



LCWD
Lebec County Water District

PACKET

May 17, 2017

FOR PUBLIC VIEW ONLY

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**JOINT POWERS AGREEMENT
FOR FORMATION OF A GROUNDWATER SUSTAINABILITY AGENCY FOR THE
CASTAC LAKE CASTAC LAKE VALLEY GROUNDWATER BASIN
UNDER THE
SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

THIS JOINT POWERS AGREEMENT (JPA) JPA is made and effective as of _____, 2017, by and between **Tejon-Castac Water District (TCWD)**, **Lebec County Water District (LCWD)**, and the **County of Kern (County)**, each a “Party” and collectively the “Parties,” with reference to the following facts:

A. In 2014, the State of California enacted the Sustainable Groundwater Management Act (Water Code Sections 10720 et seq.), referred to in this JPA as the “SGMA” or “Act,” as subsequently amended, pursuant to which certain public agencies may become or participate in a “Groundwater Sustainability Agency” (GSA) and adopt a “Groundwater Sustainability Plan” (GSP) in order to manage groundwater in underlying groundwater basins. The Act defines “basin” as a basin or Basin identified and defined in California Department of Water Resources (DWR) Bulletin 118.

B. The Castac Lake Valley Groundwater Basin (Basin No _____) has been designated low priority pursuant to SGMA and Water Code section 10720.7 provides the Legislature encourages and authorizes basins designated as low priority to be managed pursuant to SGMA, but does not require same, and expressly provides such basins are not subject to Chapter 11 of SGMA providing for “State Intervention” in certain circumstances. Accordingly, the Parties voluntarily create the GSA as hereinafter provided.

C. TCWD, LCWD and County are the agencies qualified to be a GSA under the Act for the Castac Lake Valley Groundwater Basin, and collectively encompass the entire Basin, and mutual water companies are authorized to participate in a GSA through an agreement. The map attached hereto as Exhibit A designates the boundaries of the Castac Lake Valley Groundwater Basin, and the boundaries of TCWD, and LCWD are shown on said map, along with that portion of Kern County that is not within the boundaries of one of the other Parties.

D. Lands within the Castac Lake Valley Groundwater Basin that have been developed to uses that utilize any significant groundwater are located within TCWD, and LCWD. The Castac Lake Valley Groundwater Basin lands which are not located within these districts but which are within the County, are believed to utilize small or de minimis quantities of groundwater.

E. The Parties wish to provide a framework to form a GSA and to voluntarily implement SGMA in the Castac Lake Valley Groundwater Basin, such that the implementation is through local control and management and is implemented effectively, efficiently, fairly and at a reasonable cost.

F. As authorized by the Joint Exercise of Powers Act (Government Code Section 6500 et seq.), the parties are entering into this JPA to form the Castac Lake GSA, share certain costs, and other matters provided for herein, but are not currently creating a separate entity or authority.

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

1. Formation of the Castac Lake Valley Groundwater Basin GSA. The purpose of this JPA is to form a GSA for the Castac Lake Valley Groundwater Basin and to facilitate a cooperative and ongoing working relationship between the Parties that will allow them to explore, study, evaluate, develop and implement mutually beneficial approaches and strategies for development and implementation of a GSP for the Castac Lake Valley Groundwater Basin. By execution of this JPA, the Parties collectively determine and elect to be the GSA for the Castac Lake Valley Groundwater Basin (“Castac Lake GSA”), subject to the procedures provided for in the Act. It is presumed that this Castac Lake GSA will be the sole GSA for the Castac Lake Valley Groundwater Basin. By entering into this JPA, the Parties are not currently creating a separate entity or joint powers authority.

2. Development of a Groundwater Sustainability Plan. The GSP for the Basin (“Castac Lake GSP”) will be prepared by the Castac Lake GSA. The TCWD will coordinate efforts of the Parties and be the point of contact with DWR, as defined by the Act, to meet and cooperatively develop the Castac Lake GSP. In developing the Castac Lake GSP, the Castac Lake GSA shall consider all beneficial uses and users of groundwater in the Basin, including the interests listed at Section §10723.2 of the Act.

3. GSA Governing Body. There is hereby established a GSA Committee for the Castac Lake GSA, which shall be subject to the following:

a. TCWD and LCWD (“Voting Parties”) will be represented by person(s) designated by the respective entities, with TCWD having two Committee members and LCWD one Committee member. The County shall be a non-voting member of the GSA Committee and will be represented by a designated person. Each Party may appoint one or more alternate GSA Committee members.

b. The GSA Committee may adopt resolutions, bylaws and policies to provide further details for conducting its affairs consistent with this JPA and applicable law and amend same from time to time. Meetings of the GSA Committee shall be called, noticed and conducted subject to the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.)

c. A quorum of the GSA Committee to transact business shall be two GSA Committee members representing Voting Parties. In order to pass any proposition or resolution, an affirmative vote of a majority of the GSA Committee members representing Voting Parties present and voting will be required, provided that to adopt or make any amendment to the GSP, the unanimous consent of the Voting Parties shall be required.

d. The composition, voting procedures and powers of the GSA Committee shall be reviewed and reaffirmed or modified as part of the process to adopt a GSP, including determining, if any of the Parties deems appropriate, forming a joint powers authority as a separate entity to submit and/or implement the GSP.

Equal Voting

Quorum - with both parties

4. Powers/Development of GSP.

(a) Under the conditions and with the exceptions set forth in the Agreement, the Castac Lake GSA shall have all the powers that a GSA is authorized to exercise as provided by the Act, including, but not limited to, developing a GSP that is consistent with the Act and DWR's regulations and imposing fees to pay for GSA and GSP activities.

(b) The Castac Lake GSA shall not have the power to control, limit or empower a Party's rights and authorities over its own surface water supplies, facilities, operations, water management, water supply projects and financial affairs. As provided in Water Code Section 10720.5 of the Act, the Castac Lake GSA and all of its Parties confirm that groundwater management under this Castac Lake GSA shall not modify rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution and that any groundwater management plan adopted by the Castac Lake GSA shall not determine or alter surface water rights or groundwater rights under common law or any other provision of law that determines or grants surface water rights.

5. Matters Related to County Powers.

(a) If the County is requested by the Castac Lake GSA to use the County's police powers for a specific GSA purpose, then the Castac Lake GSA shall indemnify the County against liability for such exercise of its police powers.

(b) The Parties agree that nothing in a GSP or any actions taken by this Castac Lake GSA will modify, limit or preempt the County's police powers, including, but not limited to, its land use authority. The County shall not designate or zone a specific project with the expectation that this GSA will provide more water allotment than that which is determined by any GSP allotment and policies, if there were such allotments. Likewise, the Castac Lake GSA will not restrict the use of groundwater within its boundaries to a specific use.

(c) In accordance with the terms and conditions of this JPA, the Castac Lake GSA will manage the areas of the Castac Lake Basin that are not within the boundaries of TCWD, and LCWD.

(d) Consistent with Water Code Section 10726.4(b), well permitting (which is presently codified in Kern County's Code of Ordinances at Section 14.08) is under the County's jurisdiction. The Castac Lake GSA shall not issue permits for the construction, modification, and/or abandonment of groundwater wells except as authorized by the County. The Castac Lake GSA will not transform, or trigger the transformation of, the well-permitting process from a ministerial function (which does not trigger CEQA) to a discretionary function (which may trigger CEQA) without prior consultation with the County. If the Castac Lake GSA causes CEQA to be triggered with respect to any particular well permitting application within the Castac Lake GSA, then the Castac Lake GSA shall indemnify and defend the County against liability, costs and attorney's fees.

(e) Water transfers within the Basin will be considered as part of the Castac Lake GSP development. In the event the adopted GSP includes extraction allocations pursuant to Water Code section 10726.4, the GSP will include conditions under which those allocations will be transferrable

within the Basin without materially adversely affecting others, including, but not limited to, providing that any such transfer does not materially harm any Party to this Agreement, any portion of the Basin, degrade water quality, or materially harm any other groundwater user within the Basin. The Parties acknowledge that material harm is difficult to determine objectively in advance and agree to work to include a hydrologic review process for any transfers that are authorized in the GSP. Notwithstanding the foregoing, the respective Parties reserve all applicable rights they have with respect to preserving water supplies within their boundaries.

(f) The Castac Lake GSA will ensure that any additional local agencies have a continuous opportunity to participate in the preparation, review and adoption of the Castac Lake GSP. The term “participate” in this context means access to all non-privileged drafts, reports, technical information and other materials and communications, and an ability to actively engage in all open meetings related to the preparation, review and adoption of the Castac Lake GSP. With respect to the County, as an Additional Entity and signatory to this JPA, its opportunities for participation such and review are more than members of the general public and the County will be afforded access to all documents, drafts, reports, technical information and other materials and communications of the GSA.

(g) The Castac Lake GSA will actively work with the County to preserve and protect available water supplies. Before adopting any GSP covering the Castac Lake GSA's jurisdiction or agreeing to the coordination of the GSP with other GSPs, the Castac GSA shall consider the mitigation measures adopted in the County's certified Final Oil and Gas Environmental Impact Report (SCH# 2013081079), which was adopted by the Kern County Board of Supervisors on November 9, 2015, to address the creation of any GSP practices related to the implementation of SGMA and the Oil and Gas permitting.

6. Costs. Each Party shall bear its own costs incurred with respect to activities under this JPA to participate on the GSA Committee and its proceedings and related matters. Costs incurred to retain consultants to assist with development of the Castac Lake GSP and perform related studies as approved by the GSA Committee and to implement the Castac Lake GSP shall be borne by TCWD.

The Parties may consider levying a charge pursuant to the Act, or other legal authority. Certain costs for special projects may be funded under separate agreements among the benefited Parties.

7. Staff. Each Party shall designate a principal contact person, if other than the designated GSA Committee members, and other appropriate staff members and consultants to participate on such Party's behalf in activities undertaken pursuant to this JPA. The TCWD shall be responsible for coordinating meetings and other activities under this JPA with the GSA Committee and principal contact persons for the other Parties. Informal staff meetings may occur as needed.

8. Ongoing Cooperation. The Parties acknowledge that activities under this JPA will require the frequent interaction between them in order to pursue opportunities and resolve issues that arise. The Parties shall work cooperatively and in good faith.

9. Notices. Any formal notice or other formal communication given under the terms of this JPA shall be in writing and shall be given personally, by facsimile, by electronic mail (email), or by certified mail, postage prepaid and return receipt requested. Any notice shall be delivered or addressed to the Parties at the addressees' facsimile numbers or email addresses set forth below under each signature and at such other address, facsimile number or email address as shall be designated by notice in writing in accordance with the terms of this JPA. The date of receipt of the notice shall be the date of actual personal service, confirmed facsimile transmission or email, or three days after the postmark on certified mail.

10. Entire Agreement/Amendments/Counterparts. This JPA incorporates the entire and exclusive agreement of the Parties with respect to the matters described herein and supersedes all prior negotiations and agreements (written, oral, or otherwise) related thereto. This JPA may be amended only in a writing executed by all of the Parties. This JPA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Termination/Withdrawal.

(a) This JPA shall remain in effect unless terminated by the unanimous consent of the Voting Parties.

(b) Upon 60 days written notice, any of the Parties may withdraw from this JPA and the JPA shall remain in effect for the remaining Parties. A withdrawing Party shall be liable for expenses incurred through the effective date of the withdrawal (that is 60 days after the written notice, unless a later date is specified in the notice) and for its share of any contractual obligations incurred by the Castac Lake GSA while the withdrawing Party was a party to this JPA, however, as provided a paragraph 6, the County is not participating in GSP development costs. Upon withdrawal as a Party, whether occurring before or after June 30, 2017, it is contemplated the withdrawing Party may concurrently become (or designate) a GSA for the lands within its boundaries, so that such lands of the withdrawing Party would continue to be subject to a GSA, and if applicable a GSP and the powers of such withdrawing Party within its boundaries would not be limited by this JPA. In such event this GSA and its remaining Parties (i) shall not object to or interfere with the lands in the withdrawing Parties' boundaries being in a GSA, as designated by such withdrawing Party, (ii) shall facilitate such transition to the extent necessary, and (iii) this GSA shall withdraw from managing the Basin as a GSA (if it has already elected to be a GSA) for that portion of the Basin within the boundaries of the withdrawing Party and so notify DWR. In such event, the withdrawing Party shall reconcile and reach agreement with any other Party with respect to overlapping boundaries of the Parties to determine which GSA the respective overlapping lands will be within.

12. Assignment. No rights or duties of any of the Parties under this JPA may be assigned or delegated without the express prior written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties without such written consent shall be null and void.

13. Indemnification. No Party, nor any officer, director, employee or agent of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this JPA. The Parties further agree, pursuant to California Government Code Section 895.4, that each party shall fully indemnify and hold

harmless each other Party and its officers, directors, employees and agents from an against any claims, damages, losses, judgments, liabilities, expenses, and other cost, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action taken or omitted to be taken by such Party under this JPA. Notwithstanding the foregoing, the Voting Parties agree to fully indemnify and hold harmless the County and its officers, directors, employees and agents from and against any claims, damages, losses, judgements, liabilities, expenses or other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action taken or omitted to be taken by the GSA, except to the extent directly caused by the County, or its officers, directors, employees or agents, negligence or wrongful acts.

IN WITNESS WHEREOF, the Parties have executed this JPA as of the date first above written.

Tejon-Castac Water District

By: _____

Address: _____

Email _____

Facsimile _____

Lebec County Water District

By: _____

Address: _____

Email _____

Facsimile _____

County of Kern

By: _____

Address: _____

Email _____

Facsimile _____