

**MEMORANDUM OF UNDERSTANDING
BETWEEN
TRI-COUNTY WATER AUTHORITY 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 _____, 2019 (the “Effective Date”), by and between TRI-COUNTY WATER AUTHORITY, a joint powers authority (“TCWA”) and the COUNTY OF TULARE, a political subdivision of the State of California as defined by California Government Code §§23000 *et seq.* (the “County”). TCWA 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, TCWA has elected to serve as a GSA for its collective service area in the Tule and Tulare Lake Subbasins of the San Joaquin Valley Groundwater Basin (Subbasin Nos. 5-22.13 and 5-22.12, respectively, as identified by the California Department of Water Resources (“DWR”)), 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; and
- E. WHEREAS, the County and TCWA want to ensure SGMA compliance for those areas within the County’s boundaries, but outside of TCWA’s service area, which are identified in Exhibit “A”, attached hereto and incorporated herein by this reference (the “Management Area”), and as such, the County and TCWA desire to include the Management Area within TCWA’s proposed GSP; and
- F. WHEREAS, the County does not intend to draft a GSP, but instead is entering into this MOU to work with TCWA to ensure compliance with SGMA and management of the Management Area under the terms and conditions of TCWA’s GSP; and
- G. WHEREAS, TCWA and the County desire to enter into this MOU to address the Management Area within the County’s GSA that the County desires to manage in coordination with TCWA, under the terms and conditions of TCWA’s GSP; and

H. WHEREAS, through this MOU, the Parties intend to address the terms and conditions of compliance with SGMA in the Management Area through TCWA's GSP.

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 TCWA 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 in the Management Area, that the County currently serves as the GSA over, and that the Parties intend to manage pursuant to and in compliance with TCWA's GSP.

(b) To have TCWA, along with the County through the terms of this MOU, be the exclusive GSA for the Management Area identified in Exhibit "A."

(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 TCWA. The County acknowledges that the TCWA will be responsible for drafting the GSP and that under the terms of this MOU, the TCWA's GSP shall apply to and cover the Management Area for the purposes of SGMA.

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

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

(g) The Management Area shall be required to comply with the rules and regulations of TCWA, including any approved assessments.

2. **Precedence of County's Land Use Planning Authority.** TCWA agrees that its operations as a GSA, and any GSP adopted by TCWA, 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. The County agrees that it will assist, as necessary and as allowed by law, the TCWA in the required enforcement of the GSP and SGMA requirements over the Management Area. The County acknowledges Water Code section 10726.4 and the ability of the GSP to require regulation of groundwater extractions in the Management Area if there is insufficient sustainable yield in the subbasin.

3. **Coordination Framework.** TCWA 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 TCWA's operations as a GSA and the County's exercise of its land use planning authority, the County shall have opportunities to provide, and TCWA shall consider, advisory input in the development and implementation of TCWA's GSP. The County shall designate a contact person ("Designated Contact Person") to whom TCWA shall provide written notices of opportunities to participate in SGMA implementation.

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

No fewer than 90 days prior to issuing, adopting, modifying, or approving any ordinance, policy, plan, or permit, or taking any other action related to groundwater resources within the Tule Subbasin, the County shall provide written notice to TCWA. Within 30 days of receiving such notice, TCWA may request a mandatory consultation with the County. Prior to taking any groundwater-related action, the County shall consider any comments or recommendations provided by TCWA.

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 TCWA.

(b) As TCWA has already held a Proposition 218 election to adopt land-based assessments for the properties within the boundaries of the TCWA, the County agrees to pay that assessment value for the Management Area (at the per acre rate identified in the Proposition 218 Engineer's Report) starting with assessments from 2018, to TCWA, to cover the costs for development and implementation of the GSP that will cover the Management Area, until the next time as fees are studied, adopted and implemented to cover same, which is expected to occur by July 2022.

(c) If TCWA is required to file a boundary adjustment with any government agency, including but not limited to the California 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 TCWA: Tri-County Water Authority
944 Whitley Avenue, Suite E
Corcoran, California 93212
Telephone: (559) 762-7240

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, TCWA 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. **Termination.** The Parties agree that this MOU may be terminated by either Parties upon 30 days written notice to the other Party, but such termination shall not be effective until applicable GSA boundaries are modified to maintain SGMA compliance.

8. **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.

9. **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.

10. **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.

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

12. **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).

13. **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.

14. **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.

15. **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.

16. **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.

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

TRI-COUNTY WATER AUTHORITY, a
joint powers authority

COUNTY OF TULARE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT “A”

TCWA’s GSA Management Area in the Tule Subbasin