



CALIFORNIA DEPARTMENT OF WATER RESOURCES

# SUSTAINABLE GROUNDWATER MANAGEMENT OFFICE

715 P Street | Sacramento, CA 95814 | P.O. Box 942836 | Sacramento, CA 94236-0001

May 2, 2023

John Brodie  
Delta-Mendota Subbasin Point of Contact  
San Luis & Delta-Mendota Water Authority  
P.O. Box 2157  
Los Banos, CA 93635  
[john.brodie@sldmwa.org](mailto:john.brodie@sldmwa.org)

## Re: Periodic Evaluation Requirements for Inadequate Basins

Dear John Brodie,

The Department of Water Resources (Department) is clarifying the requirements for groundwater sustainability agencies (GSAs) in basins where groundwater sustainability plans (Plans) have been determined by the Department to be inadequate.

On March 2, 2023, the Department determined that the Plan for the Delta-Mendota Subbasin was inadequate. On March 29, 2023, the Department transmitted its determination and assessment to the State Water Resources Control Board (SWRCB). As indicated in my previous letter, the Department's inadequate determination triggers state intervention procedures in Sustainable Groundwater Management Act (SGMA) Chapter 11 (Water Code §10735 *et seq.*), which are administered by the SWRCB. Questions regarding procedures and processes under Chapter 11 should be directed to the SWRCB.

Since our inadequate determinations, the Department has received numerous inquiries from GSAs regarding the SGMA requirement for GSAs to periodically evaluate their GSPs, sometimes referred to as 5-year updates (see Water Code §10728.2, 23 CCR §356.4). This periodic evaluation was previously referenced in the Department's March 2, 2023, letter to you. To be clear, however, DWR will not require basins with GSPs that have been determined inadequate to submit a periodic evaluation by January 2025. DWR will only conduct periodic plan reviews for basins with approved Plans. (23 CCR §355.6.)

The primary intent and purpose of periodic evaluations is to track Plan implementation to ensure GSAs are managing groundwater as described in their Plans and evaluate whether basins are on track to achieve their sustainability goals within 20 years. To meet this deadline, the Department recommends that GSAs continue to implement parts of their Plans while subject to state intervention. However, the Department anticipates that addressing deficiencies may involve significant revisions, additions, and amendments to Plans. The Department does not want preparation and submission of the 2025 periodic evaluation to detract resources or focus from the efforts of GSAs to develop adequate Plans to retain or regain local control. Accordingly, GSAs with inadequate Plans should concentrate their efforts on resolving deficiencies in their Plans as directed by the SWRCB. Under SGMA Chapter 11, the SWRCB can consult with and request additional assessments from the Department on any amended Plans that are prepared and submitted by GSAs to the SWRCB to avoid or discontinue state intervention procedures. (Water Code §10735.2(b).)

Mr. John Brodie  
Page 2  
May 2, 2023

Although the Department will not require or review periodic evaluations from inadequate basins, SGMA imposes other requirements that the Department expects GSAs to fulfill regardless of Plan status, including the following:

- Submission of annual reports by April 1 of each year following Plan adoption. (Water Code §10728; 23 CCR §356.2.)
- GSAs should ensure that information on the SGMA Portal remains accurate and up to date. This includes, for instance, changes regarding local and basin points of contact, GSA boundaries, membership or governance structure, public outreach and engagement plans, and other relevant information or actions.
- GSAs should continue with Plan implementation including carrying out the 2022 grant awards.

If you have any questions, please contact the Sustainable Groundwater Management Office by emailing [sgmps@water.ca.gov](mailto:sgmps@water.ca.gov).

Sincerely,

*Paul Gosselin*  
Paul Gosselin  
Deputy Director  
Sustainable Groundwater Management

cc: Natalie Stork, State Water Resources Control Board, [Natalie.Stork@Waterboards.ca.gov](mailto:Natalie.Stork@Waterboards.ca.gov)

**MEMORANDUM OF AGREEMENT  
AMONG THE DELTA-MENDOTA SUBBASIN  
GROUNDWATER SUSTAINABILITY AGENCIES**

THIS MEMORANDUM OF AGREEMENT (this “**MOA**”) is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and among the groundwater sustainability agencies within the Delta-Mendota Subbasin listed in Exhibit “A” (each a “**Party**” and collectively the “**Parties**”) and is made with reference to the following facts:

**RECITALS**

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

B. **WHEREAS**, SGMA requires all groundwater subbasins designated as high- or medium-priority by the California Department of Water Resources (“**DWR**”) to manage groundwater in a sustainable manner; and

C. **WHEREAS**, the Delta-Mendota Subbasin (Basin Number 5-22.07, DWR Bulletin 118) within the San Joaquin Valley Groundwater Basin (“**Subbasin**”), has been designated as a high-priority, critically overdrafted basin by DWR; and

D. **WHEREAS**, the Subbasin includes multiple groundwater sustainability agencies (each a “**GSA**” and collectively, the “**GSAs**”) that initially managed the Subbasin through the development and implementation of six different groundwater sustainability plans (each a “**GSP**”, and collectively, the “**GSPs**”); and

E. **WHEREAS**, pursuant to the requirements of SGMA (Wat. Code §§ 10720, *et seq.*) and DWR’s SGMA regulations (23 Cal. Code Regs., §§ 350, *et seq.*) (“**DWR Regulations**”), and in recognition of the need to sustainably manage the groundwater within the Subbasin, the Parties entered into that certain Delta-Mendota Subbasin Coordination Agreement effective December 12, 2018 (“**Coordination Agreement**”), to outline the Parties’ obligations and responsibilities regarding SGMA coordination in the Subbasin among the multiple GSAs and GSPs; and

F. **WHEREAS**, after a two-year review, DWR determined that the Subbasin GSPs were “incomplete” on January 21, 2022, and required that the GSPs be revised to address certain corrective actions by July 20, 2022; and

G. **WHEREAS**, the Parties did so revise and timely submit amended GSPs to DWR; however, the Subbasin GSPs were deemed “inadequate” by DWR on March 2, 2023; and

H. **WHEREAS**, in order to efficiently coordinate among the large number of GSAs in the Subbasin, the GSAs now desire to adopt one GSP for the Subbasin; and

I. **WHEREAS**, if there is only GSP for the Subbasin, then the GSAs no longer need the Coordination Agreement, as defined by SGMA; and

J. **WHEREAS**, the GSAs desire to enter into this MOA to coordinate the work and management of the Subbasin and clarify responsibilities of the respective GSAs, in accordance with SGMA.

**NOW, THEREFORE**, in consideration of the Recitals, which are deemed true and correct and incorporated herein, and of the covenants, terms and conditions set forth herein, the Parties hereto agree as follows:

**ARTICLE I– DEFINITIONS**

1.1 **“Coordination Committee”** shall mean the committee of GSA Representatives or GSA Group Representatives established pursuant to this MOA.

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

1.3 **“Effective Date”** shall be as set forth in the Preamble.

1.4 **“GSA”** shall mean a groundwater sustainability agency established in accordance with SGMA and its associated regulations, and **“GSAs”** shall mean more than one such groundwater sustainability agency. Each Party is a GSA.

1.5 **“GSA Representative”** shall refer to the representative of a single GSA that holds a single seat on the Coordination Committee.

1.6 **“GSA Group Representative”** shall refer to the representative of a group of GSAs that share a single seat on the Coordination Committee.

1.7 **“GSP”** shall mean a groundwater sustainability plan as defined by SGMA and its regulations, and **“GSPs”** shall mean more than one such plan.

1.8 **“MOA”** shall mean this Memorandum of Agreement by and among the Parties.

1.9 **“Participation Percentages”** shall mean that percentage of Coordinated Plan Expenses allocated to each GSA or GSA Group as described on Exhibit “B” to this MOA, which is attached and incorporated by reference herein, as updated from time to time.

1.10 **“Party”** or **“Parties”** shall mean a GSA or in the plural, two or more GSAs within the Subbasin, who are signatories to this MOA.

1.11 **“Plan Manager”** shall mean an entity or individual, appointed at the pleasure of the Coordination Committee, or as provided in **Article III** of this MOA, to perform the role of the Plan Manager to serve as the point of contact to DWR and/or the State Water Resources Control Board.

1.12 **“San Luis & Delta-Mendota Water Authority”** or **“SLDMWA”** shall mean the San Luis & Delta-Mendota Water Authority, a California joint powers agency.

1.13 “**SGMA**” shall mean the Sustainable Groundwater Management Act, as amended from time to time, commencing at Water Code section 10720, together with its implementing regulations applicable to GSPs, set forth at California Code of Regulations, Title 23, Division 2, Chapter 1.5, Subchapter 2.

1.14 “**SGMA Definitions**” shall mean those SGMA-specific definitions provided by statute or regulation; in the event of any inconsistency between a term defined in this Section and a SGMA-specific definition, the definition contained in this MOA shall prevail.

1.15 “**Subbasin**” shall mean the Delta-Mendota Subbasin (Basin Number 5-22.07, DWR Bulletin 118) within the San Joaquin Valley Groundwater Basin.

1.16 “**Subbasin-wide Activities**” shall mean those activities or actions that affect the Subbasin as a whole or are otherwise required by SGMA to be determined at the Subbasin level.

1.17 “**Water Year**” shall mean the period from October 1 through the following September 30 as defined by SGMA.

## **ARTICLE II– PURPOSE & KEY PRINCIPLES**

2.1 **Purpose.** The Parties intend to work together in mutual cooperation to develop a single legally sufficient GSP in compliance with SGMA, for the sustainable management of groundwater for the portion of the Subbasin underlying the boundaries of each of the Parties.

2.2 **Collaboration.** The Parties intend to mutually cooperate to the extent possible to jointly implement a GSP within the Subbasin. To the extent the Parties are not able to collaborate on a single GSP, each Party reserves the right to develop a GSP for the portion of the Subbasin the GSA is authorized to manage. To the extent it is not possible to jointly implement the GSP within the Subbasin, the Parties reserve the right to implement the GSP within its boundaries, and work with all Parties to coordinate such implementation in accordance with the requirements of SGMA.

2.3 **Each Party’s Rights.** The Parties expressly intend that this MOA shall not limit or interfere with each respective Party’s rights and authorities over its own internal matters, including, but not limited to, a Party’s legal rights to surface water supplies and assets, groundwater supplies and assets, facilities, operations, water management and water supply matters. Nothing in this MOA is intended to modify or limit a Party’s police powers, land use authorities, or any other authority.

2.4 **Participation Percentage.** It is the responsibility and obligation of each Party to this MOA to provide documentation to the Secretary and to the Coordination Committee establishing that it will pay its proportionate share of the Participation Percentage, to cover coordinated Subbasin-wide Activities, set forth on Exhibit “B,” as said Exhibit “B” may be modified from time to time. Provided, that the Plan Manager shall not be obligated to evaluate or provide an opinion on the legal sufficiency of the documentation.

2.5 **Management and GSP Implementation.** It is the responsibility and obligation of each Party under this MOA, and any applicable separate agreements, to manage its own GSA and

determine the method of identifying and implementing the required actions of the GSP within its GSA's boundaries. Its further the responsibility and obligation of each Party to pay its proportionate share of the Participation Percentage and other payments required as part of implementation of SGMA Subbasin-wide Activities, as may arise from time to time.

### **ARTICLE III– ROLE OF SLDMWA**

3.1 **Agreement to Serve.** By executing this MOA, and not as a Party, the SLDMWA agrees to carry out the functions described in this Article III and its subparts consistent with the terms of this Article and under the direction and supervision of the Coordination Committee, subject to the reimbursement and the termination provisions contained in this Article.

(a) **Secretary.** The SLDMWA agrees to perform the obligations of the Secretary described in this MOA, by delegation to one or more of its employees or to a consultant under contract to the SLDMWA.

(b) **Plan Manager.** The SLDMWA agrees to perform the obligations of the Plan Manager described in this MOA, by delegation to one or more of its employees or to a consultant under contract to the SLDMWA.

3.2 **Reimbursement of SLDMWA.** SLDMWA's commitment to perform the designated functions under this Section is contingent upon the execution and performance of a separate cost sharing agreement between the SLDMWA and the Parties.

3.3 **Termination of SLDMWA's Services.** Either the Parties acting through the Coordination Committee or the SLDMWA, at any time, may terminate the services being provided by the SLDMWA under this MOA upon thirty (30) days' written notice, if from the SLDMWA, to the Coordination Committee; and if from the Coordination Committee, to the SLDMWA.

### **ARTICLE IV– COORDINATION COMMITTEE**

4.1 **Coordination Committee.**

(a) The Parties agree to establish a Coordination Committee to provide the forum for the Parties to work collaboratively to develop recommendations for the technical and substantive Subbasin-wide Activities and issues. Recommendation from the Coordination Committee that require approval or action of the GSAs shall be provided to each Parties' respective governing boards for adoption, approval or other recommended action.

(b) The Coordination Committee will consist of a total of [REDACTED] voting members to represent the Subbasin and shall be comprised of the representative of a GSA ("GSA Representative") or a group of GSAs (a "GSA Group Representative"), as identified on Exhibit "C." Each GSA Representative or GSA Group Representative shall have one Alternate Representative authorized to vote in the absence of the GSA Representative or GSA Group Representative, as applicable.

(c) Individuals serving on the Coordination Committee as a GSA Representative or GSA Group Representative shall be selected by each respective GSA or GSA Group in the discretion of that particular GSA or GSA Group, and such appointments shall be effective upon providing written notice to the Secretary.

(d) The Coordination Committee will recognize each GSA Representative or GSA Group Representative and their applicable Alternative Representatives until such time as the Secretary is provided written notice of removal and replacement of said Representative.

(e) Minutes of the Coordination Committee will be prepared and maintained by the Secretary as set forth in Article 4.4(b).

4.2 **Representation and Voting.** Each Party understands its participation, as more fully set forth in Article IV of this MOA, is based on representation on the Coordination Committee. It is the responsibility and obligation of each Party under this MOA to develop its manner of selecting its respective Coordination Committee Representative and Alternate Representative. For purposes of this MOA, it is assumed that each Coordination Committee representative has been authorized by the Parties in their respective GSA or GSA Group to participate as described herein.

4.3 **Non-Entity Status.** The Parties acknowledge and agree that the Coordination Committee created by this MOA does not create a legal entity with power to sue or be sued, to enter into contracts, to enjoy the benefits or accept the obligations of a legal entity, or to exercise any legal authority.

4.4 **Coordination Committee Officers.** The Officers of the Coordination Committee will include a Chair, Vice Chair, Secretary, and Plan Manager. Except where the Parties have named such Officers in Article III of this MOA, Officers shall be selected at the initial meeting of the Coordination Committee or as soon thereafter as reasonably can be accomplished.

(a) **Chair and Vice Chair.** Any GSA Representative or GSA Group Representative may serve as the Chair. The Vice Chair, who shall also be a GSA Representative or GSA Group Representative, shall serve in the absence of the Chair. In the absence of both the Chair and Vice Chair, a meeting may be led by an Acting Chair, selected on an ad hoc basis, who is a member of the Coordination Committee.

The positions of Chair and Vice Chair shall rotate among the GSA Representative and GSA Group Representatives on the Coordination Committee on an annual basis according to alphabetical order, with the first rotation beginning on the date the first Chair is selected. The schedule for annual rotation of Chair and Vice Chair will be set at the first meeting after the Chair is appointed and reviewed and adjusted annually at the first meeting of the Water Year. Any GSA Representative or GSA Group Representative may waive designation as Chair. In such a case, the office of Chair would rotate to the next designated entity.

(b) Secretary. The Coordination Committee shall select a Secretary to carry out the functions described in this Article 4.4(b), to serve at the pleasure of the Coordination Committee. The Secretary shall be a public agency who may, but need not, be a Party to this MOA. The SLDMWA is hereby designated as the Secretary, to serve at the pleasure of the Coordination Committee.

The Secretary shall select an appointee (who may be SLDMWA staff or a consultant) to implement the Secretary's responsibilities under this MOA, for example, to coordinate meetings; prepare agendas; circulate notices and agendas; provide written notice to all Parties that the Coordination Committee has made a recommendation requiring approval by the Parties; prepare and maintain minutes of meetings of the Coordination Committee; receive notices on behalf of the Coordination Committee and call to the Coordination Committee's attention the need for responding; and provide such other assistance in coordination as may be appropriate.

The Secretary shall assume primary responsibility for Ralph M. Brown Act compliance, including without limitation, the responsibility to prepare an agenda and notices, publicly post and distribute agendas to all Coordination Committee Representatives and Alternate Representatives, the Parties, and any other interested persons who requests, in writing, such notices. The agenda shall be of adequate detail to inform the public and the Parties of the meeting and the matters to be transacted or discussed and shall be posted in a public location and distributed to each of the Parties to this MOA at least seventy-two (72) hours prior to every regular meeting and at least twenty-four (24) hours prior to every special meeting.

(c) Plan Manager. If the SLDMWA ceases to serve as Plan Manager as agreed under Article 3.1 of this MOA, then the Coordination Committee shall name a successor Plan Manager, who may be a consultant hired by the Secretary pursuant to the MOA, the representative of an entity that has been selected as Secretary, or a public agency serving as or participating in a GSA that is a Party to this MOA, and who shall serve as the point of contact for DWR as specified by SGMA. The SLDMWA is hereby designated as the initial Plan Manager, to serve at the pleasure and direction of the Coordination Committee, pursuant to Article III above.

The Plan Manager shall carry out the duties of a "plan manager" as provided in Title 23, division 2, Chapter 1.5, Subchapter 2, California Code of Regulations.

The Plan Manager has no authority to make policy decisions or represent the Coordination Committee without the specific direction of the Coordination Committee. The Plan Manager is obligated to disclose all substantive communications he/she transmits and receives in his/her capacity as Plan Manager to the Coordination Committee.

4.5 **Coordination Committee Authorized Actions**. The Coordination Committee is authorized to act upon the following enumerated items:

(a) The Coordination Committee shall review and recommend to the GSAs for approval any technical analyses.



(b) The Coordination Committee shall be responsible for ongoing review and updating of technical analyses as needed, ensuring submittal of annual reports, approving a minimum monitoring network, developing budgets, coordinating and ensuring submittal of five-year updates, recommending any needed revisions to this MOA, and providing review and assistance with coordinate projects and programs.

(c) The Coordination Committee shall review and approve work plans, and in accordance with the budgetary requirements of the respective Parties, approve annual estimates of Coordinated Plan Expenses presented by the Secretary and any updates to such estimates; provided, that such estimates or updates with supporting documentation shall be circulated to all Parties for comment at least thirty (30) days in advance of the meeting at which the Coordination Committee will consider approval of the annual estimate.

(d) The Coordination Committee shall assign work to subcommittees and workgroups as needed, provide guidance and feedback, and ensure that subcommittees and workgroups prepare work products in a timely manner.

(e) The Coordination Committee shall direct the Plan Manager in the performance of its duties under SGMA.

(f) The Coordination Committee shall provide direction to its Officers concerning other administrative and ministerial issues necessary for the fulfillment of the above-enumerated tasks.

(g) The Coordination Committee shall approve the hiring of consultants for Subbasin-wide Activities, provide direction to and supervision over consultants engaged to assist in acquiring and processing technical data, conducting monitoring and reporting, and all other activities in support of Subbasin-wide Activities.

4.6 **Coordination Committee Limitations.** When the terms of this MOA or applicable law require the approval of a GSA, that approval shall be required and evidenced as indicated in Article V of this MOA. The Coordination Committee shall not be responsible for approving the GSP, any annual report, or any five-year update thereto; each GSA retains responsibility for such approvals. The Coordination Committee may make recommendations to the Parties for approval of the GSP, an annual report, or any five-year update of the GSP, however.

4.7 **Subcommittees and Workgroups.** The Coordination Committee may appoint ad hoc or standing subcommittees, workgroups, or otherwise direct staff made available by the Parties. Such subcommittees or workgroups may include qualified individuals possessing the knowledge and expertise to advance the goals of the GSP on the topics being addressed by the subcommittee, whether or not such individuals are GSA Representatives, GSA Group Representatives or Alternate Representatives.

#### 4.8 **Coordination Committee Meetings.**

(a) **Timing and Notice.** The Chair of the Coordination Committee, any two GSA Representatives or GSA Group Representatives, or the Secretary may call meetings of the Coordination Committee as needed to carry out the activities described in this MOA. The Coordination Committee may, but is not required to, set a date for regular meetings for the purposes described in this MOA. All Coordination Committee meetings shall be held in compliance with the Ralph M. Brown Act (Gov. Code § 54950 *et seq.*).

(b) **Quorum.** A majority of the Coordination Committee members, as listed on Exhibit “C”, shall constitute a quorum of the Coordination Committee for purposes of holding a meeting. The Alternate Representative of each GSA or GSA Group shall be counted towards a quorum and as the voting representative(s) in absence of the Coordination Committee GSA Representative or GSA Group Representative for which the Alternate Representative was appointed. If less than a quorum is present, no action may be taken.

(c) **Open Attendance.** Members of the public, stakeholders, and representatives of the Parties who are not appointed as a GSA Representative or GSA Group Representative on the Coordination Committee may attend all Coordination Committee meetings and shall be provided with an opportunity to comment on matters on the meeting agenda, but shall have no vote.

(d) **Minutes.** The Secretary’s appointee shall keep and prepare minutes of all Coordination Committee meetings. Notes of subcommittee and workgroup meetings shall be kept by the Secretary’s appointee or an assistant to the appointee. All minutes and subcommittee and workgroup meeting notes shall be maintained by the Secretary as Subbasin records and shall be available to the Parties and the public upon request.

#### 4.9 **Voting by Coordination Committee.**

(a) Each GSA Representative or GSA Group Representative that is a member of the Coordination Committee shall be entitled to one (1) vote at the Coordination Committee meetings. For GSAs that share a vote, it shall be up to the Parties in each GSA Group to determine how the GSA Group vote(s) will be cast. The Coordination Committee shall not be obligated to honor the vote of an individual Party and will only accept the vote of the GSA Representative or GSA Group Representative or Alternate Representative, as identified on Exhibit “C”.

(b) Except as set forth in Article 4.10 below, the unanimous vote of the GSA or GSA Group Representatives or Alternate Representative from all GSA Groups present at a Coordination Committee meeting is required on all items upon which the Coordination Committee is authorized to act as identified in Article 4.5; the vote of a majority of a quorum shall be required for all other matters on which the Coordination Committee is authorized to act.

4.10 **Voting Procedures to Address Lack of Unanimity.** When it appears likely that the Coordination Committee will not be able to come to unanimous decision of Coordination Committee members present at a meeting on any matter upon for which a unanimous decision of those present is required, upon a majority vote of a quorum of the Coordination Committee, the matter may be subjected to any or all of the following additional procedures.

(a) **Straw Polls.** Straw poll votes may be taken for the purpose of refining ideas and providing guidance to the Coordination Committee, subcommittees, or both.

(b) **Provisional Voting.** Provisional votes may occur prior to final votes. This will be done when an initial vote is needed to refine a proposal, but the GSA Representatives or GSA Group Representatives wish to consult with their respective GSA or GSA Group(s) before making a final vote.

(c) A vote shall be delayed if any GSA Representative or GSA Group Representative declares its intention to propose an alternative or modified recommended action, to be proposed at the next meeting, or as soon thereafter as the GSA Representative or GSA Group Representative can obtain any further information or clarifying direction from its GSA Group or governing body, or both, as needed to proposed its alternative or modified recommended action.

(d) If the process outlined in Article 4.10(c) fails to result in a unanimous vote of the GSA Representatives and GSA Group Representatives present at a meeting, any GSA Representative or GSA Group Representative not voting in favor of the recommended action may request that the vote be delayed so that the Coordination Committee can obtain further information on the recommended action (for example, by directing a subcommittee established under this MOA), so the GSA Representative or GSA Group Representative can obtain clarifying direction from its GSA Group or governing body, or both, as needed.

(e) Each Party acknowledges that time is of the essence with SGMA and GSP implementation and agrees to make its best efforts to cooperate through the Coordinating Committee in coming to a unanimous vote.

**ARTICLE V – APPROVAL BY INDIVIDUAL PARTIES**

5.1 Where law or this MOA require separate written approval by each of the Parties, such approval shall be evidence in writing by providing the adopted resolution or minutes of the respective GSA’s Board of Directors’ meeting to the Secretary of the Coordination Committee.

**ARTICLE VI – POWERS RESERVED TO PARTIES**

6.1 Each of the Parties will have the sole and absolute right, in its sole discretion, to:

(a) Act as a GSA within its boundaries;

(b) Approve any portion, section or chapter of the GSP developed pursuant to this MOA;

- (c) Exercise authorities granted to each of the Parties as a GSA under SGMA;
- (d) Exercise authority to implement SGMA and any GSP adopted pursuant to this MOA; and
- (e) Defend any challenge to the adoption or implementation of a GSP developed pursuant to this MOA.

**ARTICLE VII – EXCHANGE OF DATA AND INFORMATION**

7.1 **Exchange of Information.** The Parties acknowledge and recognize pursuant to this MOA that the Parties will need to exchange information among and between the Parties.

7.2 **Procedure for Exchange of Information.**

(a) The Parties shall exchange public and non-privileged information through collaboration and/or informal requests made at the Coordination Committee level or through subcommittees designated by the Coordination Committee. However, to the extent it is necessary to make a written request for information to another Party, each Party shall designate a representative to respond to information requests and provide the name and contact information of the designee to the Coordination Committee. Requests may be communicated in writing and transmitted in person or by mail, facsimile, or other electronic means to the appropriate representative as named in this MOA. The designated representative shall respond in a reasonably timely manner.

(b) Nothing in this MOA shall be construed to prohibit any Party from voluntarily exchanging information with any other Party by any other mechanism separate from the Coordination Committee.

(c) The Parties agree that each GSA shall provide the data required to develop the Subbasin-wide coordinated water budget; provided that, unless required by law, the GSAs will not be required to provide individual well or parcel-level information in order to preserve confidentiality of individuals to the extent authorized by law, including, but not limited to, Water Code Section 10730.8, subdivision (b).

(d) To the extent that a court order, subpoena, or the California Public Records Act is applicable to a Party, such Party in responding to a request made pursuant to the California Public Records Act for release of information exchanged from another Party shall timely notify each other Party in writing of its proposed release of information in order to provide the other Parties with the opportunity to seek a court order preventing such release of information.

**ARTICLE VIII – MONITORING NETWORK**

8.1 In accordance with SGMA, the Parties hereby agree to coordinate the development and maintenance of a monitoring network at a Subbasin level through the coordination of the respective monitoring networks. The Subbasin monitoring network

description shall include monitoring objectives, protocols, and data reporting requirements specific to enumerated sustainability indicators. Each GSA is responsible for the following:

- (a) Maintaining the representative monitoring network within its boundary;
- (b) Filling data gaps in its GSA on a defined schedule;
- (c) Collecting data per the approved Subbasin-wide monitoring protocol;
- (d) Considering developing and maintaining a supplementary network for collecting data in excess of the minimum need, for the purposes of supporting local management decisions (since the level of detail necessary may not be sufficient in a Subbasin level network); and
- (e) Having at least one monitoring site for each sustainable management criteria.

8.2 The minimum monitoring network shall be based on the evaluation performed by the Subbasin-wide GSP consultant and may change from time to time. The Subbasin-wide GSP consultant shall evaluate to the monitoring network to ensure:

- (a) There is a proper spatial and temporal coverage to inform a groundwater model;
- (b) The level of monitoring is commensurate with the use in an area (e.g., limited monitoring wells in areas that do not pump or higher density of survey benchmarks in areas that have numerous deep wells); and
- (c) The network is balanced, so that should an exceedance occur, it is not biased or weighted as a function of a poorly distributed monitoring network.

#### **ARTICLE IX – COORDINATED DATA MANAGEMENT SYSTEM**

9.1 The Parties developed and currently maintain a coordinated data management system that is capable of storing and reporting information relevant to the reporting requirements and/or implementation of the GSP and monitoring network of the Subbasin. After providing the Coordination Committee with data from the individual GSAs, the Coordination Committee will ensure the data is stored and managed in a coordinated manner throughout the Subbasin and reported to DWR annually as required.

#### **ARTICLE X – ADAPTIVE MANAGEMENT PROCESS**

10.1 The Coordination Committee established an adaptive management process, which is attached hereto as Exhibit “D” and incorporated herein by this reference.

## **ARTICLE XI – MODIFICATION AND TERMINATION OF THIS MOA**

11.1 **Addition of a Party.** A Party may be added to this MOA only upon its executive of a counterpart of this MOA and its provision of any additional documentation required by this MOA. No Party may be added that is not a GSA within the Subbasin or that fails to share in GSP coordinated expenses.

11.2 **Modification or Amendment of this MOA.** The Parties hereby agree that this MOA may be supplemented, amended, or modified only by a writing signed by all Parties.

11.3 **Amendment for Compliance with Law.** Should any provision of this MOA be determined to not be in compliance with legal requirements under circumstances where amendment of the MOA to include a provision addressing the legal requirement will cure the non-compliance, the Parties agree to promptly prepare and approve such amendment.

## **ARTICLE XII – WITHDRAWAL, TERM, AND TERMINATION**

12.1 **Withdrawal.** A Party may unilaterally withdraw from this MOA without causing or requiring termination of this MOA, effective upon one (1) year written notice to the Secretary and all other Parties. The Plan Manager shall report any such withdrawal to DWR and/or the SWRCB within five (5) days of receipt of the written notice.

Any Party who withdraws shall remain obligated for GSP coordinated expenses as provided in a separate Cost Sharing Agreement. If no separate Cost Sharing Agreement is then in effect or enforceable against the withdrawing Party, the Party is obligated to pay its share of all debts, liabilities, and obligations the Party incurred or accrued under the MOA prior to the effective date of such withdrawal, and as also may established under its separate GSA Group agreement concerning such share of obligations.

Upon withdrawal, a Party agrees that it has a continuing obligation to comply with SGMA and any coordination guidelines or regulations issued by DWR, which require a coordination agreement if there are multiple GSPs in the Subbasin. This obligation shall survive the withdrawal from this MOA and is for the express benefit of the remaining Parties.

In the event any GSA Group Representative(s) prevents/prevent a required unanimous vote of the present Coordination Committee members, after following all procedures described in Article IV of this MOA, the Parties in such GSA or GSA Group agree to provide notice that such GSA or GSA Group has unilaterally withdrawn from this MOA in accordance with this Article 11.1.

12.2 **Term.** Unless modified or terminated as provided in Article 10.2 and Article 11.3, this MOA shall continue for a term that is coterminous with the requirements of SGMA for the existence of a GSP for the Subbasin.

12.3 **Termination.** This MOA may be terminated or rescinded by the unanimous written consent of all Parties. Nothing in this MOA shall prevent the Parties from entering into a coordination agreement for coordination with any other subbasin.

12.4 **Indemnification.** No Party, nor any director, officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this MOA. Each Party shall fully indemnify and hold harmless each other Party and its agents, directors, 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 Party pursuant to this MOA.

### **ARTICLE XIII – PROCEDURES FOR RESOLVING CONFLICTS**

13.1 In the event of any dispute arising from or relating to this MOA, the disputing Party shall, within thirty (30) calendar days of discovery of the events giving rise to the dispute, notify all Parties to this MOA in writing of the basis for the dispute. Within thirty (30) calendar days of receipt of said notice, all interested Parties shall meet and confer in a good-faith attempt to informally resolve the dispute. All disputes that are not resolved informally shall be settled by arbitration. Within ten (10) days following the failed informal proceedings, each interested Party shall nominate and circulate to all other interested Parties the name of one arbitrator. Within ten (10) days following the nominations, the interested Parties shall rank their top three (3) among all nominated arbitrators, awarding three points to the top choice, two points to the second choice, one point to the third choice and zero points to all others. Each interested Party shall forward its tally to the Secretary, who shall tabulate the points and notify the interested Parties of the arbitrator with the highest cumulative score, who shall be the selected arbitrator. The Secretary may also develop procedures for approval by the Parties, for selection in the case of tie votes or in order to replace the selected arbitrator in the event such arbitrator declines to act. The arbitration shall be administered in accordance with the procedures set forth in the California Code of Civil Procedure, section 1280, *et seq.*, and of any state or local rules then in effect for arbitration pursuant to said section. Upon completion of arbitration, if the controversy has not been resolved, any Party may exercise all rights to bring a legal action relating to the controversy.

### **ARTICLE XIV – GENERAL PROVISIONS**

14.1 **Authority of Signers.** The individuals executing this MOA represent and warrant that they have the authority to enter into this MOA and to legally bind the Party for whom they are signing to the terms and conditions of this MOA.

14.2 **Governing Law.** The validity and interpretation of this MOA will be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes to be proper only in the County of Merced, State of California.

14.3 **Severability.** Except as provided for cure by amendment in Article 10.2, if any term, provision, covenant, or condition of this MOA is determined to be unenforceable by a court of competent jurisdiction, it is the Parties' intent that the remaining provisions of this MOA will remain in full force and effect and will not be affected, impaired, or invalidated by such a determination.

14.4 **Counterparts.** This MOA may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same agreement.

14.5 **Good Faith.** The Parties agree to exercise their best efforts and utmost good faith to effectuate all the terms and conditions of this MOA and to execute such further instruments and documents as are reasonably necessary, appropriate, expedient, or proper to carry out the intent and purposes of this MOA.

**IN WITNESS WHEREOF**, the Parties have executed this MOA as of the Effective Date.

*(INSERT SIGNATURE BLOCKS OF ALL GSAs)*

**EXECUTING NOT AS A PARTY:**

<b>SAN LUIS &amp; DELTA-MENDOTA WATER AUTHORITY</b>	
<b>San Luis &amp; Delta-Mendota Water Authority</b>	<b>Date:</b>
<b>Signature</b>	
<b>Name of Representative:</b>	



**EXHIBIT “A”**

**Parties to the MOA**

1. Aliso Water District GSA
2. Central Delta-Mendota GSA  
(Includes: San Luis Water District, Panoche Water District, Tranquillity Irrigation District, Fresno Slough Water District, Eagle Field Water District, Pacheco Water District, Santa Nella County Water District, Mercy Springs Water District, County of Merced, and County of Fresno)
3. City of Dos Palos GSA
4. City of Firebaugh GSA
5. City of Gustine GSA
6. City of Los Banos GSA
7. City of Mendota GSA
8. City of Newman GSA
9. City of Patterson GSA
10. County of Madera–3 GSA
11. County of Merced Delta-Mendota GSA
12. DM II GSA
13. Farmers Water District GSA
14. Fresno County Management Area A and B GSAs
15. Grassland Water District GSA  
(Includes: Grassland Water District and Grassland Resource Conservation District)
16. Northwestern Delta-Mendota GSA
17. Oak Flat Water District GSA
18. Oro Loma Water District GSA
19. Patterson Irrigation District GSA
20. San Joaquin River Exchange Contractors GSA

(Includes: Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company)

21. Turner Island Water District–2 GSA
22. West Stanislaus Irrigation District GSA 1
23. Widren Water District GSA

DRAFT

**EXHIBIT “B”**

**Participation Percentages**

*Will likely be based on the number of Coordination Committee members*

DRAFT

**EXHIBIT “C”**

**Coordination Committee Representatives**

*Potentially up to 9 members*

DRAFT

**EXHIBIT “D”**

**ADAPTIVE MANAGEMENT PROCESS FOR THE SUBBASIN**

The Groundwater Sustainability Agencies (“GSAs”) in the Delta-Mendota Subbasin (the “Subbasin”) acknowledge that the Sustainable Groundwater Management Act (“SGMA”) has a long-term horizon to achieve sustainability and that management of the Subbasin will require an iterative process on the part of the GSAs and the Coordination Committee to review groundwater conditions at least annually and propose revisions to underlying data, methodologies, and assumptions, sustainable management criteria, and other Subbasin-wide coordinated information as necessary to meet changing conditions. Accordingly, the GSAs in the Subbasin establish the following framework for addressing necessary changes to the GSP during the SGMA implementation period:

1. The Coordination Committee shall initiate an annual review of the Annual Report for the GSP no later than thirty (30) days after the submission of the Annual Report to the Department of Water Resources (“DWR”) (the “Annual Review”). The Coordination Committee may designate Annual Review duties to a consultant or a subcommittee.

2. The Annual Review shall take into account all matters to be considered in the Annual Report pursuant to the DWR Regulations, section 356.2, including, but not limited to, changes in groundwater elevation, groundwater storage and the status of minimum thresholds and interim milestones in the Subbasin GSP.

3. Should any GSA have three (3) or more minimum threshold exceedances, the Coordination Committee (at the recommendation of the Plan Manager, a designated subcommittee, or a consultant) shall notify the GSA. Within thirty (30) days of said notice, the GSA shall present a plan of action to the Coordination Committee to address how the GSA will mitigate such exceedances and in what timeframe. The intent is for the Coordination Committee to discuss any such mitigation plan in an effort to provide helpful ideas to the GSA. However, the GSA is solely responsible for the management actions within its boundaries and the costs to remedy the cause of the exceedance. At its sole cost and expense, the GSA may ask the Subbasin-wide consultant to further determine: (a) what caused the exceedance; (b) whether or not the GSA has control over the cause of the exceedance; (c) whether it is an intra-basin impact from another GSA or an inter-basin impact by a neighboring subbasin; and (d) whether or not the exceedance caused damage.

4. If there is a determination that any exceedance was caused by a neighboring subbasin, this should be brought back to the Coordination Committee for further discussion and potential Subbasin-wide action. The Coordination Committee will work with other subbasins to expand existing inter-basin coordination to remedy the issues causing the exceedances.

5. In the event that the GSA is unable to mitigate or avoid future minimum threshold exceedances with its existing management actions and within the timeframe presented to the Coordination Committee, the GSA may seek assistance from the Coordination Committee. The Coordination Committee may recommend policies or programs to the GSA that could, in its discretion, take to remedy the existence of a minimum threshold exceedance and to avoid

undesirable results. Furthermore, the Coordination Committee may consider setting triggers in the GSP for GSAs to implement management actions (i.e., like an internal glide path) or work on alternative options.

