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**COUNTY OF INYO
WATER DEPARTMENT**

October 4, 2016

STAFF REPORT

TO: Board of Supervisors

FROM: Water Department

SUBJECT: Formation of a groundwater sustainability agency for the Owens Valley
Groundwater Basin

Introduction

The Sustainable Groundwater Management Act of 2014 (SGMA) requires that local agencies develop and implement plans to manage groundwater sustainably. Under SGMA, sustainability is defined as management and use of groundwater in a manner that does not cause undesirable results, where undesirable results are (California Water Code (CWC) §10721):

1. Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater recharge are managed to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.
2. Significant and unreasonable reduction of groundwater storage.
3. Significant and unreasonable seawater intrusion.
4. Significant and unreasonable degraded water quality.
5. Significant and unreasonable land subsidence that substantially interferes with surface land uses.

6. Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of surface water.

Groundwater management under SGMA is implemented at the scale of individual groundwater basins. California's groundwater basins are defined in the Department of Water Resources' (DWR) publication "California's Groundwater Bulletin 118-Update 2003." SGMA requires that local agencies form groundwater sustainability agencies (GSAs) in high and medium priority groundwater basins by June 30, 2017. GSAs are responsible for developing and implementing groundwater sustainability plans (GSPs). A GSP (or multiple GSPs) must be in place that covers the entirety of each medium and high priority basin by January 31, 2022, unless the basin is in a condition of critical overdraft, in which case the GSP must be established by January 31, 2020. When forming GSAs and developing GSPs, GSAs must consider the interests of all beneficial uses and users of groundwater. If there is not a GSA or GSAs established that entirely covers a basin by June 30, 2017, or a GSP is not in place by January 31, 2020 or 2022, the State Water Resources Control Board becomes involved in managing the basin, which would have a number of negative consequences described below.

There are 515 groundwater basins in California, 127 of which are medium or high priority. The Owens Valley Groundwater Basin (OVGB) is a medium priority basin; therefore, local agencies in the Basin must form a GSA or multiple GSAs such that the entire basin is covered by a GSA (Figure 1). DWR prioritized groundwater basins on the basis of overlying population; projected growth of overlying population; public supply wells; total wells; overlying irrigated acreage; reliance on groundwater as the primary source of water; impacts on the groundwater (including overdraft, subsidence, saline intrusion, and other water quality degradation); and any other information determined to be relevant by DWR (CWC §10933). Future basin prioritizations will additionally consider adverse impacts to local habitat and local stream flows.

The OVGB includes Chalfant, Hammil, and Benton valleys and extends to the Nevada-California border in Benton Valley (Figure 1). Inyo County submitted a request to DWR to subdivide the OVGB into a Mono subbasin that consists of Chalfant, Hammil, and Benton valleys, and an Inyo subbasin consisting of Owens and Round Valleys. DWR has denied this request, and instead, at the request of the California Department of Fish and Wildlife, is adding a Fish Slough subbasin to the OVGB.

This staff report describes the requirements of SGMA for GSA formation, discusses circumstances specific to the OVGB, and proposes a sequence of activities aimed at formation of a GSA for the OVGB.

SGMA process for forming a GSA

GSAs are formed by a local agency or group of local agencies notifying DWR of their decision to become a GSA. A local agency is defined in SGMA as a "local public agency that has water supply, water management, or land use responsibilities within a groundwater basin" (CWC §10721). Local agencies include cities, counties, water districts, irrigation districts, water

replenishment districts, and other such California public agencies. A single local agency can decide to become a GSA, or a combination of local agencies can decide to form a GSA by using either a joint powers authority (JPA), a memorandum of agreement (MOA), or other legal agreement. Within the OVGB, local agencies that could form a GSA are Inyo and Mono counties, the Tri Valley Groundwater Management District, City of Bishop, and numerous community service districts. Among these local agencies, there could be a single GSA preparing a single GSP for the basin, multiple GSAs preparing a single GSP, or multiple GSAs preparing multiple GSPs. If there are multiple GSAs in the basin, their boundaries may not overlap. If there are multiple GSPs in a basin, SGMA requires that there be coordination agreements between the GSPs to establish that the plans are compatible with each other.

A local agency is required to submit the following information to DWR in order to complete the GSA formation notification requirements of CWC §10723.8(a):

1. Information that shows the GSA formation notification was submitted to DWR within 30 days of the decision to become or form a GSA.
2. A map and narrative indicating (1) the local agency's service area boundaries, (2) the boundaries of the basin or portion of the basin the agency intends to manage, and (3) the other agencies managing or proposing to manage groundwater within the basin.
3. A copy of the resolution forming the new agency.
4. A copy of any new bylaws, ordinances, or new authorities developed by the local agency.
5. A list of the interested parties developed pursuant to CWC §10723.2 and a detailed explanation how the GSA will consider the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing GSPs.

Before deciding to become a groundwater sustainability agency, and after publication of notice pursuant to California Government Code §6066, the local agency or agencies forming a GSA are required to hold a public hearing in the county or counties overlying the basin.

The GSA formation notice will be reviewed for completeness by DWR staff and, if complete, will within 15 days be posted on DWR's GSA web site. Local agencies will have an opportunity to provide additional information, if applicable, to make a GSA formation notice complete. The decision to become a GSA will take effect if no other local agency has filed a GSA formation notice for all or a portion of the same area of a basin within 90-days of the initial posted notice. If two or more local agencies separately decide to become GSAs in the same area of a basin then no exclusive GSA for that area will be designated by DWR until the overlap is resolved. It is important for local agencies to work closely to coordinate GSA formation notifications to avoid overlapping areas. Once overlaps are resolved, the local agency or agencies will be identified by DWR as the exclusive GSA or GSAs for the area(s) described in its notice. As of

September 15, 2016, no formation notices have been posted for the Owen Valley Groundwater Basin.

Counties have a special role in SGMA. If there are areas within a medium or high priority groundwater basin that are not covered by a GSA, SGMA presumes that the county will be the GSA for that unmanaged area. In this event, the county is required to provide notification to DWR that it will act as the GSA for the unmanaged area as described above, or the county notifies DWR that it will not be the GSA for the area. If a county notifies DWR that it will not be the GSA for an unmanaged area, or unmanaged areas exist and the county has given no notice by June 30, 2017, then a number of state intervention actions are triggered that are described below (“State Intervention”).

SGMA identifies certain local agencies as “*the exclusive local agency within their statutory boundaries*” for the purpose of forming GSAs (CWC §10723(c)). These agencies are water management agencies that were formed through special legislation specifically forming the agency (special act districts). In the event of overlapping GSA formation notifications, these exclusive agencies would be deemed the GSA, unless they opt out of that role. The Mono County Tri Valley Groundwater Management District (TVGMD) is such an agency. As of August 16, 2016, TVGMD has neither submitted a formation notice nor opted out of being the GSA within their boundaries (shown on Figure 1).

SGMA exempts adjudicated areas from the requirement to form GSAs and develop GSPs, and provides that any groundwater basin or portion of a groundwater basin managed under the Inyo/Los Angeles Long Term Water Agreement (LTWA) is considered adjudicated (CWC §10720.8(c)). Los Angeles’s groundwater pumping is exempt from SGMA because it is managed pursuant to the LTWA. Figure 1 shows Los Angeles-owned land in Inyo County.

A further murky question is whether LADWP could act as a GSA in Owens Valley. Los Angeles’s jurisdiction, i.e., the city limits, does not extend to Inyo County; however, it could certainly be argued that Los Angeles has “*water supply, water management, or land use responsibilities within*” Owens Valley and thus could participate as a local agency in a GSA. Local agencies can become GSAs outside of their jurisdiction, but cannot impose fees outside of their boundaries. Whether LADWP is a GSA board member, associate member, or interested party, the GSA/GSP framework needs to include coordination between the adjudicated groundwater management on LADWP land and groundwater management under SGMA in the non-adjudicated portion of the basin.

Mutual water companies may participate in GSAs. Mutual water companies are private not-for-profit organizations that are organized under California Corporations Code §14300, regulated under the US EPA Safe Drinking Water Act, and report to Local Agency Formation Commissions (LAFCO’s). SGMA provides (CWC § 10723.6(b)):

A water corporation regulated by the Public Utilities Commission or a mutual water company may participate in a groundwater sustainability agency if the local agencies

approve through a memorandum of agreement or other legal agreement. The authority provided by this subdivision does not confer any additional powers to a nongovernmental entity.

SGMA limits GSA membership to local public agencies and water corporations regulated by the Public Utilities Commission. This limitation is a challenge to public agencies that need to represent non-public agency interests in groundwater management; however, several mechanisms exist that allow non-public agency participation in the GSA/GSP process. Five options are discussed below.

1. Delegate Voting to Non-Public Agencies. GSA members may provide or delegate voting power to representatives from groups who are not local public agencies. Both the Sacramento Groundwater Authority and Sacramento Central Groundwater Authority (SCGA) represent examples of this option. In both cases, the JPAs were drafted and signed by local cities and counties. However, in both cases the cities and counties delegated governing board seats to irrigation districts, private water purveyors and investor owned utilities and various other representatives such as an “agricultural interest” representative and a “conservation landowners” representative etc. Additionally, the SCGA requires non-member governing board representatives to contribute funding to the agency.
2. Associate Membership Arrangement. GSAs may also involve non-local public agencies without delegating member’s voting powers by opting for an associate membership arrangement. Under this option, a GSA’s formation agreement could designate specific representatives, or provide the governing board the authority to designate associate representatives. For example, in the recently-formed Indian Wells Valley Groundwater Authority, of which Inyo County is a member, the US Navy and US Bureau of Land Management are participating as non-voting associate members. In Owens Valley, associate membership status may be desirable for various agencies such as US Bureau of Land Management, US Forest Service, LADWP, California Department of Fish and Wildlife, or California State Lands Commission.
3. Form a New Public Agency. Individuals that do not have public agency status may decide they would like to form a public agency in order to form or participate in a GSA. Once an entity becomes a local agency, it would then be eligible for GSA membership under SGMA. Parties could also explore the potential to become a local agency by creating a new general act or special act district. A general act district is created by following the rules set forth in various provisions of the Water Code or Government Code. A special act district is created through legislation passed by the state legislature. Once a new district is created through a general act or special act process, the district may then elect to be a GSA. Theoretically a similar approach might involve incorporation of unincorporated communities. Given the complexities associated with forming new local public agencies, this is probably not a practical means for Owens Valley individuals and entities to participate in the GSA process.

4. Legal Voting Arrangement. Parties could also seek to establish a legal agreement with a GSA governing board member such as a county, with voting power in a GSA overlying their basin. Under this agreement, parties could stipulate that the governing board member may vote only after adopting the recommendation of the non-public agency that is a party to the agreement.
5. Advisory committees. GSAs can form advisory committees, where stakeholders may participate in the preparation and administration of a GSP through committees set up for that purpose. In the Indian Wells Valley Groundwater Basin, the local agencies have formed a JPA for the purpose of becoming the GSA for the basin. A number of interested stakeholders (agriculture, environmental, business, water purveyor) will have an opportunity to participate in the preparation of the GSP through a committee that will be responsible for overseeing such activities. Currently, two committees are planned – a sustainability plan policy advisory committee and a technical advisory committee. Although decision making authority will reside in the GSA board, stakeholders have direct involvement in the development of the GSP.

SGMA provides for federal, tribal, and private participation in the preparation of GSPs. Concerning federal and tribal participation, CWC §10720.3 provides:

The federal government or any federally recognized Indian tribe, appreciating the shared interest in assuring the sustainability of groundwater resources, may voluntarily agree to participate in the preparation or administration of a groundwater sustainability plan or groundwater management plan under this part through a joint powers authority or other agreement with local agencies in the basin. A participating tribe shall be eligible to participate fully in planning, financing, and management under this part, including eligibility for grants and technical assistance, if any exercise of regulatory authority, enforcement, or imposition and collection of fees is pursuant to the tribe's independent authority and not pursuant to authority granted to a groundwater sustainability agency under this part.

Note that this provision pertains to participation in preparation and administration of GSPs, but is silent on federal and tribal entities participating in GSAs.

GSA powers and authorities

GSAs are responsible for developing and implementing GSPs. To fulfill these responsibilities, SGMA provides GSAs a number of powers and authorities. These powers and authorities take effect when the GSA has adopted and submitted a GSP. These powers allow GSAs to conduct investigations for various purposes; require registration of groundwater extraction facilities; require installation of meters on wells at the owner/operator's expense; require annual reporting of groundwater extraction; require reporting of surface water used for groundwater recharge; acquire property (including water rights); import, store, or treat water; provide a

program for fallowing agricultural land; impose spacing requirements on new wells; regulate, limit, or suspend groundwater extraction; limit construction, enlargement, or reactivation of groundwater wells; transfer groundwater pumping allocations; impose fees on groundwater permits, extraction, or other regulated activity to fund a GSP. GSAs may also impose fees to fund the preparation of a GSP.

De minimis groundwater users are users that use for domestic purposes less than 2 acre-feet per year. De minimis users are exempt from reporting requirements and metering requirements. De minimis uses are also exempt from fees if de minimis users are not regulated under a GSP.

State intervention

The State Water Resources Control Board (SWRCB) may declare a medium or high priority basin to be in probationary status if after June 30, 2017, none of the following has occurred (CWC §10735.2(a)):

A local agency has decided to become a GSA that intends to develop a GSP for the entire basin.

A collection of local agencies has formed a GSA or prepared agreements to develop one or more GSPs that will collectively serve as a GSP for the entire basin.

A local agency has submitted an alternative that has been approved or is pending approval pursuant to CWC §10733.6.

If the SWRCB designates a basin as a probationary basin, a local agency or groundwater sustainability agency shall have 180 days to remedy the deficiency, and may provide additional time to remedy the deficiency if it finds that a local agency is making substantial progress toward remedying the deficiency. The SWRCB may develop and impose an interim plan for the probationary basin if, in consultation with DWR, it determines that a local agency has not remedied the deficiency that resulted in designating the basin as a probationary basin. Imposition of an interim plan would subject local agencies and their groundwater users to a number of onerous requirements such as restrictions on groundwater pumping, monitoring and reporting requirements, reporting of groundwater extraction, and payment of fees to the SWRCB for their costs in implementing an interim plan. State intervention may be triggered at a later time if no GSP is developed by 2022, if a GSP is not implemented, or if a GSP is deemed inadequate by the SWRCB in consultation with DWR.

Forming a GSA in the Owens Valley Groundwater Basin

Figure 1 shows the boundaries of the OVGB. The OVGB is a large basin – 1,030 square miles - with a number of jurisdictional, legal, and water management considerations specific to the basin. Considerations relevant to GSA formation in the OVGB are:

- SGMA exempts lands managed under the Inyo/Los Angeles Long Term Water Agreement from the requirement for a GSA and GSP, but because of LADWP's extensive land and water rights holdings in the basin, the GSA formed to satisfy SGMA in the non-LADWP portions of the basin needs a meaningful mechanism for interacting with LADWP and groundwater management under the LTWA. SGMA does not have clear requirements or guidance for how GSAs interact or cooperate with adjudicated areas in basins that are partially adjudicated. In order to integrate water management throughout the basin, it may be desirable to have LADWP participate in a GSA in some capacity.
- The TVGMD is deemed the exclusive local agency for GSA formation within their jurisdiction, which includes nearly the entire Mono County portion of the basin, including most of the proposed Fish Slough subbasin (Figure 1). TVGMD may opt out of their presumed role as GSA, but is as yet undecided as to whether it will do so. Small portions of the basin along the base of the White Mountains are outside of TVGMD's boundaries, and a small portion of the proposed Fish Slough subbasin is in Inyo County.
- The Swall Meadow portion of the basin is in Mono County and not within TVGMD's boundaries. Local agencies are generally, but not completely, restricted to acting as GSA within their jurisdictional boundaries. If Inyo County was to act as GSA for this portion of the basin, an agreement between Inyo and Mono counties would be necessary so that the residents of Swall Meadow are fairly represented and the GSA could exercise the authorities of SGMA outside of Inyo County.
- Groundwater management issues are different in the Tri Valley and Owens Valley portion of the basin. In Owens Valley, LADWP is the largest groundwater pumper, using groundwater from both export to Los Angeles and for use in Owens Valley. Other entities in Owens Valley use groundwater for domestic and municipal use, habitat development, water bottling, and agriculture. In Owens Valley, most agriculture groundwater use is for LADWP leases and such pumping is regulated by the LTWA. In the Tri Valley, the majority of groundwater use is for agriculture, with some additional domestic use. Although DWR has rejected Inyo County's request to subdivide the OVGB into an Owens Valley subbasin and a Tri Valley subbasin, the SGMA framework allows that different GSAs could manage each subbasin with separate GSPs, regardless of whether the basin was subdivided into two subbasins. Alternatively, a single GSA for the entire basin might avoid some redundant effort involved in forming two GSAs and two GSPs.
- There are diverse interests and perspectives on water issues in the OVGB, including irrigators, tribes, state and federal land management agencies, LADWP, domestic well owners, community water providers, environmental organizations, city and county governments, and industrial groundwater users. SGMA requires that the interests of all beneficial users be considered. The Water Department has been working with a

facilitator provided by DWR to develop an assessment of OVGB stakeholders to assist the County in conducting an open and inclusive GSA formation process.

- DWR plans to include Fish Slough as a subbasin in the OVGB when DWR revises groundwater basin boundaries later this fall. Fish Slough was identified as a separate groundwater basin in the 1975 and 1980 editions of DWR Bulletin 118, but was dropped from the 2003 edition. Boundary of the proposed Fish Slough subbasin is located such that the new subbasin is mostly in Mono County within the TVGMD's boundaries, but the southern-most portion of the subbasin is in Inyo County. Considering that groundwater development is negligible in the Fish Slough subbasin, no SGMA regulatory activities will be necessary within the subbasin. Effects on Fish Slough from groundwater extraction in Laws and the Tri Valley area will need to be evaluated as part of the planning process.
- LADWP is actively planning to supply dust control efforts on the Owens Lake playa by pumping groundwater from California State Lands Commission (CSLC) land. LADWP conducts their Owens Lake dust control activities on CSLC land through lease agreements between LADWP and CSLC, and any future groundwater pumping by LADWP would occur through a lease agreement. Inyo County and LADWP currently have a dispute over whether LADWP pumping on Owens Lake would be subject to the LTWA, with the County arguing that the LTWA regulates such pumping and LADWP arguing that such pumping is not part of the LTWA. It appears that if such pumping is not subject to the LTWA, it would be subject to SGMA. Because the proposed pumping is from state land, the authority of a GSA to regulate activities on state land must be considered. State agencies are required to *"consider the policies of [SGMA], and any groundwater sustainability plans adopted pursuant to [SGMA], when revising or adopting policies, regulations, or criteria, or when issuing orders or determinations, where pertinent"* (CWC §10720.9), *"a state or local agency that extracts groundwater shall be subject to a fee imposed under [SGMA] to the same extent as any nongovernmental entity"* (CWC §10726.8(d)), and SGMA *"does not authorize a local agency to impose any requirement on the state or any agency, department, or officer of the state. State agencies and departments shall work cooperatively with a local agency on a voluntary basis"* (CWC §10726.8(d)). It appears probable that any future pumping by LADWP at Owens Lake that is not regulated by the LTWA would be subject to regulation through a GSP, and that the CSLC could make compliance with an adopted GSP part of their lease requirements.

Recommendations

Recommended structure of GSA. Assuming that TVGMD decides to be a stand-alone GSA for their region, a working model to move forward with is for TVGMD to submit a notice to form a GSA for their region; for the Owens Valley portion of the basin, Inyo County determines with Bishop and other local agencies whether the GSA will be solely the County or a JPA including multiple agencies (consider non-voting associate membership for federal, tribal, and Los

Angeles entities); Inyo and Mono counties develop an MOU to include the Swall Meadow area in the Owens Valley GSA boundary; Owens Valley GSA should develop planning, technical, and funding/financial advisory committees; TVGMD and the GSA for Owens Valley would then agree to develop a single plan for the whole basin; Inyo County then administers a state grant to prepare a single GSP for the basin. In the event that TVGMD (or Mono County) desired to partner with other agencies to form a single GSA for the whole basin, the above structure would be modified to include TVGMD in a multi-agency GSA. At a minimum, regardless of how the timeline given below plays out, if no multi-agency agreements are settled on, Inyo County should submit a notice to DWR of its intent to be a GSA for the Inyo County portion of the basin in time to comply with the June 30, 2017 deadline.

This recommendation is a conservative yet proactive approach to developing a GSA, but alternatives exist. The GSA board could have non-local-agency voting members, as described earlier, but such a board composition cedes considerable governmental authorities provided by SGMA to non-governmental (and perhaps non-democratic) entities. Additionally, SGMA holds local agencies accountable for failures to comply with SGMA, and there is no clear way to share that accountability with non-governmental agencies. Including representatives of special interests and non-local agencies on advisory committees, as recommended above, provides a voice for special interests and non-local agencies without ceding the authorities and responsibilities that SGMA provides to counties. Another alternative would be to simply let the June 30, 2017 deadline pass without applying to be a GSA, and then notify DWR that the County intends to be the GSA for any unmanaged areas in the Inyo County portion of the basin. This approach would be less cooperatively structured and may lead to future conflicts that would be better resolved through an engaged public process described above.

Timeline. It is recommended that your Board direct the Water Department to proceed with efforts to have a GSA or GSAs in place for the OVGB by June 30, 2017. In order to have a GSA or GSAs in place to cover the entire basin by June 30, 2017, the following schedule is recommended:

Fall, 2016 – Confer with other local agency staff in OVGB to discuss and examine feasible GSA structures. It is urgent TVGMD that decide whether they want to opt out of being the GSA for their region, be the exclusive GSA for their region, or join with other local agencies in a GSA for the entire OVGB. If TVGMD exercises their right to be the exclusive GSA in their region, Inyo County should proceed with forming a GSA for the remainder of the basin, contingent on resolving with Mono County how to include Swall Meadow. Also, the City of Bishop's desires for GSA participation need to be determined. If staff can identify a consensus GSA structure among the local agencies, and present that to the governing Boards of participating local agencies. Any multi-agency GSA should be formed through a JPA rather than an MOU, so that the resulting GSA will have all of the contracting, employment, property acquisition, and legal abilities that accompany the formation of a JPA. Other activities that should be undertaken this fall are assembly of a list of interested parties and identification of beneficial users of groundwater in basin.

Fall-Winter, 2016 – Hold public meetings to inform the public about SGMA and the options for forming a GSA, and to get comments and opinions from the public. Report these meetings back to the governing boards of the involved local agencies.

January-February, 2017 – Prepare an explanation of how the GSA(s) will consider the interests of all beneficial uses and users of groundwater. Prepare necessary agreements and maps to form GSA(s), and get approval from Boards. Boards adopt resolutions to form GSA(s). In the event that local agencies have not been able to reach agreement on a GSA structure that covers the entire basin, Inyo County should consider applying to be the GSA for the Inyo County portion of the basin.

February-March, 2017 – Hold public hearing and submit required material to DWR to form a GSA.

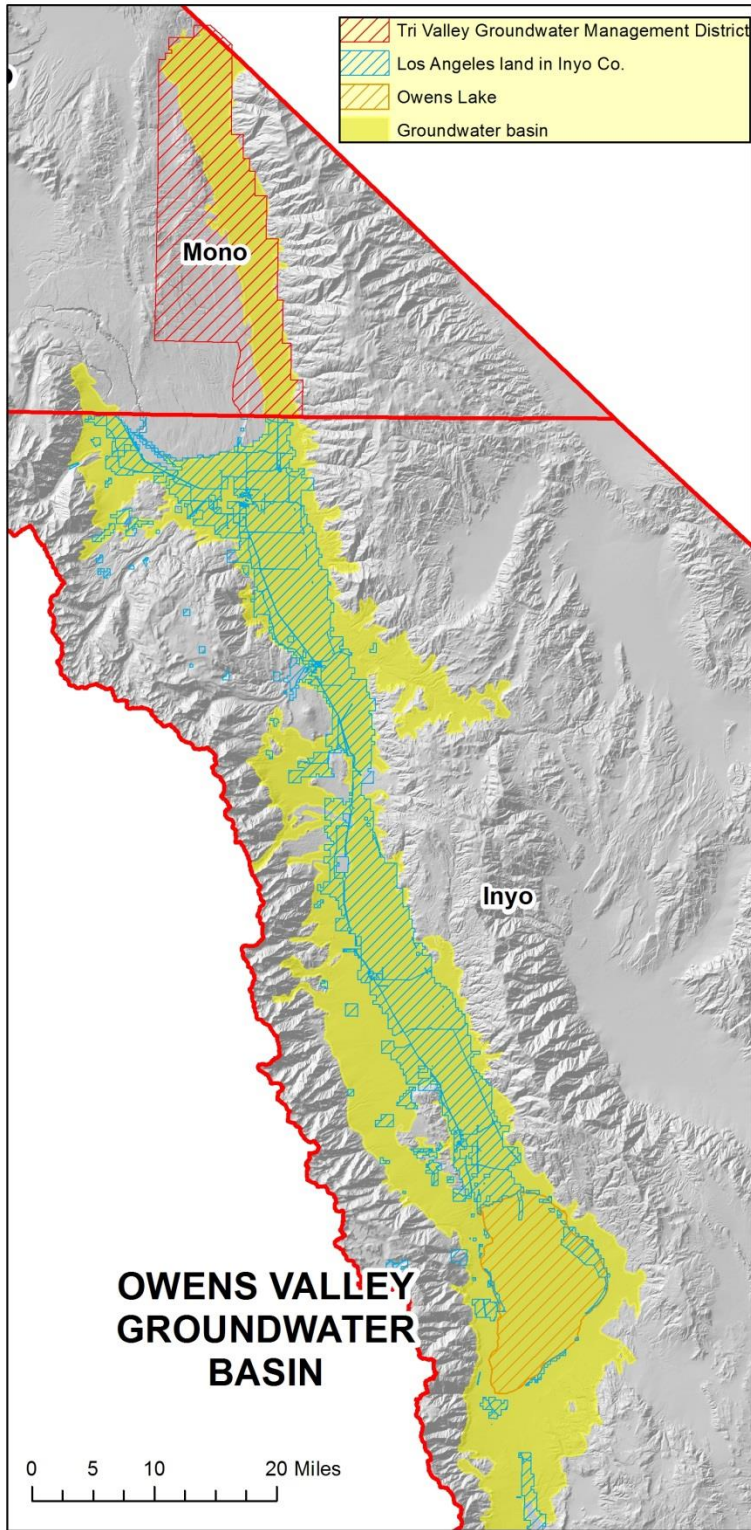


Figure 1. Owens Valley Groundwater Basin, with county boundaries, LADWP land in Inyo County, and Tri Valley Groundwater Management District boundaries shown.