

**JOINT POWERS AGREEMENT
FOR THE PURPOSE OF EXPANDING THE
CAWELO GROUNDWATER SUSTAINABILITY AGENCY
PURSUANT TO THE
SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

THIS JOINT POWERS AGREEMENT (JPA) is made and effective as of APR 09 2019, by and between **Cawelo Water District (CWD)**, and the **County of Kern (COUNTY)**, each a "Party" and collectively the "Parties," with reference to the following facts:

A. In 2014, the State of California enacted the Sustainable Groundwater Management Act (Water Code Sections 10720 et seq.), referred to in this JPA as the "SGMA" or "Act," as subsequently amended, pursuant to which certain public agencies may become or participate in a "Groundwater Sustainability Agency" (GSA) and adopt a "Groundwater Sustainability Plan" (GSP) in order to manage groundwater in underlying groundwater basins. The Act defines "basin" as a basin or subbasin identified and defined in California Department of Water Resources (DWR) Bulletin 118.

B. On June 12, 2017 notice of CWD's intent to become a GSA was posted on the Department of Water Resources SGMA Portal, and Cawelo Groundwater Sustainability Agency (Cawelo GSA) has become the exclusive GSA for the area underlying CWD's geographic boundaries.

C. At the request of certain landowners, the Cawelo GSA now desires to increase its jurisdictional boundaries to include certain limited lands located outside of current Cawelo GSA boundaries (the "Additional Lands"), as depicted on Exhibit "A" which is incorporated herein by reference, such Additional Lands currently being in non-districted areas, and for purposed of SGMA, are under the jurisdiction of the County and contained within other GSAs within Kern County.

D. Each of the Parties hereto is a local agency as defined in Water Code 10721(n) and qualified to form a GSA under Section 10723.6 (a) of the Act.

E. The Parties wish to provide a framework to expand the boundaries of the Cawelo GSA and to implement SGMA in the Cawelo GSA, as expanded by including the Additional Lands, such that the implementation is through local control and management, and is implemented effectively, efficiently, fairly and at a reasonable cost.

F. As authorized by SGMA and the Joint Exercise of Powers Act (Government Code Section 6500 et seq.), the parties are entering into this JPA to allow for the expansion of the Cawelo GSA boundaries by including the Additional Lands, but are not currently creating a separate entity or authority.

THEREFORE, in consideration of the mutual promises set forth below and to implement the goals described above, the Parties agree as follows:

1. Expansion of the Cawelo GSA. The purpose of this JPA is to allow for the expansion of the existing Cawelo GSA by including Additional Lands, and to allow them to

explore, study, evaluate, develop and implement mutually beneficial approaches and strategies for development and implementation of a GSP for the area underlying the expanded Cawelo GSA. By execution of this JPA, the Parties collectively determine and elect to be the GSA for the area underlying the expanded Cawelo GSA, subject to the procedures provided for in the Act.

By entering into this JPA, the Parties are not currently creating a separate entity or joint powers authority.

2. Development of a Groundwater Sustainability Plan. The GSP for the area underlying the expanded Cawelo GSA (Cawelo GSP) will be prepared by the Cawelo GSA. In developing the Cawelo GSP, the Cawelo GSA shall consider all beneficial uses and users of groundwater, including the interests listed at Section §10723.2 of the Act.

3. GSA Governing Body. There is hereby established a five member JPA Board for the Cawelo GSA, which shall be composed of the Board of Directors of Cawelo Water District, and which shall be subject to the following:

a. The JPA Board may adopt resolutions, bylaws and policies to provide further details for conducting its affairs consistent with this JPA and applicable law and amend the same from time to time. Meetings of the JPA Board shall be called, noticed and conducted subject to the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.)

b. A quorum of the JPA Board to transact business shall consist of a majority of the Board. In order to pass any proposition or resolution, an affirmative vote of a majority of the JPA Board members present and voting will be required, provided that to adopt or make any amendment to the GSP, a majority of the entire Board shall be required.

4. Powers/Development of GSP.

(a) Under the Conditions and with the exceptions set forth in this Agreement, the Cawelo GSA shall have all the powers that a GSA is authorized to exercise as provided by the Act, including, but not limited to, developing a GSP that is consistent with the Act and DWR's regulations and imposing fees to pay for GSA and GSP activities. The JPA Board shall proceed in a timely fashion to develop and adopt a GSP for the Cawelo GSA lands by January 31, 2020.

(b) The Cawelo GSA shall not have the power to control, limit or empower a Party's rights and authorities over its own surface water supplies, facilities, operations, water management, water supply projects and financial affairs. As provided in Water Code Section 10720.5 of the Act, the Cawelo GSA and each of its Parties confirm that groundwater management under this Cawelo GSA shall not modify rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution and that any groundwater management plan adopted by the Cawelo GSA shall not determine or alter surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

5. Matters Related to County Powers.

(a) If the COUNTY is requested by the Cawelo GSA to use the COUNTY's police powers for a specific GSA purpose, then the Cawelo GSA shall indemnify and defend the COUNTY, with Counsel of the County's choice, against liability for such exercise of its police powers.

(b) The Parties agree that nothing in a GSP or any actions taken by this Cawelo GSA will modify, limit or preempt the COUNTY's police powers, including, but not limited to, its land use authority. The COUNTY shall not designate or zone a specific project with the expectation that this GSA will provide more water allotment than that which is determined by any GSP allotment and policies, if there were such allotments. Likewise, the Cawelo GSA will not restrict the use of groundwater within its boundaries to a specific use.

(c) In accordance with the terms and conditions of this JPA, the Cawelo GSA will manage the areas of the Cawelo GSA that are not within the boundaries of CWD.

(d) Consistent with Water Code Section 10726.4(b), well permitting (which is presently codified in Kern County's Code of Ordinances at Section 14.08) is under the County's jurisdiction. The Cawelo GSA shall not issue permits for the construction, modification, and/or abandonment of groundwater wells except as authorized by the COUNTY. The Cawelo GSA will not transform, or trigger the transformation of, the well-permitting process from a ministerial function (which does not trigger CEQA) to a discretionary function (which may trigger CEQA) without prior consultation with the COUNTY. If the Cawelo GSA causes CEQA to be triggered with respect to any particular well permitting application within the Cawelo GSA, then the Cawelo GSA shall indemnify and defend the COUNTY against liability, costs and attorney's fees awarded to petitioner(s) in any CEQA challenge to well permitting within the Cawelo GSA area.

(e) Water transfers within the Basin will be considered as part of GSP development by the Cawelo GSA. To the extent that the GSP includes extraction allocations pursuant to Water Code section 10726.4, the GSP will include reasonable conditions, as determined by the GSA, under which those allocations will be transferrable within the Basin. Notwithstanding the foregoing, the respective Parties reserve all applicable rights they have with respect to preserving water supplies within their boundaries.

(f) In accordance with SGMA, the Cawelo GSA will ensure any interested parties have a continuous opportunity to participate in the preparation, review, and adoption of the Cawelo GSA's GSP. The term "participate" in this context means access to all non-privileged drafts, reports, technical information and other materials and communications, and an ability to actively engage in all open meetings related to the preparation, review and adoption of the Cawelo GSA's GSP. With respect to the County of Kern, its opportunities for participation and review are more than members of the general public and the County of Kern will be afforded access to all documents, drafts, reports, technical information and other materials and communications of the GSA, but shall maintain all privileged and confidential information as such to the extent permitted by law.

(g) Before adopting any GSP covering the Cawelo GSA's jurisdiction or agreeing to the coordination of the GSP with other GSPs, the Cawelo GSA shall include the mitigation measures

adopted in the County's certified Final Oil and Gas Environmental Impact Report (SCH# 2013081079), which was adopted by the Kern County Board of Supervisors on November 9, 2015, to address the creation of GSP practices related to the implementation of SGMA and the Oil and Gas permitting.

6. Costs. Each Party shall bear its own costs incurred with respect to activities under this JPA, to participate on the JPA Board if applicable and its proceedings, and related matters. Costs incurred to retain consultants to assist with development of the Cawelo GSP and perform related studies as approved by the JPA Board and to implement the Cawelo GSP shall be borne by Cawelo Water District, and/or by the Cawelo GSA pursuant to financing methodologies as authorized by SGMA. The Parties may consider levying a charge pursuant to the Act, or other legal authority. Certain costs for special projects may be funded under separate agreements among the benefited Parties.

7. Staff. Each Party shall designate a principal contact person, if other than the designated JPA Board members, and other appropriate staff members and consultants to participate on such Party's behalf in activities undertaken pursuant to this JPA. The Cawelo GSA and/or CWD shall be responsible for coordinating meetings and other activities under this JPA with the JPA Board and principal contact persons for the other Parties. Informal staff meetings may occur as needed.

8. Ongoing Cooperation. The Parties acknowledge that activities under this JPA will require interaction between them in order to pursue opportunities and resolve issues that arise. The Parties shall work cooperatively and in good faith.

9. Notices. Any formal notice or other formal communication given under the terms of this JPA shall be in writing and shall be given personally, by facsimile, by electronic mail (email), or by certified mail, postage prepaid and return receipt requested. Any notice shall be delivered or addressed to the Parties at the addressees' facsimile numbers or email addresses set forth below under each signature and at such other address, facsimile number or email address as shall be designated by notice in writing in accordance with the terms of this JPA. The date of receipt of the notice shall be the date of actual personal service, confirmed facsimile transmission or email, or three days after the postmark on certified mail.

10. Entire Agreement/Amendments/Counterparts. This JPA incorporates the entire and exclusive agreement of the Parties with respect to the matters described herein and supersedes all prior negotiations and agreements (written, oral, or otherwise) related thereto. This JPA may be amended only in a writing executed by all of the Parties. This JPA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Termination/Withdrawal.

(a) This JPA shall remain in effect unless terminated by the unanimous consent of the Parties, or as otherwise provided for herein.

(b) Upon 60 days written notice, either of the Parties may withdraw from this JPA. A withdrawing Party shall be liable for expenses incurred through the effective date of the withdrawal (that is 60 days after the written notice, unless a later date is specified in the notice)

and for its share of any contractual obligations incurred by the Cawelo GSA while the withdrawing Party was a party to this JPA, however, as provided a paragraph 6, the County is not participating in GSP development costs. Upon withdrawal as a Party, it is contemplated the withdrawing Party may concurrently become (or designate) a GSA for the lands within its boundaries, so that such lands of the withdrawing Party would continue to be subject to a GSA, and if applicable a GSP, and the powers of such withdrawing Party within its boundaries would not be limited by this JPA. In such event this GSA and its remaining Party (i) shall not object to or interfere with the lands in the withdrawing Party's boundaries being in a GSA, as designated by such withdrawing Party, (ii) shall facilitate such transition to the extent necessary, and (iii) this GSA shall withdraw from managing the Subbasin as a GSA for that portion of the Subbasin within the boundaries of the withdrawing Party and so notify DWR. In such event, the withdrawing Party shall reconcile and reach agreement with the other Party with respect to overlapping boundaries of the Parties to determine which GSA the respective overlapping lands will be within; provided however that lands located within Cawelo Water District shall still be included within the Cawelo GSA.

12. Assignment. No rights or duties of any of the Parties under this JPA may be assigned or delegated without the express prior written consent of the other Party, and any attempt to assign or delegate such rights or duties without such written consent shall be null and void.

13. Indemnification. No Party, nor any officer, director, employee or agent of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this JPA. The Parties further agree, pursuant to California Government Code Section 895.4, that each party shall fully indemnify and hold harmless each other Party and its officers, directors, employees and agents from an against any claims, damages, losses, judgments, liabilities, expenses, and other cost, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action taken or omitted to be taken by such Party under this JPA. If and to the extent that this Agreement, in conjunction with Government Code section 895.2 imposes liabilities upon the County of Kern, and if and to the extent the Cawelo GSA does not undertake to indemnify, defend, and hold the County harmless from such liabilities, Cawelo agrees, to the fullest extent provided by law, to indemnify, defend, and hold harmless, the County and its officers, directors, employees and agents from and against any claims, damages, losses, judgments, liabilities, expenses or other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action taken or omitted to be taken by the GSA, except to the extent directly caused by the County, or its officers, directors, employees or agents, gross negligence or intentionally wrongful acts.

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IN WITNESS WHEREOF, the Parties have executed this JPA as of the date first above written.

Cawelo Water District

Approved as to Form:

By:


David Ansolabehere, General Manager

By:


Robert Hartsock, District Counsel
McMurtrey, Hartsock & Worth

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County of Kern

Approved as to Form:

By:


David Cook, Chairman
County of Kern Board of Supervisors

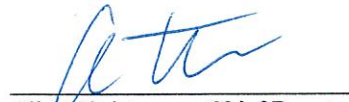
By:


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Approved and Recommended:
County Administrative Office

By:


Allen Christensen, Chief Deputy
CAO for Water Resources

