



February 4, 2016

Mark W. Cowin, Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001
Email: mark.cowin@water.ca.gov

Dear Director Cowin:

I serve as General Manager of Mission Springs Water District (MSWD), a California county water district, formed and operating under the provisions of Water Code section 30000 *et seq.* I write to you today in that capacity. MSWD serves an area that includes the Desert Hot Springs community within the Coachella Valley.

In enacting the Sustainable Groundwater Management Act (SGMA), the legislature established a statutory scheme for groundwater management at the local level. To continue serving the Desert Hot Springs community, MSWD must also be able to fully participate in this statutory scheme and to continue managing its groundwater. However, DWA notified MSWD that it intends to act as the exclusive GSA over portions of the Coachella Valley Basin underlying and within the service area boundaries of MSWD. Further, it has taken the position that MSWD's election to become the GSA over MSWD's service area is prohibited by the SGMA. (A copy of the letter is included as Attachment 1.) MSWD has raised both legal and procedural concerns regarding the application of the SGMA, and unique circumstances affecting the Coachella Valley water agencies with the formation of GSAs under SGMA, which are outlined below.

The root of the problem is Water Code section 10723. In section 10723(c), the SGMA provides a list of fifteen (15) agencies created by statute to manage groundwater, which are deemed the exclusive local agencies within their respective statutory boundaries with the power to comply with the SGMA. DWA is included in this list at section 10723(c)(1)(C).

DWA's inclusion in section 10723(c) is extremely problematic. To start, as is clear from DWR's Water Facts Publication No. 4, DWA is not now, and never has been, considered a California groundwater management district or agency. (A copy of the publication is included as Attachment 2.) DWA is a special district created in 1961 by special act of the legislature, as set forth in California Water Code Appendix Chapter 100. It was established for the purposes of importing State Water Project water and, as a State Water Contractor, was later provided statutory authority to impose and collect water replenishment assessments to fund its groundwater basin recharge activities. But DWA was not created by statute to manage groundwater. Consequently, SGMA has erroneously included DWA in section 10723(c). By including DWA in section 10723(c) as one of the agencies deemed the exclusive local agencies within their respective statutory



boundaries with the power to elect to become a GSA, the SGMA has the effect of creating a new groundwater management district or agency.

The statutory authority to manage groundwater underlying and within MSWD's service area lies with MSWD. In fact, MSWD's authority extends far beyond that of DWA's more limited authority to manage State Water contracts. CVWD has the same statutory powers to manage groundwater as MSWD – with the exception that CVWD is also recognized as a State Water contractor with statutory authority to impose and collect replenishment assessments – and like MSWD, CVWD was not included in section 10723(c). In addition, DWA also lacks exclusive management power over groundwater within the Indio, Mission Creek, San Geronio Pass, Desert Hot Springs, and Garnet Hill Sub-basins outside its own service area boundaries as documented in and evidenced by a number of agreements between DWA, CVWD, and MSWD.

Extremely important, relevant and significant are the misunderstandings with DWA's statutory boundary which, as set forth in California Water Code Appendix Section 100-2 and, as depicted in an attachment to MSWD's Notice of Election, does not extend over most of MSWD's service area, just as DWA's service area does not overlap with and/or conflict with our exclusive service area. (A copy of DWA's statutory boundary as set forth in California Water Code Appendix Section 100-2 plotted by a registered land surveyor is included as Attachment 3.) DWA only has statutory authority over water supply within its service boundary, which does not overlap or compete with that of MSWD. DWA has an "institutional (State Water Contractor) boundary" which, by agreement with MSWD, allows it to spread imported water for supplemental water (i.e. in excess of natural recharge) in the Mission Creek Sub-basin underlying the MSWD service area, and to collect replenishment assessments within that area. But an institutional boundary is not tantamount to a statutory boundary. By confusing institutional boundaries for a single purpose with statutory boundaries, and including DWA in the list of exclusive GSAs, the SGMA created an irreconcilable conflict in groundwater management in the Coachella Valley.

In addition, the SGMA fails to recognize existing cooperative agreements among groundwater managers, including, in the Coachella Valley, a settlement agreement, adopted Integrated Regional Water Management Plans (IRWMP) and other jointly prepared groundwater management plans approved, and currently being implemented jointly by MSWD, DWA and CVWD. By deeming DWA an exclusive GSA, the SGMA improperly interferes with these existing contractual and other binding relationships for management of natural and imported groundwater in the Coachella Valley Groundwater Basin. Below, I will provide a brief overview of these mutual water-related objectives and agreements that have been made by and among DWA, CVWD, and MSWD regarding groundwater recharge and pumping activities. Over the years it has been MSWD, and not DWA, that has responsibly managed the groundwater upon which MSWD relies. It was only through litigation and independent action that MSWD has moved ahead with groundwater management and planning for the Mission Creek and Garnet Hill sub-basins.

In 1962, MSWD consented to be included within the boundaries of the DWA for the limited purpose of enabling DWA to enter into State Water contracts to replenish the Mission Creek groundwater basin underlying MSWD, and from which MSWD receives 100% of its current water supply. Since that time, the landowners within MSWD have paid a State Water Project assessment for the capital costs of water imported by DWA.

Furthermore, DWA has not historically collaborated with MSWD to manage water supplies in the Mission Creek and Garnet Hill sub-basins. In the 1990s, as overdraft conditions throughout the Coachella Valley became critical, DWA and CVWD developed a Water Management Plan to address numerous issues, including storage of advanced imported water deliveries and overdraft. The development of this plan excluded MSWD. MSWD initiated litigation to adjudicate and force responsible management of the basins. MSWD, DWA and CVWD entered into a court-approved settlement agreement in 2004, which required collaborative management of the basin, including provisions creating a Mission Creek Sub-basin management committee composed of representatives of MSWD, DWA and CVWD, and an agreement to jointly prepare and share costs for a water management plan for the Mission Creek and Garnet Hill Sub-basins. In 2008, final contracts for development of the Basin Management Plan were approved by CVWD and MSWD, and later joined by DWA. The Mission Creek and Garnet Hill Sub-Basin Water Management Plan and Groundwater Flow Modeling were completed in 2013.

During development of the Mission Creek and Garnet Hill Sub-basin Water Management Plan (Water Management Plan), numerous conflicts occurred as a result of DWA's lack of interest in effectively managing water supplies. In fact, the agencies were unable to reach consensus on a number of water management issues, including plan implementation. As a result, MSWD was forced to adopt a series of position papers documenting these disagreements concurrent with its adoption of the Water Management Plan. Unfortunately, as soon as the Water Management Plan was completed in 2013, all DWA collaborative efforts ceased. DWA has never demonstrated an independent interest in groundwater management in the Mission Creek and Garnet Hill sub-basins, beyond implementation of its State Water contracts and replenishment assessment activities.

MSWD initiated the Coachella Valley Integrated Regional Water Management Plan program to encourage groundwater management collaboration among agencies within the Coachella Valley. It contains regionally-defined issues, objectives, resource management strategies, and implementation projects that ultimately provide an avenue for resolution of political issues regarding groundwater management in the Coachella Valley Basin. This commitment to cooperation is confirmed in the 2014 Memorandum of Understanding among the City of Coachella/Coachella Water Authority, Desert Water Agency, City of Indio/Indio Water Authority, Mission Springs Water District, and Valley Sanitary District, for Development and Implementation of the revised Coachella Valley Integrated Regional Water Management Plan (CVIRWMP). The CVIRWMP is led by the Coachella Valley Regional Water Management Group (CVRWVG), which includes DWA, CVWD and MSWD, whose purpose is to implement the IRWMP, and to enable the Coachella Valley region to apply for grants tied to DWR's IRWMP. MSWD is firmly committed to this inter-agency approach to groundwater management, which is aimed at preserving the

groundwater upon which its service responsibilities rely. The SGMA's designation of DWA as the exclusive GSA for the Mission Creek and Garnet Hill Sub-basins conflicts with all these cooperative efforts by placing only one agency in charge of making final decisions for the sub-basin.

In short, by including DWA in section 10723(c), the SGMA ignores the fact that DWA was not created by statute as a groundwater management district or agency. Moreover, DWA's recent self-designation as the GSA for the MSWD service area ignores the fact that DWA's statutory boundaries as defined in California Water Code Appendix Section 100-2 do not include MSWD. Further, it also ignores the existing agreements and other binding relationships already in place to promote cooperative groundwater management in the Coachella Valley. This poses a serious problem that requires immediate rectification.

MSWD submitted its GSA notification to the DWR on February 3, 2016. (A copy of the submission is attached as Attachment 4). MSWD's GSA notification clearly sets forth and underlines the disagreement now existing between MSWD and DWA as to DWA's statutory boundaries. In light of this disagreement, I urge you not to adjudicate this issue at the DWR level. MSWD and DWA must have an opportunity to meet, sit down face to face, and resolve their disagreement as to DWA's statutory boundaries. MSWD looks forward to the opportunity to resolve this conflict at the local level with its colleagues at DWA, so that both agencies can then move forward under the auspices of the SGMA.

Sending both agencies back to resolve this issue is the right thing for DWR to do. Furthermore, nothing is more important to our District than resolving this unfortunate situation. For all of the reasons discussed above, it is imperative that my Board President and I meet with you as soon as possible, to discuss the implications of the SGMA as it pertains to MSWD from a policy perspective and to engage in a dialogue regarding this important matter. I would also prefer that no attorneys be present. Thank you for your time and consideration.

I look forward to talking with you, and meeting with you at your earliest convenience.

Very truly yours,



Arden Wallum
General Manager, Mission Springs Water District

Attachments:

1. DWA letter to MSWD, dated January 19, 2016
2. DWR Water Facts Publication No. 4 (Groundwater Management Districts or Agencies in California)
3. DWA Law, Water Code Appendix § 100-2
4. MSWD's Notice of Election



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April 1, 2016

California Department of Water Resources
P.O. Box 942836
Sacramento, California 94236
Attn: Lauren Bisnett, Public Affairs Office

Re: Comments on the Draft Groundwater Sustainability Plan (GSP) Emergency Regulations

Dear Ms. Bisnett:

Let me begin with a quote from the introductory notes to these regulations.

Local control and management is a fundamental principle of SGMA (Sustainable Groundwater Management Act); the draft regulations preserve the role of local agencies in managing their basins and achieving sustainability.

We could not agree more with this laudable goal, and fully understand its importance in our local context. Unfortunately, SGMA, and the draft GSP Emergency Regulations, fall short of achieving this fundamental goal in the Coachella Valley. While we understand that these first round draft regulations are not perfect, our comments are provided to shed light on their ramifications to and within our District.

Mission Springs Water District (MSWD) is a County Water District formed in 1953 pursuant to Water Code Sections 30000 *et seq.*, to provide retail local water service within its jurisdictional boundaries. MSWD currently has 13,000 water accounts and nearly 9,000 sewer service connections providing water and wastewater service to several communities, nearly all of which are considered disadvantaged or severely disadvantaged. The Mission Creek Sub Basin (MCSB) provides the primary source of groundwater to MSWD, and our District represents nearly all of the customers that depend on water from that groundwater basin.

As we have indicated in previous comments to the Department of Water Resources (DWR), SGMA has literally handed exclusive control of the MCSB on which we and customers depend, over to two other water agencies. One of those agencies was created by special act for the sole purpose of importing State Water for basin storage and replenishment, and doesn't have a single well or customer in the MCSB. The other district, also a County Water District, pumps water from the MCSB and exports it approximately 20 miles for retail service to its wealthier customers in communities on the other side of the Coachella Valley. Only a handful of water customers within a very small portion of the MCSB are served by the other County Water District. To make matters worse, the special act agency now has a competing retail service area and, pursuant to its exclusive designation under SGMA has the ability to decide where MSWD locates its wells and how much water goes to MSWD and to its exclusive water

MSWD is a Groundwater Guardian Affiliate



service area. We believe this is a conflict of interest. Nonetheless, we are hopeful that our comments will be heard and considered.

How did this happen? Clearly MSWD's concerns were not considered in the drafting of SGMA or the subsequent draft GSP Emergency Regulations. We have not spent and cannot afford to spend millions of dollars for influential attorneys and lobbyists to promote our interests with DWR. Consequently, SGMA has literally stripped our community of any local control of our groundwater on which this District relies on for its local water supply. This result is clearly contrary to the intent of SGMA.

Over the years MSWD has had a constant struggle with these two other agencies and, only through litigation forced them to cooperatively manage water in the Coachella Valley. Most telling of this disregard for MSWD's interest is that they waited nearly 40 years to construct a recharge facility in the MCSB by which our District could benefit from imported State Water, and they refused to include the MCSB in their water management efforts until our District's litigation forced a settlement agreement requiring the three agencies to cooperate in jointly managing the MCSB and drafting such a plan. This plan would be tantamount to a GSP and would be ideal as an alternative GSP, with minor modifications. Our District spent nearly six years preparing the Water Management Plan for the MCSB, at a cost of millions of dollars. Following their designation as exclusive GSAs over MSWD's groundwater basins, the special act agency has asserted its dominance over MSWD in matters affecting the groundwater upon which we rely to serve our customers, and the District's ability to fulfill its statutory authority and duties in providing public water service within our jurisdictional boundaries.

In addition to fighting passionately to properly manage the water in our basin, MSWD was the inaugurator of the Coachella Valley's Integrated Ground Water Management Plan (IRWMP). We initiated monthly meetings and represented the interests of 20-30 disadvantaged communities and others for nearly a year and a half before either of these two agencies reluctantly joined.

The following summarizes our current comments and questions we have with respect to the Draft GSP Emergency Regulations.

COMMENTS SPECIFIC TO DRAFT GSP EMERGENCY REGULATIONS

353.8 Public Comment

This provision lacks specificity to ensure that proper notification is received by those affected by the plan. It defaults to section 353.6 regarding the GSA's decision to develop a GSP; and appears to overlook the requirement of a public hearing before the adoption of the GSP.

353.10 Withdrawal or Amendment of Plan

Again the designated GSA has almost "carte blanche" authority over groundwater use by competing public agency retail water service providers. This, along with the weak public involvement requirements, allows exclusive GSAs unchecked control over groundwater relied upon by other public agencies and the communities they represent.

354.10 Notice and Communication

This provision states, without standards or review that the GSAs are required to develop a communication plan, and does not require a specified standard for review or allow for the involvement of other affected agencies. This is a major concern, given the history of noncooperation and communication of the two other designated GSAs affecting MSWD's exercise of its statutory groundwater management and exclusive water service jurisdiction.

354.14 Hydrogeologic Conceptual Model (a) (4) (D)

The meaning of "general water quality . . . based on information derived from existing technical studies or regulatory programs" is unclear. For example, where much of the existing water quality data is nonexistent or incorrect, does this require new studies and reports, and if so, should the gathering and use of this technical information be subject to public review and comment?

354.20 Management Areas

Under this provision, each agency may (but is not required to) define one or more management areas . . . within a basin. Defining "management areas" for such things as water reuse is probably one of the more important goals of a plan like this and you only use the word "may," and its consideration should not go unnoticed. The vagueness and unenforceability of this provision is not acceptable.

354.28 Minimum Thresholds

First, under this provision, each GSA unilaterally establishes the "critical parameters" of the minimum thresholds, which implies that DWR does not exercise any oversight over this process. Second, there is no subcategory (c). Finally, the statement "an agency, after consultation with the Department, may establish a minimum threshold . . .," is confusing. It is unclear what is meant by "after consultation," and the word "may", in this context, is weak.

355.2 Department Review of Initial Adopted Plan

This provision is so vague and loose that it is unclear what is intended to or will come of this process. The disadvantaged communities and their local agencies get 60 days to review the GSP, but DWR gets two years to respond!

356.2 -12 (all)

It is unclear here just what notice is provided to disadvantaged communities. This section has a number of reports that could go unseen for years by those affected and at least this section should require that the GSA provide clear and complete information to those requesting it. The GSP should require that a mailing list be established and that ALL information be provided to those who are affected by it.

356.12 Amendments and Modifications to Plan

Again, under these provisions it appears that the GSP could be amended with no public notification and input. It is critical that a mailing list of all interested and affected parties be created, and that any and all communications between the DWR and GSP must be included.

357.2 Inter-Basin Agreements

It appears that the draft GSP Emergency Regulations have overlooked the impacts created on the disadvantaged and severely disadvantaged communities that comprise nearly all of the people residing in our District and who are dependent on the MCSB for their public water service. Again, the opportunities for oversight and review by the affected public in this process are given short shrift through weak drafting and control mechanisms.

CONCLUSION

In general the draft GSP Emergency Regulations do not provide adequate notice, public review and protest opportunities. Furthermore it is painfully clear that this process has left disadvantaged communities without effective opportunities for involvement.

I have included a copy of a letter previously sent to DWR specifically addressing issues that we face in the Coachella Valley. We realize that DWR believes in this process, but it simply doesn't work for our District or the community we represent. Again, we are requesting that we are treated fairly, with the same opportunities as other more prosperous communities.

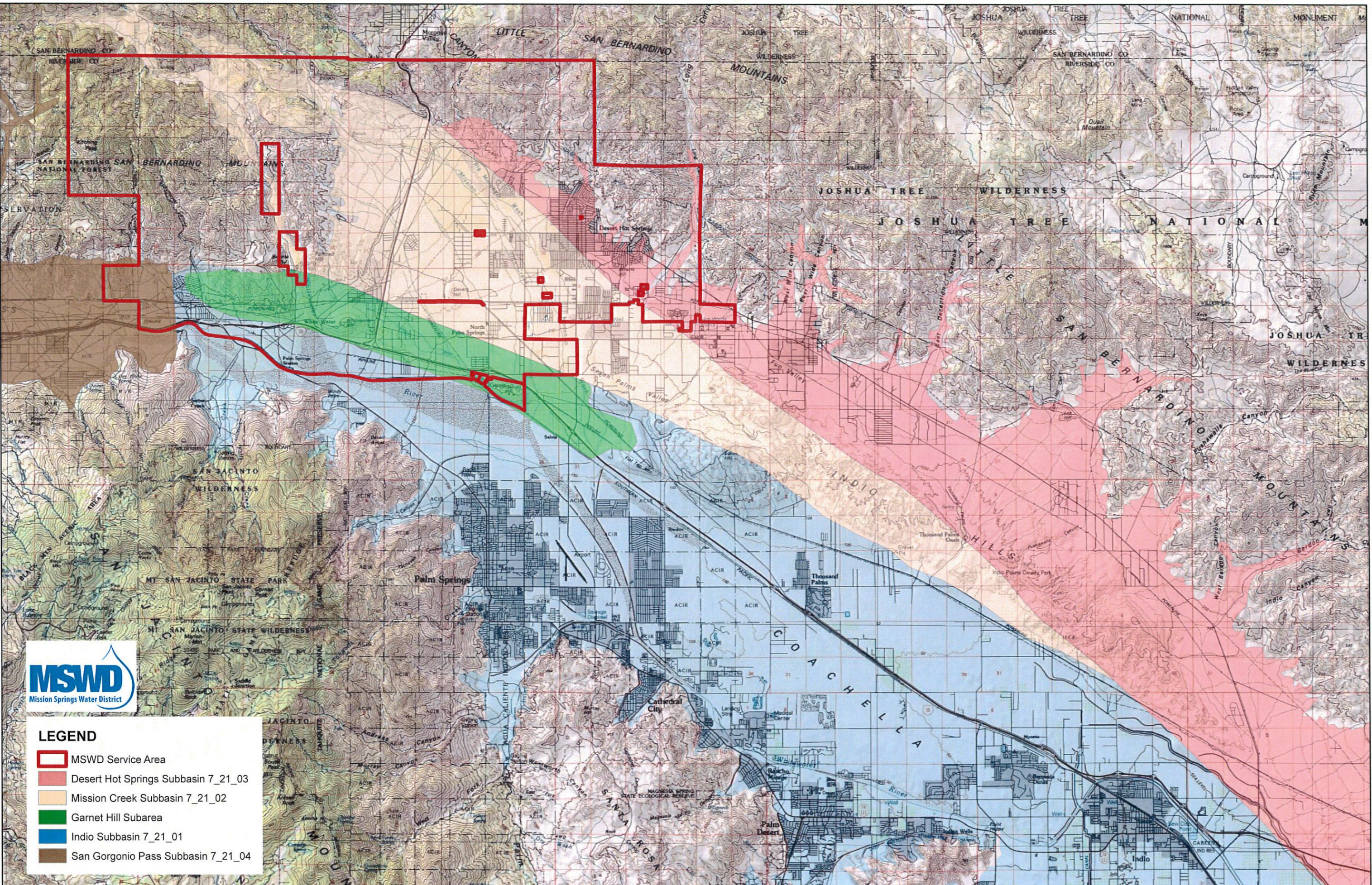
Respectfully yours,

Danny Friend for:

Arden Wallum
General Manager, Mission Springs Water District

cc: MSWD Board of Directors

Attachment: February 4, 2016 letter to Mark Cowin, Director, DWR



LEGEND

- MSWD Service Area
- Desert Hot Springs Subbasin 7_21_03
- Mission Creek Subbasin 7_21_02
- Garnet Hill Subarea
- Indio Subbasin 7_21_01
- San Geronio Pass Subbasin 7_21_04