

**JOINT EXERCISE OF POWERS AGREEMENT  
ESTABLISHING THE COLUSA GROUNDWATER AUTHORITY**

THIS AGREEMENT is entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (“**Effective Date**”), pursuant to the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.* (“**JPA Act**”) by and among the entities listed in **Exhibit A** attached hereto and incorporated herein (collectively “**Members**”).

**I. RECITALS**

- A. On August 29, 2014, the California Legislature passed comprehensive groundwater legislation contained in SB 1168, SB 1319 and AB 1739. Collectively, those bills, as subsequently amended, enacted the “Sustainable Groundwater Management Act,” or “SGMA.” Governor Brown signed the legislation on September 16, 2014 and it became effective on January 1, 2015.
- B. Each of the Members overlies the Colusa County portions of the Colusa Subbasin of the Sacramento Valley Groundwater Basin, California Department of Water Resources Basin No. 5-021.52, or the West Butte Subbasin of the Sacramento Valley Groundwater Basin, Department of Water Resources Basin No. 5-021.58, as its such boundaries may be modified from time to time in accordance with Cal. Water Code Section 10722.2 (“Basin”).
- C. Each of the Members is authorized to become, or participate in, a Groundwater Sustainability Agency (“GSA”) under SGMA.
- D. The Members desire, through this Agreement, to form the Colusa Groundwater Authority (“Authority”), a separate legal entity, for the purpose of acting as the GSA for the Colusa County portions of the Basin.
- E. The mission of the Authority is to provide a dynamic, cost-effective, flexible and collegial organization to ensure compliance with SGMA within the Basin.
- F. The Authority will serve a coordinating, administrative and implementing role in order to provide for sustainable groundwater management of the Basin. Each of the Members (or groups of Members) will have responsibilities to carry out the Groundwater Sustainability Plan and to coordinate with the Authority to implement SGMA within the Members’ jurisdictional areas.
- G. This Agreement shall form the Authority, which shall be the GSA for purposes of carrying out SGMA in the Basin.

**THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, the Members agree as follows:**

## ARTICLE 1: DEFINITIONS

1.1 **Definitions.** As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

a. **“Agreement”** shall mean this Joint Exercise of Powers Agreement Establishing the Colusa Groundwater Authority.

b. **“Authority”** shall mean the Colusa Groundwater Authority established by this Agreement.

c. **“Basin”** shall mean, for purpose of this Agreement, the Colusa County areas of the Colusa Subbasin of the Sacramento Valley Groundwater Basin, California Department of Water Resources Basin No. 5-021.52, and the West Butte Subbasin of the Sacramento Valley Groundwater Basin (excluding the area within the boundaries of Reclamation District No. 1004), California Department of Water Resources Basin No. 5-021.58, as such boundaries may be modified from time to time in accordance with Cal. Water Code Section 10722.2. The Basin is depicted in **Exhibit B**.

d. **“Board of Directors”** or **“Board”** shall mean the governing body formed to implement this Agreement as established herein.

e. **“DWR”** shall mean the California Department of Water Resources.

f. **“Effective Date”** shall be as set forth in the Preamble of this Agreement.

g. **“Groundwater Sustainability Agency”** or **“GSA”** shall mean an agency enabled by SGMA to regulate defined portions of the Basin cooperatively with all other Groundwater Sustainability Agencies in the Basin, in compliance with the terms and provisions of SGMA.

h. **“Groundwater Sustainability Plan”** or **“GSP”** shall have the definition set forth in SGMA.

i. **“GSA Boundary”** shall mean those lands located within the Basin as depicted in **Exhibit B**.

j. **“JPA Act”** shall mean the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.*

k. **“Member”** shall mean any of the signatories to this Agreement and **“Members”** shall mean all of the signatories to this Agreement, collectively. Each of the Members shall be authorized to become, or participate in, a Groundwater Sustainability Agency under SGMA.

l. **“SGMA”** shall mean the Sustainable Groundwater Management Act of 2014 and all regulations adopted under the legislation (SB 1168, SB 1319 and AB 1739)

that collectively comprise the Act, as that legislation and those regulations may be amended from time to time.

## ARTICLE 2: ORGANIZING PRINCIPLES

2.1 The Members intend to work together in mutual cooperation to develop and implement a GSP for the Basin in compliance with SGMA, consistent with the **general** principles set forth in that certain **unexecuted** Memorandum of Agreement among the Members and other stakeholders, attached hereto as **Exhibit C**.

2.2 Prior to June 30, 2017, any Member that has previously notified DWR of its intent to be a GSA in the Basin shall formally notify DWR of its withdrawal or rescission of such notification to allow the Authority to become the GSA for the Basin

2.3 The Members intend through this Agreement to take advantage of economies of scale to obtain the most cost-effective consulting, technical and professional services for the development and implementation of a GSP. As appropriate, the Authority shall cooperate with neighboring groundwater basins and neighboring GSA's to efficiently implement SGMA in the Basin.

2.4 The Members intend through this Agreement to form the Authority, elect for the Authority to serve as the GSA for the Basin, and authorize the Authority to make any and all necessary filings with DWR for the Authority to become the GSA for the Basin prior to June 30, 2017.

2.5 To the extent any Member determines in the future to become a GSA separate and apart from the Authority, such Member will coordinate with the Authority to take all actions necessary to allow such Member to become a separate GSA and to ensure that the Authority may otherwise continue consistent with the requirements of SGMA. The Authority will work cooperatively with such Member to coordinate implementation of SGMA within the Basin.

## ARTICLE 3: FORMATION, PURPOSE AND POWERS

3.1 **Recitals:** The foregoing recitals are incorporated by reference.

3.2 **Certification.** Each Member certifies and declares that it is a legal entity that is authorized to be a party to a joint exercise of powers agreement and to contract with each other for the joint exercise of any common power under Article 1, Chapter 5, Division 7, Title 1 of the Government Code, commencing with section 6500 or other applicable law including but not limited to Cal. Water Code § 10720.3(c).

3.3 **Creation of the Authority.** Pursuant to the JPA Act, the Members hereby form and establish a public entity to be known as the "Colusa Groundwater Authority," a public entity separate and apart from its members.

3.4 **Election for Authority to Serve as GSA.** Upon its formation pursuant to this Agreement, the Authority shall serve as the GSA for the Basin and shall make any and all necessary filings with regulatory agencies to become and serve as the GSA for the Basin prior to June 30, 2017. In approving this Agreement and electing for the Authority to serve as the GSA for the Basin, Members shall comply with Water Code section 10723(b), including any public notice and hearing requirements.

3.5 **Purposes of the Authority.** The purposes of the Authority are to:

- a. Provide for the joint exercise of powers of the Members and powers granted pursuant to SGMA (subject to the restrictions contained in this Agreement);
- b. Cooperatively carry out the purposes of SGMA, including the engagement of stakeholders and members of the public as required by Water Code sections 10723.2, 10723.4, and 10727.8;
- c. Become and serve as the GSA for purposes of management of the Basin in accordance with SGMA; and
- d. Develop, adopt and implement a legally sufficient GSP for the Basin, subject to the limitations set forth in this Agreement.

3.6 **Powers of the Authority.** To the extent authorized by the Members through the Board of Directors, and subject to the limitations set forth in this Agreement, the Authority shall have and may exercise any and all powers commonly held by the Members and any and all additional powers granted by SGMA, as set forth in Water Code Part 2.74, Chapter 5, section 10725, *et seq.* The powers of the Authority shall be coextensive with the authorities granted by SGMA, as it may be amended from time to time. Amendments to SGMA by the California Legislature, and the resulting modification powers of the Authority, shall not constitute an amendment of this Agreement. SGMA authorities, as they exist on the effective date of this Agreement, are attached hereto as **Exhibit D.**

3.7 **Designation.** Pursuant to Government Code section 6509, the Members hereby designate the County of Colusa for purposes of determining restrictions upon the manner of exercising the power of the Authority.

3.8 **Powers Reserved to Members.** Each of the Members reserves the right, in its sole and absolute discretion, to:

- a. Maximize input to the Plan chapter or section of the GSP adopted by the Authority as applicable within the Member's boundaries;
- b. Subject to applicable limitations in this Agreement, implement GSP actions adopted by the Authority within the Member's boundaries;
- c. Withdraw from this Agreement and become its own GSA, to the extent authorized by SGMA, and to thereafter exercise the powers conferred to a GSA, within the Member's boundaries;

d. Nothing set forth in this Agreement is intended to impede or abrogate the powers of any Member, including but not limited to the Member's police power and land use authority;

e. Each Member shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Member shall be under the control of or shall be deemed to control any other Member. No Member shall be precluded from independently pursuing any of the activities contemplated in this Agreement. No Member shall be the agent or have the right or power to bind any other Member without such Member's express written consent, except as expressly provided in this Agreement.

3.9 **Term.** This Agreement shall be effective as of the Effective Date and shall remain in effect until terminated in accordance with Article 6.4 of this Agreement.

3.10 **Boundaries of the Authority.** The geographic boundaries of the Authority and that portion of the Basin that will be managed by the Authority pursuant to SGMA are depicted in **Exhibit B**.

3.11 **Role of Members.** Each Member agrees to undertake such additional proceedings or actions as may be necessary in order to carry out the terms and intent of this Agreement, including actions specifically required by this Agreement. The support of each Member is important to the success of the Authority.

3.12 **Other Officers and Employees.** The Members do not anticipate that the Authority will have any employees. However, the Authority may:

a. Provide that any employee of a Member, and subject to a written agreement between that Member and the Authority, may be in the nature of an independent contractor of the Authority, and shall perform, unless otherwise provided by the Board, the same various duties for the Authority as for his or her employer in order to carry out this Agreement;

b. Engage one or more Members or third parties to manage any or all of the business of the Agency on terms and conditions acceptable to the Board of Directors as specified in a separate written contract. To the extent that a manager is appointed, the manager shall at all times maintain exclusive control over any employees of or contractors to the manager assigned to perform services under the manager's contract with the Authority, including, but not limited to, matters related to hiring, probationary periods, disciplinary action, termination, benefits, performance evaluations, salary determinations, promotions and demotions, and leave accruals;

c. Employ or contract for competent registered civil engineers and other consultants to investigate and to carefully devise a plan or plans to carry out and fulfill the objects and purposes of SGMA, and complete a GSP.

## ARTICLE 4: GOVERNANCE

4.1 **Board of Directors.** The business of the Authority will be conducted by a Board of Directors that is hereby established, and that shall be initially composed of and appointed as follows:

- One member of the County Board of Supervisors, appointed by the County Board of Supervisors;
  - One member of the Colusa City Council, appointed by the City of Colusa City Council;
  - One member of the Williams City Council, appointed by the City of Williams City Council;
  - One member of the Board of the Glenn Colusa Irrigation District, appointed by the Glenn Colusa Irrigation District;
  - One member of the Board of the Maxwell Irrigation District or the Westside Water District, said appointment to alternate every two years beginning with an appointment by the Maxwell Irrigation District of one of its Board members;
  - One member of the Board of the Princeton-Codora-Glenn Irrigation District or the Provident Irrigation District, said appointment to alternate every two years beginning with an appointment by the Princeton-Codora-Glenn Irrigation District of one of its Board members;
  - One member of the Board of the Colusa County Water District, appointed by the Colusa County Water District;
  - One member of the Board of Reclamation District 108, appointed by Reclamation District 108;
  - One member of the Board of Reclamation District 479, appointed by Reclamation District 479;
  - One member of the Board of the Colusa Drain Mutual Water Company, proposed by the Colusa Drain Mutual Water Company, which will be appointed by the Authority;
  - Two representatives of private groundwater pumpers, recommended by the Colusa County Groundwater Commission and appointed by the County Board of Supervisors, who are members of the Colusa County Groundwater Commission;
- a. **Modifications to Board.** The composition of the Board of Directors may be modified from time to time to reflect the withdrawal or termination of any Member or the admission of any new Member to the Authority, subject to the procedures provided herein. Admission and withdrawal of new Members, and modifications to the Board of Directors to reflect such changes, shall not constitute an amendment of this Agreement.

- b. **Alternates to Board members.** The appointing authority of each Member, as set forth above, may appoint an alternate or alternates to the Board. Alternates shall be identified to the Board at the same time as Board appointments, and any modifications to a Member's alternate or alternates as soon as practicable after such modification has been made. Alternates may vote on all matters before the Authority in the absence of the appointed Board member or representative. Each alternate shall be informed of the business of the Authority and the actions to be taken when acting on behalf of a Board member. The Board may in the future adopt additional procedures for the qualification and appointment of alternate Board members, and for the voting rights of such alternates.
- c. All members of the Authority Board of Directors and all alternates will be required to file a Statement of Economic Interests (FPPC Form 700).

4.2 **Term of Directors.** Each member of the Authority Board of Directors, and alternates to the Board member, will serve at the pleasure of its appointing authority, which shall have the authority to appoint and remove its appointees in its sole and absolute discretion. Each appointing authority shall notify the Authority in writing of its designated Board members and alternate Board members.

4.3 **Officers.** The Board of Directors shall elect a chairperson, a vice chairperson, a secretary and a treasurer. The chairperson and vice-chairperson shall be directors of the Board and the secretary and treasurer may, but need not, be directors of the Board. The chairperson shall preside at all meetings of the Board and the vice-chairperson shall act as the chairperson in the absence of the chairperson elected by the Board. The treasurer shall meet the qualifications set out in Government Code section 6505.5 as a depository of funds for the Authority.

4.4 **Powers and Limitations.** All the powers and authority of the Authority shall be exercised by the Board, subject, however, to the rights reserved by the Members as set forth in this Agreement.

4.5 **Quorum.** A majority of the Authority Board of Directors will constitute a quorum for the purpose of conducting business, unless there is an even number of Directors on the Authority Board of Directors, in which case a quorum may be established with half the Board members.

4.6 **Voting.** Except as to actions identified in Section 4.7, the Authority Board of Directors will conduct all business by vote of a majority of the Directors present, if a quorum shall be established, and each Director shall have one (1) vote. Prior to voting, Board members shall endeavor in good faith to reach consensus on the matters to be determined such that any subsequent vote shall be to confirm the consensus of the Board. If any Board member or Member strongly objects to a consensus-based decision prior to a vote being cast, the Board shall work in good faith to reasonably resolve such strong objection, and, if the same is not resolved collaboratively, then the matter will proceed to a vote for final resolution under this Article 4.6 or Article 4.7 below, as applicable.

a. At the first Board meeting following the two-year anniversary of the Effective Date of this Agreement, the Board of Directors shall consider whether to recommend that the voting structure described in this Article 4.6 be modified in any respect. If the Board of Directors recommends such modification, the governing body of each Member shall consider the recommended modification(s) and shall report back to the Authority Board of Directors regarding the Member's position thereon.

4.7 **Supermajority Vote Requirement for Certain Actions.** The following actions will require a two-thirds (2/3) vote of the directors present:

- a. Approval of the Authority's annual budget and amendments to the annual budget, consistent with Article 5.1 and **Exhibit E**;
- b. Decisions related to the levying of taxes, assessments, regulatory fees, or other fees and charges, and any amendments thereto;
- c. Decisions concerning property acquisition and ownership
- d. Decisions related to the expenditure or reimbursement of funds by the Authority beyond expenditures approved in the Authority's annual budget, and concerning contracts exceeding monetary thresholds determined by the Board;
- e. Issuance of bonds or other indebtedness;
- f. Adoption of rules, regulations, policies, ordinances, bylaws and procedures, and any amendments thereto;
- g. Decisions related to the establishment of the Members' funding obligations for payment of the Authority's operating and administrative costs as provided in Article 5.1 and **Exhibit E**, or any amendments or modifications of Members' funding obligations;
- h. Adoption of a GSP and any amendments or modifications of a GSP;
- i. Decisions related to Basin boundary adjustments;
- j. Adoption of procedures for the appointment of alternative Board members, and for the voting rights of such alternatives;
- k. Involuntary termination of any Member;
- l. Termination of this Agreement.

4.8 **Meetings.** The Board shall provide for regular and special meetings in accordance with Chapter 9, Division 2, Title 5 of Government Code of the State of California (the "Ralph M. Brown Act" commencing at section 54950), and any subsequent amendments of those provisions.



4.9 **Rules, Regulations, By-Laws and Ordinances.** The Board may adopt rules, regulations, by-laws and ordinances to supplement this Agreement and to provide for the effective and efficient administration of the Authority. In the event of conflict between this Agreement and any rule, regulation, by-law, or ordinance, the provisions of this Agreement shall govern.

4.10 **Administrator.** The Members hereby designate Colusa County to serve as administrator of, and keeper of records for, the Authority.

## ARTICLE 5: FINANCIAL PROVISIONS

5.1 **Funding; Initial Contributions and Expenses:** Upon execution of this Agreement, and for a period not to exceed the earlier of (a) two years or (b) adoption of an alternative funding plan approved by the Board, the Members agree to share the operating and administrative costs of operating the Authority in accordance with the percentages set forth in the separate Initial Funding and Administrative Service Agreement attached as Exhibit E hereto, which is hereby incorporated into this Agreement. Each Member will make quarterly payments of its share of the operating and administrative costs. Members shall make payments underas required in the Funding Agreement within thirty (30) days of the payment accrual dates in the Funding Agreement. Each Member will be solely responsible for identifying and allocating funds for payment of the Member's share of operating and administrative costs. The obligation of each Member to make payments under the terms and provision of this Agreement is an individual and separate obligation of the Member and not a joint obligation with those of the other Members.

5.2 **Funding Plan; long-term funding.** Upon the formation of the Authority, the Board of Directors shall work diligently on the development, adoption and implementation of a long-term funding plan to cover the operating and administrative costs of the Authority. The long-term funding plan shall supersede and replace the initial funding plan described in section 5.1 above, at the earliest possible date.

- a. The long-term funding plan may include provision for reimbursement or offset of the Members' initial funding contributions pursuant to section 5.1 above, as authorized by law.
- b. If a long-term funding plan is unlikely to be adopted and implemented within two years of this agreement, the Board shall meet and confer with the Members to determine how to fund the activities of the Authority beyond the initial two years, or to take other appropriate action including but not limited to, termination of the Authority.

5.3 **Indemnification.** Members, directors, officers, agents 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. To the fullest extent permitted by law, the Authority shall hold harmless, defend and indemnify the Members and their officers, employees and agents, and members of the Board, from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to

property arising out of the activities of the Authority or its Board, officers, employees or agents under this Agreement. These indemnification obligations shall continue beyond the Term of this Agreement as to any acts or omissions occurring before or under this Agreement or any extension of this Agreement.

a. The Authority shall be required to obtain insurance, or join a self-insurance program in which one or more of the Members participate, appropriate for its operations. Any and all insurance coverages provided by the Agency, and/or any self-insurance programs joined by the Agency, shall name each and every Member as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named insured in the performance of this Agreement. Minimum levels of the insurance or self-insurance program shall be set by the Agency in its ordinary course of business. The Agency shall also require all of its contractors and subcontractors to have insurance appropriate for their operations.

**5.4 Repayment of Funds.** Unless the Board determines otherwise, no refund or repayment of the initial commitment of funds specified in Article 5.1 will be made to a Member ceasing to be a Member of this Agreement whether pursuant to removal by the Board of Directors or pursuant to a voluntary withdrawal. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, the terms and conditions of this Agreement or other agreement of the Authority and withdrawing Member.

**5.5 Budget.** The Authority's fiscal year shall run from July 1 through June 30. Each fiscal year, the Board shall adopt a budget for the Authority for the ensuing fiscal year. Within ninety (90) days of the effective date of this Agreement, the Board shall adopt a budget. Thereafter, a budget shall be adopted no later than December **March 1** of the preceding fiscal year.

**5.6 Alternate Funding Sources.** The Board may obtain State of California or federal grants.

**5.7 Depository.** The Treasurer of the Authority **shall be the County Treasurer**, who shall be the depository and have custody of all money of the Authority, from whatever source, subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Member or any other person or entity. The Treasurer shall perform the duties specified in Government Code sections 6505 and 6505.5. **Subject to the voting requirements in Article 4.7, the Board may elect to appoint a different Treasurer, provided such appointment is subject to the requirements of Government Code sections 6505 and 6505.5.**

**5.8 Accounting.** Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. The books and records of the Authority shall be open to inspection by the Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.

5.9 **Audit.** A qualified firm, serving in the capacity of auditor, shall audit the records and the accounts of the Authority annually in accordance with the provisions of Government Code section 6505. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the Fiscal Year under examination.

5.10 **Expenditures.** All expenditures within the designations and limitations of the applicable approved budget shall be made upon the approval of any officer so authorized by the Board. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the approval and written order of the Board. The Board shall requisition the payment of funds only upon approval of claims or disbursements and requisition for payment in accordance with policies and procedures adopted by the Board.

5.11 **Members Limited Liability.** As provided by Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities, and obligations of the Authority only, and not of the constituent Members of the Authority.

## ARTICLE 6: CHANGES TO MEMBERSHIP, WITHDRAWAL AND TERMINATION

6.1 **Addition to Membership.** Any local agency with the Basin that is qualified to be a GSA pursuant to Water Code section 10723, and which was not a Member of the Authority at the time of its effective date, is eligible to become a Member of the Authority subject to the requirements in this Article 6.1. Such local agency must notify the Authority in writing of its intent to become a Member, and the Authority shall confirm the local agency's membership in writing within thirtysixty (360) days, provided the local agency's notice of intent includes all of the following verifications:

- a. The local agency is qualified to be a GSA under the applicable requirements of Water Code section 10723.
- b. The local agency agrees to become a Member of and signatory to this Agreement, and subject to all requirements, rights and obligations of this Agreement.
- c. The local agency agrees to contribute a proportionate share of the costs of the Authority, as reasonably determined by the Board of the Authority. Such costs may include, at the discretion of the Board, reasonable reimbursement for costs incurred in the formation and early implementation of the Authority pursuant to Article 5.1 and the Funding Agreement.

The Board's written confirmation of the new membership will serve as an addendum to this Agreement, and to **Exhibit A**, and shall ratify the admission of the new Member to the Authority. Such addendum does not constitute an Amendment of this Agreement, nor does it require separate approval of this Agreement by the Members. Upon written confirmation by the Board of the new membership, such new Member may appoint a Board member and alternates as provided in Article 4.1, and shall be entitled to participate in the Authority as provided herein.

6.2 **Noncompliance; Involuntary Termination/Removal.** In the event any Member (1) fails to comply with the terms of this Agreement, or (2) undertakes actions that conflict with or undermine the functioning of the Authority or the preparation or implementation of the GSP, such Member shall be subject to the provisions for involuntary removal of a Member set forth in this Article 6.2. Such actions may include, for example and without limitation, failure to pay its agreed upon contributions when due; refusal to participate in GSA activities or to provide required monitoring of sustainability indicators; refusal to implement measures as may be required of the Member by the GSP, or which the Member has authority to impose on landowners and pumpers within the Member's jurisdiction. Involuntary termination/removal may only be exercised by the Board after participating in a meet and confer process regarding the proposed involuntary termination removal and otherwise pursuing other reasonable efforts to resolve the Member's non-compliance, including third party neutral dispute resolution processes if appropriate as provided in Article 8.6. In the event of the involuntary removal of a Member the removed Member shall remain fully responsible for its proportionate share of all liabilities incurred by the Authority prior to the effective date of the removal.

6.3 **Withdrawal of Members.** A Member may, in its sole discretion, unilaterally withdraw from the Authority, effective ninety (90) days after receipt of written notice to the Authority, provided that the withdrawing Member will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority up until the effective date of the Member's withdrawal, in accordance with Article 5.1; except that, a withdrawing Member will not be responsible for any obligation or liability that the Member has voted against or has voiced its disapproval on at a Board meeting, provided the Member provides written notice of its withdrawal from the Authority within three days of the Board action. In the event the withdrawing Member has any rights in any property or has incurred obligations to the Authority, the Member may not sell, lease or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed by it and the Authority. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawing Member.

6.4 **Termination.** This Agreement may be terminated and the Authority dissolved by a supermajority/unanimous vote of the Board in accordance with Article 4.7 hereof. However, in the event of termination each of the Members will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority, in accordance with Article 5. Nothing in this Article will prevent a Member from withdrawing from this Agreement and the Authority as provided for in this Agreement, or from entering into other joint exercise of power agreements.

6.5 **Disposition of Property Upon Termination.** Upon termination of this Agreement, the assets of the Authority shall be transferred to the Authority's successor, provided that a public entity will succeed the Authority, or in the event that there is no successor public entity, to the Members in proportion to the contributions made by each Member. If the successor public entity will not assume all of the Authority's assets, the Board shall distribute the Authority's assets between the successor entity and the Members in proportion to any obligation required by Articles 5.

**6.6 Rights of Member to Become GSA in Event of Withdrawal or Termination/Removal.** Upon withdrawal or involuntary termination/removal of a Member, or termination of this Agreement pursuant to Article 6.4, whether occurring before or after June 30, 2017, the withdrawing or terminated/removed Member will retain all rights and powers to become or otherwise participate in a GSA for the lands within its boundaries. In such event the Authority and its remaining Members (i) shall not object to or interfere with the lands in the withdrawing or terminated/removed Member's boundaries being in a GSA, as designated by the withdrawing or terminated/removed Member or otherwise, (ii) shall facilitate such transition to the extent reasonably necessary, and (iii) shall withdraw from managing that portion of the Basin within the boundaries of the withdrawing or terminating/removing Member and so notify the California Department of Water Resources.

**6.7 Use of Data.** Upon withdrawal, any Member shall be entitled to use any data or other information developed by the Authority during its time as a Member. Further, should a Member withdraw from the Authority after completion/adoption of the GSP by the Authority, it shall be entitled to utilize the GSP for future implementation of SGMA within its boundaries.

## **ARTICLE 7: PROJECTS AND MANAGEMENT ACTIONS**

**7.1 Special Project Agreements.** Members may enter into special project agreements amongst themselves and with the Authority to achieve any of the purposes or activities authorized by this Agreement, and to share in the expenses and costs of such special project, for example, to share in funding infrastructure improvements within the boundaries of particular Members. Special project agreements must be in writing and documentation must be provided to each of the Members to this Agreement. No special project agreement undertaken pursuant to this Section 7.1 shall conflict with the terms of this Agreement or the GSP.

**7.2 Special Project Expenses.** Members that enter into special project agreements agree that any special project expenses incurred for each such special project are the costs of the special project participants, respectively, and not of the Authority or any other Members to this Agreement not participating in the special project. Special project expenses shall be paid by the parties to the respective special project agreements.

**7.3 Indemnification of Other Members; Special Projects.** Members participating in special project agreements, if the Authority is a party to such agreement, shall hold each of the other Members who are not parties to the special project agreement free and harmless from and indemnify each of them against any and all costs, losses, damages, claims and liabilities arising from the special project agreement. The indemnification obligation of Members participating in special project agreements shall be the same as specified in Article 5.3 for Members in general, except that they shall be limited to liabilities incurred for the special project.

**7.4 Identified Management Actions.** In the development of this Agreement certain Members have identified particular activities and strategies that should be considered by the Authority as it develops the GSP. Without predetermining how these activities and strategies will be considered and implemented, the Members hereby direct the Authority to consider the following in the development of the GSP, without limitation:

- a. Formation of management areas or other tools to address unique or particular circumstances in the Basin;
- b. Development of water budgets and other accounting practices to facilitate sustainable groundwater management;
- c. Utilization of groundwater banking concepts to maximize the use of the Basin for the benefit of the Members and residents in the Basin, consistent with SGMA's goals and objectives.

## ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 **Amendments.** This Agreement may be amended from time to time by a unanimous vote of the Members. Except as otherwise provided herein, the Authority may not amend the terms of this Agreement.

8.2 **Binding on Successors.** Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without a unanimous vote by the Members. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto.

8.3 **Notice.** Any notice or instrument required to be given or delivered under this Agreement may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of 72 hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery, delivered to the address or facsimile numbers of the Members listed in **Exhibit A**.

8.4 **Counterparts.** This Agreement may be executed by the Members 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.

8.5 **Choice of Law.** This Agreement shall be governed by the laws of the State of California.

8.6 **Dispute Resolution.** The Board of the Authority shall develop rules and policies for third party neutral dispute resolution to resolve disputes that may arise under this Agreement.

8.7 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement are held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.8 **Headings.** The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Members to this Agreement.

8.9 **Construction and Interpretation.** This Agreement has been arrived at through negotiation, and each Member has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Member shall not apply in the construction or interpretation of this Agreement.

8.10 **Entire Agreement.** This Agreement constitutes the entire agreement among the Members and supersedes all prior agreements and understandings, written or oral. This Agreement may only be amended by written instrument executed by all Members.

IN WITNESS WHEREOF, the Members have executed this Agreement on the day and year first above-written.

By \_\_\_\_\_  
City of Colusa

By \_\_\_\_\_  
County of Colusa

By \_\_\_\_\_  
Colusa County Water District

By \_\_\_\_\_  
Colusa Drain Mutual Water Company

By \_\_\_\_\_  
Glenn Colusa Irrigation District

By \_\_\_\_\_  
Maxwell Irrigation District

By \_\_\_\_\_  
Princeton-Codora-Glenn Irrigation  
District

By \_\_\_\_\_  
Provident Irrigation District

By \_\_\_\_\_  
Reclamation District 108

By \_\_\_\_\_  
Reclamation District 479

By \_\_\_\_\_  
Westside Water District

By \_\_\_\_\_  
City of Williams



**EXHIBIT A**

**EXHIBIT A**

**MEMBER ENTITIES ESTABLISHING THE COLUSA GROUNDWATER AUTHORITY**

- Colusa County Board of Supervisors
- Colusa City Council
- Williams City Council
- Glenn Colusa Irrigation District
- Maxwell Irrigation District
- Westside Water District
- Princeton-Codora-Glenn Irrigation District
- Provident Irrigation District
- Colusa County Water District
- Reclamation District 108
- Reclamation District 479
- Colusa Drain Mutual Water Company

**EXHIBIT B**

**BASIN MAP TO BE INSERTED**

**EXHIBIT C**

## WORKING DRAFT

### Memorandum of Agreement Defining Colusa Subbasin Groundwater Sustainability Interests Version 7 – February 23, 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 Pumps*) 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.



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

## 5.2 Sustainability

5.2.3 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.

5.2.5 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 board members to act on behalf of and represent all landowners within their service areas to ensure collective compliance with the Act.

5.2.8 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.

5.2.9 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.

**EXHIBIT D**

**Water Code - WAT**

**DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES [10000 - 12999]**

*( Heading of Division 6 amended by Stats. 1957, Ch. 1932. )*

**PART 2.74. Sustainable Groundwater Management [10720 - 10737.8]**

*( Part 2.74 added by Stats. 2014, Ch. 346, Sec. 3. )*

**CHAPTER 5. Powers and Authorities [10725 - 10726.9]**

*( Chapter 5 added by Stats. 2014, Ch. 346, Sec. 3. )*

**10725.**

(a) A groundwater sustainability agency may exercise any of the powers described in this chapter in implementing this part, in addition to, and not as a limitation on, any existing authority, if the groundwater sustainability agency adopts and submits to the department a groundwater sustainability plan or prescribed alternative documentation in accordance with Section 10733.6.

(b) A groundwater sustainability agency has and may use the powers in this chapter to provide the maximum degree of local control and flexibility consistent with the sustainability goals of this part.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10725.2.**

(a) A groundwater sustainability agency may perform any act necessary or proper to carry out the purposes of this part.

(b) A groundwater sustainability agency may adopt rules, regulations, ordinances, and resolutions for the purpose of this part, in compliance with any procedural requirements applicable to the adoption of a rule, regulation, ordinance, or resolution by the groundwater sustainability agency.

(c) In addition to any other applicable procedural requirements, the groundwater sustainability agency shall provide notice of the proposed adoption of the groundwater sustainability plan on its Internet Web site and provide for electronic notice to any person who requests electronic notification.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10725.4.**

(a) A groundwater sustainability agency may conduct an investigation for the purposes of this part, including, but not limited to, investigations for the following:

(1) To determine the need for groundwater management.

(2) To prepare and adopt a groundwater sustainability plan and implementing rules and regulations.

(3) To propose and update fees.

(4) To monitor compliance and enforcement.

(b) An investigation may include surface waters and surface water rights as well as groundwater and groundwater rights.

(c) In connection with an investigation, a groundwater sustainability agency may inspect the property or facilities of a person or entity to ascertain whether the purposes of this part are being met and compliance with this part. The local agency may conduct an inspection pursuant to this section upon obtaining any necessary consent or obtaining an inspection warrant pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10725.6.**

A groundwater sustainability agency may require registration of a groundwater extraction facility within the management area of the groundwater sustainability agency.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10725.8.**

(a) A groundwater sustainability agency may require through its groundwater sustainability plan that the use of every groundwater extraction facility within the management area of the groundwater sustainability agency be measured by a water-measuring device satisfactory to the groundwater sustainability agency.

(b) All costs associated with the purchase and installation of the water-measuring device shall be borne by the owner or operator of each groundwater extraction facility. The water-measuring devices shall be installed by the groundwater sustainability agency or, at the groundwater sustainability agency's option, by the owner or operator of the groundwater extraction facility. Water-measuring devices shall be calibrated on a reasonable schedule as may be determined by the groundwater sustainability agency.



(c) A groundwater sustainability agency may require, through its groundwater sustainability plan, that the owner or operator of a groundwater extraction facility within the groundwater sustainability agency file an annual statement with the groundwater sustainability agency setting forth the total extraction in acre-feet of groundwater from the facility during the previous water year.

(d) In addition to the measurement of groundwater extractions pursuant to subdivision (a), a groundwater sustainability agency may use any other reasonable method to determine groundwater extraction.

(e) This section does not apply to de minimis extractors.

*(Amended by Stats. 2015, Ch. 303, Sec. 551. Effective January 1, 2016.)*

**10726.**

An entity within the area of a groundwater sustainability plan shall report the diversion of surface water to underground storage to the groundwater sustainability agency for the relevant portion of the basin.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10726.2.**

A groundwater sustainability agency may do the following:

(a) Acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and hold, use, enjoy, sell, let, and dispose of, real and personal property of every kind, including lands, water rights, structures, buildings, rights-of-way, easements, and privileges, and construct, maintain, alter, and operate any and all works or improvements, within or outside the agency, necessary or proper to carry out any of the purposes of this part.

(b) Appropriate and acquire surface water or groundwater and surface water or groundwater rights, import surface water or groundwater into the agency, and conserve and store within or outside the agency that water for any purpose necessary or proper to carry out the provisions of this part, including, but not limited to, the spreading, storing, retaining, or percolating into the soil of the waters for subsequent use or in a manner consistent with the provisions of Section 10727.2. As part of this authority, the agency shall not alter another person's or agency's existing groundwater conjunctive use or storage program except upon a finding that the conjunctive use or storage program interferes with implementation of the agency's groundwater sustainability plan.

(c) Provide for a program of voluntary fallowing of agricultural lands or validate an existing program.

(d) Perform any acts necessary or proper to enable the agency to purchase, transfer, deliver, or exchange water or water rights of any type with any person that may be necessary or proper to carry out any of the purposes of this part, including, but not limited to, providing surface water in exchange for a groundwater extractor's agreement to reduce or cease groundwater extractions. The agency shall not deliver retail water supplies within the service area of a public water system without either the consent of that system or authority under the agency's existing authorities.

(e) Transport, reclaim, purify, desalinate, treat, or otherwise manage and control polluted water, wastewater, or other waters for subsequent use in a manner that is necessary or proper to carry out the purposes of this part.

(f) Commence, maintain, intervene in, defend, compromise, and assume the cost and expenses of any and all actions and proceedings.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10726.4.**

(a) A groundwater sustainability agency shall have the following additional authority and may regulate groundwater extraction using that authority:

(1) To impose spacing requirements on new groundwater well construction to minimize well interference and impose reasonable operating regulations on existing groundwater wells to minimize well interference, including requiring extractors to operate on a rotation basis.

(2) To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations. Those actions shall be consistent with the applicable elements of the city or county general plan, unless there is insufficient sustainable yield in the basin to serve a land use designated in the city or county general plan. A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

(3) To authorize temporary and permanent transfers of groundwater extraction allocations within the agency's boundaries, if the total quantity of groundwater extracted in any water year is consistent with the provisions of the groundwater sustainability plan. The transfer is subject to applicable city and county ordinances.

(4) To establish accounting rules to allow unused groundwater extraction allocations issued by the agency to be carried over from one year to another and voluntarily transferred, if the total quantity of groundwater extracted in any five-year period is consistent with the provisions of the groundwater sustainability plan.

(b) This section does not authorize a groundwater sustainability agency to issue permits for the construction, modification, or abandonment of groundwater wells, except as authorized by a county with authority to issue those permits. A groundwater sustainability agency may request of the county, and the county shall consider, that the county forward permit requests for the construction of new groundwater wells, the enlarging of existing groundwater wells, and the reactivation of abandoned groundwater wells to the groundwater sustainability agency before permit approval.

*(Amended (as added by Stats. 2014, Ch. 346) by Stats. 2014, Ch. 347, Sec. 12. Effective January 1, 2015.)*

**10726.5.**

In addition to any other authority granted to a groundwater sustainability agency by this part or other law, a groundwater sustainability agency may enter into written agreements and funding with a private party to assist in, or facilitate the implementation of, a groundwater sustainability plan or any elements of the plan.

*(Added by Stats. 2015, Ch. 666, Sec. 3. Effective January 1, 2016.)*

**10726.6.**

(a) A groundwater sustainability agency that adopts a groundwater sustainability plan may file an action to determine the validity of the plan pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure no sooner than 180 days following the adoption of the plan.

(b) Subject to Sections 394 and 397 of the Code of Civil Procedure, the venue for an action pursuant to this section shall be the county in which the principal office of the groundwater management agency is located.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance or resolution imposing a new, or increasing an existing, fee imposed pursuant to Section 10730, 10730.2, or 10730.4 shall be commenced within 180 days following the adoption of the ordinance or resolution.

(d) Any person may pay a fee imposed pursuant to Section 10730, 10730.2, or 10730.4 under protest and bring an action against the governing body in the superior court to recover any money that the governing body refuses to refund. Payments made and actions brought under this section shall be made and brought in the manner provided for the payment of taxes under protest and actions for refund of that payment in Article 2 (commencing with Section 5140) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, as applicable.

(e) Except as otherwise provided in this section, actions by a groundwater sustainability agency are subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**10726.8.**

(a) This part is in addition to, and not a limitation on, the authority granted to a local agency under any other law. The local agency may use the local agency's authority under any other law to apply and enforce any requirements of this part, including, but not limited to, the collection of fees.

(b) Nothing in this part shall be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity, or to impose fees or regulatory requirements on activities outside the boundaries of the local agency.

(c) Nothing in this part is a limitation on the authority of the board, the department, or the State Department of Public Health.

(d) Notwithstanding Section 6103 of the Government Code, a state or local agency that extracts groundwater shall be subject to a fee imposed under this part to the same extent as any nongovernmental entity.

(e) Except as provided in subdivision (d), this part does not authorize a local agency to impose any requirement on the state or any agency, department, or officer of the state. State agencies and departments shall work cooperatively with a local agency on a voluntary basis.

(f) Nothing in this chapter or a groundwater sustainability plan shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin.

*(Amended by Stats. 2015, Ch. 255, Sec. 10. Effective January 1, 2016.)*

**10726.9.**

A groundwater sustainability plan shall take into account the most recent planning assumptions stated in local general plans of jurisdictions overlying the basin.

*(Added by Stats. 2014, Ch. 347, Sec. 14. Effective January 1, 2015.)*

**EXHIBIT E**

MEMORANDUM OF AGREEMENT FOR INITIAL FUNDING OF AND FOR  
ADMINISTRATIVE SUPPORT SERVICES TO COLUSA GROUNDWATER  
AUTHORITY AGREEMENT

RECITALS

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into and effective this \_\_\_ day of \_\_\_\_\_, 2017, by and between the County of Colusa, City of Colusa, City of Williams, Glenn Colusa Irrigation District, Maxwell Irrigation District, Westside Water District, Princeton-Codora-Glenn Irrigation District, and Provident Irrigation District, Colusa County Water District, Reclamation District 108, Reclamation District 479 (collectively “Members”), for the purposes of establishing initial funding for the Colusa Groundwater Authority (“Authority”)

RECITALS

- A. This Initial Funding and Administrative Services Agreement (“AGREEMENT”) is incorporated as Exhibit E into the JOINT EXERCISE OF POWERS AGREEMENT ESTABLISHING THE COLUSA GROUNDWATER AUTHORITY (“JPA”), as if fully set forth therein.
- B. The Members share the common goal of cost effective, sustainable groundwater management within the Colusa County portions of the Basin.
- C. This MOA AGREEMENT is authorized pursuant to Government Code section 6500, et seq., and defines the Members’ respective initial financial contributions and cost-share responsibilities for operational and administrative costs of operating the Authority, and for contracting and engaging for administrative and professional services, in furtherance of Article 5.1 of the JPA.

THEREFORE, in consideration of the mutual promises, covenants, and conditions herein set forth, the Members agree as follows:

**ARTICLE 1: DEFINITIONS**

- 1.1 **Definitions.** As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:
  - 1.1.1 **“Authority”** shall mean the Colusa Groundwater Authority.
  - 1.1.2 **“Authority Board”** shall mean the Board of Directors of the Authority.
  - 1.1.3 **“MOA”** shall mean this Memorandum of Agreement.
  - 1.1.4 **“Initial Financial Contributions”** shall mean monetary contributions to fund the operating and administrative costs of the Authority for a period of time not to exceed the earlier of (a) two years or (b) adoption of an alternative funding plan approved by the Authority Board.

1.1.5 **“Member”** shall mean any of the signatories to this MOAAGREEMENT and **“Members”** shall mean all of the signatories to this MOAAGREEMENT, collectively. All of the Members also are signatories to the Joint Exercise of Powers Agreement Establishing the Colusa Groundwater Authority.

## ARTICLE 2: FUNDING AGREEMENT

### 2.1 Budgets and Member Contributions.

2.1.1 **Fiscal Year.** The Fiscal Year of the Authority shall be July 1 – June 30.

2.1.2 **Initial Budgets.** Budgets developed by the Members for Fiscal Years 2017-2018 and 2018-2019 are set forth in Exhibit A, which is attached and hereby incorporated into this MOAAGREEMENT. Budgets may be adjusted by approval of the Authority Board, subject to the procedures provided in the Joint Exercise of Powers Agreement (“JPA”) and Article 2.1.3, below.

2.1.3 **Funding Obligation Initial Budgets.** Each Member shall be responsible for funding a portion of said budget in accordance with the schedule set forth in Exhibit A (“Funding Obligation”). Members’ Funding Obligation shall be paid in four equal installments, which shall accrue on July 1<sup>st</sup>, October 1<sup>st</sup>, February 1<sup>st</sup>, April 1<sup>st</sup> during the term of this MOAAGREEMENT. Such installment payments shall be made within thirty (30) days of each accrual date. The Authority may pursue interest and penalties for delinquent payments made more than thirty (30) days after each accrual date. The obligation of each Member to make payments under the terms and provisions of this MOAAGREEMENT is an individual and separate obligation of the Member and not a joint obligation with those of the other Members.

2.1.4 **In-Kind Services.** This MOAAGREEMENT does not contemplate in-kind services, but the Authority Board may consider adopting policies for in-kind services in lieu of a Member or Members Funding Obligation, or as an off-set to such Funding Obligation. Any policy for in-kind services in lieu of, or an off-set to, Funding Obligations shall require a written agreement between the Board and the Member providing in-kind services, and such agreement shall include detailed provisions for tracking in-kind costs, rates, reimbursements and in-kind offsets.

2.1.5 **Verification of Authority.** Each Member hereby verifies and confirms that it has authority to enter into this Funding Agreement, and that it understands and hereby acknowledges its Funding Obligation as set forth in this Article 2.

## ARTICLE 3: SERVICES AGREEMENT AND ENGAGEMENT OF CONSULTANTS

### 3.1 Agreement with County for Administrative Services.

3.1.1 **Services Agreement between County and Authority.** The Members contemplate that the County of Colusa will provide for use of administrative services staff and related resources byfor the Authority during the term of this MOAAGREEMENT. Upon

formation of the Authority, the County and Authority will enter into anmay negotiate a new administrative services agreement to augment andor supersede this MOAAGREEMENT, and to provide for administrative and bookkeeping services, and use of other County staff and resources.

**3.1.2 Scope of County Services and Recoverable costs.** For the term of this MOAAGREEMENT, the County shall make available its staff and resources to provide administrative and financial services to the Authority. Such services many include, without limitation, project management related to the administrative services for the Authority, including the development and implementation of a Groundwater Sustainability Plan pursuant to SGMA, and financial, bookkeeping, invoicing and contracting services. A more detailed scope of services shall be stated in the services agreement between the County and Authority, as provided in Article 3.1.1 hereof.

**3.1.3 Invoicing and Payment and Reimbursement of County Services.** The County shall invoice the Authority quarterly for all costs and expenses incurred in carrying out the services required under this MOAAGREEMENT, and as required under future funding agreement. Said invoices shall include the reasonable cost to the County for providing the staff and human resources time required to carry out the administrative services under this MOAAGREEMENT, as well as other costs and expenses incurred on the Authority's behalf, including but not limited to rents, overhead, materials, insurance, benefits, taxes and the like. Invoicing shall be monthly, and invoices shall include a statement of the County's services and the costs and expenses incurred performing such services during the prior month. The Authority shall pay all invoices within thirty (30) days of receipt.

**3.1.4 Direction of the Authority Board.** The services provided in this MOAAGREEMENT shall be at the direction of the Board of the Authority, although the County is and shall remain the employer of any staff providing services hereunder. The County shall be deemed an independent contractor to the Authority, and the Authority shall have no authority to terminate, suspend, reprimand or otherwise discipline any County employee providing services hereunder, but shall direct all employment issues and complaints to the County which shall have absolute discretion to act.

## **3.2 Engagement of Consultants.**

**3.2.1 Engagement of Consultants; County as Contracting Agent.** It is anticipated that the Authority may need to retain the services of one or more consultants in furtherance of the purposes of the Authority as defined in Article 3.4 of the JPA, and the Members hereby authorize the Authority to engage appropriate consulting services as necessary and consistent with this AGREEMENT. County staff providing administrative services under Article 3.1 above shall act as the contracting agent on behalf of the Authority and shall follow County procurement policies in the engagement of any such consultant(s). The agreement between the County and Authority for administrative services, as called for in Article 3.1.1, shall address engagement of consultants and shall augment and supersede this Article 3.2.



3.2.3 **Board Approval.** Notwithstanding the foregoing, the Authority Board shall approve engagement of any consultants retained on behalf of the Authority. The Authority Board shall be given an opportunity to review and approve all requests for proposals prior to their release and shall participate in the various stages of the selection process, including but not limited to, review of proposals and participation on interview panels. The Authority Board shall issue all notices to proceed approve all consultant and related contracts.

#### **ARTICLE 4: WITHDRAWAL AND TERMINATION**

4.1 **Withdrawal.** A Member may, in its sole discretion, unilaterally withdraw from the MOA AGREEMENT, without causing or requiring termination of the MOA AGREEMENT. Withdrawal shall become effective upon ninety (90) days after receipt of written notice to the Authority and the remaining Members' designated addresses as listed in Exhibit "B". A Member that has withdrawn from this MOA AGREEMENT shall remain obligated to pay its percentage cost share of expenses and obligations as outlined in the current budget and Exhibit "A" incurred, accrued, or encumbered up to the date the Member provided notice of withdrawal, including, but not limited to, its cost share obligation under any existing consultant contract. If a Member withdraws, the Authority Board shall reassess the contributions of each remaining Member to fund the current budget and determine if the Authority Board needs to request the contribution of additional funding from each Member.

#### **4.2 Termination and Term.**

4.2.1 This MOA AGREEMENT may be terminated upon unanimous written consent of all current Members.

4.2.2 The Funding Agreement provided for in Article 2 shall terminate by its own terms the earlier of (a) two years from the effective date of this agreement or (b) adoption of an alternative funding plan approved by the Authority Board. The Members may vote to extend this MOA AGREEMENT or a replacement agreement by unanimous vote.

#### **ARTICLE 5: INDEMNIFICATION**

5.1 No Member, nor any officer or employee of a Member, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Member under or in connection with this MOA AGREEMENT. The Members further agree, pursuant to California Government Code section 895.4, that each member shall fully indemnify and hold harmless each other Member and its agents, officers, employees, and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Member under this MOA AGREEMENT.

#### **ARTICLE 6: MISCELLANEOUS**

6.1 **Amendment.** This MOAAGREEMENT may be amended only by unanimous written consent of all current signatories.

6.2 **Binding on Successors.** Except as otherwise provided in this MOAAGREEMENT, the rights and duties of the Members may not be assigned or delegated without a unanimous vote by the Members. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities, and other obligations then in effect under the terms of this MOAAGREEMENT. This MOAAGREEMENT shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Members hereto.

6.3 **Notice.** Any notice or instrument required to be given or delivered under this MOAAGREEMENT may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of seventy-two (72) hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery, as follows:

[INSERT]

6.4 **Execution in Counterparts.** This MOAAGREEMENT may be executed by the Members 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.

6.5 **Choice of Law.** This MOAAGREEMENT is made in the State of California, under the Constitution and laws of said State and is to be so construed.

6.6 **Dispute Resolution.** Any dispute under this MOAAGREEMENT shall be resolved pursuant the dispute resolution procedures provided for in the JPA.

6.7 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this MOAAGREEMENT is held to be unlawful, invalid, or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs, or provisions shall be deemed enforced so as to be lawful, valid, and enforced to the maximum extent possible.

6.8 **Construction and Interpretation.** This MOAAGREEMENT has been arrived at through negotiation and each Member has had a full and fair opportunity to revise the terms of this MOAAGREEMENT. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Member shall not apply in the construction or interpretation of this MOAAGREEMENT.

6.9 **Entire Agreement.** This MOAAGREEMENT constitutes the entire agreement among the Members and supersedes all prior agreements and understandings, written or oral. This MOAAGREEMENT may only be amended by written instrument executed by all Members.

By \_\_\_\_\_  
City of Colusa

By \_\_\_\_\_  
County of Colusa

By \_\_\_\_\_  
Colusa County Water District

By \_\_\_\_\_  
Glenn Colusa Irrigation District

By \_\_\_\_\_  
Maxwell Irrigation District

By \_\_\_\_\_  
Princeton-Codora-Glenn Irrigation  
District

By \_\_\_\_\_  
Provident Irrigation District

By \_\_\_\_\_  
Reclamation District 108

By \_\_\_\_\_  
Reclamation District 479

By \_\_\_\_\_  
Westside Water District

By \_\_\_\_\_  
City of Williams