

**MEMORANDUM OF AGREEMENT FORMING THE CAL WATER-COUNTY  
GROUNDWATER SUSTAINABILITY AGENCY**

A-17- 146 5/23/2017

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made and entered into as of this 23rd day of May, 2017, by and between San Joaquin County ("County"), and the California Water Service Company ("Cal Water") an investor owned utility and California Water Corporation authorized to do business in the State of California. The County and Cal Water are sometimes referred to herein as "Party" or collectively as "Parties."

**RECITALS**

- A. On September 16, 2014, Governor Brown signed the Sustainable Groundwater Management Act (the "Act" or "SGMA"); and
- B. The Act allows for the formation of a Groundwater Sustainability Agency ("GSA"), or multiple GSAs, that will be responsible for developing a Groundwater Sustainability Plan ("GSP") for a groundwater basin, and where multiple agencies are interested in jointly managing groundwater resources, the Act allows multiple local agencies to form and act as a single GSA through a legal agreement pursuant to California Water Code Section 10723 et seq.; and,
- C. Pursuant to the California Water Code Section 10723(b) notice and public hearing requirements, the County elected to become a GSA on December 15, 2015; and,
- D. Pursuant to the Act, at Water Code Section 10723.6(b), a water corporation regulated by the Public Utilities Commission or a mutual water company may participate in a GSA through a memorandum of agreement or other legal agreement, without conferring any additional powers to a nongovernmental entity; and,
- E. Cal Water is a water corporation regulated by the Public Utilities Commission that has groundwater management operations, acts as an urban water supplier, and otherwise holds water related assets in the Eastern San Joaquin Subbasin ("Subbasin"); and,
- F. The Eastern San Joaquin Groundwater Authority is a Joint Powers Authority ("JPA") formed to coordinate the development of a GSP for the Subbasin, and Article 4.1 of the JPA formation document provides that each member of the JPA will appoint one representative on the JPA Board of Directors; and,
- G. The County intends to create two separate and distinct GSAs, one which includes the unincorporated area served by Cal Water ("Cal Water-County GSA"), and a second which includes the remaining unincorporated area not included within the boundary of another GSA, as depicted in **Exhibit A**. The separate Cal Water-County GSA will allow Cal Water to participate on the JPA Board of Directors as a limited voting member; and,

H. On May 23, 2017, the County Board of Supervisors adopted a Resolution approving the jurisdictional boundary of the County's GSA and directing staff to file the necessary submittals to the California Department of Water Resources ("DWR").

**NOW, THEREFORE**, in consideration of the promises, terms, conditions and covenants contained herein, the Parties to this Agreement hereby agree as follows:

**1. Recitals.**

The Parties agree that the recitals listed above are true and correct, and are hereby incorporated into this Agreement.

**2. Principles for Cal Water-County GSA.**

The Parties agree that the creation of the Cal Water-County GSA, does not transfer to Cal Water any County authorities conveyed to it as a County, or any other authorities conveyed to the County by SGMA.

To create the Cal Water-County GSA, the County shall modify its boundary to reflect the boundaries of the Cal Water-County GSA and shall file all required information with DWR. The geographic boundaries of the Cal Water-County GSA and that portion of the Subbasin that will be managed by the Cal Water-County GSA pursuant to SGMA shall initially consist of the area depicted in **Exhibit A**. The boundaries of the Cal Water-County GSA may only be changed by unanimous approval of the Parties or as required by law, including pursuant to the Act.

The Cal Water-County GSA shall possess the power in its own name to exercise any and all powers of the Parties reasonably related to the purpose of the Cal Water-County GSA, including all powers as set forth in the Act.

**3. Cal Water – County GSA Representation in the Subbasin.**

At an official meeting of the Eastern San Joaquin Groundwater Authority Board of Directors, the County will present this MOA recognizing the Cal Water-County GSA as a separate member at the first formal meeting of the JPA. At that time, Cal Water may serve as the appointed representative for the Cal Water-County GSA on the JPA in accordance with Article 4.1 of the JPA agreement. This will recognize the Cal Water-County GSA as a separate member of the JPA with limited voting rights, but will have the same financial obligations and any other duties expected of its members individually and collectively.

Cal Water will have limited voting power on the JPA. Cal Water shall abstain from voting on the following:

- a. Decisions related to levying of taxes, assessments or property-related fees and charges;

b. Decisions regarding the involuntary acquisition by any means and the holding, use, sale, letting and disposal of real and personal property of every kind, including lands, water rights, structures, buildings, rights-of-way, easements, and privileges, and the construction, maintenance, alteration and operation of any and all works or improvements, within or outside the Authority, necessary or proper to carry out any of the purposes of the Authority;

c. Decisions related to the limitation or curtailment of groundwater pumping.

The County also agrees that it will not seek a second vote for the Cal Water-County GSA on items that Cal Water does not have authority to vote on. The voting role of Cal Water on the JPA will also terminate with the adoption of the Subbasin GSP, but may be renewed if agreed to in a subsequent MOA entered into by Cal Water and the County. However, neither Party shall be under any obligation to enter into a future MOA.

#### **4. Financial Provisions.**

Cal Water shall be responsible for all operating and administrative costs, expenses, and financial obligations of the Cal Water-County GSA. The obligation of Cal Water to make payments under the terms and provision of this Agreement is an individual and several obligation and not a joint obligation with those of the County. Cal Water shall remain responsible for its proportionate share of any obligation or liability duly incurred by the JPA and apportioned to the Cal Water-County GSA. Each Party shall otherwise be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Party shall be the agent or have the right or power to bind the other Party without such Party's express written consent, except as expressly provided in this Agreement. Contributions of grant funding, State, Federal, or County funding may be provided as funding or a portion of funding on behalf of a Party.

#### **5. Water and Property Rights.**

This Agreement shall not confer on the Cal Water-County GSA any power to alter any water right, contract right, or any similar right held by either Party or to amend either Party's water delivery practices, course of dealing, or conduct, without the affected Party's express consent, nor shall the sharing of any intellectual property or other information or technical know-how of either Party with the Cal Water-County GSA confer on the Cal Water-County GSA or the other Party any right or license to such intellectual property, information or technical know-how, except as may be expressly granted by the affected Party in writing. All such intellectual property, information and technical know-how that either Party may share with the Cal Water-County GSA in connection with the Party's participation in the Cal Water-County GSA pursuant to this Agreement shall remain the sole property of the affected Party.

**6. Confidentiality.**

The Parties are aware that the County is subject to the California Public Records Act. However, any confidential, privileged, protected and trade secret information of the Parties shall remain confidential, privileged and protected, even if the information is shared with the other Party or utilized in connection with the Cal Water-County GSA, to the extent allowed under applicable authority. Any information, data or records developed or obtained by the Cal Water-County GSA, or by one of the Parties acting on behalf of the Cal Water-County GSA, shall constitute the property of the Cal Water-County GSA, and any applicable privileges, protections and confidentiality will accrue to and reside with the Cal Water-County GSA.

**7. Mutual Indemnity.**

Each Party agrees to indemnify, defend, and hold the other Party and their respective officers, employees and agents free and harmless from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorney's fees, arising out that Party's willful misconduct or negligent acts, errors, or omissions in connection with the operation and management of the Cal Water-County GSA.

**8. Term.**

This Agreement shall have an initial three-year term, unless terminated sooner by written consent of the Parties, or by Cal Water in writing upon 30-days' notice to the County. Alternatively, this Agreement shall automatically end when the Eastern San Joaquin Groundwater Authority GSP is adopted by the County. However, this Agreement may be extended up to two years after adoption of the GSP upon mutual agreement of the Parties consistent with Section 10. If this Agreement is extended, Cal Water will continue to represent the Cal Water-County GSA on the JPA with a limited voting role.

**9. Termination and Withdrawal.**

Upon termination of this Agreement, Cal Water will no longer represent the Cal Water-County GSA and the County will assume all administration of the Cal Water-County GSA. Cal Water shall remain responsible for its share of expenses and obligations of the Cal Water-County GSA incurred prior to the effective date of termination of this Agreement. No refund or repayment of funds shall occur upon termination of this Agreement until and after all obligations and indebtedness of the Cal Water-County GSA have been resolved. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made by the Parties, or pursuant to other agreement of the Parties.

**10. Amendments and Subsequent Agreements.**

This Agreement may be amended from time to time by a subsequent writing, approved and signed by the Parties. An extension of term as referenced in Section 8 may be executed by the

County Public Works Director on behalf of the County. The Parties may enter into a subsequent agreement for the implementation and/or the amendment of the GSP if approved by Cal Water and the County.

**11. Assignment; Binding on Successors.**

Except as otherwise provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the written consent of the other Party. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the assigning Party and the Cal Water-County GSA.

**12. Notice.**

All notices permitted or required to be given shall be in writing and (a) delivered personally, or (b) sent by certified mail (return receipt requested), or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested at the addresses set forth below as follows:

To the County:

1810 East Hazelton Avenue  
Stockton, CA 95205  
Attention: Public Works Director

To Cal Water:

1505 East Sonora St  
Stockton, CA 95205  
Attention: District Manager

Notices shall be deemed received when actually received in the office of the addressee or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other person making the delivery.

**13. Counterparts.**

This Agreement may be executed by each Party in separate counterparts, each of which when so executed and delivered shall be an original. All such counterparts shall together constitute but one and the same instrument.

**14. Choice of Law; Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any dispute concerning this Agreement shall be in the Superior Court of San Joaquin County.

**15. Informal Dispute Resolution.**

In the event that a dispute arises among the Parties relating to this Agreement if the Parties are not able to reach consensus or unanimous agreement and approval, where required by this Agreement, the Parties shall attempt in good faith to resolve the dispute through informal means. If the Parties cannot resolve a dispute within 30 days of the commencement of efforts to informally resolve the dispute, the Parties may submit the dispute to an impartial mediator or arbitrator mutually agreed upon by the Parties. The mediator or arbitrator will have the option of meeting and conferring with the Parties informally to resolve the dispute, to conduct a more formal but non-binding mediation session, not to exceed one business day, or to engage in any other informal or formal dispute resolution process as agreed upon by the Parties. Upon completion of any formal mediation session, or after 60 days following the initial submission of the dispute to the mediator or arbitrator, if the dispute has not been resolved, any Party shall have the right to bring a legal action relating to the dispute.

**16. Severability.**

The invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of any other portion or provision to the fullest extent permitted by law. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

**17. Contract Interpretation.**

This Agreement shall be construed as though jointly prepared by both Parties.

IN WITNESS WHEREOF, the County and Cal Water execute this Agreement effective as of the date first written above.

COUNTY

*C.W.*

CHARLES WINN  
Chair, Board of Supervisors  
County of San Joaquin,  
State of California

CAL WATER  
California Water Service Company,  
a California Corporation

By: *[Signature]*

Name: Tim Treloar

Title: VP, Water Quality & Chief Utilities  
Operations Officer

Date: 5/4/17



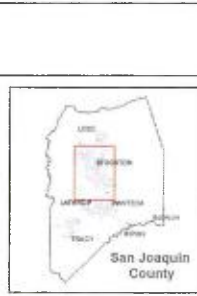
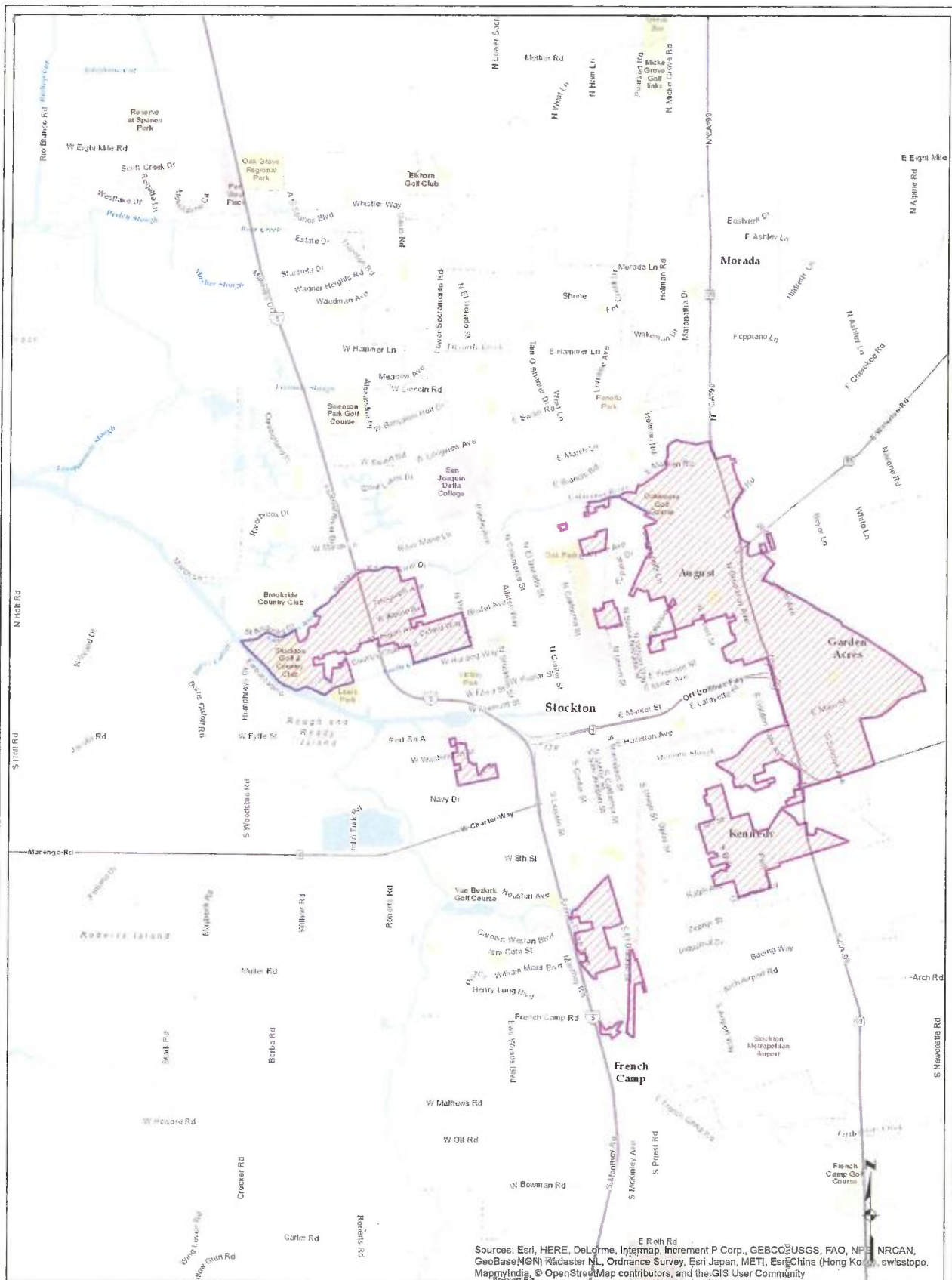
ATTEST: MIMI DUZENSKI  
Clerk of the Board of Supervisors  
of the County of San Joaquin,  
State of California

By: *Mimi Duzenski*  
Clerk

APPROVED AS TO FORM:  
By: *[Signature]*  
LAWRENCE P. MEYERS  
Deputy County Counsel

RECOMMENDED FOR APPROVAL:

By: *[Signature]*  
KRIS BALAJI, PMP, P.E.  
Director of Public Works



**Unincorporated Areas Served by Cal Water**  
 -- VICINITY MAP --

**SAN JOAQUIN COUNTY**  
 Department of Public Works, 1810 E. Hazelton Ave., Stockton, CA 95205  
 The County of San Joaquin does not warrant the accuracy, completeness, or suitability for any particular purpose.  
 The Information on this map is not intended to replace engineering, financial or primary records research.

