

**MEMORANDUM OF AGREEMENT TO FORM A GROUNDWATER SUSTAINABILITY
AGENCY FOR THE VERBENIA AREA OF THE SAN GORGONIO PASS SUBBASIN**

This 2017 Memorandum of Agreement (MOA) is entered into by and between the Mission Springs Water District (MSWD) and the San Gorgonio Pass Water Agency (SGPWA), which may be referred to herein individually as a "Party" and collectively as the "Parties."

Pursuant to the Sustainable Groundwater Management Act (SGMA), and as further set forth herein, the purpose of this MOA is for MSWD and SGPWA to form a Groundwater Sustainability Agency (GSA) for an approximately one-square mile portion of the San Gorgonio Pass Subbasin referred to herein as the "Verbenia Area."

WHEREAS, on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319, and Assembly Bill 1739, collectively known as the Sustainable Groundwater Management Act, codified in certain provisions of the California Government Code, commencing with Section 65350.5, and in certain provisions of the California Water Code, including but not limited to, Sections 5200 et seq. and 10720 et seq.; and

WHEREAS, SGMA went into effect on January 1, 2015, and thereafter various clarifying amendments to SGMA were signed into law in 2015, including Senate Bills 13 and 226, and Assembly Bills 617 and 939; and

WHEREAS, the San Gorgonio Pass Subbasin (Basin), as further depicted in **Exhibit A** to this MOA, is identified by the California Department of Water Resources (DWR) Bulletin 118 as Subbasin No. 7-21.04 of the Coachella Valley Groundwater Basin, and is designated by DWR as medium priority, and therefore, except as provided by SGMA, the Basin is subject to the requirements of SGMA; and

WHEREAS, the Parties recognize and agree that a portion of the Basin (herein, the Adjudicated Area) is subject to the Beaumont Basin adjudication and Judgment in the case referred to as *San Timoteo Watershed Management Authority v. City of Banning, et al.*, Riverside County Superior Court Case No. RIC 389197, and that pursuant to SGMA Section 10720.8(a)(1), said portion of the Basin generally is not subject to the requirements of SGMA; and

WHEREAS, SGMA Section 10720.7 requires the Basin, as a medium priority basin which is not designated by DWR as being subject to critical conditions of overdraft, to be managed by a Groundwater Sustainability Plan (GSP) or coordinated GSPs by January 31, 2022; and

WHEREAS, SGMA Section 10727(b) authorizes (1) a single GSP covering the entire Basin developed and implemented by one GSA, (2) a single GSP covering the entire Basin developed and implemented by multiple GSAs, or (3) multiple GSPs developed and implemented by multiple GSAs and coordinated pursuant to a single coordination agreement that covers the entire Basin; and

WHEREAS, SGMA Section 10735.2 requires the formation of a GSA or multiple GSAs for the Basin by June 30, 2017; and

WHEREAS, SGMA Section 10723.6(a) authorizes a combination of local agencies to form a GSA pursuant to a joint powers agreement, a memorandum of agreement, or other legal agreement; and

WHEREAS, pursuant to SGMA, the City of Banning, Banning Heights Mutual Water Company, Cabazon Water District, and SGPWA each have adopted Resolutions of their respective governing boards to jointly form and establish a GSA (referred to as the SGP-GSA) for a certain portion of the Basin, as further depicted in **Exhibit B** to this MOA; and

WHEREAS, pursuant to SGMA Section 10723(c)(1)(C), Desert Water Agency has been designated as the exclusive GSA for a certain portion of the Basin (referred to as the DWA-GSA), in which DWA's boundaries overlap the MSWD service area, as further depicted in **Exhibit C** to this MOA; and

WHEREAS, on or about September 28, 2016, MSWD filed an amended notice of intent to be a GSA for an approximately one-square mile portion of the Basin that lies within the service areas of MSWD and SGPWA, which one-square mile area is further specified and depicted in **Exhibit D** to this MOA, and is referred to herein as the "Verbenia Area"; and

WHEREAS, on or about January 10, 2017, SGPWA also filed a notice of intent to be a GSA for the Verbenia Area; and

WHEREAS, on or about January 13, 2017, DWR designated the Verbenia Area to be in overlap for purposes of the competing GSA notices filed by MSWD and SGPWA, and thus MSWD and SGPWA have worked together to prepare this MOA to establish a separate GSA for the Verbenia Area (herein, the Verbenia-GSA); and

WHEREAS, both MSWD and SGPWA overlies the Verbenia Area and each has respective water supply and water management responsibilities within the Verbenia Area, and thus each is authorized by SGMA to become part of the Verbenia-GSA; and

WHEREAS, in accordance with the terms of this MOA, the Parties agree that the Verbenia-GSA formed by this MOA will cover the Verbenia Area of the Basin, and the Parties mutually desire and intend that the Verbenia-GSA, the SGP-GSA, and the DWA-GSA will cooperate and coordinate in subsequently preparing and implementing one or more GSPs for sustainable management of the Basin; and

WHEREAS, in entering into the Verbenia-GSA MOA, MSWD makes no admission or agreement that DWA is the exclusive GSA over any part of MSWD's service area, including the area designated herein or in the Verbenia-GSA MOA as the DWA-GSA.

WHEREAS, the Parties mutually desire and intend to work with local stakeholders and interested entities within the Verbenia-GSA to carry out the policy, purposes, and requirements of SGMA in the Verbenia Area.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually understood and agreed as follows:

I. Incorporation of Recitals

The Recitals stated above are incorporated herein by reference.

II. Purpose

The purpose of this MOA is to form the Verbenia-GSA for an approximately one-square mile portion of the Basin as specified herein and as depicted in **Exhibit D** to this MOA pursuant to applicable provisions and requirements of SGMA, including but not limited to SGMA Sections 10723 and 10723.6.

III. Approval of MOA and Formation of the Verbenia-GSA

Approval of this MOA and formation of the Verbenia-GSA shall be accomplished as follows:

- A. MSWD and SGPWA each will hold its own noticed public hearing pursuant to SGMA Section 10723(b) and Government Code Section 6066 and at such hearing will consider approval of a Resolution by its governing board to enter this MOA and jointly form the Verbenia-GSA as specified in this MOA;
- B. Upon the foregoing respective approvals by MSWD and SGPWA, there shall be established the Verbenia Area Groundwater Sustainability Agency (Verbenia-GSA), the members of which shall be MSWD and SGPWA as provided in this MOA.

IV. Definitions

The following terms, whether used in the singular or plural, and when used with initial capitalization, shall have the meanings specified herein. The Parties agree that any definitions set forth herein are intended to be consistent with SGMA, and in the event of any discrepancy between a defined term in this MOA and a defined term in SGMA, the terms of SGMA shall control.

- A. **Adjudicated Area** refers to that portion of the Basin that is subject to the Beaumont Basin adjudication and Judgment in the case referred to as *San Timoteo Watershed Management Authority v. City of Banning, et al.*, Riverside County Superior Court Case No. RIC 389197.
- B. **Basin** refers to the San Geronio Pass Subbasin, designated by the California Department of Water Resources Bulletin 118 as Subbasin No. 7-21.04, as further specified and depicted in **Exhibit A** to this MOA.
- C. **DWR** means the California Department of Water Resources.
- D. **DWA-GSA** refers to the GSA that is currently designated for a certain portion of the Basin pursuant to SGMA Section 10723(c)(1)(C), wherein DWA has been designated as the exclusive GSA, as further depicted in **Exhibit C** to this MOA. The portion of the Basin, depicted in **Exhibit C** as the DWA-GSA, overlaps with MSWD's service area; and DWA's exclusive GSA designation over the DWA-GSA is subject to litigation between MSWD and DWA.
- E. **GSA** means Groundwater Sustainability Agency, as defined by SGMA.
- F. **GSP** means Groundwater Sustainability Plan, as defined by SGMA.

- G. **Memorandum of Agreement** or **MOA** refers to this Memorandum of Agreement.
- H. **MSWD** means the Mission Springs Water District.
- I. **Party** or **Parties** refers individually or collectively to Mission Springs Water District and San Gorgonio Pass Water Agency, as signatories to this MOA.
- J. **SGMA** refers to the Sustainable Groundwater Management Act.
- K. **SGP-GSA** refers to the San Gorgonio Pass Subbasin GSA being formed for a certain portion of the Basin by the Cabazon Water District, City of Banning, Banning Heights Mutual Water Company, and SGPWA, as further depicted in **Exhibit B** to this MOA.
- L. **SGPWA** means the San Gorgonio Pass Water Agency.
- M. **Verbenia-GSA** refers to the GSA being formed by MSWD and SGPWA pursuant to this MOA for an approximately one-square mile portion of the Basin that lies within the respective service areas of MSWD and SGPWA, as further specified and depicted in **Exhibit D** to this MOA.

V. Boundaries of the Verbenia-GSA

The boundaries of the Verbenia-GSA shall be the approximately one-square mile portion of the Basin that lies within the respective service areas of MSWD and SGPWA, as further specified and depicted in **Exhibit D** to this MOA.

VI. Coordination and Cooperation

- A. Continued Cooperation. The Parties to this MOA will continue to meet, confer, coordinate, and collaborate to discuss and develop technical, managerial, financial, and other criteria and procedures applicable to the Verbenia Area, and to cooperate with the SGP-GSA and DWA-GSA regarding the preparation, governance, and implementation of a GSP or coordinated GSPs in the Basin pursuant to SGMA.
- B. Points of Contact. Each Party shall designate a principal contact person for that Party, who may be changed from time to time at the sole discretion of the designating Party. The principal contact person for each Party shall be responsible for coordinating with the principal contact persons for the other Party in scheduling meetings and other activities under this MOA.
- C. Management Areas. The Parties acknowledge that SGMA, and provisions of the SGMA regulations promulgated by DWR, including but not limited to Section 354.20 (23 C.C.R. § 354.20), authorize the establishment of management areas for the development and implementation of sustainable groundwater management within the Basin, and accordingly the Parties acknowledge and agree that the establishment of management areas within the Basin is a governance alternative that the Parties may explore with the SGP-GSA and DWA-GSA.

VII. Roles and Responsibilities

- A. The Parties agree to jointly establish their roles and responsibilities for SGMA compliance relating to the Verbenia Area.
- B. The Parties shall coordinate with each other to cause all applicable noticing and submission of required information to DWR regarding formation of the Verbenia-GSA.

VIII. Funding and Budgeting

The Parties shall mutually develop reasonable budgets and cost sharing agreements or arrangements for work to be undertaken for SGMA compliance relating to the Verbenia Area.

IX. Stakeholder Access

The Parties agree to work together in ensuring public outreach and involvement of the public and other interested stakeholders within the Verbenia Area throughout the SGMA process, including but not limited to all beneficial uses and users of groundwater as provided in SGMA Section 10723.2.

X. Term, Termination, and Withdrawal

- A. Term. This MOA shall continue and remain in effect unless and until terminated by the unanimous written consent of the Parties, or as otherwise provided in this MOA, or as authorized by law.
- B. Withdrawal. Either Party may decide, in its sole discretion, to withdraw from this MOA by providing ninety (90) days written notice to the other Party. A Party that withdraws from this MOA shall remain obligated to pay its share of costs and expenses incurred or accrued under this MOA and any related cost sharing agreement or arrangement up to the date the Party provides its notice of withdrawal as provided herein. Withdrawal by a Party shall cause the termination of this MOA, in which case MSWD and SGPWA shall meet and confer regarding: (i) ongoing compliance with SGMA for purposes of the Verbenia Area; (ii) whether either Party or both of the Parties may desire to retain GSA status over the Verbenia Area; and (iii) notices and information to be submitted to DWR and/or the State Water Resources Control Board. The Parties agree to undertake the resolution of such issues in a manner that satisfies all requirements of SGMA.

XI. Notice Provisions

All notices required by this MOA shall be made in writing and delivered to the respective representatives of the Parties using the following contact information:

Mission Springs Water District
General Manager
66575 Second Street
Desert Hot Springs, CA 92240
Fax: (760) 329-2482

San Gorgonio Pass Water Agency

General Manager
1210 Beaumont Avenue
Beaumont, CA 92223
Fax: (951) 845-0281

Either Party may change its contact information for which notices are to be given under this MOA by providing the other Party with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change. All notices shall be effective upon receipt and shall be deemed received upon confirmed personal service, confirmed facsimile delivery, confirmed courier service, or on the fifth (5th) calendar day following deposit of the notice in registered first class mail.

XII. General Terms

- A. Amendments. Amendments to this MOA require unanimous written consent of each Party and approval by the Parties' respective governing boards.
- B. Successors and Assigns. The terms of this MOA shall be binding upon all successors in interest and assigns of each Party; provided, however, that no Party shall assign its rights or obligations under this MOA without the signed written consent of the other Party to this MOA.
- C. Waiver. No waiver of any provision of this MOA by either Party shall be construed as a further or continuing waiver of such provision or any other provision of this MOA by the waiving Party or the other Party.
- D. Authorized Representatives. Each person executing this MOA on behalf of a Party hereto affirmatively represents that such person has the requisite authority to sign this MOA on behalf of the respective Party.
- E. Exemption from CEQA. The Parties recognize and agree that, pursuant to SGMA Section 10728.6 and Public Resources Code Section 21065, neither this MOA nor the preparation or adoption of a GSP constitutes a "project" or approval of a project under the California Environmental Quality Act (CEQA) or the State CEQA Guidelines, and therefore this MOA is expressly exempt from CEQA review.
- F. Governing Law and Venue. This MOA shall be governed by and construed in accordance with the laws of the State of California. Any suit, action, or proceeding brought under the scope of this MOA shall be brought and maintained to the extent allowed by law in the County of Riverside, California.
- G. Attorney's Fees, Costs, and Expenses. In the event of a dispute between the Parties arising under this MOA, each Party shall assume and be responsible for its own attorney's fees, costs, and expenses.
- H. Construction and Interpretation. The Parties agree and acknowledge that this MOA has been developed through a negotiated process between the Parties, and that each Party has had a full and fair opportunity to review the terms of this MOA with the advice of its own legal counsel and to revise the terms of this MOA, such that each Party constitutes a drafting Party to this MOA. Consequently, the Parties understand and

agree that no rule of construction shall be applied to resolve any ambiguities against either Party as the drafting Party in construing or interpreting this MOA.

- I. Force Majeure. No Party shall be liable for the consequences of any unforeseeable force majeure event that (1) is beyond its reasonable control, (2) is not caused by the fault or negligence of such Party, (3) causes such Party to be unable to perform its obligations under this MOA, and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a force majeure event, the Party unable to perform shall promptly notify the other Party in writing to the extent practicable. It shall further pursue its best efforts to resume its obligations under this MOA as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.
- J. Execution in Counterparts. This MOA may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.
- K. No Third Party Beneficiaries. This MOA is not intended, and will not be construed, to confer a benefit or create any right on a third party or the power or right of any third party to bring an action to enforce any of the terms of this MOA.
- L. Timing and Captions. Any provision of this MOA referencing a time, number of days, or period for performance shall be measured in calendar days. The captions of the various articles, sections, and paragraphs of this MOA are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, terms, or intent of this MOA.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this MOA as of the respective dates specified in the adopting Resolution of each Party as provided above in Article III of this MOA.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties hereto have approved and executed this MOA as of the respective dates specified in the adopting Resolution of each Party as provided above in Article III of this MOA.

MISSION SPRINGS WATER DISTRICT

By: _____

IN WITNESS WHEREOF, the Parties hereto have approved and executed this MOA as of the respective dates specified in the adopting Resolution of each Party as provided above in Article III of this MOA.

SAN GORGONIO PASS WATER AGENCY

By: David J. Ferrn