

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

DEPT: Environmental Resources

BOARD AGENDA: 4.B.6
AGENDA DATE: February 13, 2018

SUBJECT:

Approval of the Amended and Restated Eastside San Joaquin Groundwater Sustainability Agency Memorandum of Understanding Allowing Calaveras County to Enter as a Member Agency

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2018-0084

On motion of Supervisor Monteith , Seconded by Supervisor Olsen
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Withrow, Monteith, and Chairman DeMartini

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:


ELIZABETH A. KING, Clerk of the Board of Supervisors

File No. GSA-2-2

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Environmental Resources

BOARD AGENDA:4.B.6
AGENDA DATE: February 13, 2018

CONSENT:

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval of the Amended and Restated Eastside San Joaquin Groundwater Sustainability Agency Memorandum of Understanding Allowing Calaveras County to Enter as a Member Agency

STAFF RECOMMENDATION:

1. Approve and adopt, via Resolution, the Amended and Restated Memorandum of Understanding (MOU) pertaining to the formation and operation of the Eastside San Joaquin Groundwater Sustainability Agency (Eastside GSA) allowing Calaveras County to join the Eastside GSA.

2. Authorize the Chairman of the Board of Supervisors to sign and execute the Amended and Restated MOU pertaining to the Eastside GSA.

DISCUSSION:

An existing Memorandum of Understanding (MOU) between Calaveras County Water District, Rock Creek Water District, and Stanislaus County established the Eastside Groundwater Sustainability Agency (GSA) which was formally recognized as the GSA for the jurisdictions of the respective agencies in August 2017. Calaveras County has since expressed interest in joining the Eastside GSA as a fourth party, but was unable to schedule the necessary hearings and other considerations to meet the timelines required for the state-mandated June 30, 2017, filing deadline to form GSAs under the 2014 Sustainable Groundwater Management Act. Subsequently, Calaveras County has also contacted the California Department of Water Resources to acknowledge and affirm that they would join the Eastside GSA via an amended MOU at a later date, and such action will not create an "overlap" filing that would be in conflict with the Eastside GSA boundaries as already defined.

The attached "Amended and Restated MOU" was created to allow Calaveras County to join the Eastside GSA. The amended MOU does two things:

- (1) allows for the inclusion of the County of Calaveras; and
- (2) changes the voting requirements to majority for all actions (Section 6.b).

Calaveras County approved the Amended and Restated MOU at their October 10, 2017, Board of Supervisors meeting. Calaveras County Water District took this same action on November 8, 2017. The remaining two members, Rock Creek Water District and Stanislaus County, will also take such action through their respective Boards before the Amended and Restated MOU becomes effective.

POLICY ISSUE:

Approval of this action by the Board of Supervisors is required to remain in compliance with State legislation known as the “Sustainable Groundwater Management Act” and in conformance with provisions of the MOU pertaining to the formation and administration of the Eastside San Joaquin Groundwater Sustainability Agency.

FISCAL IMPACT:

There is no fiscal impact associated with the recommended action.

BOARD OF SUPERVISORS’ PRIORITY:

The recommended actions are consistent with the Board’s priority of *Delivering Efficient Public Services and Community Infrastructure* by implementing State law pertaining to the Sustainable Groundwater Management Act.

STAFFING IMPACT:

There is no impact to staff as a result of this recommended action.

CONTACT PERSON:

Jami Aggers, Director, DER
Walter Ward, Water Resources Manager

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

ATTACHMENT(S):

1. Amended and Restated Eastern San Joaquin Memorandum of Understanding
2. Groundwater Sustainability Agency Memorandum of Understanding Amendment Resolution

**FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING
FOR IMPLEMENTATION OF THE
SUSTAINABLE GROUNDWATER MANAGEMENT ACT
IN THE EASTERN SAN JOAQUIN GROUNDWATER BASIN
BY SUPPORTING FORMATION OF THE
EASTSIDE SAN JOAQUIN GROUNDWATER SUSTAINABILITY AGENCY**

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) between the County of Calaveras (“Calaveras”), the County of Stanislaus (“Stanislaus”), Rock Creek Water District (“Rock Creek”), and Calaveras County Water District (“CCWD”), each of which is referred to as a “Party” and collectively “Parties,” is made and effective as of the last date on which all of the Parties listed below have executed this MOU.

Recitals:

A. The State of California has enacted the Sustainable Groundwater Management Act (contained in SB 1168, AB 1739 and SB 1319), referred to in this MOU as the “Act,” pursuant to which certain local agencies and parties to a memorandum of understanding or other legal agreement may become “groundwater sustainability agencies” and adopt “groundwater sustainability plans” in order to manage and regulate groundwater in underlying groundwater basins, as identified and defined in California Department of Water Resources Bulletin 118. The Parties are local agencies qualified to become a groundwater sustainability agency and adopt a groundwater sustainability plan under the Act.

B. Multiple local agencies overlying a single groundwater basin or subbasin may adopt individual groundwater sustainability plans if those plans are coordinated, or may join together to adopt a single plan. The Parties all overlie portions of the Eastern San Joaquin Subbasin as defined by the California Department of Water Resources (the “Basin”) and wish to participate in the implementation of the Act within the Basin or specific portions thereof. As a result, coordination and cooperation between the Parties is necessary in order to determine their respective roles and the manner in which they will implement the Act. In addition, other agencies that are qualified to become groundwater sustainability agencies overlie the Basin and have expressed interest in implementation of the Act in the Basin, and the Parties acknowledge the importance of involving those other agencies in the management of groundwater resources in the Basin under the Act. The Parties desire to by this agreement create the Eastside San Joaquin Groundwater Sustainability Agency (“GSA”).

C. The Parties wish to establish an agreement and framework for cooperative efforts relative to formation of a GSA in order to implement the Act in the Basin to help ensure that the Act is implemented in the Basin effectively, efficiently, fairly, and at the lowest reasonable cost.

D. This MOU is filed for the sole purpose of incorporating the County of Calaveras into the existing governance structure of the GSA; the boundaries of the GSA will not be altered in any way. The Parties thus find this MOU and its provisions constitute an immaterial change to the GSA’s initial April 17, 2017 MOU.

THEREFORE, in consideration of the mutual promises set forth below and to implement the goals described above, the Parties hereto agree as follows:

1. **Purposes of MOU.** The purposes of this MOU are to (i) facilitate a cooperative and ongoing working relationship among the Parties and other stakeholders and water users to establish a GSA in order to develop and implement mutually beneficial approaches and strategies for implementing the Act in the Basin; and (ii) facilitate contacts with other agencies, both current and prospective, overlying the Basin so that they can coordinate with the GSA to implement a GSP and to satisfy the requirements of the Act.

2. **Intent to Form GSA; Implementation of the GSP.** This MOU is to express the intent of the Parties to jointly file as a multiagency GSA for the area located in the Eastern San Joaquin subbasin and under the jurisdiction of the Parties. The Parties shall regularly confer with regard to those efforts.

3. **Outreach to Other Agencies.** In recognition of the importance of involving all interested agencies in the Basin that are or will be involved in efforts to establish the GSA and the GSP in the management of the Basin in coordination with other agencies in the Basin, as an initial activity under this MOU, the Parties shall develop and implement an outreach plan pursuant to which the Parties will contact other agencies within or near their respective boundaries that may become groundwater sustainability agencies and adopt groundwater sustainability plans under the Act, to invite their participation in activities undertaken in connection herewith.

4. **Initial Administrative Costs.** Each Party shall bear all costs it incurs with respect to its activities under this MOU, including without limitation, costs relative to the formation of the GSA and activities in which that Party wishes to participate.

5. **Financing.** The Parties will develop a coordinated financing plan and cost share agreement for GSA activities that will include, without limitation, seeking bond funding, state loan funds, and imposing appropriate fees and assessments.

6. **Actions of the GSA.** The Parties intend to support and advocate for the GSA, which would have, among others set forth in the Act, the following authorities and obligations:

a) The GSA would adopt actions for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the territory of the GSA.

b) An action adopted by the GSA would become effective on the last date on which a majority of the respective boards of the Parties have approved of the action.

c) All actions would be adopted at noticed public hearings by the Parties' respective boards.

d) Calaveras County Water District would be designated as the contracting agent for the GSA and would have the authority to contract as necessary to accomplish the purposes of the GSA, subject to approval by the Parties.

e) The GSA would have the authority to enter into a coordination agreement with other local agencies for purposes of coordinating the GSA's plan with other agencies or groundwater sustainability plans within the basin.

7. **Savings Provisions.** This MOU shall not operate to validate or invalidate, modify or affect any Party's water rights or any Party's obligations under any agreement, contract or memorandum of understanding/agreement entered into prior to the effective date of this MOU. Nothing in this MOU shall operate to convey any new right to groundwater to either Party. Each Party to this MOU reserves any and all claims and causes of action respecting its water rights and/or any agreement, contract or memorandum of understanding/agreement; any and all defenses against any water rights claims or claims under any agreement, contract or memorandum of understanding/agreement. Further, nothing in this MOU is intended to interfere with any county's exercise of its land-use authority under its police power or to interfere with the operation of any county's existing groundwater ordinance, as of the date of this MOU.

8. **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.

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

10. **Jurisdiction.** 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.

11. **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 to this MOU.

12. **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.

13. **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.

14. **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.

15. **Successors and Assigns.** This MOU shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this MOU. 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.

16. **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.

17. **Attorneys' Fees and Costs.** The prevailing Party in any litigation or other action to enforce or interpret this MOU shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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:

County of Stanislaus
Attn: Manager
1010 10th Street
Modesto, CA 95354

Rock Creek Water District
Attn: General Manager
9601 East Highway 4
Farmington, CA 95230

County of Calaveras
Attn: Manager
891 Mountain Ranch Road
San Andreas, CA 95249

Calaveras County Water District
Attn: General Manager
P.O. Box 608
San Andreas, CA 95249

County of Stanislaus

By 

Title Chairman Jim DeMartini

County of Calaveras

By _____

Title _____

Rock Creek Water District

By _____

Title _____

Calaveras County Water District

By _____

Title _____

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

2018-0084

Date: February 13, 2018

On motion of Supervisor Monteith Seconded by Supervisor Olsen
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Withrow, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # 4.B.6

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF STANISLAUS COUNTY
APPROVING THE AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING FOR THE
EASTSIDE EASTERN SAN JOAQUIN GROUNDWATER SUSTAINABILITY AGENCY**

WHEREAS, on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act of 2014 (SGMA); and

WHEREAS, SGMA went into effect on January 1, 2015; and

WHEREAS, SGMA requires all high and medium priority groundwater basins, as designated by the California Department of Water Resources (DWR) Bulletin 118, to be managed by a Groundwater Sustainability Agency (GSA); and

WHEREAS, SGMA authorizes specific local agencies overlying the Basin to elect to become a GSA within the Basin; and

WHEREAS, Stanislaus County (County) is a local public agency as defined under SGMA that overlies the Basin and is therefore eligible to serve as a GSA within the Basin; and

WHEREAS, the County held a public hearing on February 14, 2017, after publication of notice pursuant to Government Code section 6066 to elect to become a GSA and manage groundwater in the Eastern San Joaquin subbasin pursuant to SGMA; and

WHEREAS, via a Memorandum of Understanding the County, Rock Creek Water District and Calaveras County Water District formed the "Eastside San Joaquin Groundwater Sustainability Agency (Eastside GSA) for the areas of the Eastern San Joaquin Groundwater subbasin located within Stanislaus and Calaveras counties not already covered by another GSA; and

WHEREAS, the Eastside GSA was formally recognized as the exclusive GSA for these areas by the State of California and DWR; and

WHEREAS, the Calaveras County Board of Supervisors subsequently held a public hearing to become a GSA and join the Eastside GSA; and

WHEREAS, the agencies of the Eastside GSA wish to amend the Memorandum of Understanding governing the Eastside GSA to allow Calaveras County to enter as a signatory to the Memorandum of Understanding and thus a member of the Eastside GSA.

NOW, THEREFORE, BE IT RESOLVED that the Stanislaus County Board of Supervisors authorize the Board Chairman to enter into the Amended and Restated Memorandum of Understanding for the Eastside GSA, attached hereto, and a part hereof.

ATTEST: ELIZABETH A. KING, Clerk
Stanislaus County Board of Supervisors,
State of California