



**DATE:** September 27, 2022

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Execute an Agreement with the East Bay Municipal Utility District (EBMUD) for the Implementation of the City/EBMUD Jointly Prepared East Bay Plain Subbasin Groundwater Sustainability Plan

### **RECOMMENDATION**

That the Council adopts a resolution (Attachment II) authorizing the City Manager to Execute an Agreement, in a form approved by the City Attorney, with EBMUD for Implementation of the East Bay Plain Subbasin Groundwater Sustainability Plan (GSP), jointly prepared by the City and EBMUD.

### **SUMMARY**

In June 2017, the State formally designated Hayward as the Groundwater Sustainability Agency (GSA) for the portion of the East Bay Plain Groundwater Subbasin (EBP Subbasin) that underlies the City. EBMUD is the GSA for the remaining portion of the Subbasin that underlies the agency's service area. As a GSA, Hayward is responsible for developing and implementing a GSP to sustainably manage groundwater within its management area. Hayward and EBMUD worked together to prepare a single GSP for the EBP Subbasin, under the terms of a Cooperating Agreement. The governing bodies of each entity approved the GSP in December 2021, and it was submitted to the State in January 2022. Staff is requesting authorization to enter into an Implementation Agreement to work cooperatively with EBMUD to implement the GSP management actions necessary to ensure groundwater sustainability.

### **BACKGROUND**

In response to extreme drought conditions and unprecedented low groundwater levels, Governor Jerry Brown signed three pieces of legislation in 2014, which are collectively referred to as the Sustainable Groundwater Management Act (SGMA) and created a statewide framework for sustainable, local groundwater management in California. As part of SGMA, local agencies in high- and medium-priority basins are required to form GSAs that have authority and responsibility for developing and implementing GSPs. The EBP Subbasin, which in part underlies Hayward, was deemed a medium-priority basin and subject to SGMA requirements. In June 2017, the State formally designated Hayward as the GSA for the portion of the EBP Subbasin that underlies the City. A primary responsibility of a GSA is to

development and implement a GSP to demonstrate that the Subbasin will be sustainably managed within twenty years of Plan implementation without adverse impacts.

The remainder of the EBP Subbasin underlies EBMUD's service area. The City and EBMUD entered into a Cooperating Agreement in June 2018 (subsequently amended three times) to work together to develop a single GSP for the entirety of the EBP Subbasin. This collaboration reduced duplication of technical work, improved communication with stakeholders across the entire EBP Subbasin, and resulted in a robust and effective GSP. The Hayward City Council and the EBMUD Board of Directors adopted the GSP for the EBP Subbasin on December 7<sup>1</sup> and December 14, 2021<sup>2</sup> respectively, and it was submitted to the State Department of Water Resources (DWR) on January 26, 2022.

The Cooperating Agreement anticipated the possibility of grant funding from DWR to expand on the original scope of work set forth in the Agreement. EBMUD and DWR have since entered into agreements for Proposition 1 and Proposition 68 grant funds totaling \$1,680,000 for additional monitoring and analysis, as well as developing a publicly accessible data management system. Some of this work is in progress and has not yet been completed.

It was also anticipated that a subsequent agreement would be developed and executed to address the governance structure, decision-making procedures, and allocation of costs and responsibilities relative to implementing the GSP to ensure coordinated management and compliance with SGMA. Staff from both agencies have been meeting regularly to develop an Implementation Agreement that allows for coordinated management of the EBP Subbasin while protecting each entity's interests.

## **DISCUSSION**

As documented in the adopted GSP, the EBP Subbasin is currently in a sustainable condition. Therefore, the key management actions primarily involve one-time data-gap filling activities and regular monitoring of the EBP Subbasin to ensure that undesirable results continue to be avoided. These management activities include:

- Installing new groundwater monitoring wells and stream gauges as necessary
- Monitoring groundwater levels, quality, and local stream flow
- Conducting habitat surveys to confirm and monitor groundwater dependent ecosystems
- Coordinating with local stakeholders, to share information and provide opportunity for input
- Developing and maintaining a publicly accessible data management system

Entering into an Implementation Agreement with EBMUD will allow the City to better leverage staff resources for these activities, as well as ensure consistent and effective management of the EBP Subbasin.

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<sup>1</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=5347830&GUID=2C82ACB9-EBCF-4AA1-B45C-65F1C3F2434B&Options=&Search=>

<sup>2</sup> <https://www.ebmud.com/water/about-your-water/water-supply/groundwater-sustainability-agencies>

The proposed Implementation Agreement calls for each party to be responsible for monitoring its portion of the EBP Subbasin and updating the data management system. Staff will be constructing new monitoring wells to ensure that the data collected is accurate and representative. This work is being funded through State grant funds that were obtained by EBMUD and the City during the joint GSP development. The parties will work together to implement habitat surveys. These surveys, which evaluate groundwater dependent ecosystems are critical to ensuring species resiliency and survival.

The proposed Agreement also includes stakeholder communication and engagement activities and specifically incorporates provisions to continue active stakeholder engagement during GSP implementation. In addition to ongoing efforts with the general public and interested parties, activities will include convening a Technical Advisory Committee to review data and reports, and an Inter-Basin Working Group to share information and coordinate management actions with representatives from adjacent groundwater basins.

In addition to the actions described above, the GSAs must complete annual reports and update the GSP every five years to account for new data and regulations. The proposed Implementation Agreement provides for the City and EBMUD to work cooperatively to prepare and submit the required annual reports, which is expected to be a significant effort. It is anticipated that the five-year update will also be a cooperative effort, and the parties plan to develop a separate Cooperating Agreement for this work in 2025.

### Cost Share

The proposed cost sharing arrangement for implementing the GSP generally mirrors the agreed-to cost share for the GSP development. The City will be responsible for 35% of costs associated with consultant assistance for reporting and for the costs of additional or supplemental joint projects that may become necessary in order to sustainably manage the Subbasin. These supplemental costs would be developed on a case-by-case basis. Hayward's share of costs for stakeholder engagement and communication will be 30%. Each party will continue to be responsible for its own internal staff costs.

### **ECONOMIC IMPACT**

SGMA provides mechanisms for GSAs to recover costs for groundwater management through water rates, pump and extraction fees, and grants. However, based on the anticipated actions, implementation of the GSP is not expected to have significant economic impacts on the City's water customers.

### **FISCAL IMPACT**

The Water Improvement Fund in the Capital Improvement Program CIP includes funds for groundwater-related activities, including preparation and implementation of the GSP. The existing allocation is sufficient to support near-term actions such as groundwater water monitoring and preparing the annual report. There will be no impact on the General Fund.

## **STRATEGIC ROADMAP**

This agenda item does not relate to one of the Council's six Strategic Priorities.

## **SUSTAINABILITY FEATURES**

The City's emergency wells are currently equipped to deliver water in the event of an earthquake or other disruptions to the City's imported surface water supplies. Implementation of the GSP ensures that the groundwater beneath the City is protected and sustainably managed to increase overall water supply reliability, maximize local sources, and diversify Hayward's water supply to help the City respond to future uncertainties and the effects of climate change.

## **PUBLIC CONTACT**

SGMA requires active stakeholder participation in GSP development and implementation to ensure common understanding and transparency. Key stakeholders in Hayward include large groundwater users and neighboring agencies such as the Hayward Area Parks and Recreation District, Chabot College, Alameda County, and the Alameda County Water District. The City and EBMUD developed a Stakeholder Communication and Engagement Plan that guides stakeholder outreach and incorporates a broad variety of communication methods. Regular meetings have been conducted with stakeholders and interested parties throughout development of the GSP.

As noted in the discussion, the proposed Implementation Agreement calls for continued active stakeholder engagement during GSP implementation, including a Technical Advisory Committee and an Inter-Basin Working Group to share information and coordinate management actions.

## **NEXT STEPS**

If the Council approves the recommended actions, staff will execute the proposed GSP Implementation Agreement with EBMUD.

*Prepared by:* Cheryl Muñoz, Water Resources Manager

*Recommended by:* Alex Ameri, Director of Public Works

*Approved by:*



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Kelly McAdoo, City Manager