



**Board of Supervisors Staff
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: October 23, 2018-REVISED

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
County Counsel Sign-Off	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
CONTACT PERSON: Denise England PHONE: 559-636-5000				

SUBJECT: Memorandum of Understanding with the Lower Tule Groundwater Sustainability Agency

REQUEST(S):
That the Board of Supervisors:

1. Approve the Memorandum of Understanding with the Lower Tule Groundwater Sustainability Agency for Groundwater Sustainability Plan coverage in the Tule Sub-basin; and
2. Authorize the Chairman to sign two copies of the MOU.

SUMMARY:
On January 1, 2015 the Sustainable Groundwater Management Act (SGMA) went into effect. The SGMA required that public agencies overlying a high priority groundwater basin or sub-basin form Groundwater Sustainability Agencies by June 30, 2017. On June 6, 2017 your Board approved Resolution No. 2017-0394 electing to become a Groundwater Sustainability Agency (GSA) in portions of Tulare County where no other eligible public agency exists. SGMA requires that GSAs adopt Groundwater Sustainability Plans (GSPs) no later than January 30, 2020.

Staff has been negotiating with adjacent GSAs to obtain GSP coverage for the parcels contained in the Tulare County GSA. One such GSA is the Lower Tule GSA. Lower Tule GSA covers the boundary of the Lower Tule River Irrigation District. One of their landowners has ground within the Irrigation District and a few parcels just west of the District (and GSA) boundary. This landowner requested GSP coverage under the Lower Tule River GSA. To that end a Memorandum of

SUBJECT: Memorandum of Understanding with the Lower Tule Groundwater Sustainability Agency
DATE: October 23, 2018

Understanding has been crafted to detail the relationship between the Tulare County GSA and the Lower Tule GSA. The Lower Tule GSA will include the area outlined in Exhibit A as a management area within their GSP. At this time, the Lower Tule GSA has not adopted fees for SGMA implementation. When the GSA elects to adopt fees staff will work with the GSA to ensure the fees are also assessed on the parcels included in Exhibit A.

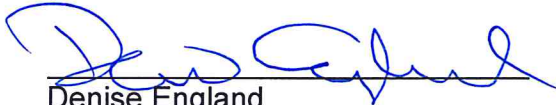
FISCAL IMPACT/FINANCING:

The costs associated with participation in the GSA are included in the FY19 budget.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's Strategic Plan includes an initiative to provide for the safety and security of the public which includes the goal of providing an adequate and safe water supply.

ADMINISTRATIVE SIGN-OFF:



Denise England
Water Resources Director

cc: County Administrative Office

Attachment(s)
MOU
Exhibit A

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF MEMORANDUM OF)
UNDERSTANDING WITH THE LOWER) Resolution No. _____
TULE GROUNDWATER SUSTAINABILITY) Agreement No. _____
AGENCY)
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: MICHAEL C. SPATA
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Approved the Memorandum of Understanding with the Lower Tule Groundwater Sustainability Agency for Groundwater Sustainability Plan coverage in the Tule Sub-basin.
2. Authorized the Chairman to sign two copies of the MOU.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
LOWER TULE GROUNDWATER SUSTAINABILITY AGENCY AND THE COUNTY
OF TULARE
WITH RESPECT TO IMPLEMENTATION OF
THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is entered into this ___ day of _____, 2018 (the “Effective Date”), by and between LOWER TULE GROUNDWATER SUSTAINABILITY AGENCY (LTGSA) and the COUNTY OF TULARE, a political subdivision of the State of California as defined by California Government Code §§23000 *et seq.* (the “County”). LTGSA and the County may be referred to herein collectively as the “Parties,” or individually as a “Party,” or by their respective names.

RECITALS

- A. WHEREAS, on September 16, 2014, the Governor of the State of California signed into law Senate Bills 1168 and 1319, and Assembly Bill 1739 collectively, the Sustainable Groundwater Management Act (“SGMA”), which is codified at Water Code Sections 10720 *et seq.*; and
- B. WHEREAS, SGMA requires that California groundwater basins and subbasins be managed by a Groundwater Sustainability Agency (“GSA”) or multiple GSAs, and that such management be implemented pursuant to an approved Groundwater Sustainability Plan (“GSP”) or multiple coordinated GSPs; and
- C. WHEREAS, Lower Tule River Irrigation District (“LTRID”) has elected to serve as a GSA for its service area in the Tule Subbasin of the San Joaquin Valley Groundwater Basin and subject to separate agreements, provides GSP coverage for the unincorporated communities of Poplar, Tipton, and Woodville, as separate management areas within the LTGSA that are not within the boundary of the Lower Tule River Irrigation District (“LTRID”), (the Tule Subbasin of the San Joaquin Valley Groundwater Basin is identified as Subbasin Nos. 5-22.13 by the California Department of Water Resources (“DWR”) and a portion of which is within the County); and
- D. WHEREAS, California Water Code Section 10723.8, subdivision (c), prohibits the recognition of any entity as an exclusive GSA if the entity’s proposed GSA management area overlaps the proposed GSA management area of another entity, subject to certain procedural requirements, including allowing a combination of local agencies to form a GSA by using a memorandum of agreement or other legal agreement; and
- E. WHEREAS, the County serves as the GSA, under the presumption described in Water Code section 10724, over certain areas within the County’s boundaries, including an area that is adjacent to but outside of the LTGSA boundaries, a map of this areas is attached hereto and incorporated herein by reference as Exhibit “A”, (the “white areas” or “Management Areas” referenced herein) however the County is not currently able to prepare a GSP for the areas described in Exhibit A; and

F. WHEREAS, the County desires to include this white area within the LTGSA's GSP ; and

F. WHEREAS, pursuant to the terms of this MOU, the County agrees that the Management Area/white area specified in Exhibit A, will be included within the LTGSA GSP and will be subject to LTGSA rules and requirements; and

G. WHEREAS, through this MOU, the Parties intend to address the terms and conditions of GSP coverage by LTGSA of these white areas and intend to collectively serve as the GSA through this memorandum pursuant to Water Code section 10723.6.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein and these Recitals, which are hereby incorporated herein by this reference, it is agreed by and among the Parties hereto as follows:

1. **Objectives.** The objectives of LTGSA and the County in entering into this MOU are as follows:

(a) To achieve sustainable groundwater management pursuant to SGMA in those portions of the Tule Subbasin that are within the exterior boundaries of the County and that LTGSA is willing to cover as part of its GSA, which are identified in Exhibit "A", attached hereto and incorporated herein by this reference (the "Management Area").

(b) To have the County join the LTGSA as a non-voting entity and for the Management Area identified in Exhibit "A" to be included within the boundaries of the LTGSA for SGMA purposes under the terms and conditions stated in this Agreement.

(c) To work cooperatively with others GSAs within the Tule Subbasin to achieve sustainable groundwater management in the Tule Subbasin.

(d) To work together to establish a GSP that covers the Management Area while acknowledging the County's land use planning authority and the powers and authority of the LTGSA. County acknowledges that the LTGSA will be responsible for drafting the GSP and that under the terms of this Agreement that GSP is intended to apply to the designated Management Area.

(e) To establish a process to ensure there are no conflicts between LTGSA's GSP and the County's exercise of its land use planning authority and police powers.

(f) Parties agree that they shall cooperate in the implementation of SGMA requirements over the Management Areas.

(g) County acknowledges that this Agreement does not represent any annexation by LTRID, an entity separate from the LTGSA, of the Management Area or an annexation of this area by the LTGSA. The Management Area is not subject to LTRID irrigation rules, requirements, benefits, or assessments, and will not be entitled to receive any water acquired by LTRID for landowners within LTRID. The Management Area will be included

within the LTGSA under the collective authority of the County and LTGSA under the terms of this Agreement and not be annexation into the LTGSA.

(h) The Management Area will be required to comply with rules and regulations applicable within the LTGSA, including any assessments that may be approved on that apply to lands within the LTGSA boundaries by the LTGSA, and will be eligible for water programs available on the basis of land ownership within LTGSA boundaries.

(i) County agrees it will assist, as necessary and as allowed by law, LTGSA in the required enforcement of SGMA requirements over the Management Area.

2. **Precedence of County's Land Use Planning Authority.** LTGSA agrees that its operations as a GSA, and any GSP adopted by LTGSA, will not abrogate the County's General Plan or conflict with the County's exercise of its land use planning authority; provided, that the County's General Plan and the County's exercise of its land use planning authority comply with all applicable laws, statutes, and regulations. County acknowledges that under Water Code section 10726.4 if there is insufficient sustainable yield in the basin to serve a land use designated in the County's General Plan for the Management Area, then groundwater extractions may be regulated to meet applicable sustainable yield requirements.

3. **Coordination Framework.** LTGSA agrees, in developing and implementing its GSP, to consider the interests of the County, specifically including the County's General Plan. In order to prevent conflicts between the GSP and the County's General Plan and between LTGSA's operations as a GSA and the County's exercise of its land use planning authority, the County shall have opportunities to provide, and LTGSA shall consider, advisory input in the development and implementation of LTGSA's GSP. The County shall designate a contact person ("Designated Contact Person") to whom LTGSA shall provide written notices of opportunities to participate in SGMA implementation, including LTGSA board meetings and Groundwater Planning Commission meetings.

No fewer than 90 days before adopting or modifying the GSP or policies or procedures for the exercise of GSA powers, LTGSA shall provide written notice to the Designated Contact Person. Within 30 days of receiving such notice, the Designated Contact Person may request consultation with LTGSA's representative. Prior to the adoption or modification of the GSP or policies or procedures for the exercise of GSA powers, LTGSA shall consider any comments or recommendations provided by the Designated Contact Person for the County, to achieve the goals of this MOU.

4. **Finances.** Each of the Parties to this MOU shall bear its own costs of implementing SGMA, except as follows:

(a) The County shall provide assistance and support in applying for grant funding related to SGMA implementation when so requested by LTGSA.

(b) To the extent that LTGSA incurs costs in either the development or implementation of a GSP applicable to, or in implementing SGMA within, the portion of the Management Area that lies solely within the boundaries of the County, the County shall provide proportional financial reimbursement to LTGSA until such time as fees are studied, adopted and

implemented to cover the Management Area. LTGSA and the County agree to cooperate in the preparation and voting process to implement and enforce any required fees.

(c) If LTGSA is required to file a boundary adjustment with any government agency, including but not limited to the Department of Water Resources to include the Management Area, then County agrees to be responsible for the costs to complete the boundary adjustment.

5. **Notices.** All notices required or permitted by this MOU or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this Section 5. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices.

To LTGSA: Lower Tule Groundwater Sustainability Agency
357 E. Olive Ave
Tipton, CA 93272
Telephone: (559) 686-4716

To County of Tulare: County of Tulare
c/o Denise England
County Administration Building
2800 W. Burrel Avenue
Visalia, California 93291
Telephone: 559-636-5005

Either Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this section and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

6. **Compliance with Laws.** In any action taken pursuant to this MOU, LTGSA and the County shall comply with all applicable statutes, laws, and regulations, specifically including, but not limited to, SGMA and its implementing regulations, as they now exist or as they may be amended or promulgated from time to time.

To the extent that this MOU conflicts with or does not accurately reflect any applicable statutes, laws, or regulations now existing or as amended or promulgated from time to time, the laws, statutes, and regulations shall govern.

To the extent that any applicable statutes, laws, or regulations are amended or newly promulgated in such a manner that causes this MOU to conflict with or no longer accurately reflect such statutes, laws, or regulations, this MOU shall be modified, in writing, by all Parties, in order to comport with the newly amended or promulgated statutes, laws, or regulations.

7. **Entire Agreement.** This MOU and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

8. **Amendments.** No provisions of this MOU may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of all Parties.

9. **No Assignment.** The rights and obligations of the Parties to this MOU may not be assigned or delegated, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void.

10. **Binding Effect.** This MOU shall apply to and bind successors, assignees, contractors, subcontractors, transferees, agents, employees, and representatives of the respective Parties hereto.

11. **Governing Law.** This MOU and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California (without giving effect to any choice of law principles).

12. **Waiver.** The failure of any Party to insist on strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by any Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the MOU by any other Party.

13. **Severability.** If any term or provision of this MOU is, to any extent, held invalid or unenforceable, the remainder of this MOU shall not be affected.

14. **Headings.** The subject headings of the sections of this MOU are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

15. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

16. **Joint Powers Agreement Not Required.** It is understood and agreed by the Parties that the development and implementation of a GSP does not require the formation of a

joint powers agency between the Parties. The Parties agree that this Agreement is not intended form a joint powers agency between their respective organizations.

17. **Termination.** Parties agree this Agreement may be terminated by either party upon written notice, but termination shall not be effective until applicable GSA boundaries are modified to maintain SGMA compliance, which may include a separate GSA over the Management Area.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year first above written.

LOWER TULE GROUNDWATER
SUSTAINABILITY AGENCY

COUNTY OF TULARE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

