

16-0901

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
FRESNO AND THE FARMERS WATER DISTRICT WITH RESPECT TO
IMPLEMENTATION OF THE SUSTAINABLE GROUNDWATER
MANAGEMENT ACT IN A PORTION OF THE DELTA-MENDOTA SUBBASIN**

This Memorandum of Understanding (MOU) is made and effective as of Aug 23 2016 2016, by and between the County of Fresno, a political subdivision of the State of California (County) and the Farmers Water District (FWD).

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 10727.6¹. SGMA further provides that if local agencies in a basin or subbasin fail to timely satisfy the GSA and GSP requirements, with the first such deadline occurring 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. Code 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. On or about June 22, 2016, FWD notified the California Department of Water Resources (DWR) of its intention to serve as a GSA for the FWD service area, i.e. within its jurisdictional boundaries, as may change from time to time ("**Service Area**") within the Delta- Mendota Subbasin (the "**Subbasin**") of the San Joaquin Valley Groundwater Basin (Basin No. 5-22.07 in the Department of Water Resources' CASGEM system) (the "**Basin**"), 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 over the Service Area, and both the County and FWD wish to avoid creating an overlap within FWD's Service Area.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and

¹ All references to Code Sections herein shall be to the California Water Code unless otherwise specified

conditions herein set forth, and the recitals above, which are incorporated herein by this reference, it is agreed by and among the Members as follows:

I. Objectives

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

A. To comply with SGMA and manage the groundwater within the Service Area to achieve a sustainable groundwater condition, as required by SGMA.

B. To work cooperatively within the Subbasin to achieve sustainable groundwater management in the Subbasin.

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

II. Precedence of County's Land Use Planning Authority

FWD and County shall work cooperatively, as set forth herein, to ensure that FWD's GSA, and any GSP adopted by FWD (or its GSA), 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. FWD shall consider the interests of the County, specifically including the County's general plan, in developing and implementing its GSP. The County shall have ongoing opportunities to provide, and FWD shall consider, advisory input in the development and implementation of FWD's GSP in order to avoid conflicts between the GSP and the County's general plan, and between FWD's 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) with whom FWD shall cooperate and coordinate FWD's SGMA implementation, including the development of the GSP and the establishment of policies or procedures for the exercise of GSA powers.

B. FWD shall provide written notice to the designated contact person or TAC no fewer than 60 days before adopting or modifying its GSP. The designated contact person or TAC may request a mandatory consultation with the FWD's representative within 30 days of receiving such notice. FWD shall consider any comments or recommendations provided by

the designated contact person or TAC prior to the adoption or modification of the GSP, in compliance with and to achieve the goals of Section II above.

C. If, within 30 days of receiving such notice, the County's designated contact person or TAC provides written notice to FWD that any elements of the proposed GSP, or proposed modifications or amendments thereto, appear to conflict with the County's General Plan or land use authority, FWD will not proceed with consideration of approval of the identified items until an authorized representative of FWD presents the FWD's justification to the Board of Supervisors (Board) at a regularly scheduled and noticed Board meeting, or until the County's designated contact person or TAC withdraws such notice of perceived conflict, whichever is earlier. Nothing in this Section shall prevent or limit FWD and/or the County by and through its designated contact person or TAC from continuing to cooperate, discuss and/or negotiate FWD's GSP or amendments thereto prior to FWD presenting to the County's Board.

D. The County shall provide written notice to FWD 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 Basin. FWD 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 FWD prior to taking the groundwater-related action.

E. The County agrees not to notify DWR that it intends to serve as a GSA within FWD's Service Area, and will not create an overlap with FWD, if the County and FWD 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 FWD. To the extent that FWD incur costs in developing or implementing a GSP applicable to, or in implementing SGMA within, the County's GSA management area(s) (i.e. outside the Service Area), pursuant to agreement with the County, the County shall provide proportional financial reimbursement to FWD.

V. Compliance with Laws

A. In any action taken pursuant to this MOU, FWD 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 FWD, 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 or regulation 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 or regulation 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:

Steven E. White

Title:

Public Works and Planning Director

Address:

2220 Tulare Street, Sixth Floor
Fresno, California 93721

Telephone:

(559) 600-4537

Farmers Water District:

Name:

Jim Stilwell

Title:

PRESIDENT, BOARD OF DIRECTORS

Address:

4460 W. SHAW AVE #219
FRESNO, CA 93722

Telephone:

559-674-8897

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

Farmers Water District

COUNTY OF FRESNO

BY Ernest Buddy Mendes

ERNEST BUDDY MENDES, CHAIRMAN
BOARD OF SUPERVISORS

Jim Stilwell
BY: Jim Stilwell

Title: PRESIDENT
BOARD OF DIRECTORS

Approved as to Legal Form

Daniel Cederborg
Fresno County Counsel

BY: Peter Wall deputy

ATTEST:
BERNICE E. SEIDEL, CLERK
BOARD OF SUPERVISORS

By Russie Cuyler
DEPUTY