



BORREGO WATER DISTRICT

October 26, 2015

Mark Nordberg, GSA Project Manager Senior Engineering Geologist
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236
Mark.Nordberg@water.ca.gov

RE: Notice of Election to Serve as a Groundwater Sustainability Agency

Dear Mr. Nordberg:

Pursuant to Water Code section 10723.8, the Borrego Water District (District), provides this notice of its election to serve as the Groundwater Sustainability Agency (GSA) for the portion of the Borrego Valley Groundwater Basin (number 7-24) within the boundaries of the District and wholly within the County of San Diego, as identified in the attached Exhibit A.

The District is a California Water District formed and operating under the provisions of the California Water Code 35565 and has the authority to exercise powers related to groundwater management. The District adopted an AB3030 Groundwater Management Plan in 2002. The District territory lies entirely within San Diego County and is the sole source water supply for the unincorporated community of Borrego Springs.

On October 20, 2015, the District held a public hearing to consider applying for the GSA status. The District noticed this hearing in both the bi-weekly Borrego Sun and the daily San Diego Union Tribune newspapers, as required by Water Code section 10723(b). A copy of the notice is provided in Exhibit B.

The District also mailed courtesy copies to the Counties of Imperial and San Diego which are the only other local agencies with groundwater authority in the Bulletin 118-2003 configuration of the Borrego Valley Groundwater Basin. A copy of the resolution through which the District elected to become a GSA is attached as Exhibit C. Please note that, under separate cover, the District, the County of Imperial, and the County of San Diego will jointly request the Department of Water Resources adjust the basin boundaries in Bulletin 118-2003 so as to split the basin so that the District and the County of San Diego will manage the portion within the County of San Diego and the County of Imperial will manage the portion within its boundaries.

The District will work cooperatively with the two Counties, along with all interested stakeholders pursuant to Water Code 10723.2. These interested parties include, but are not limited to, the following:

- a) Holders of overlying groundwater rights
 - 1) agricultural users - 17 property owners encompassing 3,976 acres
 - 2) domestic well owners - approximately 75 wells located within the District boundary
- b) Municipal well operators - no incorporated cities within District boundary
- c) Public water systems - Borrego Water District
- d) Local land planning agencies - San Diego County Department of Planning and Development Services, Borrego Springs Community Sponsor Group
- e) Environmental users of groundwater - Anza-Borrego Desert State Park
- f) surface water users - Anza-Borrego Desert State park
- g) The federal government - none
- h) California Native American Tribes - none
- i) Disadvantaged Communities - all ratepayers of the Borrego Water District
- j) Entities listed in Section 10927 - the Borrego Water District has filed and maintains CASGEM monitoring data with the Department of Water Resources.

The District will consider the interests of all users of groundwater within its boundaries and will maintain a list of interested parties to be included in the formation of the Groundwater Sustainability Plan.

If the DWR has any question, or requires additional information regarding this notification, please feel free to contact me.

Sincerely,



Jerry Rolwing
General Manager
760/767-5806
jerry@borregowd.org

RESOLUTION 2015-10-02

Electing to Become a Groundwater Sustainability Agency

WHEREAS the Legislature recently adopted the Sustainable Groundwater Management Act of 2014, which authorizes local agencies to manage groundwater in a sustainable fashion; and

WHEREAS, in order to use the authority granted in the Sustainable Groundwater Management Act, a local agency must elect to become a groundwater sustainability agency; and

WHEREAS, where more than one local agency overlies a groundwater basin, the Sustainable Groundwater Management Act calls on local agencies to cooperate to manage the groundwater basin in a sustainable manner for the common good; and

WHEREAS, the District together with the Counties of Imperial and San Diego overlies the Borrego Valley groundwater basin; and

WHEREAS, it is the intent of the District to work cooperatively with community interests (including but not limited to the Borrego Water Coalition), the County of Imperial, and the County of San Diego, to manage the Borrego Valley groundwater basin in a sustainable fashion; and

WHEREAS, the District has provided informal notice of its intent to serve as a groundwater sustainability agency for the Borrego Valley Groundwater Basin (the "Basin" as defined in DWR Bulletin 118-80) by means of written communications to the Borrego Water Coalition and the Counties of Imperial and San Diego; and

WHEREAS, on October 5th and October 12th, 2015, the District caused notice of its election to serve as a groundwater sustainability agency for the Basin in the *San Diego Union-Tribune*; and

WHEREAS, on October 20, 2015, the District held a public hearing to consider whether it should elect to become a groundwater sustainability agency for the Basin.

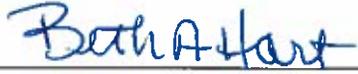
NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Borrego Water District as follows:

1. The District hereby elects to become a groundwater sustainability agency for the Basin.
2. District staff are hereby directed to provide notice of this election to the California Department of Water Resources in the manner required by law.
3. District staff are hereby directed to promptly meet with the Borrego Water Coalition and the Counties of Imperial and San Diego in order to begin the process of developing a groundwater sustainability plan for the Basin. District staff are further directed to develop that plan in consultation and close coordination with the California Department of Water Resources,

the Regional Water Quality Control Board, the State Water Resources Control Board, and other interested stakeholders, as contemplated by the Sustainable Groundwater Management Act.

4. District staff are hereby directed to report back to the Board of Directors at least quarterly on the progress toward developing the groundwater sustainability plan for the Basin. The Board of Directors wishes to move forward aggressively to complete the development of this plan as quickly as may be feasible and to ensure that the groundwater basin will be managed in a sustainable fashion at the earliest possible date.

ADOPTED, SIGNED AND APPROVED this 20th day of October, 2015.



Beth Hart, President
Board of Directors of Borrego Water District

ATTEST:



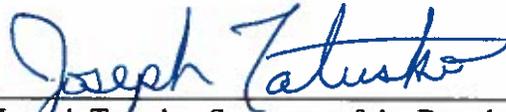
Joseph Tatusko, Secretary
Board of Directors of Borrego Water District

{Seal}

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Joseph Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular meeting held on the 20th day of October, 2015, and that it was so adopted by the following vote:

AYES: DIRECTORS: Hart, Brecht, Tatusko, Delahay
NOES: DIRECTORS:
ABSENT: DIRECTORS: Estep
ABSTAIN: DIRECTORS:

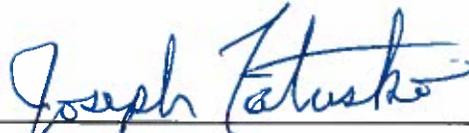


Joseph Tatusko, Secretary of the Board of Directors
of Borrego Water District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Joseph Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2015-10-2, of said Board, and that the same has not been amended or repealed.

Dated: October 20, 2015



Joseph Tatusko, Secretary of the Board of Directors
of Borrego Water District



County of San Diego

MARK WARDLAW
DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
www.sdcounty.ca.gov/pds

DARREN GRETLER
ASSISTANT DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

November 14, 2016

Mark Nordberg, GSA Project Manager
Senior Engineering Geologist
Department of Water Resources
901 P Street, Room 213A
Post Office Box 942836
Sacramento, CA 94236

Delivery via E-Mail
(MarkNordberg@water.ca.gov)

GSA NOTIFICATION: MEMORANDUM OF UNDERSTANDING FOR THE BORREGO VALLEY GROUNDWATER SUSTAINABILITY AGENCY

Dear Mr. Nordberg:

Pursuant to California Water Code (Water Code) Section 10723.8, the County of San Diego (County) provided notice on January 13, 2016 to the California Department of Water Resources (DWR) of the County's decision to become a Groundwater Sustainability Agency (GSA) for the Borrego Valley Groundwater Basin (BVGB) [Attachment 1]. Since Borrego Water District (BWD) also provided notice to become a GSA for BVGB (DWR Basin No. 7-24), the County and BWD collaborated on a Memorandum of Understanding (MOU) to eliminate any overlap in the areas proposed to be managed. This MOU (Attachment 2) was approved by BWD on September 20, 2016 and by the County Board of Supervisors on October 19, 2016 and establishes a multiple-agency GSA for the BVGB.

In October 2016, DWR released final 2016 modifications to California's basin boundaries (Bulletin 118 Basins [2016 Edits]), which included the subdivision of the BVGB into two separate subbasins (Borrego Springs and Ocotillo Wells). As such, this notification includes a map and GIS files of each agency's proposed GSA boundaries within the limits of the revised basin in San Diego County (Attachment 1).

In addition to eliminating the overlap, the MOU serves to memorialize each agency's roles and responsibilities for developing a single Groundwater Sustainability Plan (GSP) that complies with the requirements of the Sustainable Groundwater Management Act (SGMA) to sustainably manage groundwater in the BVGB. As indicated in the initial notices, the County and BWD intend to work cooperatively to jointly manage groundwater in the basin.

Mr. Nordberg
November 14, 2016
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Both agencies remain committed to considering the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing a GSP. Each agency further anticipates working collaboratively with stakeholders to develop and implement the GSP for the Borrego Valley Groundwater Basin. To aid this effort, the County and BWD will be establishing an advisory committee in spring 2017. In accordance with Water Code Section 10727.8(a), interested parties may participate in the development and implementation of the GSP by attending advisory committee meetings in Borrego Valley and may sign up to receive information about GSP development at the County's SGMA webpage located at: <http://www.sandiegocounty.gov/pds/SGMA.html>.

The County and BWD concur that this agreement does not involve a material change from the information in the posted notices from BWD and the County, yet eliminates the overlap as required by California Water Code Section 10723.8(c).

If you have any questions, or require additional information, please contact the County Groundwater Geologist, Jim Bennett, at (858) 694-3820.

Sincerely,



MARK WARDLAW, Director
Planning & Development Services

Attachments:

Attachment 1 – Borrego Valley Groundwater Basin Map

Attachment 2 – MEMORANDUM OF UNDERSTANDING FOR THE BORREGO VALLEY
GROUNDWATER SUSTABILITY AGENCY

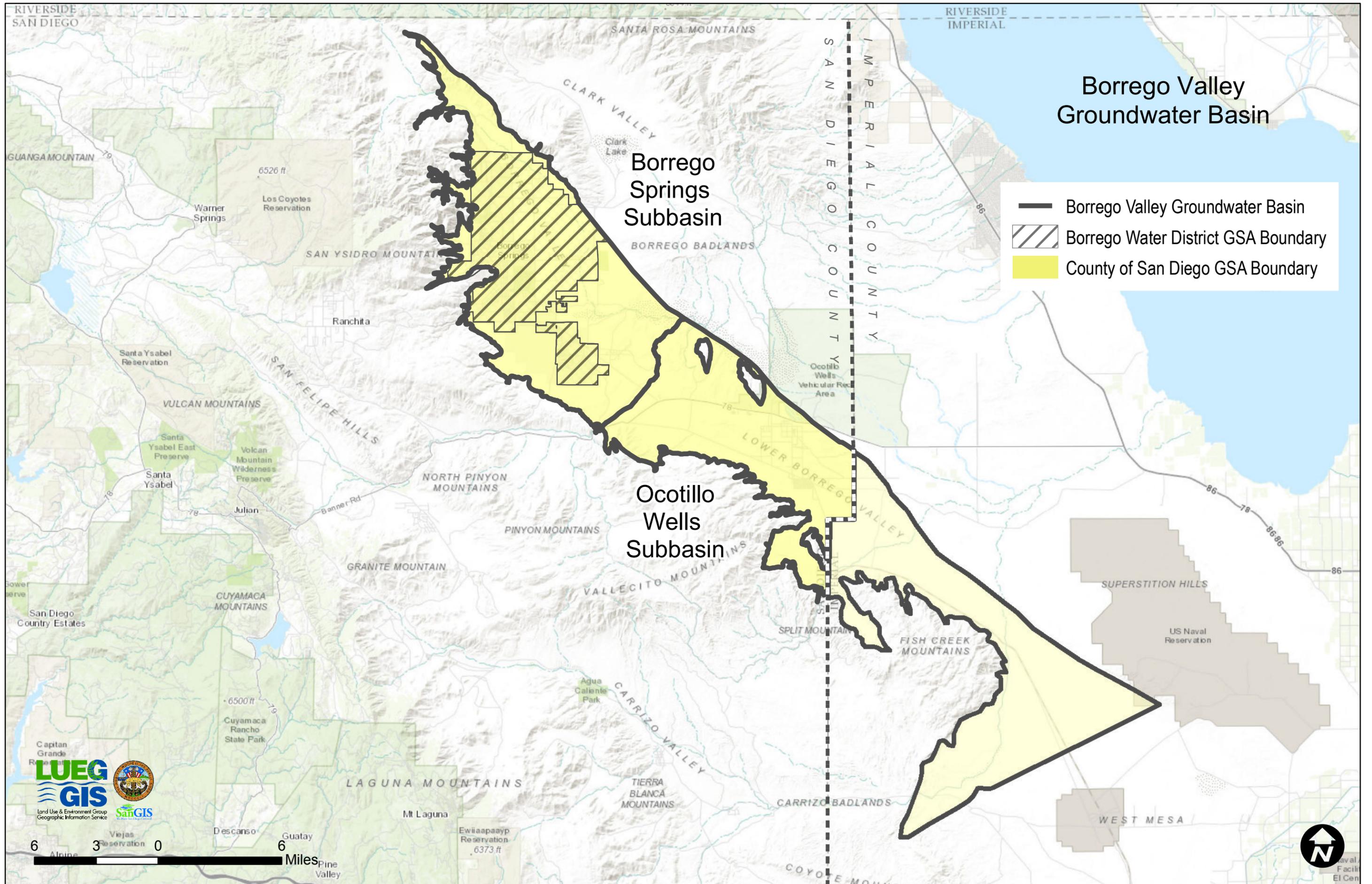
cc.

Jim Bennett, Groundwater Geologist, County of San Diego

jim.bennett@sdcounty.ca.gov

Geoff Poole, General Manager, Borrego Water District

geoff@borregowd.org



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

This Memorandum of Understanding for the Development of a Groundwater Sustainability Plan (“Plan”) for the Borrego Valley Groundwater Basin (“MOU”) is entered into and effective this 24th day of October, 2016 by and between the Borrego Water District (“District”) and the County of San Diego (“County”). The District and the County 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);

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 Borrego Valley Groundwater Basin (Borrego Basin), identified as Basin Number 7.24, 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 Plan or coordinated Plans pursuant to Act;

WHEREAS, Section 10720.7 of Act requires all critically over drafted basins be managed under a Plan by January 31, 2020;

WHEREAS, the California Department of Water Resources (DWR) has identified the Borrego Basin as critically over drafted;

WHEREAS, the Parties intend to eliminate overlap of the Parties by collectively developing and implementing a single Plan to sustainably manage Borrego 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 Plan;

WHEREAS, it is the intent of the Parties to complete the Plan 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 Plan not later than the date as required by the Act for the Borrego 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 Borrego Water District and the County 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 Plan to sustainably manage the Borrego 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 Plan implementation during preparation of the Plan.

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. "Advisory Committee" refers to the stakeholder group created in Section III of the MOU.
3. "Core Team" refers to the working group created in Section III of the MOU.
4. "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.
5. "District" refers to the Borrego Water District, a Party to this MOU.
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. "Governing Body" means the legislative body of each Party: the District Board of Directors and the County Board of Supervisors, respectively.
9. "Groundwater Sustainability Plan (Plan)" is the basin plan for the Borrego Basin that the parties to this MOU are seeking to develop and implement pursuant to the Act.
10. "Memorandum of Understanding (MOU)" refers to this agreement.
11. "Party" or "Parties" refer to the County of San Diego and Borrego Water District.

12. "Plan Funding" is the funding necessary for the preparation and implementation of the Plan.
13. "Plan Schedule" includes all the tasks necessary to complete the Plan and the date scheduled for completion.
14. "State" means the State of California.
15. "SWRCB" refers to the State Water Resources Control Board.
16. "Undesirable Result" shall be defined as in the Act Section 10721(x) 1-6

III. Agreement.

This section establishes the process for the Borrego Basin Plan Core Team and the Advisory Committee.

1. Establishment and Responsibilities of the Plan Core Team (Core Team).
 - a. The Core Team shall jointly develop a coordinated Plan. The Plan shall include, but not be limited to, enforcement measures, a detailed breakdown of each Parties responsibilities for Plan implementation, anticipated costs of implementing the Plan, and cost recovery mechanisms (if necessary).
 - b. The Core Team will consist of representatives from each Party to this MOU working cooperatively together to achieve the objectives of the Act. 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.
 - c. Each member of the Core Team shall be responsible for keeping his/her respective management and governing board informed of the progress towards the development of the Plan and for obtaining any necessary approvals from management/governing board. Each member of the Core Team shall keep the other member reasonably informed as to all material developments so as to allow for the efficient and timely completion of the Plan.
 - d. Each Core Team member's compensation for their service on the Core Team is the responsibility of the appointing Party.
 - e. The Core Team shall develop and implement a stakeholder participation plan that involves the public and area stakeholders in an Advisory Committee role to aid in developing and implementing the Plan.
 - f. The Core Team will cooperatively work with the Advisory Committee to develop bylaws for the governance of the Advisory Committee. These bylaws are subject to approval by the Core team prior to adoption by the Advisory Committee. The Core Team may establish an appointment process and other administrative procedures for the Advisory Committee, in accordance with District and County policies intended to promote active participation in local

government, and requirements to include stakeholders in the development of the Plan as established in the Act.

- g. The Core Team will be the primary liaison with the Advisory Committee; and will guide Advisory Committee activities.
2. Core Team Meetings.
 - a. The Core Team will establish a meeting schedule and choice of locations for regular meetings to discuss Plan development and implementation activities, assignments, milestones and ongoing work progress.
 - b. The Core Team may establish and schedule meetings of the Advisory Committee to coordinate development and implementation of the Plan.
 - c. Attendance at all Core Team meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available.
 3. Establishment and Role of the Advisory Committee
 - a. The Parties shall establish an Advisory Committee. The Advisory Committee will provide input to the Core Team on Plan development, including providing recommendations on basin sustainability measures, and the planning, financing, and implementation of the Plan. The Parties will agree on the composition of the Advisory Committee and acknowledge that the Advisory Committee must meet the requirements established in the Act.
 - b. Advisory Committee members will not be compensated for activities associated with the Advisory Committee, Plan development or any activity conducted under this agreement.
 - c. The Advisory Committee that is formed through this process shall be subject to and abide by the California open meeting laws under Government Code sections 54950 et seq., otherwise known as the "Brown Act," in order for the Parties to accept an Advisory Committee's recommendations.
 - d. Meetings of the Advisory Committee shall be held in Borrego Springs, CA.

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 single representative to communicate actions conducted under this agreement to DWR. The appointee shall not communicate formal actions or decisions without prior written approval from the Core Team. This is not intended to discourage informal communications between the Parties

and DWR.

V. Roles and Responsibilities of the Parties.

1. The Parties are responsible for developing a coordinated Plan that meets the requirements of the Act.
2. The Parties will jointly establish their roles and responsibilities for implementing a coordinated Plan for the Borrego Basin in accordance with the Act.
3. The Parties will jointly work in good faith and coordinate all activities to meet the objectives of this MOU. 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.
4. 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 Plan development.
5. After execution of this MOU as soon as reasonably possible, the Core Team shall mutually develop a timeline that describes the anticipated tasks to be performed under this MOU and dates to complete each task (Plan Schedule); and scope(s) of work and estimated costs for Plan development. The Plan Schedule will allow for the preparation of a legally defensible Plan acceptable to the Parties and include allowances for public review and comment, and approval by governing boards prior to deadlines required in the Act. Due to the critical nature of the Borrego Basin overdraft, both Parties shall make every effort to complete the draft Plan as soon as possible but no later than July 1, 2019. The Plan Schedule shall become part of this MOU through reference. The Plan Schedule will be referred and amended as necessary to conform to developing information, permitting, and other requirements. Therefore, this Plan 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.
6. The Parties recognize that they may disagree as to the composition of the Plan and/or the timelines/methods for implementing the Plan. In the event that the Parties have attempted, in good faith, to resolve the matter on their own and are unsuccessful, the Parties agree to jointly seek to use the non-binding mediation services provided by the DWR to address disputes arising under the Act, to the extent that such services are available. If non-binding mediation from the DWR is not available or if either Party believes it would be more useful to consult with the State Water Resources Control Board ("SWRCB"), the Parties agree to request non-binding mediation from the Chair of the SWRCB or another Member designated by the Chair who is acceptable to both Parties. The Parties recognize that the failure to timely complete a Plan or to achieve any of the other milestones in the Act may result in intervention by the SWRCB.

VI. Contracting and Funding for Plan Development.

1. The Parties shall mutually develop a scope of work, budget, cost sharing agreement and cost recovery plan ("Plan Funding") for the work to be undertaken pursuant to this MOU. The Plan Funding shall be included and adopted in the final Borrego Basin Plan. Both the budget and cost sharing agreement shall be determined prior to any substantial financial expenditures or incurrence of any financial obligations related to consultant costs.
2. Specifically, to fulfill the requirements of the Act, the Core Team will jointly prepare and agree upon a scope of work for the consultants needed to prepare the Plan. The Parties agree that any work contracted for the purpose of developing the Plan shall be a cooperative effort.
3. The County shall hire consultant(s) to complete required components of the Plan. The contracting shall be subject to the County's competitive bid process and be subject to auditing by the County's Auditor and Controller.
4. Within the parameters of the County's contracting regulations, policies and procedures, the Core Team will be cooperatively involved in the evaluation, selection and oversight of the consultant(s).
5. Each Party is free to retain other consultants for its own purposes and at its own cost, *provided that* each Party consults with the other Party before conducting such work. The scope of any such work may not conflict with or duplicate work performed under this MOU. Nothing in this agreement prohibits either Party from exercising its statutory authorities afforded to each Party individually.
6. The Parties agree that each Party will bear its own staff costs to develop the Plan.

VII. Approval.

1. The Parties agree to make best efforts to adhere to the required Plan Schedule and will forward a final Borrego Basin Plan to their respective governing boards for approval and subsequent submission to DWR for evaluation as provided for in Act.
2. Approval and amendments will be obtained from the District Board of Directors prior to submission to the County Board of Supervisors.
3. Each Governing Board retains full authority to approve, amend, or reject the proposed Plan, provided the other Governing Board subsequently confirms any amendments, but both Parties also recognize that the failure to adopt and submit a Plan for the Basin to DWR by January 31, 2020 risks allowing for state intervention in managing the Basin.
4. The Parties agree that they will use good-faith efforts to resolve any issues that one or both Governing Boards may have with the final proposed Plan for the 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 Borrego Basin Plan by both Governing Boards.

VIII. Staffing.

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

IX. Indemnification.

1. Claims Arising From Sole Acts or Omissions of County.

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

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

The District hereby agrees to defend and indemnify the County of San Diego, its agents, officers and employees (hereafter 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 District in the performance of this MOU. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve the District of any obligation imposed by this MOA. County shall notify District promptly of any claim, action or proceeding and cooperate fully in the defense.

3. Claims Arising From Concurrent Acts or Omissions.

The County of San Diego ("County") hereby agrees to defend itself, and the District hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of County and District. In such cases, County and District 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 County and District agree in writing to a joint defense, County and District may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of District and County. Joint defense counsel shall be selected by mutual agreement of County and District. County and District agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 5 below. County and District further agree that neither party may bind the other to a settlement agreement without the written consent of both County and District.

5. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and District 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 Agreement, *providing that* nothing in this paragraph shall be construed to operate as a waiver of any applicable privilege.

XII. Notice.

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

For the District:

General Manager
Borrego Water District
PO Box 1870
806 Palm Canyon Drive
Borrego Springs, CA 92004

For the County:

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

With a copy to:

David Aladjem
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

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 Agreement.** 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 Agreement 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 Agreement may be amended only by written instrument duly signed and executed by the County and the District.
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 Agreement, 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 Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County and the District.

7. Authorized Representatives. The persons executing this Agreement on behalf of the parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective party understand that both parties are relying on these representations in entering into this Agreement.
8. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each party.
9. Severability. The provisions of this Agreement are severable, and the adjudicated invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement 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 Agreement 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 Agreement to reflect the original intent of the parties in the changed circumstances.
10. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the United States and the State of California.
11. Entire Agreement.
 - a. This Agreement constitutes the entire agreement between the County and the District 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 Agreement or the construction or meaning of any term hereof, this Agreement 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 Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hand on the date first above

written.

BORREGO WATER DISTRICT

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

By: Beth A Hart
Beth A. Hart
President, Board of Directors

By: [Signature]
Clerk of the Board of Supervisors

DATE: 10/24/16

APPROVED AS TO FORM AND LEGALITY
BY COUNTY COUNSEL

By: [Signature] 10/19/16
Senior Deputy

Approved and/or authorized by the
Board of Supervisors of the County of San Diego.
Meeting Date: 10/19/16 Minute Order No. 1
By: [Signature] Date: 10/24/16
Deputy Clerk of the Board Supervisors