Agreement in their efforts to sustainably manage local groundwater supplies, consistent with the Sustainable Groundwater Management Act (SGMA).

Since the Application was filed, MID staff and consultants have coordinated with State Water Board, Division of Water Rights to develop additional information necessary to support the Application. Coordination has occurred with a number of other agencies as well, such as California Department of Water Resources and the Department of Fish and Wildlife. Local agency stakeholders have also coordinated with MID to ensure broad-based local support for the Application. Although MID initially filed the Application, it was contemplated that other parties may desire to become more actively involved in the process to obtain the water right, beyond general support.

In coordination with State Water Board staff, as well as staff and consultants for the parties referred to herein, a draft agreement has been prepared through which the parties will work together on the development and pursuit of the Application. Understanding that the process to obtain a water right permit (and ultimately a license) will be a long and complicated process, the parties desire to set forth the terms and conditions through which the parties may become a co-

applicant to, and jointly pursue the Application. Following is a summary of some of the key terms:

- Parties – currently contemplated as the Merced Irrigation District; Merced Subbasin Groundwater Sustainability Agency; Turner Island Groundwater Sustainability Agency-1; Le Grand-Athlone Water District; Plainsburg Irrigation District; Amsterdam Water District; Sandy Much Mutual Water Company; La Paloma Mutual Water Company, and Lone Tree Mutual Water Company however the Agreement contemplates the possibility for other parties in the future. While portions of Chowchilla and Turlock subbasins are included in the proposed place of use in the Application, agencies in that area will not be party to the Agreement.
- Term – the Agreement becomes effective upon execution by MID and any other parties that execute within 60 days of execution by MID. The Agreement will remain in effect until it is terminated in writing by the parties.
- Roles of the parties – while the parties to the Agreement will be added as co-applicants to the Application, for a number of reasons, MID shall serve as lead coordinator and primary contact with the State Water Board and other third parties. MID will administer the Agreement; pay costs associated with pursuing the Application (subject to reimbursement provisions in the Agreement); and, MID will be the Lead Agency for purposes of compliance with the California Environmental Quality Act.
- Allocation of costs – the Agreement provides that MID will pay 50% of all costs incurred pursuant to the Agreement, and the remaining parties will pay 50%. The remaining parties shall determine amongst themselves how to distribute, collect and forward to MID their respective percentages of costs. This includes not only costs moving forward, but also reimbursement of costs associated with filing the Application (MID paid a filing fee to the State Water Board in the amount of \$544,000, with approximately additional \$300,000 for the preparation, refinement, and inclusion of additional diversion points and contemplated projects, and environmental summary for all streams in the application) and developing the Application over the last several months. MID will create and administer a separate balancing account for purposes of holding and tracking costs and expenses incurred and paid in furtherance of the Agreement.
- Allocation of water – MID shall be the sole water right holder, exclusive of any and all other parties to the Agreement, as to water from the Merced River. Water from the local creeks and streams identified in the Application will be allocated amongst the parties through a Water Management Agreement, to be negotiated in good faith and executed at some point in the future. The Merced Subbasin GSA will be a party to that future Water Management Agreement.

A copy of the Agreement Regarding the Acquisition of Certain Flood Flow Water Rights and Water Supply among the Merced Irrigation District; Merced Subbasin Groundwater Sustainability Agency; Turner Island Groundwater Sustainability Agency-1; Le Grand-Athlone Water District; Plainsburg Irrigation District; Amsterdam Water District; Sandy Much Mutual Water Company; La Paloma Mutual Water Company, and Lone Tree Mutual Water Company (the Agreement) is available for review from staff, upon request.

REQUEST/RECOMMENDATION/ACTION NEEDED:

Approve the Agreement Regarding the Acquisition of Certain Flood Flow Water Rights and Water Supply among the Merced Irrigation District; Merced Subbasin Groundwater Sustainability Agency; Turner Island Groundwater Sustainability Agency-1; Le Grand-Athlone Water District; Plainsburg Irrigation District; Amsterdam Water District; Sandy Much Mutual Water Company; La Paloma Mutual Water Company, and Lone Tree Mutual Water Company and authorize the Chair to sign the Agreement.

**MERCED SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY
RESOLUTION NO. 2020-01**

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT REGARDING THE
ACQUISITION OF CERTAIN FLOOD FLOW WATER RIGHTS AND WATER
SUPPLY AMONG THE MERCED IRRIGATION DISTRICT; MERCED SUBBASIN
GROUNDWATER SUSTAINABILITY AGENCY; TURNER ISLAND GROUNDWATER
SUSTAINABILITY AGENCY-1; LE GRAND-ATHLONE WATER DISTRICT;
PLAINSBURG IRRIGATION DISTRICT; AMSTERDAM WATER DISTRICT; SANDY
MUCH MUTUAL WATER COMPANY; LA PALOMA MUTUAL WATER COMPANY;
AND, LONE TREE MUTUAL WATER COMPANY, AND AUTHORIZING ACTIONS
RELATED THERETO**

WHEREAS, Merced Subbasin Groundwater Sustainability Agency (Agency) is a Groundwater Sustainability Agency pursuant to the Sustainable Groundwater Management Act (SGMA).

WHEREAS, Pursuant to SGMA, California's water providers that overlie a groundwater basin are required to develop a comprehensive system to manage groundwater resources at the local level in a sustainable manner. SGMA authorizes Groundwater Sustainability Agency(s) (GSA) to prepare or coordinate in the preparation of a Groundwater Sustainability Plan(s) (GSP) to sustainably manage the local groundwater basin(s). Among other things, the GSA(s) may contemplate the development of water supplies and water projects to assist in sustainable management activities;

WHEREAS, the Agency is one of the parties responsible for the local management, implementation and enforcement of the GSP developed for the Merced Groundwater Subbasin;

WHEREAS, the Agency, together with a number of other local agencies, have determined that there are undeveloped and unappropriated water supplies in the area that may be used beneficially locally, and in particular could be a source of supplemental water to assist in efforts to sustainably manage the Merced Groundwater Subbasin;

WHEREAS, on December 29, 2019, Merced Irrigation District (MID) submitted an Application to Appropriate Water from the Merced River and 11 creeks/streams in eastern Merced County (the Application), contemplating that other local agencies may desire to become more actively involved in the process to obtain the water right, beyond general support;

WHEREAS, a draft agreement through which the parties will work together, in good faith on the development and pursuit of the Application has been developed to set forth the terms and conditions through which the parties may become a co-applicant to the Application as well as pay costs and expenses associated with pursuing the Application through permitting and licensing;

WHEREAS, the Board of Directors for the Agency (Board) has been presented with and reviewed a copy of a draft Agreement Regarding the Acquisition of Certain Flood Flow Water Rights and Water Supply among the Merced Irrigation District; Merced Subbasin Groundwater Sustainability Agency; Turner Island Groundwater Sustainability Agency-1; Le Grand-Athlone

Water District; Plainsburg Irrigation District; Amsterdam Water District; Sandy Much Mutual Water Company; La Paloma Mutual Water Company; and Lone Tree Mutual Water Company (the Agreement), the key terms of which are:

- Parties – currently contemplated as the Merced Irrigation District; Merced Subbasin Groundwater Sustainability Agency; Turner Island Groundwater Sustainability Agency-1; Le Grand-Athlone Water District; Plainsburg Irrigation District; Amsterdam Water District; Sandy Much Mutual Water Company; La Paloma Mutual Water Company; and, however the Agreement contemplates the possibility for other parties in the future.

- Term – the Agreement becomes effective upon execution by MID and any other parties that execute within 60 days of execution by MID. The Agreement will remain in effect until it is terminated in writing by the parties.

- Roles of the parties – while the parties to the Agreement will be added as co-applicants to the Application, for a number of reasons, MID shall serve as lead coordinator and primary contact with the State Water Board and other third parties. MID will administer the Agreement; pay costs associated with pursuing the Application (subject to reimbursement provisions in the Agreement); and, MID will be the Lead Agency for purposes of compliance with the California Environmental Quality Act.

- Allocation of costs – the Agreement provides that MID will pay 50% of all costs incurred pursuant to the Agreement, and the remaining parties will pay 50%. The remaining parties shall determine amongst themselves how to distribute, collect and forward to MID their respective percentages of costs. This includes not only costs moving forward, but also reimbursement of costs associated with filing the Application (MID paid a filing fee to the State Water Board in the approximate amount of \$544,000) and developing the Application over the last several months. MID will create and administer a separate balancing account for purposes of holding and tracking costs and expenses incurred and paid in furtherance of the Agreement.

- Allocation of water – MID shall be the sole water right holder, exclusive of any and all other parties to the Agreement, as to water from the Merced River. Water from the local creeks and streams identified in the Application will be allocated amongst the parties through a Water Management Agreement, to be negotiated in good faith and executed at some point in the future. MID will be a party to that future Water Management Agreement.

WHEREAS, the Board desires and hereby determines it to be in the best interests of the Agency to authorize execution of the Agreement, as substantially presented and consistent with the key terms summarized herein.

NOW, THEREFORE, BE IT RESOLVED that the recitals set forth hereinabove are true and correct, and the Board so finds and determines and the Governing Board of the Merced Subbasin GSA hereby authorizes the Board Chair or his designee to complete negotiations and execute an agreement in the substantial form summarized herein, subject to such reasonable modifications, revisions, additions and deletions as such executing officer may approve prior to execution, said execution to provide conclusive evidence of the Board's approval.

BE IT FURTHER RESOLVED THAT the Board Chair or his designee is authorized to execute such additional agreements or documents, and to take such other actions as they deem necessary or appropriate to carry out and implement the intent of this Resolution.

PASSED AND ADOPTED at a special meeting of the Governing Board at Merced, California, this 12th day of June 2020, by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

MERCED SUBBASIN GROUNDWATER
SUSTAINABILITY AGENCY

By: _____
Chair

ATTEST:

Secretary