

**MEMORANDUM OF UNDERSTANDING
DEVELOPMENT OF A GROUNDWATER SUSTAINABILITY PLAN
FOR THE SAN PASQUAL VALLEY GROUNDWATER BASIN**

This Memorandum of Understanding for the Development of a Groundwater Sustainability Plan (“GSP”) for the San Pasqual Valley Groundwater Basin (“MOU”) is entered into and effective this 29 day of June, 2017 by and between the County of San Diego (“County”) and the City of San Diego (“City”). The County and the City are each sometimes referred to herein as a “Party” and are collectively sometimes referred to herein as the “Parties.”

RECITALS

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 (“Act”) found at California Water Code Section 10720, *et seq*;

WHEREAS, Act went into effect on January 1, 2015;

WHEREAS, Act seeks to provide sustainable management of groundwater basins, enhance local management of groundwater; establish minimum standards for sustainable groundwater management; and provide local groundwater agencies the authority and the technical and financial assistance necessary to sustainably manage groundwater;

WHEREAS, the Parties have each declared to be a Groundwater Sustainability Agency (“GSA”) overlying portions of San Pasqual Valley Groundwater Basin (“San Pasqual Basin”), identified as Basin Number 9.10, a Bulletin 118 designated (medium-priority) basin;

WHEREAS, each Party has statutory authorities that are essential to groundwater management and Act compliance;

WHEREAS, Section 10720.7 of Act requires all basins designated as high- or medium-priority basins designated in Bulletin 118 be managed under a GSP or coordinated GSPs pursuant to Act;

WHEREAS, Section 10720.7 of Act requires that all basins designated high- or medium- priority basins designated in Bulletin 118 that are not critically overdrafted basins be managed under a GSP by January 31, 2022;

WHEREAS, the Parties intend to eliminate overlap of the Parties by forming a multi-agency GSA (San Pasqual Valley GSA) over the entire San Pasqual Basin (Attachment A) and collectively developing and implementing a single GSP to sustainably manage San Pasqual Basin pursuant to section 10727 *et seq.* of Act;

WHEREAS, the Parties wish to use the authorities granted to them pursuant to the Act and utilize this MOU to memorialize the roles and responsibilities for developing the GSP;

WHEREAS, it is the intent of the Parties to complete the GSP as expeditiously as possible in a manner consistent with Act and its implementing regulations;

WHEREAS, it is the intent of the Parties to cooperate in the successful implementation of the GSP not later than the date as required by the Act for the San Pasqual Basin;

WHEREAS, the Parties wish to memorialize their mutual understandings by means of this MOU; and

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the County of San Diego and the City of San Diego hereby agree as follows:

I. Purposes and Authorities.

This MOU is entered into by the Parties for the purpose of establishing a cooperative effort to develop and implement a single GSP to sustainably manage the San Pasqual Basin that complies with the requirements set forth in the Act and its associated implementing regulations. The Parties recognize that the authorities afforded to a GSA pursuant to Section 10725 of the Act are in addition to and separate from the statutory authorities afforded to each Party individually. The Parties intend to memorialize roles and responsibilities for GSP implementation during preparation of the GSP.

II. Definitions.

As used in this Agreement, unless context requires otherwise, the meanings of the terms set forth below shall be as follows:

1. “Act” refers to the Sustainable Groundwater Management Act.
2. “Core Team” refers to the working group created in Section III of the MOU.
3. “Cost Recovery Plan” refers to a component of the Plan that includes an evaluation of fee recovery options and proposed fee recovery alternative(s) available to GSAs pursuant to Sections 10730 and 10730.2 of SGMA.
4. “City” refers to the City of San Diego, a Party to this MOU. The City has designated the Deputy Director for Long-Range Planning and Water Resources Division, Public Utilities Department or their designee(s), as the City department representative to carry out the terms of this MOU for the City.
5. “County” refers to the County of San Diego, a Party to this MOU. The County has designated the Director, Planning & Development Services, or his designee(s), as the County department representative to carry out the terms of this MOU for the County.
6. “DWR” refers to the California Department of Water Resources.
7. “Effective Date” means the date on which the last Party executes this Agreement.
8. “Executive Group” refers to the group created in Section III of the MOU.
9. “Governing Body” means the legislative body of each Party: the City Council and the County Board of Supervisors, respectively.
10. “Groundwater Sustainability Plan (“GSP”)” is the basin plan for the San Pasqual Basin that the Parties to this MOU are seeking to develop and implement pursuant to the Act.
11. “Memorandum of Understanding (“MOU”)” refers to this agreement.
12. “Party” or “Parties” refer to the City of San Diego and County of San Diego.

13. “GSP Schedule” includes all the tasks necessary to complete the GSP and the date scheduled for completion.
14. “State” means the State of California.

III. Agreement.

This section establishes the process for the San Pasqual Basin GSP Core Team, Executive Group and Stakeholder Engagement.

1. Core Team Structure

- a. Details of Core Team structure (number of members and interests represented) will be determined during GSP development.
- b. The Core Team will be coordinated by a City designated person. The City designated person will be responsible for developing the scope of work, schedule, and budget for GSP development for consideration by the Core Team’s members.

2. Establishment and Responsibilities of the GSP Core Team (“Core Team”).

- a. The Core Team will consist of representatives from each Party to this MOU working cooperatively together to achieve the objectives of the Act, and is coordinated by the City. Core Team members serve at the pleasure of their appointing Party and may be removed/changed by their appointing Party at any time. A Party must notify all other Parties to this MOU in writing if that Party removes or replaces Core Team members.
- b. The Core Team shall develop a coordinated GSP. The GSP shall include, but not be limited to, enforcement measures, a detailed breakdown of each Parties responsibilities for GSP implementation, anticipated costs of implementing the GSP, and cost recovery mechanisms (if necessary).
- c. The Core Team shall develop a stakeholder engagement plan (Engagement Plan), which shall detail outreach strategies to involve stakeholders and other interested parties in the preparation of the GSP.
- d. Each member of the Core Team shall be responsible for keeping his/her respective management and governing body informed of the progress towards the development of the GSP and for obtaining any necessary approvals from management/governing body. Each member of the Core Team shall keep the other members reasonably informed as to all material developments so as to allow for the efficient and timely completion of the GSP.
- e. Each Core Team member’s compensation for their service on the Core Team is the responsibility of the appointing Party.

3. Establishment and Responsibilities of the Executive Group.

- a. The Executive Group shall consist of representatives, typically directors, general managers, or chief executives, from each Party.
- b. The Executive Group for San Pasqual discussions will be coordinated by a City

representative.

- c. The Executive Group's primary responsibilities are to provide information and individual advice to the Core Team on matters such as: progress on meeting goals and objectives, progress on implementing actions undertaken pursuant to the MOU and resolving issues related to those actions, and formulating measures to increase efficiency in reaching the MOUs goals. Executive Group members also provide direction and oversight regarding activities that should be undertaken by their Party's representative(s) on the Core Team.
 - d. The Executive Group shall develop and approve a "Guiding Principles" document, which will provide a foundation for collaborative discussion, planning, operational values, and mutual understandings among members of the Core Team. Prior to beginning GSP preparation, the "Guiding Principles" will be prepared and included as part of this MOU through reference.
4. Core Team and Executive Group Meetings.
- a. The Core Team will establish a meeting schedule and choice of locations for regular meetings to discuss GSP development and implementation activities, assignments, milestones and ongoing work progress.
 - b. The Core Team shall establish and schedule public meetings to coordinate development and implementation of the GSP.
 - c. Attendance at all Core Team meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available.
 - d. The Core Team agrees to host a minimum of one Executive Group Meeting per calendar year prior to Plan adoption. The purpose of such meetings will be to discuss, review, and resolve details and issues brought forward from the Core Team regarding the development of the Plan and other related activities.

IV. Interagency Communication.

1. To provide for consistent and effective communication between Parties, each Party agrees that a single member from each Party's Core Team will be their central point of contact on matters relating to this MOU. Additional representatives may be appointed to serve as points of contact on specific actions or issues.
2. The Core Team shall appoint a representative from the City to communicate actions conducted under this MOU to DWR and be the main point of contact with DWR. The appointee shall not communicate formal actions or decisions without prior written approval from the Core Team.
3. Informal communications between the Parties and DWR are acceptable.

V. Roles and Responsibilities of the Parties.

1. The Parties are responsible for developing a coordinated GSP that meets the requirements of the Act.
2. The Parties are each responsible for implementing the GSP in their respective

jurisdictional areas (see attached map of jurisdictional areas)

3. The Parties will jointly establish their roles and responsibilities for implementing a coordinated GSP for the San Pasqual Basin in accordance with the Act.
4. The Parties will jointly work in good faith and coordinate all activities to meet the objectives of SGMA compliance. The Parties shall cooperate with one another and work as efficiently as possible in the pursuit of all activities and decisions described in the MOU.
5. As part of the Engagement Plan, and prior to GSP preparation, the Parties agree to explore the option of an advisory committee comprised of diverse social, cultural, and economic elements of the population and area stakeholders within the San Pasqual Basin. If implemented, the advisory committee makeup and structure will be determined prior to GSP development with input from local stakeholders.
6. Each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or statutory authority, as needed to carry out the objectives of this MOU. Further development of roles and responsibilities of each Party will occur during GSP development.
7. After execution of this MOU as soon as reasonably possible, the Core Team shall develop a timeline that describes the anticipated tasks to be performed under this MOU and dates to complete each task (“GSP Schedule”); and scope(s) of work and estimated costs for GSP development. The GSP Schedule will allow for the preparation of a legally defensible GSP acceptable to the Parties and include allowances for public review and comment, and approval by Governing Bodies prior to deadlines required in the Act. The GSP Schedule will be determined at the beginning of GSP development and will be referred and amended as necessary to conform to developing information, permitting, and other requirements. Therefore, this GSP Schedule may be revised from time to time upon mutual agreement of the Core Team. Costs shall be funded and shared as outlined in Section VI.
8. The Core team shall be coordinated by the City and its Executive Group member. Core Team members will collaborate to meet sustainability objectives as defined in SGMA and apply the Guiding Principles developed by the Executive Group prior to developing the GSP.
9. The Core Team shall work in a manner that seeks to achieve full agreement (consensus) amongst the Parties. In the event that the Core Team has attempted, in good faith, to resolve the matter on its own and is unsuccessful, the Core Team agrees to seek resolution through Executive Group Meetings.

VI. Contracting and Funding for GSP Development.

1. The Parties shall mutually develop a scope of work, budget, and Cost Recovery Plan for the work to be undertaken pursuant to this MOU. The GSP Cost Recovery Plan shall be included and adopted in the final San Pasqual Basin GSP. The budget shall be determined prior to any financial expenditures or incurrence of any financial obligations related to consultant costs.
2. The City shall hire consultant(s) to complete required components of the GSP. The

contracting shall be subject to the City's competitive bid process.

3. The Parties agree that consultant costs for GSP development shall be proportionately based on the jurisdictional area of each Party in the San Pasqual Basin such that the City shall pay 90 percent of any consultant cost(s) to prepare a GSP for the San Pasqual Basin while the County shall pay the remaining 10 percent. Compensation for each member's representatives on the Core Team shall be borne by the Party. The Parties shall enter into a cost reimbursement agreement for the preparation of the Plan.
4. Specifically, to fulfill the requirements of the Act, the Core Team will collaboratively agree upon a scope of work for the consultants needed to prepare the GSP. The scope of work and budget shall include only what is required by the Act. In the event that one or more stakeholders requests a non-essential component or additional detail in the scope of work, the Parties will discuss the request, and if appropriate, any deviation from the 90/10 split will be agreed upon in writing prior to execution of that task.
5. The Parties agree that each Party will bear its own staff costs to develop the GSP.

VII. Approval.

1. The Parties agree to make best efforts to adhere to the required GSP Schedule and will forward a final San Pasqual Basin GSP to their respective Governing Body for approval and subsequent submission to DWR for evaluation as provided for in Act.
2. Approval and amendments will be obtained from the County Board of Supervisors prior to submission to the City Council.
3. Each Governing Body retains full authority to approve, amend, or reject the proposed GSP, provided the other Governing Body subsequently confirms any amendments. Both Parties also recognize that the failure to adopt and submit a GSP for the San Pasqual Basin to DWR by January 31, 2022, risks allowing for State intervention in managing the San Pasqual Basin.
4. The Parties agree that they will use good-faith efforts to resolve any issues that one or both Governing Bodies may have with the final proposed GSP for the San Pasqual Basin in a timely manner so as to avoid the possibility of State intervention. An amendment to this MOU is anticipated upon acceptance of the San Pasqual Basin GSP by both Governing Bodies.

VIII. Staffing.

Each Party agrees that it will devote sufficient staff time and other resources to actively participate in the development of the GSP for the San Pasqual Basin, as set forth in this MOU.

IX. Indemnification.

1. Claims Arising From Sole Acts or Omissions of City.
The City of San Diego ("City") hereby agrees to defend and indemnify the County, its agents, officers and employees (hereinafter collectively referred to in this paragraph as "County"), from any claim, action or proceeding against County,

arising solely out of the acts or omissions of City in the performance of this MOU. At its sole discretion, County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this MOU. The County shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

2. Claims Arising From Sole Acts or Omissions of the County.

The County hereby agrees to defend and indemnify the City of San Diego, its agents, officers and employees (hereafter collectively referred to in this paragraph as 'City') from any claim, action or proceeding against City, arising solely out of the acts or omissions of County in the performance of this MOU. At its sole discretion, City may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve the County of any obligation imposed by this MOU. City shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

3. Claims Arising From Concurrent Acts or Omissions.

The City of San Diego ("City") hereby agrees to defend itself, and the County hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of City and County. In such cases, City and County agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5 below.

4. Joint Defense.

Notwithstanding paragraph 3 above, in cases where City and County agree in writing to a joint defense, City and County may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of County and City. Joint defense counsel shall be selected by mutual agreement of City and County. City and County agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 5 below. City and County further agree that neither Party may bind the other to a settlement agreement without the written consent of both City and County.

5. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, City and County may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

X. Litigation.

In the event that any lawsuit is brought against, either Party based upon or arising out of the terms of this MOU by a third party, the Parties shall cooperate in the defense of the action. Each Party shall bear its own legal costs associated with such litigation.

XI. Books and Records.

Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records

contained on electronic media) relating to the performance of that Party's obligations pursuant to this MOU, *providing that* nothing in this paragraph shall be construed to operate as a waiver of any applicable privilege. The Parties shall keep the information exchanged pursuant to this section confidential to the greatest extent allowed by law.

XII. Notice.

All notices required by this MOU will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of City and the County at their respective addresses as follows:

For the City:

Lan C. Wiborg
Deputy Director
Public Utilities Department
525 B Street, Suite 300
San Diego, CA 92101

With a copy to:

Raymond C. Palmucci
Deputy City Attorney, Civil Division
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101

For the County:

San Diego County
Administrative Officer
San Diego County
1600 Pacific Highway
San Diego, CA 92101

With a copy to:

Justin Crumley, Senior Deputy
Office of County Counsel
1600 Pacific Highway, Rm 355
San Diego, CA 92101

Any Party may change the address or facsimile number to which such communications are to be given by providing the other Parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

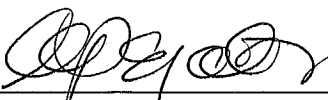
XIII. Miscellaneous.

1. Term of MOU. This MOU shall remain in full force and effect until the date upon which the Parties have both executed a document terminating the provisions of this MOU.
2. No Third Party Beneficiaries. This MOU is not intended to, and will not be construed to, confer a benefit or create any right on a third party, or the power or right to bring an action to enforce any of its terms.
3. Amendments. This MOU may be amended only by written instrument duly signed and executed by the City and the County.
4. 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.

5. 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 the County of San Diego, California.
6. Waiver. The waiver by either Party or any of its officers, agents or employees, or the failure of either Party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this MOU, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this MOU, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the City and the County.
7. Authorized Representatives. The persons executing this MOU on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this MOU on behalf of their respective Party and to bind their respective Party to the terms and conditions of this MOU. The persons executing this MOU on behalf of their respective Party understand that both Parties are relying on these representations in entering into this MOU.
8. Successors in Interest. The terms of this MOU will be binding on all successors in interest of each Party.
9. Severability. The provisions of this MOU are severable, and the adjudicated invalidity of any provision or portion of this MOU shall not in and of itself affect the validity of any other provision or portion of this MOU, and the remaining provisions of the MOU shall remain in full force and effect, except to the extent that the invalidity of the severed provisions would result in a failure of consideration or would materially adversely affect either Party's benefit of its bargain. If a court of competent jurisdiction were to determine that a provision of this MOU is invalid or unenforceable and results in a failure of consideration or materially adversely affects either Party's benefit of its bargain, the Parties agree to promptly use good faith efforts to amend this MOU to reflect the original intent of the Parties in the changed circumstances.
10. Construction of MOU. This MOU shall be construed and enforced in accordance with the laws of the United States and the State of California.
11. Entire MOU.
 - a. This MOU constitutes the entire agreement between the City and the County and supersedes all prior negotiations, representations, or other agreements, whether written or oral.
 - b. In the event of a dispute between the Parties as to the language of this MOU or the construction or meaning of any term hereof, this MOU will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this MOU.

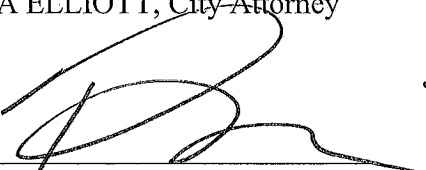
IN WITNESS WHEREOF, the Parties hereto have set their hand on the date first above written.

CITY OF SAN DIEGO

By: 
Kristina Peralta
Director, Purchasing & Contracting

I HEREBY APPROVE the form of the
foregoing Agreement on this 29
day of 6, 2017.

MARA ELLIOTT, City Attorney


By: 
Ray Palmucci
Deputy City Attorney

R-311212-1

COUNTY OF SAN DIEGO,
a political subdivision of
the State of California

By: 
Clerk of the Board of Supervisors


DATE: 6/27/17


Approved and/or authorized by the Board of Supervisors of the County of San Diego.	
Meeting Date: <u>6/21/17</u>	Minute Order No. <u>4</u>
By: <u></u>	Date: <u>6/27/17</u>
Deputy Clerk of the Board Supervisors	

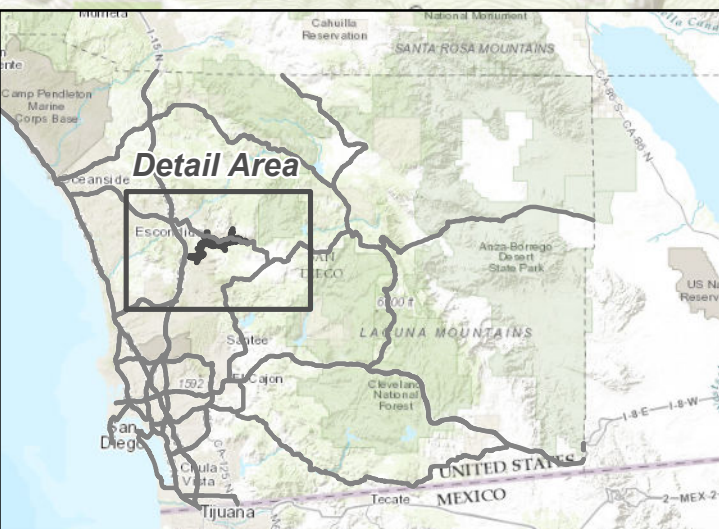
APPROVED AS TO FORM AND LEGALITY
BY COUNTY COUNSEL

By:  6/27/17
Senior Deputy




San Pasqual Valley Groundwater Basin GSA Boundary

 San Pasqual Groundwater Basin

 San Pasqual Valley GSA Boundary



San Pasqual Valley Groundwater Basin Jurisdictional Boundaries

-  San Pasqual Groundwater Basin
-  County of San Diego
-  City of San Diego

