

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # *B-6

Urgent Routine

AGENDA DATE February 9, 2016

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Amendments to the Turlock Groundwater Basin Association Memorandum of Understanding

STAFF RECOMMENDATIONS:

1. Approve an amendment to the Turlock Groundwater Basin Association Memorandum of Understanding (MOU) to allow the City of Waterford to join as a New Party and to revise the method of adding new parties in the future.
2. Adopt a resolution authorizing the above amendments to the Turlock Groundwater Basin Association Board Memorandum of Understanding.

(Continued on Page 2)

FISCAL IMPACT:

There is no fiscal impact to the County as a result of this action.

BOARD ACTION AS FOLLOWS:

No. 2016-79

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien
 and approved by the following vote,
 Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith
 Noes: Supervisors: None
 Excused or Absent: Supervisors: None
 Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST:


 CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Amendments to the Turlock Groundwater Basin Association Memorandum of Understanding

STAFF RECOMMENDATIONS (CONTINUED):

3. Authorize the Chairman of the Board of Supervisors to sign the amended MOU.

DISCUSSION:

Local agencies within the Turlock Groundwater Subbasin (Basin) have been working cooperatively together on groundwater management issues since 1994. A Memorandum of Understanding (MOU) was adopted in 1995, establishing the Turlock Groundwater Basin Association (TGBA) with the sole purpose of developing a Basin-wide groundwater management plan (GMP). Once the GMP was completed in 1997, the TGBA automatically dissolved. A majority of the member agencies adopted the GMP and have continued to work together over the past 20 years to implement it. A second MOU was developed in 2001 to formalize the TGBA, and provide a focal point for continuing local groundwater management efforts within the Basin.

The second MOU included a list of all of the public water agencies, and counties, known to be located within the Basin. The local public agencies that are signatory members to the existing MOU include the City of Modesto, City of Hughson, City of Ceres, City of Turlock, Merced County, Denair Community Service District, Ballico-Cortez Water District, Hilmar Water District, Eastside Water District, Turlock Irrigation District, Merced Irrigation District and Stanislaus County. The TGBA Board, consisting of one representative from each of the member agencies, governs the TGBA activities in the Basin.

The City of Waterford, which now owns and manages the Hickman water system (formerly owned and operated by the City of Modesto) has asked to join the TGBA. Hickman is located within the Basin. The current process for adding new members to the MOU requires that the governing bodies of two thirds (2/3) of the member agencies take affirmative action to amend the MOU to allow the new member(s) to join.

Additionally, as part of the outreach process of implementing the Sustainable Groundwater Management Act (SGMA), several other entities have been identified as water suppliers within the Basin. These other water agencies may wish to formally join the TGBA as it pertains to the formation of a Groundwater Sustainability Agency (GSA) pursuant to the provisions of SGMA.

To facilitate and improve the efficacy and timeliness of the process by which new members can join in the future, the TGBA Board is requesting that the governing bodies of the existing members, approve a revision of the MOU to allow the TGBA Board to approve such identified water agencies as new members, pursuant to Section 5.4.2 of the MOU, "New Parties." An MOU revision of this nature requires 2/3 approval of the member agency governing bodies. At a meeting held on January 21, 2016, the TGBA Board representatives agreed to bring this matter before their respective governing bodies for consideration of approval as soon as practically feasible.

Approval of Amendments to the Turlock Groundwater Basin Association Memorandum of Understanding

POLICY ISSUE:

The recommended actions support the Board's priorities of A Healthy Community, Effective Partnerships, and a Well Planned Infrastructure System by ensuring a coordinated approach towards regional groundwater resources management. Continued participation in groundwater management activities supports the Department of Environmental Resources' mission to promote a safe and healthy environment and improve the quality of life in the community through a balance of science, education, partnerships and environmental regulation.

STAFFING IMPACTS:

Existing staff will be utilized to provide the necessary support to the activities of the MOU.

CONTACT PERSONS:

Jami Aggers, Director of Environmental Resources
Walter Ward, Water Resources Manager

Telephone:209-525-6770
Telephone:209-525-6710

ATTACHMENTS:

Revised MOU (Attachment A)

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Date: February 9, 2016

2016-79

On motion of Supervisor Withrow Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

Item # *B-6

THE FOLLOWING RESOLUTION WAS ADOPTED:

Amendments to the Turlock Groundwater Basin Association Memorandum of Understanding

WHEREAS, the Turlock Groundwater Basin Association (TGBA) was formed in 2001 for the purpose of providing a forum in which the groundwater agencies can work cooperatively to coordinate groundwater management activities within the Turlock Groundwater Subbasin; and

WHEREAS, the Association was formed with a Memorandum of Understanding (MOU), such that it does not duplicate any of the services, duties or authorities of any other agency, nor does it have any enforceable regulatory authority over any Party's facilities, water supplies or water rights; and

WHEREAS, the existing Memorandum of Understanding (MOU) stipulates that new parties may be added to the TGBA by a two-thirds vote of the Governing Boards of the parties to the TGBA; and

WHEREAS, with the new requirements imposed by the Sustainable Groundwater Management Act (SGMA), it is recognized by the interested parties that the TGBA is not the forum for implementing SGMA, but does provide a valuable forum for local agencies to coordinate on a subbasin scale as the agencies within the Turlock Subbasin move forward toward complying with SGMA; and

WHEREAS, the City of Waterford recently acquired the Hickman water distribution system, located within the Turlock Subbasin, and as such has requested to join the TGBA; and

WHEREAS, other agencies may wish to join the TGBA; and

WHEREAS, to facilitate more expedient additions to the Association in the future, the TGBA recommends adding the City of Waterford to the TGBA and amending the TGBA Memorandum of Understanding so that in the future new parties can be added by a two-thirds vote of the TGBA Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Stanislaus, State of California, that:

1. The City of Waterford is approved as a party to the TGBA.
2. The proposed amendments to the TGBA Memorandum of Understanding as indicated on Attachment A are approved.

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
Stanislaus County Board of Supervisors,
State of California



File No.

ATTACHMENT 'A'

**MEMORANDUM OF UNDERSTANDING
ESTABLISHING THE TURLOCK GROUNDWATER BASIN ASSOCIATION**

1. PARTIES:

The parties to the Memorandum of Understanding (“MOU”) are: City of Ceres, a California Public Agency; Keyes Community Services District, a California Public Services District; Denair Community Services District, a California Public Services District; City of Turlock, a California public agency; Hilmar County Water District, a California Public Services District; Delhi County Water District, a California Public Services District; City of Hughson, a California public agency; City of Modesto, a California public agency; City of Waterford, a California public agency; Merced Irrigation District, a California Irrigation District; Ballico Community Services District, a California Public Services District; County of Merced, a Political Subdivision of the State of California; County of Stanislaus, a Political Subdivision of the State of California; Eastside Water District, a California Water District; Ballico-Cortez Water District, a California Water District; and Turlock Irrigation District, a California Irrigation District.

2. RECITALS:

This MOU is entered into with regard to the following facts and circumstances, among others:

2.1 Groundwater and surface water resources within the Turlock Groundwater Basin are vitally important resources, in that they provide the foundation to maintain current and fulfill future agricultural, domestic, municipal and industrial needs, as well as other needs, and to maintain the economic viability and prosperity of the Basin area.

2.2 The Stanislaus/Merced County area is one of the world's foremost agricultural areas; and the agricultural industry has played a major role in the development of the economy of Stanislaus/Merced County area. In an era of increasing competition for the area's finite water resources, it is important to understand and plan for the utilization of all the area's water resources in order to preserve all elements of the local economy vital to the area's well-being.

2.3 The Parties entered into a Memorandum of Understanding on or around July 14, 1995, for the purposes of studying and evaluating the condition of the Basin, and developing a groundwater management plan for the preservation, protection and enhancement of the Basin. The Turlock Groundwater Basin Groundwater Management Plan was adopted by the Parties on or about October 1997. The 1995 Memorandum of Understanding terminated by its own terms on December 31, 1997.

2.4 The Parties desire to form an association, which will be known as the Turlock Groundwater Basin Association, to provide a mechanism for the Parties to collectively implement the Plan and the purposes and goals of this Memorandum of Understanding.

2.5 Purposes and Goals: The purposes and goals for the formation of the Association are:

2.5.1 To provide a mechanism to coordinate the implementation of the Plan and other groundwater management activities;

2.5.2 To create an association of the Parties to enhance the ability to obtain funding to carry out the Plan and related groundwater management projects; and

2.5.3 Provide information and guidance for the management, preservation, protection and enhancement of the Basin.

2.6 The Parties believe that non-coordinated action by water providers and users within the Basin could result in counter productive competition for finite resources resulting in adverse impacts to the groundwater and surface water supplies within the Basin.

2.7 The Parties believe that creation of an Association for water suppliers within the Basin is important to protect the groundwater and surface water resources and will assist in meeting the needs of all users of such resources within the Basin.

2.8 Because of the enactment of Water Code Sections 10750 et seq., it is clear to the Parties that local management of water resources is desirable in order that local control be maintained over such resources.

2.9 The Parties hereto desire to enter into this MOU in order to form an association to promote the stated goals and provide coordinated implementation of the Plan to make the best use of available water resources to meet the needs of their respective constituents and service territories.

2.10 In forming the Association, it is the Parties' desire that the Association not be formed as a separate governmental entity, nor have any enforceable regulatory authority over any Party's facilities or any Party's respective surface water or groundwater supplies or rights, nor duplicate any services, duties or authority of any other agency.

3. AGREEMENT:

The Parties agree as follows:

4. DEFINITIONS:

The following terms, whether in the singular or the plural, and when used herein with initial capitalization, shall have the meanings specified in this Section 4:

4.1 **Basin:** The Turlock Groundwater Basin, which is geographically defined as that area in the State of California bounded on the west by the San Joaquin River; on the north by the Tuolumne River, on the east by the base of the Sierra Nevada foothills; and on the south by the Merced River, and includes the area of land overlying that basin and all tributaries therein.

4.2 **Board:** That body, consisting of one representative from each of the Parties, which governs the Association, as established pursuant to Section 5.2 of this MOU.

4.3 **Chairperson:** The presiding officer of the Association as elected by the Board.

4.4 **Governing Bodies:** The legislative bodies of the governmental Parties to this MOU.

4.5 **MOU:** This Memorandum of Understanding Establishing the Turlock Groundwater Basin Association.

4.6 **Parties:** Each of those entities named in Section 1 of this MOU, or those Parties added pursuant to Section 5.4 of this MOU.

4.7 **Plan:** The Turlock Groundwater Basin Groundwater Management Plan, adopted on or about October 1997.

5. THE ASSOCIATION:

5.1 **Powers and Purposes:** The Parties to this MOU hereby form the Turlock Groundwater Basin Association.

5.1.1 The purpose of the Association is to provide a forum in which the Parties can work cooperatively; to combine the available talent of the Parties' respective staffs; and to accomplish the purposes described in Section 2 of this MOU.

5.1.2 This Association shall have no enforceable regulatory authority over any person or entity, including Parties or Parties' facilities or rights.

5.2 **Board:** The Association shall be governed by a Board whose membership, duties and responsibilities are set forth herein.

5.2.1 Each Party shall designate one person to serve as a member of the Board, and one or more alternates. Each member of the board, and each alternate, shall serve at the pleasure of the Party appointing such member. A Party's alternate may serve in the place of that Party's member in the absence of such member and, in such case, the alternate shall have the powers of the member.

5.2.2 The Board, at its first meeting, shall elect a chairperson and vice-chairperson from its members. Such officers shall serve at the pleasure of the Board and in such capacities until the first meeting of the Board in 2002 at which time the Board shall elect new officers. Thereafter, the Board shall elect a chairperson and vice-chairperson from its members at the first meeting of each even numbered calendar year. The Chairperson shall be responsible for presiding over meetings of the Board, and shall notify committee members of meetings of the Board. The Board shall establish a date, time and place for its regular meetings, and may hold special meetings when required for the proper transaction of business. All

meetings of the Board shall be held in accordance with the provisions of the Brown Act, California Government Code §54950 et seq. The Board shall prescribe such procedures for the conduct of its business as it deems appropriate.

5.2.3 A quorum shall consist of a majority of the Voting Members of the Board, except that less than a quorum may adjourn meetings of the Board. Alternatively, the Chairperson may adjourn a meeting of the Board to a specified time, date and place if there is less than a quorum of members present for a meeting.

5.2.4 The Board shall have the following duties and responsibilities:

- a. Develop and implement the activities, including work schedule, designated to achieve the objectives of the Association as set forth in Section 2 of this MOU.
- b. Monitor work activities of the Association.
- c. Establish such committees as may be necessary or desirable to carry out the purposes of the Association, and to exercise general supervision over such committees.

5.2.6 Except for actions for which a different approval standard is set forth in this MOU, all actions of the Board shall be approved by a majority of the members present.

5.3 **Staff; Employees:** The Association may have employees upon a decision by the Board, and/or may obtain staff and support services through the Parties.

5.4 **New Parties:** New Parties may join the Association, provided that they meet the requirements set forth in this Section 5.4.

5.4.1 Any local public agency, whose service area includes land located within the Basin, which uses groundwater, or is authorized to provide groundwater, groundwater quality management, or groundwater replenishment within its service area, and whose service includes all or a portion of the Basin, may apply for membership in the Association.

5.4.2 Application for membership shall be subject to approval by the Board; approval shall require the affirmative vote of two-thirds (2/3) of the Board.

5.4.3 Any new Party to this Agreement shall, as a condition of admission to the Association, be required to first pay its proportionate share of back contributions, if any, as determined by the Board.

6. COMMITTEES:

The Board may establish any committees it determines are necessary or desirable.

7. ASSOCIATION COSTS:

7.1 Costs incurred by any Party in connection with any functions of the Association, or any committee established by the Board, and expenses of a Party's personnel including, without limitations, the regular and alternate members appointed by a party to any committee while performing such functions, shall not be reimbursed by the Association except upon approval of the Board.

8. FUNDING AND VOTING PERCENTAGES:

8.1 It is anticipated that the Parties will fund their own staff work. However, outside funding may be available to the Parties, or any subgroup of the Parties, may make additional funding contributions, if necessary, upon agreement of those Parties participating in the funding.

8.2 **Voting Rights:** Each Party's representative on the Board shall be entitled to one vote.

8.3 **Modification by Party:** Funding percentages and/or voting percentages as indicated in Section 8.1 and 8.2 respectively, may be changed only upon the approval of the Governing Bodies of two-thirds (2/3) of the Parties.

9. RELATIONSHIP OF THE PARTICIPANTS:

9.1 **Each Party's Action is Independent of the Other:** The obligation of each Party to make payments under the terms and provisions of this MOU is an individual and several obligation and not a joint obligation with those of the other Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this MOU. No Party shall be under the control of or shall be deemed to control any other Party or the Parties collectively. No Party shall be precluded from independently pursuing any of the activities contemplated in this MOU. No Party shall be the agent of or have the right or power to bind any other Party without such Party's express written consent, except as expressly provided in this MOU.

9.2 **No Creation of a Joint Powers Agency:** The Parties agree that by this MOU they do not intend to provide for the creation of an agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with §6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

10. TERMS OF THIS MOU: The term of this MOU shall commence on November 15, 2001 and shall continue until terminated by Board action.

Upon termination of this MOU, the Board shall determine the assets and liabilities of the Association; make every effort to satisfy all obligations within sixty (60) days of the termination of the MOU; and distribute the remaining fund balance equitably to each Party in proportion to each Party's funding contribution to the Association.

11. GENERAL PROVISIONS GOVERNING MOU:

11.1 Invalidity of Any Term Not to Invalidate the Entire Memorandum: In the event that any of the terms, covenants or conditions of this MOU or the application of any such term, covenant or condition shall be held invalid as to any Party, person or circumstance by any court of competent jurisdiction, all other terms, covenants or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOU.

11.2 Construction of Terms: This MOU is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties or imposing obligations on a Party to any person other than another Party.

11.3 Good Faith: Each Party should use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.

11.4 Withdrawal or Termination of Membership: Except in the event of the termination of this MOU pursuant to Section 10, a party who withdraws or terminates its membership in the Association shall not be entitled to a refund of its funding contributions. Any Party may terminate membership and withdraw from this Association upon thirty (30) days written notice of termination to the Association. If a Party withdraws from the Association when the Party is in arrears as to its funding contributions to the Association, that Party's entitlement to use any work product of the Association as provided for herein shall be determined by the Board.

11.5 Amendment: An amendment to this MOU must be approved by the affirmative vote of the Governing Bodies of two-thirds (2/3) of the Parties.

11.6 **Counterpart Execution:** This MOU may be executed in counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11.7 **Governance:** This MOU is made under and shall be governed by the laws of the State of California.

11.8 **Reasonable Delivery of Documents:** Each Party agrees upon request by the Chairperson or by the Board, to make, execute and deliver any and all documents reasonably required to implement this MOU.

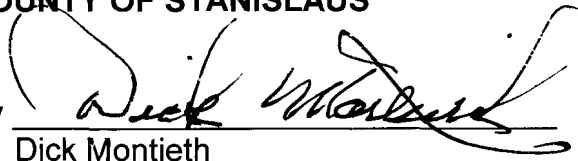
IN WITNESS WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

Signature Page

EACH PARTICIPANT SHALL HAVE A
SEPARATE SIGNATURE PAGE

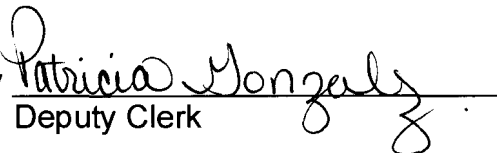
Memorandum of Understanding Establishing the Turlock Groundwater Basin Association

COUNTY OF STANISLAUS

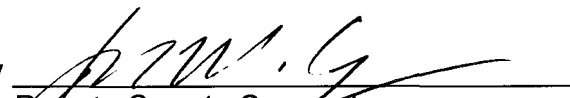
By 
Dick Montieth
Chair of the Board of Supervisors

“County”

Attest:
Christine Ferraro Tallman
Clerk of the Board of Supervisors

By 
Deputy Clerk

Approved as to Form:
John P. Doering
County Counsel

By 
Deputy County Counsel