

WORKING DRAFT

Memorandum of Agreement Defining Colusa Subbasin Groundwater Sustainability Interests Version 6 – February 8, 2017

This Memorandum of Agreement (MOA) is made and entered into by and among the County of Colusa, the City of Colusa, the City of Williams, Glenn Colusa Irrigation District, Princeton-Codora-Glenn Irrigation District, Provident Irrigation District, Colusa County Water District, Maxwell Irrigation District, Westside Water District, Reclamation District 108, Reclamation District 479 (*Structure to be determined: Reclamation District 1004, Colusa Drain Mutual Water Company, Colusa County Private Pumpers*) which are referred to herein individually as a “Party” and collectively as “Parties,” for the purposes of developing a joint exercise of powers agreement and joint powers agency to serve as the Groundwater Sustainability Agency in the Colusa County portion of the Colusa Subbasin in support of Senate Bills 1168, 1319 and 13, and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act (the Act). This MOA shall hereinafter be known as the Colusa County Groundwater Sustainability Agency MOA.

Recitals

WHEREAS, on September 16, 2014 Governor Jerry Brown signed the Act into law; and

WHEREAS, the Act went into effect on January 1, 2015; and

WHEREAS, the Act was amended on January 1, 2016; and

WHEREAS, the Act requires, among other things, sustainable management of groundwater basins, local management of groundwater, minimum standards for sustainable groundwater management, and provides local agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, section 10720.7 of the Act requires that all basins designated as high-or-medium priority basins designated in Department of Water Resources Bulletin 118 be managed under a Groundwater Sustainability Plan, or coordinated Groundwater Sustainability Plans, pursuant to the Act; and

WHEREAS, the Colusa Subbasin is located within the Sacramento Valley Basin and is designated as a medium priority basin; and

WHEREAS any local public agency is eligible to become a Groundwater Sustainability Agency (GSA); and

WHEREAS, a local public agency is defined in Section 10721 of the Act as an agency having water supply, water management, or land use responsibilities within a groundwater basin; and

WHEREAS, each of the Parties to this MOA is a local public agency within or partially within the County of Colusa and the Colusa Subbasin; and

WHEREAS several of the Parties have filed notices that they will act as a GSA for some portion of the subbasin within Colusa County.

WHEREAS, there are groundwater extractors in the Colusa Subbasin, including private individuals and corporations, which are outside of the boundaries of public agencies signatory to this MOA, other than the County (“Unaffiliated Extractors”); and

WHEREAS, Unaffiliated Extractors in the Colusa Subbasin include Native American Tribes and federal agencies; and

WHEREAS, the water laws of the State of California recognize the priority of overlying groundwater rights relative to appropriative groundwater rights, and further recognize the correlative nature of overlying groundwater rights (that is, properties overlying a groundwater basin share an equal right and priority to the reasonable and beneficial use of the sustainable yield of the groundwater basin); and

WHEREAS, the Parties acting through this MOA intend to maintain an open line of communication and to work cooperatively with local Native American Tribes and federal agencies during SGMA planning and implementation; and

WHEREAS, the Parties, acting through this MOA intend to work cooperatively with other local agencies and Unaffiliated Extractors in the Colusa Subbasin to manage the Subbasin in a sustainable manner pursuant to the requirements set forth in the Act; and

WHEREAS, the Parties intend to execute a Joint Exercise of Powers Agreement pursuant to the Joint Exercise of Powers Act, Government Code Section 6500, et seq., for the purpose of forming a single GSA to manage the Colusa Subbasin consistent with the Act and pursuant to the principles in this MOA; and

WHEREAS upon future request and notification, the Parties will add other local public agencies as signatories to the intended joint powers agreement and members of the GSA;

NOW, THEREFORE, the Parties hereby agree as follows.

Section 1. Definitions

As used in this MOA, unless context requires otherwise, the meanings of the terms set forth below shall be as follows:

1. “Act” refers to the Sustainable Groundwater Management Act.
2. “Agency” means the Colusa County Groundwater Sustainability Agency, formed pursuant to the Agreement.
3. “Agreement” means the Joint Exercise of Powers Agreement, as authorized by Government Code section 6500, et seq., contemplated in this MOA, which will establish the Agency for purposes of developing and implementing the Plan contemplated herein.
4. “Beneficial Uses and Users” include, without limitation, all current and future potential beneficial uses and users of groundwater in the Colusa Subbasin, as well as other parties responsible for implementing and carrying out the Plan.
5. “Committee” shall mean any committee established pursuant to this MOA.
6. “County” shall mean the County of Colusa in its role as a local public agency (as defined in the Act) and as a governing jurisdiction.
7. “Department” means the California Department of Water Resources.
8. “Effective Date” means the date on which the last Party executes this MOA.

9. "Fiscal Year" means July 1 through June 30.
10. "Governing Board" means the governing body of the Agency.
11. "Member's Governing Body" means the respective Board of Directors or other voting body that controls each individual local public agency that is signatory to this MOA.
12. "Party" and "Parties" shall mean all organizations, individuals and collectives that are signatories to this MOA.
13. "Plan" refers to the Groundwater Sustainability Plan adopted by the Agency in coordination with the [Stakeholders/Beneficial Interests] pursuant to the Agreement.
14. "State" means the State of California.
15. "Subbasin" or "Colusa Subbasin" means the Colusa Subbasin as defined in State of California Bulletin 118.

Section 2. Purpose

- 2.1 The purpose of this MOA is to describe general and specific principles that reflect mutual understanding of the Parties concerning commitments and obligations associated with implementing the Act in the Colusa Subbasin to lead to the creation of a multi-party joint powers agency that will serve as the Agency.
- 2.2 This MOA also describes the Parties' understanding of the Agency's initial tasks and associated potential costs to implement the Act (as described in Section 6).
- 2.3 A potential purpose for this MOA is to serve as the legal agreement by which the Parties operate as a Groundwater Sustainability Agency during the time that the Parties are creating a multi-party joint powers agency that will serve as the Agency.

Section 3. Term

- 3.1 This MOA shall become effective upon execution by each of the Parties and shall continue in full force and effect until the earliest of the following events occurs:
 - 3.1.1. Execution of the Agreement, or
 - 3.1.2. Twelve months from the date of execution of this MOA.

Section 4. General Principles of Understanding

This Section 4 reflects the mutual general goals, objectives and understandings of the Parties to this MOA with respect to development of the Agreement.

- 4.1 A partnered approach should be fostered for sustainable groundwater management in the Colusa Subbasin that, among other things, supports the Act; achieves sustainable conditions in the Subbasin; reflects mutual respect for each Party's discretion, governmental authority, expertise, knowledge of groundwater conditions, rights, needs and concerns; and ensures appropriate representation of all Beneficial Uses and Users.

02/08/17 Draft (with County, PID/PCGID/CCWD, GCID and Maxwell legal Edits, and Governance Committee Comments from 01/27/17 meeting, and 2/23/2017 meeting)

4.2 Local control of groundwater and compliance with the Act should be preserved to the maximum extent practicable, and State intervention to implement the Act should be avoided to the extent possible.

4.3 Implementation of the Act may be expensive and all Beneficial Uses and Users will need to contribute to implementation. Failure to implement the Act locally could result in State intervention and even greater costs and regulation.

4.4 A partnered approach to groundwater management and implementation of the Act is in the best interest of Beneficial Use and Users within the Agency boundaries because it will maximize efficiencies, keep costs at a minimum and capitalize on skills and strengths of various partners provided that such proposed partnership also creates and maintains collegial relationships and flexible implementation of the Act.

4.5 As authorized by Section 10723.6 (a) of the Water Code, the Parties intend to form and participate in a single multi-agency GSA covering the portions of the Subbasin that lie within the County. To this end, the Parties intend to execute an Agreement and form the Agency not later than June 30, 2017, and the Agreement will include procedures for other local agencies within the Colusa Subbasin to be added to the Agreement and the Agency at a later date.

4.6 Local agencies within the Colusa Subbasin that are Parties to this MOA, and which have previously filed with the Department notices to become GSA's for their respective service areas, will concurrently with one another, and upon execution of the Agreement formally withdraw said notices, not later than June 30, 2017, and will comply with and carry out the Act through the Agency in cooperation with Beneficial Uses and Users. If the Agreement is not executed and the Agency is not formed by June 30, 2017, the local agencies will comply with and carry out the Act in cooperation with Beneficial Uses and Users through this MOA until one of the events in Section 3.1 occurs.

4.7 Pursuant to the Act, all Beneficial Uses and Users of groundwater will be subject to the Agreement and Plan, and the Parties intend that all Beneficial Uses and Users will cooperate with the Agency and abide by the guidelines put forth in the Agency's Plan for the Subbasin.

4.8 Being a Party to this MOA is not a condition to participate in Plan development. All Beneficial Uses and Users have an equal opportunity, either directly or through appropriate representation on the governing board of the Agency, to participate in Plan development.

4.9 No Party's land or property use, or any other authority, is limited by this MOA.

4.10 Sustainable groundwater conditions in the Colusa Subbasin are critical to support, preserve, and enhance the economic viability, social well-being and culture of all Beneficial Uses and Users, including tribal, domestic, municipal, agricultural, and industrial users.

4.11 Unsustainable groundwater practices threaten the groundwater resources of all groundwater users in the Colusa Subbasin.

4.12 Aquifers within the basin can be threatened by unsustainable management of groundwater resources.

4.13 Economic prosperity and healthy natural resources in the County can be threatened by the lack of available groundwater and surface water resources, and such threats should be avoided to the maximum extent practical.

4.14 All Beneficial Uses and Users should have an open, transparent and timely opportunity to engage with the Agency and to provide input on Plan development and implementation of the Act. Extensive outreach is a priority of all Parties to this MOA, to inform Beneficial Uses and Users about implementation and potential effects of the Act, and to ensure Beneficial Uses and Users are involved in the process where practical.

4.15 Implementation and enforcement of the Plan should take place at the most local level possible and should allow each Party maximum input to any Plan chapter or section applicable to the Party and the Beneficial Uses and Users that exist or will exist in a Party's service area or jurisdiction, and should reflect the Party's authority and desire to manage the water resources available to its constituents or customers, provided such management is consistent with sustainability requirements of the Act and Plan.

4.16 Overlying landowners in the Colusa Subbasin have a right to share in the sustainable yield of the Subbasin for reasonable and beneficial use on overlying land.

4.17 Act implementation is new for all County Beneficial Uses and Users, and there are many unknowns. Willingness by Parties and Beneficial Users to adapt and adjust during Agency formation and Plan development and implementation is crucial to success.

4.18 Achieving and maintaining groundwater sustainability for the good of all groundwater beneficial users in the County is the Agency's first priority and main focus, especially in the early stages of Act implementation while all Beneficial Uses and Users work together to alleviate any existing fear and distrust.

4.19 The Parties understand and agree that this MOA and a Party's execution of the Agreement and participation in the Agency are subject to multi-party agreements being executed in other portions of the Colusa Subbasin outside of Colusa County for purposes of compliance with the Act. If similar multi-party agreements are not executed in other portions of the Colusa Subbasin outside of Colusa County, than a Party whose jurisdiction extends to portions of the Colusa Subbasin outside of Colusa County may withdraw from this MOA or the Agreement, and proceed independently under the Act.

Section 5. Specific Principles of Understanding

This Paragraph 5 reflects the Parties' mutual specific goals, objectives and understanding concerning development of the Agreement and the Agency, and future implementation of the Act.

5.1 Governance and Implementation of the Act

5.1.1 Pursuant to Water Code section 10724, and for purposes of making appointments to the governing board of the Agency, the County will represent the common and unique interests of

groundwater extractors located in the areas of the Subbasin that are not within the jurisdictional boundary of local agencies that are a Party to the Agreement, other than the County.

5.1.2 The Agency will implement the Act in a manner that optimizes the Act's goals to achieve sustainable groundwater conditions which support the vital agricultural economy in the County, other industry, and domestic and public water uses.

5.1.3 The governing board of the Agency will, consistent with state law regarding joint powers authorities, reflect diverse representation of Beneficial Uses and Users within the Colusa Subbasin and will include representatives of Parties to the Agreement. Mutual water companies and other private pumpers may be represented on the governing board as County appointees.

5.1.4 The Agency will pursue financial and infrastructure solutions and beneficial partnerships with Parties and other entities to provide sustainable water supplies within the Colusa Subbasin.

5.1.5 Local agencies that are signatories to the Agreement will reserve the right to withdraw from the Agreement and Agency if the local agency determines it is no longer in the Party's best interests to remain in the Agency. Any local agency that is formed after the date of the Agreement will have the right to become a Party to the Agreement and participate in the governance of the Agency.

5.1.6 Governance and implementation under the Agreement will be designed to avoid duplicative or conflicting governmental authorities to the maximum extent possible. Each Party will have maximum input regarding provisions of the Plan affecting groundwater within its own boundaries. Each Party retains and preserves powers and authority to regulate groundwater use within its boundaries so long as its actions are consistent with achieving sustainability consistent with the Groundwater Sustainability Plan (GSP).

5.1.7 As parties implement the Act within their respective boundaries, they will coordinate efforts with any adjacent areas within and outside of the Subbasin.

5.1.8 Among other functions, the Agency will work with local agencies and other Beneficial Uses and Users to coordinate and facilitate intra-basin water transfers as appropriate and to avoid one or more of the six undesirable results defined by the Act:

1. Chronic lowering of groundwater levels
2. A reduction in groundwater storage
3. Degradation in water quality
4. Land subsidence
5. Surface water depletion
6. Impacts on groundwater dependent ecosystems

5.1.9 The Parties agree that the Plan should encourage board members to act on behalf of and represent all landowners within their service areas to ensure collective compliance with the Act.

5.2 Sustainability

5.2.1 Data collection and groundwater studies are essential to increase knowledge and to support groundwater management decisions. Funding and implementing such studies is a priority and a shared responsibility among all Agency Parties and other Beneficial Uses and Users. The specifics of such sharing will be an element of the Agreement.

5.2.2 Groundwater conditions throughout the County and Subbasin are not uniform. Conditions vary by location, surface water conditions, precipitation and water year type. While all Beneficial Uses and Users will share the obligation to achieve sustainability, solutions will need to reflect these geographic and hydrogeographic differences.

5.2.3 The Parties agree that the Plan encourages utilization of surface water to its full extent as available and feasible, and groundwater is conserved for use during dry periods when surface water is not readily available or affordable.

5.2.4 The Parties agree that the Plan should recognize the interconnectedness of groundwater and surface water resources, and contributions to the system from surface water use, distribution, and applications.

5.2.3 5.2.5

5.2.4 The Agency recognizes that groundwater recharge occurs through many different means. Applied surface water, precipitation, porous supply and drain ditches, and Best Management Practices utilized by beneficial users contribute to the basins recharge. Studies will quantify the availability of such recharge and provisions will be included in the GSP to ensure that future groundwater extractions are consistent with quantified recharge and the sustainable yield of the Colusa Sub-Basin.

5.2.6 The Parties agree that the Plan should encourage all Beneficial Uses and Users, whether using surface water or groundwater in the basin, to maximize the beneficial use water consistent with their respective rights, and provide for mitigation of impacts on waterways, creeks, streams and rivers.

5.2.7 The Parties agree that the Plan should encourage surface water users to use surface water and groundwater for in-basin transfers to meet local demands. Following transfers will also occur both in and outside of the Subbasin, with transfer quantities based on avoided consumptive use.

5.2.8 The Parties agree that the Plan should encourage surface water transfers to potentially serve as a tool to settle disputes over environmental obligations such as dedication of surface water to environmental requirements in reservoirs, rivers, or the Bay-Delta or to mitigate impacts during drought periods which will include increased reliance on groundwater by surface water users. The Parties agree that the Plan should encourage Agency members to agree to coordinate and partner on actions that attempt to balance environmental solutions with groundwater sustainability.

5.3 Agency Financing and Support

5.3.1 The Parties agree that the Agreement and Plan should include provisions for Party contributions of capital and operating funds, personnel, services, equipment or property to cover the Agency and Plan development.

5.3.2 The Parties agree that the Agreement and Plan should encourage and recognize that there will be costs for the development, implementation and administration of the Plan, the Parties must agree on governance that maximizes the potential for State funding, and to allocate the local share of these costs by one or more mutually agreeable and equitable formulas (to be determined)

5.4 Flexibility of the Agency

5.4.1 The Parties agree that the Agreement and Plan should encourage maximum flexibility to adapt to changes in Agency membership, funding, planning oversight, et cetera, as the Parties build their relationships and mutual trust.

Section 6. Potential Projects and Costs

To be added _____ as per work between the County and Facilitation Consultant

[signatures]