

Joint Powers Agreement Forming the Northern Delta Groundwater Sustainability Agency

This Joint Powers Agreement (“Agreement”) is made and entered into by

Reclamation District 501 (“Parties” or “Members”), each of whom are California reclamation or drainage districts, for the purposes of forming a joint powers agency to serve as the Groundwater Sustainability Agency (“GSA”) for those portions of the Solano, South American, and Eastern San Joaquin subbasin within the member Groundwater Sustainability Agencies’ jurisdiction (“Subbasins,” identified more fully in Exhibit A).

Recitals

WHEREAS, on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act (the “SGMA”); and

WHEREAS, SGMA went into effect on January 1, 2015; and

WHEREAS, SGMA seeks to provide sustainable management of groundwater basins, enhance local management of groundwater, establish minimum standards for sustainable groundwater management, and provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, each of the Parties to this Agreement is a local government entity with either water supply, water management, or land use responsibilities within the Subbasins; and

WHEREAS, each of the Parties to this Agreement is a valid Groundwater Sustainability Agency under SGMA, responsible for compliance with SGMA within its respective boundaries and groundwater basin; and

WHEREAS, pursuant to the Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500), two or more public agencies may by agreement jointly exercise any power held in common by agencies entering into such an agreement; and

WHEREAS, upon execution of this joint powers agreement, the Parties intend to form a joint powers agency, known as the Northern Delta Groundwater Sustainability Agency (“NDGSA”) to and exercise on behalf of its members the powers held in common by those Members and to serve as the single, combined Groundwater Sustainability Agency within the boundaries provided in Exhibit A for the Subbasins; and

WHEREAS, Section 10720.7 of SGMA requires all basins designated as high- or medium-priority basins designated in Bulletin 118 be managed under one or more Groundwater Sustainability Plans (“GSPs”) or an Alternative to a Groundwater Sustainability Plan pursuant to SGMA by certain statutory deadlines; and

WHEREAS, the Subbasin proposed to be managed by the NDSGA overlies portions of the Solano subbasin, a Bulletin 118 designated medium-priority basin; the Eastern San Joaquin subbasin, a Bulletin 118 designated high-priority basin; and the South American subbasin, a Bulletin 118 designated high-priority basin, each of which are required to be managed under one or more Groundwater Sustainability Plans by 2022; and

WHEREAS, the Parties, acting through and by the NDGSA intend to work cooperatively with other Groundwater Sustainability Agencies operating in the Subbasins to manage those basins in a sustainable fashion pursuant to the requirements set forth in SGMA.

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Parties hereby agree as follows.

Article 1. Definitions

As used in this Agreement, unless elsewhere defined, the meanings of the terms set forth below shall be as follows:

- 1.1. "Agency" means Northern Delta Groundwater Sustainability Agency.
- 1.2. "Committee" shall mean any committee established pursuant to this Agreement.
- 1.3. "Fiscal Year" means July 1 through June 30.
- 1.4. "Governing Board" means the governing body of the Agency.
- 1.5. "Board Member" or "Board Members" means members of the Agency's Governing Board.
- 1.6. "Member's Governing Body" means the Board of Directors or other voting body that controls the individual public agencies that are members of the Agency.
- 1.7. "Member" means a signatory to this Agreement.
- 1.8. "State" means the State of California.

Article 2. Creation of a Separate Entity

- 2.1. Upon the effective date set forth in Article 3.1 of this Agreement, the Agency is hereby created. Pursuant to the provisions of Article I, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with section 6500, the Agency shall be a public agency separate from its members. The principal offices shall be located at 1717 I Street, Sacramento, CA 95811 or at such other place as the Governing Board shall determine.
- 2.2. The boundaries of the Agency shall encompass the established service areas for all of the Members GSAs. Attached hereto and incorporated herein is Exhibit A, a map showing the boundaries of the Agency.

Article 3. Term

- 3.1. This Agreement shall become effective upon the date of execution by a second Party ("Effective Date") and shall continue in full force and effect until terminated pursuant to the provisions of Article 18 (Termination and Withdrawal).

Article 4. Purpose of the Agency

- 4.1. The purpose of this Agreement is to create a joint powers agency separate from its Members that will exercise certain powers held in common by those members to serve as the Groundwater Sustainability Agency for the Subbasins.
- 4.2. The Agency will exercise the Members' commonly held powers to develop, adopt, and implement Groundwater Sustainability Plans for the Subbasins in order to implement SGMA's requirements and to sustainably manage the Subbasins.
- 4.3. The Agency will involve the public and area stakeholders through outreach and engagement in developing and implementing the required Groundwater Sustainability Plans for the Subbasins.
- 4.4. The Agency will coordinate and cooperate with other Groundwater Sustainability Agencies operating in the adjacent basins in order to meet the sustainability requirements outlined in SGMA and its implementing regulations.

Article 5. Powers of the Agency

- 5.1. Powers. Subject to the limitations addressed herein, the Agency shall have the power, in the name of the Agency, to exercise the common powers of the Members. Pursuant to the provisions of Division 5, Part 2.74, Chapter 5 of the California Water Code, commencing with section 10725, the Agency shall have the powers common to all Groundwater Sustainability Agencies , including but not limited to, the following:
 - 5.1.1. Employ agents, consultants, advisors, independent contractors, and employees.
 - 5.1.2. Make and enter into contracts with public or private entities, including the State and the United States, and one another.
 - 5.1.3. Acquire, hold, and convey real and personal property.
 - 5.1.4. Incur debts, obligations, and liabilities; and by unanimous vote of the Governing Board to issue bonds, notes, or other similar evidence of debt.
 - 5.1.5. To borrow money.
 - 5.1.6. Accept contributions, grants, or loans from any public or private agency or individual in the United States or any department, instrumentality, or agency thereof for the purpose of financing its activities.
 - 5.1.7. Invest money that is not needed for immediate necessities, as the Governing Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with section 53601 of the California Government Code.
 - 5.1.8. Reimburse Agency members for the actual amounts of reasonable and necessary expenses incurred in attending the Agency's meetings or any committee of the Agency in performing the duties of their officer, subject to Governing Board policy and budget authorization.

- 5.1.9. Sue and be sued; provided that a Member agency may determine not to participate in the affirmative litigation.
- 5.1.10. Undertake all other acts reasonable and necessary to carry out the purpose of this Agreement.
- 5.1.11. Employ or retain a full time or part time supporting staff.
- 5.1.12. Adopt rules, regulations, ordinances, and resolutions, in compliance with any procedural requirements applicable to the adoption of a rule, regulation, ordinance, or resolution by the groundwater sustainability agency.
- 5.2. The Agency shall not have the power to bind any Member to any monetary obligation whatsoever by this Agreement other than that unanimously authorized by the mutual written consent of the Members.

Article 6. Agency Governing Board

- 6.1 Membership of Governing Board. The Agency shall be governed by a Governing Board consisting of one (1) Board Member representing each Member and appointed by a majority vote of that Member's governing body. A Board Member may represent more than one Member and shall have a vote and be counted for quorum for each of those represented Members.
- 6.2 Requirements. Board Members serve for a two-year term, or until removed or replaced by the governing body of the Member agency that they represent (see Section 6.4). Each Board Member shall certify to the Secretary of the Governing Board in writing that he or she has been appointed to be a Board Member by the Member and that he or she meets the qualifications established by this section, 6.2.
- 6.3 Alternate Board Members. Each Member shall appoint one Alternate Board Member. The Alternate Board Member must meet the requirements set forth in section 6.2. Alternate Board Members have no vote at Governing Board meetings if the Board Member is present. If the Board Member is not present, the Alternate Board Member shall be entitled to participate as a regular Board Member.
- 6.4 Removal of Board Members. Board Members and Alternate Board Members shall serve at the pleasure of their appointing Member's Governing Board and may be removed or replaced at any time. Upon removal of a Board Member, the Alternate Board Member shall serve as a Board Member until a new Board Member is appointed by the Member. Members must submit any changes in Board Member or Alternate Board Member positions to the Secretary in writing and signed by the Member.

Article 7. Associate Members

- 7.1 Associate Member. The Governing Board may appoint Associate Members to the Governing Board. Associate members shall be entitled to participate in the meetings and discussions of

the Governing Board but Associate Members shall not have the power to vote on any action to be taken by the Agency or to become an officer of the Agency.

- 7.2 Removal or Addition of Associate Members. The Governing Board may remove any Associate Members or appoint any party or individual as an Associate Member upon an affirmative vote from three quarters of Board Members.

Article 8. Officers

- 8.1 Officers. The Governing Board shall select a Chairman, Vice-Chairman, Secretary, and any other officers as determined necessary by the Governing Board.

8.1.1 The Chairman shall preside at all Governing Board Meetings.

8.1.2 The Vice-Chairman shall act in place of the Chairman at meetings should the Chairman be absent.

8.1.3 The Secretary shall keep minutes of all meetings of the Governing Board and shall, as soon as possible after each meeting, forward a copy of the minutes to each member and alternate of the Governing Board.

8.1.4 All Officers shall be chosen at the first Governing Board meeting and serve a term for two (2) years. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Governing Board.

Article 9. Treasurer, Controller, and Legal Counsel

- 9.1 Treasurer and Controller. The Governing Board shall select a treasurer and controller for the Agency. The controller of the Agency shall cause an independent audit of the Agency's finances to be made by a certified public accountant in compliance with California Government Code section 6505. The treasurer of the Agency shall be the depositor and shall have custody of all money of the Agency from whatever source. The controller of the Agency shall draw warrants and pay demands against the Agency when the demands have been approved by the Agency or any authorized representative pursuant to any delegation of Agency adopted by the Agency. The treasurer and controller shall comply strictly with the provisions of statutes relating to their duties found in Chapter 5 (commencing with section 6500) of Division 7 if Title 1 of the California Government Code.

- 9.2 Legal Counsel. The Governing Board shall select legal counsel as it deems appropriate.

Article 10. Executive Director & Staff

- 10.1 Appointment. The Governing Board shall appoint or hire an Executive Director who may be compensated for his or her services, as determined by the Governing Board.

- 10.2 Duties. The Executive Director shall be the chief administration officer of the Agency, shall serve at the pleasure of the Governing Board, and shall be responsible to the Governing Board for the proper and efficient administration of the Agency. The Executive Director shall have the powers designated in the Bylaws.

- 10.3 Staff. The Agency shall employ such additional full-time and or part-time employees, assistants, and independent contractors that may be necessary from time to time to accomplish the purposes of the Agency.

Article 11. Governing Board Voting

- 11.1 Quorum. A majority of Board Members shall constitute a quorum for the transaction of business, except as otherwise specified in this Agreement. In the absence of a quorum, any meeting of the Governing Board may be adjourned from time to time by a majority present, but no other business may be transacted.
- 11.2 Budget. The annual budget of the Agency shall be approved by a vote of a majority of the Board Members.
- 11.3 GSP Approvals and Enforcement: Any GSP adopted by the Agency shall first be approved by a majority vote of each of the Governing Boards of the Members subject to that GSP. Members not subject to a GSP shall have no right to vote on the final approval of the GSP. Decisions related to the enforcement, funding, and implementation of GSPs are reserved to those Members whose service area is included within that GSP, and no others.
- 11.4 Board Member Votes. Each Board Member shall have one (1) vote for each member represented. Except as otherwise specified in this Agreement, all decisions, including the decision of whether or not to initiate litigation, shall be made by the affirmative vote of a majority of all Board Member's votes.

Article 12. Agency Meetings

- 12.1 Initial Meeting. The initial meeting of the Agency's Governing Board shall be held in Walnut Grove, California within **30** days of the effective date of this Agreement.
- 12.2 Time and Place. The Governing Board shall meet at least quarterly at a time and place set by the Governing Board, and at such other times as determined by the Governing Board.
- 12.3 Conduct. All meetings of the Governing Board shall be noticed, held, and conducted in accordance with the Ralph. M. Brown Act to the extent applicable. Board Members and Alternate Board Members may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by the applicable laws.

Article 13. Committee Formation

- 13.1 Internal Committee Formation. There shall be established such internal committees as the Governing Board shall determine from time to time. Each such internal committee shall be comprised of Board Members, shall exist for the term specified in the action establishing the committee, shall meet as directed by the Governing Board, and shall make recommendations to the Governing Board on the various activities of the Agency. An internal committee may be tasked by the Governing Board with administering or implementing the various activities of the Agency, but does not have the authority to legally bind the Agency. The Agency expressly reserves to its Governing Board the right to review and approve expenditures in excess of five

thousand dollars (\$5,000) the decision to initiate any enforcement action under Groundwater Sustainability Plans developed or implemented by the Agency.

- 13.2 External Advisory Committee Formation. The Governing Board may establish one or more advisory committees comprised of diverse social, cultural, and economic elements of the population and area stakeholders within the service area of the NDGSA. The Governing Board shall encourage the active involvement of the advisory committee(s) prior to and during the development and implementation of the GSP. The Governing Board will ensure that at least one (1) member from the Governing Board or Agency employee attends and participates in each advisory committee meeting.

Article 14. Membership

- 14.1 Members. The signatories to this Agreement, as it may be amended from time to time, are the members of the joint powers authority. Associate Members may be added to the Governing Board subject to the provisions of Article 7, but are not signatories to the Agreement.
- 14.2 New Members. Additional Parties may join this Agreement and become a Member provided that the prospective new member, (a) is eligible to participate in or serve as a Groundwater Sustainability Agency as provided by SGMA, (b) possesses powers common to all other Members, (c) receives an affirmative vote from a majority of Board Members, (d) pays all previously incurred costs that the Governing Board determines have resulted in benefit to their agency, (e) pays all applicable fees and charges, and (f) agrees in writing to the terms and conditions of this Agreement.

Article 15. Specific Projects

- 15.1 Projects. The Agency intends to carry out activities in furtherance of its purposes and consistent with the powers established by the Agreement with the participation of its Members. The Members expect that these activities will include, but are not limited to (1) the development and implementation of one or more GSPs; (2) the implementation of groundwater related projects to benefit some or all Members of the Agency; (3) the development of funding mechanisms to further the purposes of the Agency; and (4) the exercise of the Agency's enforcement powers under one or more GSPs.
- 15.2 Separate GSPs: The Members specifically acknowledge that the Agency will participate in the development of a minimum of one GSP in each of the basins included in the Agency's service area. Members shall have the exclusive right to review, approve, and take implementing action under the GSP or GSPs that will govern that Member's service area. Members shall have no obligation to fund activities or GSPs that occur outside of the groundwater basin in which that Member's service area is located. So, for example, a Member whose service area is situated entirely within the Solano Subbasin shall have no obligation to fund activities or participate in the development of a GSP in the Eastern San Joaquin Subbasin.
- 15.3 Member Specific Projects. In addition to the general activities undertaken by all Members of the Agency, the Members may initiate specific projects or litigation that involves less than all Members. Such Projects shall be the subject of separate Project Agreements, and

nonparticipating members shall have no obligation to participate in or fund these activities. No Member shall be required to be involved in a Project that involves less than all the Members.

Article 16. Budget and Expenses

- 16.1 Budget. The Governing Board shall approve a budget at its initial meeting and before the beginning of each fiscal year thereafter. Each Member's Governing Body shall authorize its funding contribution before the beginning of the fiscal year.
- a. Each of the Parties may, but are not required to, contribute additional money, office space, furnishings, equipment, supplies, or services as their respective Governing Boards may deem appropriate.
 - b. Funds may also be derived through State and Federal grants, or other available sources. The Agency may also apply for available State and Federal funds and shall make new and additional applications from time to time as appropriate. The Agency may also establish and collect various fees, leases, or rents as may be authorized by law under the common powers of all the Parties.
 - c. The Agency may accept and expend funds from public or private sources subject to the legal restrictions, which are set forth in the common powers of the Parties for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.
- 16.2 The Agency shall be limited to the making of expenditures or incurring of liabilities in the amount of the appropriations allowed by the budget as adopted and revised by the Agency.
- 16.3 The Agency shall attempt to maintain a contingency fund of approximately ten percent of the annual budget at all times.
- 16.4 No Member shall have an obligation to fund, and no Members contributions shall be directed toward, activities outside the authority of that participating Member. Specifically, no Member shall be required to fund the development of GSPs outside its respective groundwater basin; and no Member's contributions to the Agency shall be applied toward activities that do not directly benefit that Member.

Article 17. Liability and Indemnification

- 17.1 Liability. In accordance with California Government Code section 6508.1, the debts, liabilities, and obligations of the Agency shall be the debts, liabilities, and obligations of the Agency alone, and not the Members. To the extent authorized under California law, no Board Member, officer, or employee of the Agency shall be responsible for any action made, taken, or omitted, by any other Board Member, officer, or employee.
- 17.2 Indemnification. The members of the Governing Board, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the parties to this agreement for any mistake of judgement or any other action made, taken, or

omitted by any agent, employee, or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Agency's funds, or failure to invest the same.

- a. The funds of the Agency shall be used to defend, indemnify, and hold harmless the Agency and any Board Member, officer, or employee of the Agency for actions taken in good faith and within the scope of his or her authority.
- b. Nothing herein shall limit the right of the Authority to purchase insurance or to create a self-insurance mechanism to provide coverage for the foregoing indemnity.

Article 18. Withdrawal and Termination

- 18.1 Withdrawal. A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon sixty (60) days written notice the remaining Members.
- 18.2 Effect of Withdrawal. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations of the Agency incurred or accrued prior to the effective date of such withdrawal, other than debts, liabilities, and obligations incurred pursuant to any Project Agreement to which the withdrawing Member is not a participant.
- 18.3 Termination of Agency. This Agreement may be rescinded and the Agency terminated by unanimous written consent of all Members, except during the outstanding term of any Agency indebtedness. Nothing in this Agreement shall prevent the Members from entering into other joint exercise of power agreements.
- 18.4 Disposition of Agency Assets upon Termination.
 - 18.4.1 Surplus Funds. Upon termination of this Agreement, any reserves or surplus money on-hand shall be returned to the Members in the same proportion said Members have funded such reserves or surplus, in accordance with California Government Code section 6512.
 - 18.4.2 Agency Property. The Agency shall first offer any assets of the Agency for sale to the Members on terms and conditions determined by the Governing Board. If no such sale to Members is consummated, the Board shall offer the assets of the Agency for sale to any non-member for good and adequate consideration on terms and conditions determined by the Governing Board.

Article 19. Miscellaneous

- 19.1 Notices. Notices hereunder shall be sufficient if delivered via electronic mail, First-Class mail or facsimile transmission to the addresses following the Party signature blocks hereafter.
- 19.2 Bylaws. At, or as soon as practicable after the first Governing Board meeting the Governing Board shall draft and approve Bylaws of the Agency to govern day-to-day operations of the Agency.

- 19.3 Amendment. This Agreement may be amended at any time, by unanimous agreement of the Members, provided that before any amendments shall be operative or valid, it shall be reduced to writing and signed by all Members hereto.
- 19.4 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.
- 19.5 Execution in Counterparts. The Parties intend to execute this Agreement in counterparts. It is the intent of the Parties to hold one (1) counterpart with single original signatures to evidence the Agreement and to thereafter forward other original counterparts to each Member on a rotating basis for all signatures. Thereafter, each Party shall be delivered an originally executed counterpart with all Party signatures.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first written above.

NAME

By: 

Name: Thomas W Hester

Title: Chairman

Date: 4-12-2018