



## MEMORANDUM

DATE: August 28, 2018

TO: Butte County Board of Supervisors

FROM: Paul Gosselin, Director

RE: Agreement with the City of Oroville and Thermalito Water and Sewer District  
Establishing the Joint Exercise of Power for the Wyandotte Creek Groundwater  
Sustainability Agency

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### Action Requested

1. Approve agreement and authorize the Chair to sign, and;
2. Authorize staff to formally rescind Butte County as a GSA in the Wyandotte Creek subbasin.

### Background

On January 1, 2015, the Sustainable Groundwater Management Act (SGMA) went into effect. SGMA provides local public agencies with land use, water management or water supply the opportunity to be Groundwater Sustainability Agencies (GSA) with the responsibility of developing and implementing Groundwater Sustainability Plans (GSPs). GSPs must evaluate the sustainability of the basin and identify projects and actions that will be implemented in order to achieve sustainability over a 20 year period. Each subbasin must be covered by one or more GSPs by January 30, 2022. SGMA allows for more than one GSP for each subbasin, subject to Coordination Agreements and other requirements. Failure to meet the deadline would subject the subbasin to intervention by the State Water Resources Control Board.

The Wyandotte Creek subbasin overlies Butte County and is subject to SGMA. All of the GSAs in the Wyandotte Creek subbasin (Butte County, the City of Oroville and Thermalito Water and Sewer District) have committed to work toward developing and submitting a single GSP. To achieve this goal Butte County, and the other GSAs,

participated in a facilitated public process with stakeholders in the Wyandotte Creek subbasin to draft the Wyandotte Creek Joint Powers Agreement (Agreement).

### Wyandotte Creek Joint Powers Agreement

The purpose of the Agreement is to create a new agency, the Wyandotte Creek GSA. The purpose of the Wyandotte Creek GSA is to (a) develop, adopt, and implement a GSP for the Wyandotte Creek subbasin in order to implement SGMA requirements and achieve the sustainability goals; and (b) involve the public and subbasin stakeholders through outreach and engagement in developing and implementing the GSP. Under the terms of the Agreement, Butte County, the City of Oroville and Thermalito Water and Sewer District will rescind their individual GSA status to form the Wyandotte Creek GSA.

The Wyandotte Creek GSA would be a Joint Powers Agency (JPA) covering the entire Wyandotte Creek subbasin and assuming all of the SGMA authorities. Although the local agencies will rescind their individual GSA status, they will retain their existing authorities (i.e., Butte County retains its land use, well permitting and police powers). The creation of the Wyandotte Creek GSA brings consistency in planning and programs and provides an avenue for non-public agency involvement on the Wyandotte Creek GSA Board and advisory committee. At the heart of the Agreement is the focus to maximize local input and decision-making and to address the different water demands and sustainability considerations in the municipal and rural areas of the Wyandotte Creek subbasin.

### Wyandotte Creek GSA Board

The Wyandotte Creek GSA Board will serve the policy-making role for SGMA implementation in the Wyandotte Creek subbasin. All GSA Board meetings are subject to the Brown Act and will be noticed and open to the public. The GSA Board will be composed of 5 seats, each with equal and full voting rights, including:

1. Butte County- 1 seat (Member Agency)
2. City of Oroville - 1 seat (Member Agency)
3. Thermalito Water and Sewer District – 1 seat (Member Agency)
4. Agricultural groundwater user - 1 seat (Wyandotte Creek GSA Board Appointed Stakeholder)
5. Domestic well user (non-agricultural) - 1 seat (Wyandotte Creek GSA Board Appointed Stakeholder)

Wyandotte Creek GSA Board members serve four-year terms without term limits. Each Board member would have an alternate. All Board members (i.e., Member Agency and Stakeholder members) must live and/or work for an entity in the Wyandotte Creek Subbasin. The Member Agency Board members (Butte County, City of Oroville and Thermalito Water and Sewer District) must be elected officials and appointed by the

respective Member Agencies' governing bodies. The Wyandotte Creek GSA Board appointed stakeholder member seats must meet the following criteria:

- Reside in the basin
- Must not be party to any litigation against the Wyandotte Creek GSA or any of its Member Agencies
- For agricultural groundwater user:
  - Must own or lease real property in active commercial agricultural production whose operation overlies the Wyandotte Creek subbasin or be an employee of a commercial agricultural production operation overlying the Wyandotte Creek subbasin
  - Must extract groundwater from the subbasin for the irrigation/frost protection in commercial operation
- For non-agricultural domestic well user criteria: must extract groundwater overlying the Wyandotte Creek subbasin for domestic use only.

Appointment and Removal of Stakeholder JPA Board Members (primary and alternates):

- Non-agricultural domestic well user and the agricultural groundwater user members and alternates will be appointed by the Wyandotte Creek GSA Board through an open application process
- Stakeholder Agency members may only be removed from the Wyandotte Creek GSA Board if they fail to attend three consecutive meetings or no longer meet the criteria, as identified in the JPA.

If other eligible local agencies are formed in the future, the Agreement has a provision to allow them to join. A Member Agency may, in its sole discretion, withdraw from the Agreement, effective 60 days after written notice to the Wyandotte Creek GSA Board. In such an event, the Wyandotte Creek GSA Board and its remaining Members will not object to or interfere with the withdrawing Member Agency's desire to become a GSA, will facilitate such a transition to the extent necessary and will withdraw from management of that portion of the subbasin and so notify DWR. The JPA Agreement may be terminated and the Agreement dissolved by a unanimous vote of the Member Agencies. Upon withdrawal or termination of the Agreement, the withdrawing Member Agencies retain all rights and powers to become or otherwise participate as a GSA for lands within its jurisdiction.

### Decision-Making

The Wyandotte Creek GSA Board will possess the ability to exercise those powers specifically granted by the Joint Powers Act and SGMA. The Wyandotte Creek GSA Board will aspire to seek consensus. However, the work of the Wyandotte Creek GSA

Board must be timely and efficient. Therefore, “consensus-seeking” represents an approach through which the Wyandotte Creek GSA Board will make a robust, reasonable attempt to reach consensus (the duration of which will be decided by the Wyandotte Creek GSA Board). If the Wyandotte Creek GSA Board cannot reach consensus, the Wyandotte Creek GSA Board defaults to the following voting structure.

- **Quorum:** A majority of the members of the Wyandotte Creek GSA Board members shall constitute a quorum for purposes of transacting business.
- **Director Votes:** Each member of the Wyandotte Creek GSA Board shall have one vote.
- **Supermajority Voting Requirement (4 affirmative votes) for the following:**
  1. Bylaws adoption, modification or alteration
  2. GSP adoption, modification, alteration
  3. Adoption of assessment, charges and fees
  4. Adoptions of regulations and ordinances
  5. Adoption or modification of annual budget, including capital projects
  6. Property acquisition (excepting rights of way)
  7. Removal of Advisory Committee Members
  8. Modifications to the composition and number of Advisory Committee Members
  9. Removal of stakeholder board seats as is consistent with the Agreement

#### Preservations of Powers

- The Wyandotte Creek GSA Board and all of its Member Agencies confirm that that Wyandotte Creek GSA Board will not have the authority to limit or interfere with the respective Member Agency’s rights and authorities over their own internal matters, including, but not limited to, legal rights to surface water supplies and assets, groundwater supplies and assets, facilities, operations, water management and water supply matters.
- The Member Agencies make no commitments by entering into the Agreement to share or otherwise contribute their water supply assets as part of the development or implementation of a GSP.
- Nothing in the Agreement is intended to modify or limit a Member Agency’s police powers, land use authorities, or any other authority.
- Each Member Agency shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.
- No Member Agency shall be under the control of or shall be deemed to control any other GSA.
- No Member Agency shall be precluded from independently pursuing any of the activities contemplated in the Agreement.

- No Member Agency shall be the agent or have the right or power to bind any other Member Agency.
- The Member Agencies further intend to cooperate to obtain consulting, administrative and management services needed to efficiently develop a GSP and to identify mechanisms for the management and funding commitments reasonably anticipated to be necessary for the purposes of this Agreement.

#### Management Committee

Each Member Agency (Butte County, City of Oroville and Thermalito Water and Sewer District) would designate a staff person (in-kind support) to participate on the Wyandotte Creek GSA Management Committee. The Management Committee will receive direction from the Wyandotte Creek GSA Board, make recommendations and generate staff reports and proposals to the Wyandotte Creek GSA Board. The Management Committee staffs the Advisory Committee and reports to the Wyandotte Creek GSA Board recommendations and actions from the Advisory Committee. The Management Committee assures that staff and other resources are provided to prepare and implement the GSP, and administer the governance for the Wyandotte Creek GSA.

#### Employees and Consultants

The Wyandotte Creek GSA will not have any employees. However, the Wyandotte Creek GSA will have the power to employ consultants to fulfill the objectives and purposes of SGMA and complete a GSP.

- Technical Coordination: Butte County will take the lead in developing technical aspects of the GSP including contracting for professional services in coordination with the Management Committee and the Wyandotte Creek GSA Board.
- Ad Hoc Technical Working Groups: The Management Committee may form ad hoc technical working groups to provide input on technical matters pertaining to the GSP.
- Administration: Preparation of the Wyandotte Creek GSP and carrying out governance will require various administrative activities such as meeting management, website development and maintenance, public outreach and communication. The Management Committee will evaluate the required administrative actions and mutually agree on in-kind support by Member Agencies, as needed.

#### Advisory Committee

The Advisory Committee represents diverse stakeholder interests and provides input and recommendations to the governing body on GSA policies and GSP development and implementation. At-large members are appointed by the Wyandotte Creek GSA Board. Initially, there will be ten (10) Advisory Committee members that include:

- Cal Water (1)

- Tribal representative(s)
- South Feather Water and Power (1)
- At-large agricultural water users (3)
  - at-large agricultural groundwater user (2)
  - GPAC member (1) - In the event no GPAC representative is available, the seat will be selected through an open solicitation process
- At-large domestic well users (2)
- At-large environmental (1)
- At-large business (1)

The Wyandotte Creek GSA Board will appoint at-large members to fill Advisory Committee seats. Interested individuals from the community or organizations may apply to the Wyandotte Creek GSA Board, designating in the application the seat that the applicant would intend to fill. At-large members must live, farm or be employed by a firm operating in the Wyandotte Creek subbasin. The Wyandotte Creek GSA Board encourages candidates with experience and familiarity with groundwater and its management.

Pursuant to Wyandotte Creek GSA Board direction, the Management Committee will develop the annual work plan and schedule for Advisory Committee meetings. The Advisory Committee will adopt a charter describing their purpose, operating principles and ground rules that will be confirmed by the Wyandotte Creek GSA Board.

To inform the Wyandotte Creek GSA Board and assist in decision-making, the Advisory Committee will provide written recommendations that will be included in Management Committee reports. The recommendations will identify areas of agreement and disagreement. The Advisory Committee will strive for consensus when possible, but reaching consensus is not necessary. Consensus means that everyone can at least “live with” the recommendation. When unable to reach consensus on recommendations, the Advisory Committee will outline the areas in which it does not agree, providing some explanation to inform the Wyandotte Creek GSA Board decision-making. The Wyandotte Creek GSA Board will consider Advisory Committee recommendations when making decisions. If that Board does not agree with the recommendations of the Advisory Committee, the Wyandotte Creek GSA Board shall state the reasons for its decision. The Advisory Committee will be staffed by a member of one of the Member Agencies. All Advisory Committee meetings are subject to the Brown Act and will be noticed and open to the public.

### Management Areas

The development of the sustainable criteria and project components of the GSP will be conducted in localized areas referred to as Management Areas, analogous to the

subinventory units utilized in the Butte County Basin Management Objective program. As is consistent with state regulations, a Management Area refers to an area within a basin for which a GSP may identify different minimum thresholds, measurable objectives, monitoring, and projects and actions based on unique local conditions. The GSP will separate each of the Management Areas into distinct “chapters” which will include a description of the Management Area the rationale for the approach, and demonstrate it can be managed without causing undesirable results outside the Area. All chapters must be consistent with the subbasin-wide sustainability goals. Upon recommendation of the Advisory Committee, the draft Management Area chapters will be submitted to the Wyandotte Creek GSA Board for inclusion in the GSP unless the chapters do not comply with SGMA or applicable regulations. Upon inclusion in the GSP, the Wyandotte Creek GSA Board would be responsible for implementation, reporting and enforcement.

Within the Wyandotte Creek subbasin there will be two Management Areas. One Management Area will include the municipal areas that overly and are adjacent to the City of Oroville and Thermalito Water and Sewer District, the other Management Area overlies the rural areas south of Oroville.

#### Fiscal Impacts

Resources to administer the Agreement and to develop and implement the GSP is expected to be met through existing in-kind staff support among the Member agencies and from the Proposition 1 GSP Grant. The Member Agencies are not obligated to commit funds to the Wyandotte Creek GSA, however, may provide in-kind support. Water resource projects (e.g., recharge, water supply) that are part of the GSP would require a dedicated funding source. The Agreement calls for the Wyandotte Creek GSA Board to develop a long-term work plan and budget within ninety (90) days. If there are unmet or unanticipated resources needed to administer the terms of the Agreement or to implement certain aspects of the Wyandotte Creek GSP, the Wyandotte Creek GSA has authority to issue fees and bond under SGMA.

#### Discussion

The Agreement was created after considerable discussion among the Wyandotte Creek GSA managers, the Groundwater Pumpers Advisory Committee and facilitated outreach to members of the public. The Wyandotte Creek GSA managers sought to create an Agreement that is mutually acceptable to the Member Agencies, promotes strong stakeholder involvement, maximizes efficiency and will lead to groundwater sustainability. The City of Oroville and Thermalito Water and Sewer District intend to bring the Agreement to their respective board/council for approval in September.

