

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF FRESNO
AND WESTLANDS WATER DISTRICT WITH RESPECT TO IMPLEMENTATION OF
THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT IN THE WESTSIDE
SUBBASIN**

This Memorandum of Understanding (MOU) is made and effective as of October 18, 2016, by and between the County of Fresno, a political subdivision of the State of California (County) and Westlands Water District, a local agency (Westlands).

This MOU is made with reference to the following facts and understandings:

A. The Sustainable Groundwater Management Act of 2014, which includes Water Code sections 10720-10736.6 (SGMA) was signed into law on September 16, 2014, and requires that each California groundwater basin or subbasin be managed by a Groundwater Sustainability Agency (GSA) or multiple GSAs, and that such management include an approved Groundwater Sustainability Plan (GSP) or multiple GSPs subject to Water Code sections 10727(b)(3) and 10727.6. SGMA further provides that if local agencies in a basin or subbasin fail to timely satisfy the GSA and GSP requirements, with the GSA Formation deadline on June 30, 2017, the State Water Resources Control Board may assert management control over groundwater resources within all or a portion of that basin or subbasin.

B. Section 10723.8(c) of SGMA prohibits the recognition of any entity as an exclusive GSA if the entity's proposed GSA management area overlaps with the proposed GSA management area of another entity, subject to certain procedural requirements.

C. Westlands notified the Department of Water Resources (DWR) of its intention to serve as GSA for the Westside Subbasin of the San Joaquin Valley Groundwater Basin (Basin No. 5-22.09), a portion of which is within Fresno County.

D. The County has no present intention or desire to notify DWR that it intends to serve as a GSA, and both the County and Westlands wish to avoid creating an overlap within Westlands' proposed management area.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein set forth, and the recitals above, which are incorporated herein by this reference, it is agreed by and among the County and Westlands as follows:

I. Objectives

The objectives of Westlands and the County in entering into this MOU are:

A. To achieve sustainable groundwater management pursuant to SGMA in those portions of the Westside Subbasin (the Subbasin) that are within the exterior boundaries of both Westlands and Fresno County.

B. To work cooperatively with adjacent GSAs to achieve sustainable groundwater management in the Subbasin.

C. To establish a process to ensure there are no conflicts between Westlands' GSP and the County's exercise of its land use planning authority.

II. Precedence of County's Land Use Planning Authority

Westlands agree that its operations as a GSA, and any GSP adopted by Westlands, will not abrogate the County's general plan or conflict with the County's exercise of its land use planning authority; provided that the County's general plan or the exercise of the County's land use planning authority complies with all applicable laws, statutes, and regulations.

III. Coordination Framework

A. Westlands shall consider the interests of the County, specifically including the County's general plan, in developing and implementing its GSP. The County shall be provided the opportunity to have an active and ongoing role in the development and implementation of Westlands' GSP in order to prevent conflicts between the GSP and the County's general plan, and between Westlands' operations as a GSA and the County's exercise of its land use planning authority. The County shall designate a contact person or a technical advisory committee (TAC) to whom Westlands shall provide written notices of opportunities to participate in SGMA implementation, including the development of the GSP and the establishment of policies or procedures for the exercise of GSA powers.

B. The County agrees to consider updating its building permit approval process to establish new groundwater well construction standards for wells extracting groundwater within the Westside Subbasin. New construction standards could require pump testing, include the installation of equipment to collect flow data, water level, ground surface elevation, and require the applicant to sign an agreement to comply with Westlands' GSP.

C. Westlands shall provide written notice to the designated contact person or TAC no fewer than 90 days before Westlands holds a public hearing to adopt or modify the GSP or policies or procedures for the exercise of GSA powers. The designated contact person or TAC may request a mandatory consultation with Westlands' representative within 30 days of receiving such notice. Westlands shall consider comments or recommendations provided by the designated contact person or TAC prior to the adoption or modification of the GSP or procedures for the exercise of GSA powers.

D. If, within 30 days of receiving such notice, the County's designated contact person or TAC provides written notice to Westlands that any proposed elements of the GSP, proposed procedures for the exercise of GSA powers, or proposed modification of either, conflicts with the County's General Plan or land use authority, then Westlands and County will consult to resolve the concerns regarding the proposed elements, procedures or modifications. Both parties shall cooperate, collaborate, and pursue revisions to the conflicting language and avoid delays. If resolution cannot be achieved with the County's designated contact person or TAC, then Westlands will present its justification to the Board of Supervisors (Board) at a regularly scheduled and noticed Board meeting

E. The County shall provide written notice to Westlands no fewer than 90 days (or as soon as practicable) prior to issuing, adopting, modifying, or approving any ordinance, policy, plan, or permit, or taking any other action related to groundwater resources within the Subbasin. Westlands may request a mandatory consultation with the County within 30 days of receiving such notice. The County shall consider any comments or recommendations provided by Westlands prior to taking the groundwater-related action.

D. The County agrees not to notify DWR that it intends to serve as a GSA within Westlands' proposed management area, and will not create an overlap with Westlands, if the County and Westlands mutually agree to the terms of this MOU.

IV. Finances

Each of the parties to this MOU shall bear its own costs of implementing SGMA, except as follows: The County shall provide assistance and support in applying for grant funding related to SGMA implementation when so requested by Westlands. To the extent that Westlands incurs costs in developing or implementing a GSP applicable to, or in implementing SGMA within, the area that falls outside of Westlands' jurisdictional boundary, the County shall provide proportional financial reimbursement to Westlands.

V. Compliance with Laws

A. In any action taken pursuant to this MOU, Westlands and the County shall comply with all applicable statutes, laws, and regulations, specifically including but not limited to SGMA and its implementing regulations, as they now exist or as may be amended or promulgated from time to time.

B. To the extent that this MOU conflicts with or does not accurately reflect any applicable statutes, laws, or regulations now existing or as amended or promulgated from time to time, the laws, statutes, and regulations shall govern.

C. To the extent that any applicable statutes, laws, or regulations are amended or newly promulgated in such a manner that causes this MOU to conflict with or no longer accurately reflect such statutes, laws, or regulations, this MOU shall be modified in order to comport with the newly amended or promulgated statutes, laws, or regulations.

VI. Miscellaneous Provisions

A. This MOU may be amended from time to time only by mutual written agreement of the County and Westlands, in accordance with the terms of this MOU. This MOU may be terminated in accordance with the terms of this MOU (1) by mutual written agreement of both of the parties to this MOU, or (2) when either or both of the parties to this MOU are no longer participating in the implementation of SGMA within the geographical area subject to this MOU.

B. This MOU contains the entire understanding between the parties relating to this subject matter and supersedes all oral or written agreements between them with respect thereto, and no previous written or oral understandings have been or shall be relied upon.

C. The failure of any party in any one or more instances to insist upon strict performance of any terms or provisions of this MOU, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms, provisions or options on any future occasion.

D. This MOU is the result of arms-length negotiations between sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either party.

E. Should the participation of either party to this MOU, or any part, term, or provision of this MOU be superseded by conflicting State legislation as mutually agreed by the parties or decided by a court of competent jurisdiction to be illegal, in excess of that party's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable

or ineffectual, the validity of the remaining portions, terms, or provisions of this MOU shall not be affected thereby and each party hereby agrees it would have entered into this MOU upon the remaining terms and provisions.

F. The rights and duties of the parties to this MOU may not be assigned or delegated, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void.

G. This MOU may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the parties hereto. Facsimile or electronic signatures shall be binding.

H. Notices authorized or required to be given pursuant to this MOU shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the parties at the addresses set forth for each below, or to such other changed addresses communicated to the other party in writing.

County:

Name:	<u>Steven E. White</u>
Title:	<u>Public Works and Planning Director</u>
Address:	<u>2220 Tulare Street, Sixth Floor</u>
	<u>Fresno, California 93721</u>
Telephone:	<u>(559) 600-4537</u>

Westlands:

Name:	<u>Thomas W. Birmingham</u>
Title:	<u>General Manager</u>
Address:	<u>3130 N. Fresno Street</u>
	<u>Fresno, CA 93703</u>
Telephone:	<u>(559) 241-1523</u>

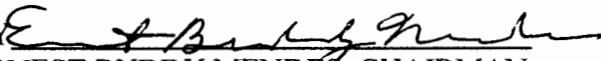
I. Each signatory to this MOU certifies that he or she is authorized to execute this MOU and to legally bind the party he or she represents, and that such party shall be fully bound by the terms hereof upon such signature without further act, approval, or authorization of such party.

IN WITNESS WHEREOF, the parties have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

County of Fresno

Westlands Water District

COUNTY OF FRESNO

BY: 
ERNEST BUDDY MENDES, CHAIRMAN
BOARD OF SUPERVISORS

BY: _____

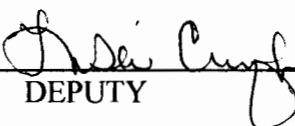
Title: _____

Approved as to Legal Form

Daniel Cederborg
Fresno County Counsel

BY:  deputy

ATTEST:
BERNICE E. SEIDEL, CLERK
BOARD OF SUPERVISORS

By 
DEPUTY

IN WITNESS WHEREOF, the parties have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

County of Fresno

Westlands Water District

COUNTY OF FRESNO

Thomas W. Birmingham

BY _____
ERNEST BUDDY MENDES, CHAIRMAN
BOARD OF SUPERVISORS

BY: Thomas W. Birmingham
Title: General Manager/ General Counsel

Approved as to Legal Form

Daniel Cederborg
Fresno County Counsel

BY: _____

ATTEST:
BERNICE E. SEIDEL, CLERK
BOARD OF SUPERVISORS

By _____
DEPUTY