Appendix 1-B

Memorandum of Understanding Establishing a South American Subbasin SGMA Working Group and Identifying Cost Share Provisions for GSP Development (May 13, 2020)

Memorandum of Understanding
Establishing a South American Subbasin SGMA Working Group and Identifying Cost Share Provisions for GSP Development

This Memorandum of Understanding ("**MOU**") is entered into and effective this 13th day of May, 2020 by and among the County of Sacramento, a political subdivision of the State of California; Sacramento Central Groundwater Authority (SCGA), a joint powers authority; Northern Delta Groundwater Sustainability Agency (NDGSA), a joint powers authority; Omochumne-Hartnell Water District (OHWD), a California Water District; and Sloughhouse Resource Conservation District, (SRCD) a California Resource Conservation District. (each a "**Party**" and collectively, the "**Parties**.")

RECITALS

WHEREAS, the 2014 Sustainable Groundwater Management Act ("**SGMA**") empowers local agencies to adopt and implement groundwater sustainability plans ("**GSPs**") in order to provide for the sustainable management of groundwater basins; and

WHEREAS, SGMA recognizes and supports the primacy of local agencies in managing groundwater within their boundaries, and promotes coordination and collaboration among those local agencies in order to ensure sustainable groundwater management; and

WHEREAS, the Sacramento Valley- South American Sub-basin ("**Basin**") is an un-adjudicated groundwater basin that has been classified as a High Priority basin by the California Department of Water Resources ("**DWR**"), and which therefore must be governed by a GSP, or coordinated GSPs, no later than January 31, 2022; and

WHEREAS, each of the Parties is a local agency within the meaning of Water Code section 10721(m) with authority to adopt and implement a GSP in the Basin; and

WHEREAS, certain of the Parties have elected to serve as GSA in the same areas of the Basin, such that a condition of overlap exists in those service areas; and

WHEREAS, pursuant to County Resolution 2017-0201, the County of Sacramento has accepted responsibility for those portions of the Basin for which no exclusive GSA has been designated ("**Unmanaged Areas**"), such that the entire basin is included within the jurisdiction of a GSA; and

WHEREAS, Sacramento Central Groundwater Authority was awarded a grant under Proposition 1 and a grant under Prop 68 to fund the development of a GSP in the Basin; and

WHEREAS, it is the intent of the Parties to coordinate in the development and implementation of a single Basin-wide GSP; to provide a structure in which to collaborate and share costs in the development of that GSP; and to ensure that each Party appropriately bears the costs of GSP development in its own jurisdiction, and no others.

AGREEMENT

1. Definitions. The following terms shall have the following meanings.

(a) "Administrative Agency" means the entity designated under Section 8 of this MOU to administer the Grant, coordinate with consultants on behalf of the Parties and at the direction of the Working Group, and invoice costs pursuant to this MOU.

(b) "Basin" means the Sacramento Valley – South American Subbasin, as described in DWR Bulletin 118, Basin No. Basin 5-21.65.

(c) "GSA" means a Groundwater Sustainability Agency, established and authorizes pursuant to Water Code section 10723.8.

(d) "GSP" means a Groundwater Sustainability Plan developed under the Sustainable Groundwater Management Act.

(e) "Unmanaged Areas" means those portions of the Basin for which the County, in the absence of any other GSA election, has accepted responsibility as a GSA pursuant to County Resolution No. 2017-0201. For purposes of cost sharing and Working Group governance, the County's allocable area shall include only the Unmanaged Areas, excepting therefrom areas within SRCD/OHWD's jurisdiction.

(f) "Working Group" means the South American Subbasin Working Group, convened pursuant to this MOU for the purposes of developing and providing recommendations related to a SGMA-compliant GSP for the Basin.

2. **Term.** This MOU shall be effective upon signing and shall remain in full force and effect until the date upon which all of the Parties execute a document jointly amending or terminating the provisions of this MOU.

3. **Responsibilities of the Parties.** Each Party to this MOU shall be responsible for: providing timely responses and supporting information related to GSP development to the Working Group and Administrative Agency upon request; performing appropriate and coordinated outreach to other groundwater management entities and stakeholders within the Basin; promptly paying all invoiced costs as set forth in Exhibit A; and for considering and adopting a SGMA-compliant GSP over the area for which that Party serves as exclusive GSA, no later than January 31, 2022.

4. **Independent Consideration of the GSP.** The Parties expressly acknowledge that the Working Group is an advisory body intended to facilitate GSP development. The governing Board of each GSA is responsible for considering and adopting an appropriate GSP for its jurisdictional boundaries. Any Party may decline to adopt the GSP developed by the Working Group, or elect to proceed with development of its own GSP at that Party's expense. The decision not to adopt a GSP developed under this MOU shall not relieve a Party of its cost obligations pursuant to this MOU.

5. **Management Areas**. The parties recognize that the GSP may include distinct management areas to foster implementation and monitoring

6. **Establishment of the South American Subbasin SGMA Working Group.** Upon execution of this MOU, the Parties will convene the South American Subbasin SGMA Working Group ("**Working Group**"). Seats on the Working Group shall be allocated among the Parties as detailed in Exhibit A.

(a) The Working Group shall be responsible for sharing feedback from the Parties related to the GSP development; for developing the GSP for the Basin; and for making recommendations to the Parties regarding the adoption and development of the GSP.

(b) The Working Group will seek to make decisions through consensus. In the absence of a consensus, participants of the Working Group may be called upon to cast votes. Recommendations of the Working Group provided to the Parties shall include a report of the votes cast.

7. **Cost Sharing.** Shared costs of GSP development shall be allocated according to the proportions identified in Exhibit A. When any additional Party becomes a signatory to this MOU, the cost share proportions identified in Exhibit A shall be modified to appropriately distribute GSP development costs between the new and existing Parties, according to the formula identified in Exhibit A.

- In Kind Contributions are appropriate and recognized as satisfactory to meet the cost share requirements of a party to this agreement.

- Nothing in this MOU shall prevent a Party from voluntarily incurring its own costs related to GSP development, or from developing its own GSP or supporting materials at that Party's expense.

- Any in-kind contributions proposed to be substituted for monetary reimbursement of Assignable GSP Development Costs (Exhibit A) must be approved by the Administering Agency and, further, be consistent with the grant agreement between the Administering Agency and DWR.

8. **Responsibilities of the Administrative Agency.** The Administrative Agency shall be responsible for implementing the recommendations of the Working Group in GSP development; engaging and providing direction to consultants at the election and direction of the Working Group; and administering the grants for the benefit of the Basin. Costs of GSP development shall be distributed pursuant to Exhibit A and shall be recoverable by the Administrative Agency from the Parties in the proportions identified in Exhibit A.

(a) SCGA shall be initially designated as the Administrative Agency; this designation may be altered by the unanimous written consent of the Parties. The commitment

of the Administrative Agency to perform the designated functions under this Section is contingent upon the execution and performance of the cost sharing terms of this MOU.

9. **Invoicing and Payment of Shared GSP Development Cash Costs**. Costs of GSP development as set forth in Exhibit A, shall be invoiced to all Parties by the Administrative Agency, and paid by the invoiced Party within 90 days. A Party that fails to make payment within 90 days may be suspended from voting on Working Group recommendations until full payment of the past-due invoices is made. Activities of the Working Group will not be delayed under such an occurrence and costs incurred by the Working Group will still accrue to the Party as set forth in Exhibit A, during any period of non-payment.

10. **Basin Boundary Modifications**. To facilitate the efficient development of a GSP for the Basin, that Parties agree that no Party shall submit a request for Basin Boundary Modification of this Basin to DWR without the unanimous consent of the Parties, which consent shall not be unreasonably withheld.

11. **Withdrawal**. The intent of this agreement is for a spirit of working together for a single Basin-wide GSP. However, any party may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement by the following provisions.

a) The withdrawing Party shall provide the Working Group with thirty (30) days prior written notice.
b) The withdrawing Party shall be responsible for payment of its proportional share of costs and obligations associated with GSP development identified in Attachment A, up to the time of submission of the written notice of the withdrawal. Withdrawing party would be responsible for securing and funding consultants to develop and submit any amendments or revisions to the GSP required as a result of withdrawal.
c) The withdrawing party shall be responsible for securing SGMA compliance within its jurisdictional boundaries at its own expense, including as necessary, GSP development, coordination, and the cost of any additional requirements imposed by DWR or other regulatory agencies.

The withdrawing party shall be responsible for providing notice, maps and all other necessary information to the DWR and other GSAs regarding its change in status within 30 days of withdrawal.

12. **Resolution of Overlap: OHWD/SCGA**. Upon execution of this MOU, SCGA will modify its current overlapping GSA notification in OHWD's service area (SCGA-GSA-2) to exclude all of OHWD service area, except the area defined as the Kiefer Landfill. OHWD will modify their current overlapping GSA notification to exclude that area defined as Kiefer landfill. Modifications of each party will include all necessary geospatial information needed to identify the new service area boundary for each party. Immediately prior to modifying these notifications, SCGA and OHWD will attach separate letters to their existing notification

explaining why their notifications are being modified. OHWD will formally request that SCGA modify its governing joint powers agreement in order to remove OHWD's lands from SCGA's jurisdiction. SCGA will promptly request that the signatories to that agreement execute an amendment to that agreement to carry out the removal.

(a) For the term of plan development, Zone 13 funding currently provided to SCGA on behalf of OHWD shall be applied by SCGA as a credit toward any costs billed to OHWD under Section 7 of this MOU.

13. **Resolution of Overlap: OHWD/SRCD**. Upon execution of this MOU, SRCD will withdraw their overlapping GSA notification in OHWD's service area (SCGA-2). Immediately prior to withdrawing their notification, SRCD will attach a letter explaining why their current notification is being withdrawn.

14. **Resolution of Overlap and Redefining GSA Boundaries: SCGA/SRCD**. Upon execution of this MOU, SCGA and SRCD will modify their current GSA notifications for SCGA-GSA-3 to reflect this agreement. SCGA will modify their notice to describe and map an area of SCGA-GSA-3 that includes all lands to the eastern boundary of "Zone 40" (Urban limit), and all land within the limits of the Kiefer Landfill, as part of SCGAs GSA service area. SRCD will modify their current notification for SCGA-GSA-3 to describe and map an area east of the Zone 40 boundary and east of the OHWD boundary, and excluding Kiefer Landfill and Rancho Murieta CSD, as the SRCD GSA service area. All South American subbasin land within the Rancho Murieta Community Services District will remain a part of the Sacramento County GSA until such time that the RMCSD Board of Directors makes a formal decision to be included within the boundaries of another GSA. Notice modifications of each party will include all necessary geospatial information needed to identify the new service area boundary for each party. Sacramento County will need to modify their default notice for SCGA-GSA-3 to complete the process.

(a) For the term of plan development, Zone 13 funds collected within SRCDs GSA boundary shall be applied as a credit toward any costs billed to SRCD under Section 7 of this MOU.

15. **Disputes**. The Working Group is committed to working towards consensus in all decisions to be made regarding development of the GSP. With the help of a third-party facilitator, the Parties agree to put a good faith effort into transparently raising any concerns, understanding one another's interests, and working towards solutions that will adequately meet the needs of all Parties.

All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or legal proceeding, including arbitration. The Parties covenant that they will participate in the mediation in good faith. Mediation will be

conducted in Sacramento County, California, unless otherwise agreed to by the Parties in writing. The mediator shall be mutually selected.

16. **No Alternation of Water Rights**. Consistent with Water Code sections 10720.1(b), 10720.5 and 10726.8, nothing in this Agreement or in its implementation shall be construed to alter the existing water rights of the Parties.

GENERAL PROVISIONS

17. *Authority*. Each signatory of this MOU represents that s/he is authorized to execute this MOU on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this MOU and to perform all obligations under this MOU.

18. *Amendment*. This MOU may be amended or modified only by a written instrument executed by each of the Parties.

19. *Jurisdiction and Venue*. This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in Sacramento County, California.

20. *Headings*. The paragraph headings used in this MOU are intended for convenience only and shall not be used in interpreting this MOU or in determining any of the rights or obligations of the Parties.

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

22. *Entire Agreement*. This MOU constitutes the entire agreement of the Parties with respect to the subject matter of this MOU and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this MOU.

23. *Partial Invalidity*. If, after the date of execution of this MOU, any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this MOU, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

24. *Successors and Assigns*. This MOU shall be binding on and inure to the benefit of the successors and assigns of the respective Parties. No Party may assign its interests in or obligations under this MOU without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

25. *Waivers*. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU and forbearance to enforce one or more of the remedies provided in this MOU shall not be deemed to be a waiver of that remedy.

26. *Attorneys' Fees and Costs*. In the event of a dispute between the Parties, each Party will pay their own attorneys' fees, expert witnesses' fees, costs of suit, and any other costs associated with the dispute.

27. *Necessary Actions*. Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this MOU.

28. *Compliance with Law*. In performing their respective obligations under this MOU, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

29. *Third Party Beneficiaries*. This MOU shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.

30. *Counterparts*. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

31. *Notices*. All notices, requests, demands or other communications required or permitted under this MOU shall be in writing unless provided otherwise in this MOU and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by electronic mail or facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

EXHIBIT A: Working Group Membership & Cost Allocation

Party	Working Group Members	Assignable GSP Development Costs *
County of Sacramento	1 Representative	8% of agreed to amount Estimate= $88,247.36
Omochumne-Hartnell Water District	2 Representatives	17% of agreed to amount, to be paid first from Zone 13 funds during development of the GSP Estimate= $187,525.64
Sacramento Central Groundwater Authority	7 Representatives, including: • No more than 5 representatives that are signatories to the SCGA joint powers agreement; public water systems; commercial industrial self supplied interests; or sanitation districts. • At least 2 representatives of Agriculture, Ag-residential self supplied public agencies or Conservation Landowner interests	63% of agreed to amount Estimate= $694,947.96
Northern Delta Groundwater Sustainability Agency	1 Representative	8% of agreed to amount Estimate= $88,247.36
Sloughhouse Resource Conservation District	1 Representative	4% of agreed to amount, to be paid first from Zone 13 funds. Cash Cost estimate=$20,000

Sloughhouse RCD (Con't)		Zone 13 estimate= $25,000 Estimate= $ 44,123.68

. Assignable GSP development Costs are based on matching cost requirements of a Prop 1 grant funds (50% match) and Prop 68 grant fund (25% match).

IN WITNESS WHERE OF, the parties have caused this agreement to be duly executed upon signature.

Brad Van Loben Sels, Board Chairperson
Northern Delta Groundwater Sustainability Agency

Date

Kurt Kautz, Board Chairperson
Omochumne-Hartnell Water District

Date

Todd Eising, Board Chairperson
Sacramento Central Groundwater Authority

July 1st 2020
Date

Michael Peterson, Director
Sacramento County Department of Water Resources

Date

Jay Schneider, Chairperson
Sloughhouse Resource Conservation District

Date