

Pauma Valley Community Services District  
33129 Cole Grade Road \* Pauma Valley, CA 92061  
(760) 742-1909 \* (760) 742-1588

## **NOTICE OF PUBLIC SPECIAL MEETING**

DATE: Monday, April 18, 2022  
TIME: OPEN Session - 10:00 a.m.  
PLACE: 33129 Cole Grade Rd. Pauma Valley, CA 92061  
<https://us02web.zoom.us/j/89350637118>  
Phone: (669) 900-6833 Passcode: 893 5063 7118

### Mission Statement

The Mission of the Pauma Valley Community Services District is to protect the public health and environment of its community by providing effective wastewater management and stormwater drainage control, life safety assistance, security services, and exceptional customer care.

## **AGENDA**

1. Call to Order
2. Roll Call
3. Public Comments
  - a. Any person may address the Board at this time upon any subject not identified on this Agenda, but within the jurisdiction of the District; however, State law precludes the Board from taking action on or engaging in extended deliberations concerning items of business which are not on the Agenda. Any matter not on the agenda that requires action will be referred to staff for a report and action at a subsequent Board meeting. As to matters on the Agenda, an opportunity will be given to address the Board when the matter is considered.
  - b. In the interest of public health and safety this meeting will be held as a hybrid (in-person and virtually). Please note, individuals have a limit of three (3) minutes to make comments and will have the opportunity when called upon by the presiding officer.
4. Joint Exercise Of Powers Agreement Establishing The Upper San Luis Rey Groundwater Management Authority (USLRGMA)
  - a. The Board will consider approving the JPA

5. Third Amended and Restated Memorandum of Understanding between PVCSD and RPMWC Regarding Future Collaboration and Water Management Within The San Luis Rey Valley Groundwater Basin
  - a. The Board will consider approving the MOU
  
6. Announcements/Adjournment
  - a. Special Meeting on May 16, 2022 at 10:00 a.m. for PVCSD

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the District's Administrative office not less than 72 hours prior to the meeting date and time above. All public records relating to each agenda item, including any public records distributed less than 72 hours the office of the District Secretary, 33129 Cole Grade Road, Pauma Valley, California.

To request a disability-related modification or accommodation regarding agendas or attendance, contact Amber Watkins, at [AmberWatkinspvcسد@hotmail.com](mailto:AmberWatkinspvcسد@hotmail.com) at least 48 hours before the meeting.



April 14, 2022

# STAFF REPORT

**DATE:** April 18, 2022

**TO:** Board of Directors

**FROM:** Bobby Graziano, General Manager  
Steve Anderson, General Counsel

**SUBJECT:** SGMA Joint Powers Agreement

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## **RECOMMENDATION**

It is recommended that the Board of Directors approve the Joint Exercise of Powers Agreement Establishing the Upper San Luis Rey Groundwater Management Authority (USLRGMA).

## **BACKGROUND/ANALYSIS**

In 2017, the District entered into a Memorandum of Understanding: Development of a Groundwater Sustainability Plan for the San Luis Rey Groundwater Basin with the Upper San Luis Rey Resource Conservation District (RCD), Yuima Municipal Water District (Yuima MWD) and the County of San Diego (the "MOU"). Later, the County withdrew from the MOU. In 2020, the District, RCD and Yuima MWD entered into Amendment 1 to the MOU. Thereafter, Pauma Municipal Water District (PMWD) and San Luis Rey Municipal Water District (SLRMWD) joined the MOU parties in January 2022.

Under Section X(1)(a) of the MOU, the parties always contemplated that the MOU would be turned into or replaced by the creation of a joint powers authority. The Joint Powers Authority (JPA) Agreement carries forward this direction.

If approved, the JPA Agreement would form a new public entity to serve as the groundwater sustainability agency for the Upper San Luis Rey groundwater subbasin. The Member Agencies forming the USLRGMA will be PVCSD, RCD, Yuima MWD, PMWD, and SLRMWD.

The USLRGMA would hold all powers granted to groundwater sustainability agencies under the Sustainable Groundwater Management Act (SGMA).

The Board of Directors of the USLRGMA would be comprised of

- One member appointed by the Board of the PVCSD—either a Board member or employee of CSD
- One Board member of Rancho Pauma Mutual Water Company appointed by the PVCSD Board
- Two appointees from Yuima MWD
- Two appointees from the RCD
- Two appointees from Pauma Municipal Water District
- One appointee from San Luis Rey Municipal Water District

- Two “at large” appointees of the San Luis Rey Indian Water Authority, subject to the Authority making such appointments. These seats are voluntary and the IWA may choose not to make any appointments.
- One at Large Director representing the private pumping community, being either a local landowner or the Executive Director of the San Diego County Farm Bureau

A 2/3 super-majority vote of USLRGMA Board members present would be required for certain items to be approved, including annual budgets, the levying of fees, adoptions of rules, approval of the GSP, and any decision to curtail groundwater pumping. If the JPA elects to levy pumping fees, those fees would include costs absorbed by each of the Members from July 2019 in working on the preparation and implementation of the GSP.

Yuima MWD would be designated Administrator of the USLRGMA until the requirements of all existing grants have been fulfilled. Thereafter, the USLRGMA Board could appoint a different Administrator or ask Yuima MWD to continue in that role.

Costs of administering the USLRGMA will be borne by the Member Agencies, as described in the JPA Agreement, with the expectation that a long-term funding plan will be developed within 12-24 months of USLRGMA formation to address reimbursement of certain Member agency costs as well as going forward costs of the USLRGMA. Yuima MWD expenditures on SGMA issues not otherwise covered by existing grant funding incurred since July 2019 would be subject to immediate reimbursement by the Member Agencies. On an initial basis, the RCD will contribute \$25,000 toward JPA administration and GSP implementation. All other costs will be shared equally on a 1/3 each basis by PVCSD (with Rancho Pauma MWC), Pauma MWD and Yuima MWD, with the expectation that pumping fees would be adopted by the USLRGMA in the next 18-24 months and be used to pay for SGMA costs from the adoption date forward.

The USLRGMA would indemnify and hold harmless the Member Agencies and their USLRGMA Board appointees to the fullest extent allowed by law. The debts, liabilities and obligations of USLRGMA would remain with the USLRGMA, and not become those of the individual Members of the USLRGMA.

Any Member may withdraw from the USLRGMA upon 90 days’ notice.

Overall, the implementation of the GSP in the Upper San Luis Rey Subbasin is going to take a great deal of time and effort over a number of decades. Creating a joint powers authority to undertake this effort will make the process more streamlined and cost-effective than if individual agencies tried to implement the GSP on their own. The USLRGMA will be able to address any issues with the GSP that DWR may raise, impose any necessary pumping or other fees to pay for USLRGMA administration and GSP implementation, and take other actions, as directed by the USLRGMA Board of Directors. As a result, should there be any legal or other challenges to USLRGMA actions, the USLRGMA will defend those actions.

**JOINT EXERCISE OF POWERS AGREEMENT  
ESTABLISHING THE UPPER SAN LUIS REY GROUNDWATER MANAGEMENT  
AUTHORITY (USLRGMA)**

This Agreement is entered into and effective this 1st day of May, 2022 (“Effective Date”), pursuant to the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.* (“JPA Act”) by and among the Members listed in Exhibit “A” attached hereto and incorporated herein.

**RECITALS**

A. WHEREAS, on August 29, 2014, the California Legislature passed comprehensive groundwater legislation contained in SB 1168, SB 1319 and AB 1739. Collectively, those bills, as subsequently amended, enacted the “Sustainable Groundwater Management Act,” or “SGMA.” Governor Brown signed the legislation on September 16, 2014, and it became effective on January 1, 2015; and

B. WHEREAS, on June 27, 2017, the Parties to that agreement entitled the Memorandum of Understanding for Development of a Groundwater Sustainability Plan for the San Luis Rey Valley Groundwater Basin (“2017 MOU”) approved the 2017 MOU and agreed to work together cooperatively in order to facilitate the preparation of a groundwater sustainability plan (“GSP”) per the timelines and in accordance with the requirements of SGMA; and

C. WHEREAS, the 2017 MOU was submitted to the California Department of Water Resources (“DWR”) and was subsequently accepted by DWR as creating a Groundwater Sustainability Agency (“GSA” or “Pauma Valley GSA”) for the Pauma Valley Subbasin of the San Luis Rey Valley Groundwater Basin (“SLR Basin” or “Basin”), which GSA would be managed by the Parties according to the 2017 MOU; and

D. WHEREAS, the County of San Diego (“County”) was initially assigned the lead role in preparing the GSP per the 2017 MOU with primary responsibility for developing and obtaining approval of the GSP on or before the January 31, 2022; and

E. WHEREAS, in September 2019, the Governor signed SB 779, which, as memorialized in Water Code Section 10722.5, divided the SLR Basin into an upper and lower subbasin divided at “the east line of the western boundary of Section 6, Range 2 West, Township 10 South, San Bernardino Meridian”, with the “portion of the basin to the west of the dividing line” designated as the “Lower San Luis Rey Valley Groundwater Subbasin”, and “the portion of the basin to the east of the dividing line” designated as the “Upper San Luis Rey Valley Groundwater Subbasin.”(abbreviated as the “Subbasin” hereafter);<sup>1</sup> and

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<sup>1</sup> The SWRCB designated the Pala Basin portion of the SLR Basin as a subterranean stream flowing through a known and definite channel in 2002. AB 1944, which was signed by the Governor on September 5, 2018, divided the SLR Basin into an upper and lower subbasin but unintentionally caused a small portion of the lower subbasin to be included in the upper subbasin. SB 779 revised the boundary between the two subbasins in 2019. Water Code Section 10722.5 (b), after amendment by SB 779, directs that “water beneath the surface of the ground within the Upper San Luis Rey Valley Groundwater Subbasin shall be included within the definition of

F. WHEREAS, DWR has indicated that the 2017 MOU is currently the operative GSA governance document for the portions of the Subbasin described in the 2017 MOU; and

G. WHEREAS, the County formally withdrew from the 2017 MOU on November 18, 2018 and communicated such withdrawal to DWR per SGMA on January 23, 2019; and

H. WHEREAS, on May 1, 2020, DWR determined that the Lower San Luis Rey Valley Groundwater Subbasin is a very low priority basin because of a prior determination by the State Water Resources Control Board (“SWRCB”) that the portions of the SLR Basin below Frey Creek are a subterranean stream and therefore directly managed by the SWRCB under its water rights permitting authority; and

I. WHEREAS, on May 1, 2020, DWR confirmed that the Subbasin continues to be a medium priority groundwater basin that must develop and submit for DWR approval a GSP on or before January 31, 2022 and achieve sustainable groundwater management within the Subbasin on or before 2042.

J. WHEREAS, the 2017 MOU allows for the remaining Parties to the 2017 MOU to continue functioning as a GSA and to develop a GSP for the SLR Basin after the withdrawal of one or more Parties to the MOU, and further states that the withdrawal of a Party to the 2017 MOU shall not affect the binding nature of the 2017 MOU nor rights/obligations of the other Parties to the 2017 MOU; and

K. WHEREAS, the 2017 MOU provides that it may be amended by written instrument duly signed and executed by all Parties, and Section X.1 of the 2017 MOU states that the Parties to the 2017 MOU will consider amending the 2017 MOU to form a Joint Powers Authority before the GSP is submitted to DWR in January 2022; and

L. WHEREAS, the remaining Parties to the 2017 MOU after the County’s withdrawal—specifically Yuima Municipal Water District (“Yuima”), Pauma Valley Community Services District (“PVCSD”), and the Upper San Luis Rey Resource Conservation District (“USLRCD”)—amended the 2017 MOU on or about June 2020, July 2021 and January 2022 to, among other things, add San Luis Rey Municipal Water District (“SLRMWD”) and Pauma Municipal Water District (“Pauma MWD”) as additional members of the GSA, acknowledge statutorily directed boundary changes that reduced the area required to be managed under the GSP, reconstitute the Executive Team of the GSA, and designate Yuima as taking the lead role in contracting for, and managing, the development of a GSP for the Subbasin; and

M. WHEREAS, Yuima, with the concurrence of the Executive Team, awarded a contract for GSP preparation in July 2020, thereby facilitating outreach to a wide array of Subbasin

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groundwater for the purposes of this part by any groundwater sustainability agency developing or implementing a groundwater sustainability plan, except for water beneath the surface of the ground downstream of the confluence of San Luis Rey River and Frey Creek that is extracted and used as authorized under an existing appropriative water right.”

stakeholders regarding the SGMA and GSP development process, and resulting in substantial feedback to Yuima and the other Parties to the 2017 MOU; and

N. WHEREAS, after receiving feedback from interested persons within the Subbasin, the Parties determined that sustainable and equitable groundwater management decisions within the Subbasin can best be accomplished by changing the governance structure of the GSA to that of a joint powers authority (“JPA”) consistent with Section X.1 of the 2017 MOU by transforming, restating and amending the 2017 MOU by way of approval this Agreement such that the Authority will serve as the GSA for the Subbasin after adoption of this Agreement by all Members (as defined below) under the provisions described herein; and

O. WHEREAS, each of the Members listed in Exhibit A is a member of the GSA, and individually authorized and eligible to become a GSA per SGMA; and

P. WHEREAS, on January 21, 2022, the Pauma Valley GSA Executive Team created by the 2017 MOU, as amended, met in a publicly noticed meeting, with one or more representatives from each Member of the GSA present, and at said meeting the Pauma Valley GSA Executive Team voted unanimously to recommend to the Yuima Board of Directors that: (i) Yuima approve the GSP for the Upper San Luis Rey Valley Subbasin, (ii) after taking all required actions to correct and finalize the GSP, submit the GSP to DWR; and

Q. WHEREAS, on January 24, 2022, the Board of Directors of Yuima, as lead agency for the GSA, approved the GSP after receiving the unanimous recommendation of the GSA Executive Team and directed the Administrator of the Pauma Valley GSA to submit the GSP to DWR on or before January 31, 2022; and

R. WHEREAS, on or about January 30, 2022, the Administrator of the Pauma Valley GSA submitted the final and approved GSP, and all exhibits and appendices thereto, for the Upper San Luis Rey Valley Subbasin, to DWR; and

S WHEREAS, the Members of the Pauma Valley GSA desire, through this Agreement, to form the Upper San Luis Rey Groundwater Management Authority (“USLRGMA” or “Authority”), a JPA and separate legal entity, for the purpose of, among other things, serving as the GSA for the Subbasin and implementing the GSP; and

T. WHEREAS, the mission of the Authority is to provide a dynamic, cost-effective, flexible and collegial organization to ensure compliance with SGMA within the Subbasin; and

U. WHEREAS, the Authority will serve a coordinating, administrative and implementing role in order to provide for sustainable groundwater management of the Subbasin; and

V. WHEREAS, this Agreement shall form the Authority, which shall be the GSA for purposes of implementing the GSP and carrying out SGMA in the Subbasin, and which Authority shall have such other powers as designated herein and those set forth in SGMA, except as expressly described herein.

**THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, the Members agree as follows:**

**ARTICLE 1  
DEFINITIONS**

1.1 **Definitions.** As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

- (a) “Agreement” shall mean this Joint Exercise of Powers Agreement Establishing the Upper San Luis Rey Groundwater Management Authority which is also a restatement and amendment of the 2017 MOU intended to carry out the provisions of Section X.1(a) of the 2017 MOU.
- (b) “At Large Director” shall mean the individual Agricultural Community Director of the Authority Board who is appointed pursuant to Section 4.1, below and who is not a Member of the Authority. “At Large Director” may also include one or more representatives appointed by the San Luis Rey Indian Water Authority pursuant to Section 4.1.
- (c) “Authority” shall mean the Upper San Luis Rey Groundwater Management Authority established by this Agreement.
- (d) “Board of Directors” or “Board” shall mean the governing body formed to implement this Agreement as established herein, and “Director” or “Directors” shall mean the individuals appointed to the Board per Section 4.1.
- (e) “DWR” shall mean the California Department of Water Resources.
- (f) “Effective Date” shall mean May 1, 2022.
- (g) “Groundwater Sustainability Agency” or “GSA” shall have the definition set forth in SGMA, as applied to the Subbasin.
- (h) “Groundwater Sustainability Plan” or “GSP” shall have the definition set forth in SGMA, and shall also mean the groundwater sustainability plan submitted for the Subbasin.
- (i) “JPA Act” shall mean the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.*
- (j) “Member” shall mean any of the signatories to this Agreement, and “Members” shall mean all of the signatories to this Agreement, collectively, as listed in Exhibit A.
- (k) “Subbasin” shall mean, for purpose of this Agreement, the Upper San Luis Rey Valley Groundwater Subbasin identified as that portion of the Basin



east of the east line of the western boundary of Section 6, Range 2 West, Township 10 South, San Bernardino Meridian, as such Subbasin boundaries may be modified from time to time in accordance with Water Code section 10722.2. The Subbasin is depicted in Exhibit B.

- (1) “SGMA” shall mean the Sustainable Groundwater Management Act of 2014 and all regulations adopted under the legislation (SB 1168, SB 1319 and AB 1739) that collectively comprise the Act, as that legislation and those regulations may be amended from time to time.

## **ARTICLE 2 ORGANIZING PRINCIPLES**

2.1 The Members and the other entities and individuals participating in Authority governance intend to work together in mutual cooperation to develop and implement a GSP for the Subbasin in compliance with SGMA. The Members expressly acknowledge and agree that , this Agreement is intended to become the operative governance document for the GSA for groundwater management pursuant to SGMA within the Subbasin. Should this Agreement, or the Authority, be deemed inoperative or invalid for any reason, then the Members agree that the original terms of the 2017 MOU shall remain the operative GSA governance document for the Subbasin until such time as a different joint powers agreement or authority is validly formed.

2.2 The Members intend through this Agreement to take advantage of economies of scale to obtain the most cost-effective consulting, technical and professional services for the development and implementation of a GSP. As appropriate, the Authority shall cooperate with neighboring groundwater basins and neighboring GSAs to efficiently implement SGMA in the Subbasin.

2.3 The Members intend through this Agreement to form the Authority, elect for the Authority to serve as the GSA for the Subbasin, implement SGMA and the GSP, including making any changes to the GSP as may be required by DWR, and authorize the Authority to make any and all necessary postings with DWR for the Authority to be recognized as the GSA for the Subbasin.

2.4 The Members intend through this Agreement that the Authority shall take such actions as are necessary to ensure the Authority satisfies all requirements and conditions of any grants applicable to the development of a GSP for the Subbasin. Existing grants and grant funding may be transferred from Yuima to the Authority for administration provided such transfers are authorized by law and are approved by the grantors, and the governing bodies of both the Authority and Yuima.

2.5 The Members intend through this Agreement to work collaboratively with all stakeholders within the Subbasin, and in particular to conduct the activities of the Authority with regard to Tribal entities in the Subbasin in such a manner that ensures federal reserved water rights are fully respected within the Subbasin.

**ARTICLE 3  
FORMATION, PURPOSE AND POWERS**

3.1 **Recitals.** The foregoing recitals are incorporated by reference.

3.2 **Certification.** Each Member certifies and declares that it is a legal entity that is authorized to be a party to a joint exercise of powers agreement and to contract with each other for the joint exercise of any common power under Article 1, Chapter 5, Division 7, Title 1 of the Government Code, commencing with section 6500 or other applicable law including but not limited to Cal. Water Code § 10720.3.

3.3 **Creation of the Authority.** Pursuant to the JPA Act, the Members hereby form and establish the Authority, a public entity separate and apart from its Members, which is to be known hereafter as the “Upper San Luis Rey Groundwater Management Authority,” the “Authority”, or “USLRGMA.”

3.4 **Election for Authority to Serve as GSA.** Upon its formation pursuant to this Agreement, the Authority shall serve as the GSA for the Subbasin and shall make any and all necessary postings or other actions required to formalize the JPA formation process.

3.5 **Purposes of the Authority.** The purposes of the Authority include, but are not limited to:

- (a) Provide for the joint exercise of powers of the Members and powers granted pursuant to SGMA (subject to the restrictions contained in this Agreement);
- (b) Cooperatively carry out the purposes of SGMA, including the engagement of stakeholders and members of the public as required by Water Code sections 10723.2, 10723.4, and 10727.8;
- (c) Become and serve as the GSA for purposes of management of the Subbasin in accordance with SGMA;
- (d) Implement and enforce the GSP approved by the Pauma Valley GSA for the Subbasin, subject to the limitations set forth in this Agreement.
- (e) Take such other actions as are required to ensure sustainable groundwater management within the Subbasin consistent with the regulations and timeframes established by SGMA, including but not limited to making any changes to the GSP as may be required by DWR.

3.6 **Powers of the Authority.** To the extent authorized by the Members through the Board of Directors, and subject to the limitations set forth in this Agreement, the Authority shall have and may exercise any and all powers commonly held by the Members, and any and all additional powers granted by SGMA, or other applicable law, to GSAs. Amendments to SGMA by the California Legislature, and the resulting modification of powers of the Authority, shall not constitute an amendment of this Agreement absent compliance with Section 8.1 of this Agreement. Authority hereby expressly assumes all powers and obligations of the PVGSA undertaken pursuant

to the 2017 MOU, in addition to all other powers and authorities identified herein and existing under the law applicable to GSAs.

3.7 **Designation.** Pursuant to Government Code section 6509, the above powers are subject to the restrictions upon the manner of exercising said powers set forth in the Municipal Water District Law of 1911, Water Code Section 71000 et seq.

3.8 **Powers Reserved to Members.** Each of the Members reserves the following rights:

- (a) Subject to applicable limitations in this Agreement or SGMA, to implement GSP actions adopted by the Authority within the Member's boundaries;
- (b) Nothing set forth in this Agreement is intended to impede or abrogate the powers of any Member, including but not limited to the Member's police power or land use authority, if any;
- (c) Each Member shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Member shall be under the control of or shall be deemed to control any other Member. No Member shall be precluded from independently pursuing any of the activities contemplated in this Agreement, providing such activities do not preclude other Members or the Authority from complying with the requirements of SGMA or the GSP. No Member shall be the agent or have the right or power to bind any other Member without such Member's express written consent, except as expressly provided in this Agreement.

3.9 **Term.** This Agreement shall be effective as of the Effective Date and shall remain in effect until terminated in accordance with Section 6.4 of this Agreement.

3.10 **Boundaries of the Authority.** The geographic boundaries of the Authority are depicted in Exhibit B, as may be modified from time to time by way of changes to the geographic boundaries of the Members or the Subbasin.

3.11 **Role of Members.** Each Member agrees to undertake such additional proceedings or actions as may be necessary in order to carry out the terms and intent of this Agreement, including actions specifically required by this Agreement. The support of each Member is important to the success of the Authority.

3.12 **Other Officers and Employees.** Upon the requisite vote of the Board of Directors, the Authority may, among other things:

- (a) Engage one or more Members, Authority employees, or third parties, to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors as specified in a separate written contract. To the extent that a manager of the Authority is appointed, and consistent with this Section 3.12(a), the manager of the Authority shall at all times maintain exclusive control over any employees of or contractors

of the Authority, including, but not limited to, matters related to hiring, probationary periods, disciplinary action, termination, benefits, performance evaluations, salary determinations, promotions and demotions, and leave accruals of Authority employees, unless expressly otherwise agreed to by the Authority Board of Directors;

- (b) Employ or contract for competent consultants to investigate, and to carefully devise a plan or plans, to carry out and fulfill the objectives and purposes of SGMA, including but not limited to timely completing any necessary changes to the GSP;
- (c) Employ one or more persons to serve in such positions as may be approved by the Board of Directors.

#### **ARTICLE 4 GOVERNANCE**

4.1 **Board of Directors.** The business of the Authority will be conducted by a Board of Directors that is hereby established, and that shall be initially composed of and appointed as follows:

- One board member or employee of the Pauma Valley Community Services District (“PVCSD”) appointed to the Authority Board by the PVCSD Board of Directors;
- One board member of the Rancho Pauma Mutual Water Company (“RPMWC”) who shall be appointed to the Authority Board by the PVCSD Board of Directors and serve as a representative of PVCSD to the Authority Board;
- Two board members or employees of the Yuima Municipal Water District, appointed by the Yuima Municipal Water District Board of Directors;
- Two board members or employees of the Upper San Luis Rey Resource Conservation District, appointed by the Upper San Luis Rey Resource Conservation District Board of Directors;
- Two board members, or other designees of the Pauma MWD, who own land within Pauma MWD, appointed by the Pauma MWD Board of Directors;
- One Board member, or designee of the SLRMWD, appointed by the SLRMWD Board of Directors.
- Two At Large Directors, nominated by the San Luis Rey Indian Water Authority (“SLRIWA”), who are either a member of the SLRIWA Board of Directors or an employee of the SLRIWA;
- One At Large Agricultural Community Director representing the private pumping community. The Authority may, but is not required to, elect to accept nominations and fill this seat at the Authority’s first Board meeting or at a subsequent meeting of the

Board. The At Large Director shall be either the current Executive Director of the San Diego County Farm Bureau, or a landowner who farms land overlying the Subbasin using groundwater that the landowner pumps from the Subbasin.

4.1.1 Agricultural Director: As to the Agricultural Community At Large Director, upon the affirmative vote of two-thirds (2/3) of the Directors appointed by the Members to appoint the Agricultural Community At-Large Director, such Agricultural Community At-Large Director shall be seated on the Authority Board as a voting Director of the Authority Board. An Agricultural Community At-Large Director so appointed shall remain on the Board until such time as such At-Large Director resigns, or two-thirds (2/3) of the other Directors vote to replace the Agricultural Community At-Large Director. Any vacancies in the Agricultural Community At-Large Director seat shall be re-filled, should the Board desire to refill the vacancy, by way of the same process used to fill the seat originally. The Agricultural Community At-Large Director seat may remain unfilled, in the discretion of a majority of the Members on the Authority Board of Directors.

4.1.2 SLRIWA Directors: Directors appointed by SLRIWA, should SLRIWA decide to participate in the governance of the Authority and appoint Directors to the Board, shall be deemed voting Directors of the Authority upon receipt by the Authority of a letter of appointment of the Director(s) from SLRIWA. SLRIWA Directors so appointed per this Section 4.1.2 shall remain voting Directors on the Board of the Authority until they resign, are unable to continue participating on the Board by reason of death, disability or other legal disqualification, or are otherwise replaced by SLRIWA in its sole discretion.

4.1.3 Modifications to the Board: The composition of the Board of Directors may be modified from time to time to reflect the withdrawal or termination of any Member, or the admission of any new Member to the Authority, subject to the procedures provided herein, including, but not limited to, that any new Members be local agencies eligible under SGMA to serve as a GSA within the Subbasin.

4.1.4 Alternates to Board Directors: Each Member, and the SLRIWA, may appoint one Alternate director to the Board. Alternates shall be identified to the Board at the same time as Board appointments, and any modifications to a Member's alternate shall be identified as soon as practicable after such modification has been made. An Alternate may vote, with one vote, on all matters before the Authority in the absence of the appointed Board Director(s), and Alternates may attend Authority meetings but may not vote when the primary representative(s) is/are in attendance. Each alternate shall be informed of the business of the Authority and the actions to be taken when acting on behalf of a Board member. The Board may in the future adopt additional procedures for the qualification and appointment of alternate Directors. There shall be no alternates for any Agricultural Community At-Large Director. Alternate Directors shall not be permitted to attend Authority closed sessions unless the regular Director is absent.

4.1.5 FPPC Requirements: Per applicable law, all Directors of the Authority Board and all alternates will be required to comply with all laws applicable to public agency officials, including but not limited to the requirement to file an annual Statement of Economic Interests (FPPC Form 700) and comply with all other applicable FPPC requirements.

4.2 **Term of Directors.** Each Director and alternate to each Director, will serve at the pleasure of its appointing authority, which shall have the authority to appoint and remove its appointees in its sole and absolute discretion, subject to the limitations described in Section 4.1. Provided, however, that the Agricultural Community Director shall be subject to appointment and removal by the two-thirds (2/3) vote of the Authority Board. Each appointing entity shall notify the Authority in writing of its designated Director(s) and alternate upon the replacement of an existing Director by the Member.

4.3 **Officers.** The Board of Directors shall elect a chairperson, a vice chairperson, and a secretary, and shall appoint a “Treasurer” as provided in Section 5.7. The chairperson and vice-chairperson shall be Directors of the Board and the secretary and Treasurer may, but need not, be Directors of the Board. The chairperson shall preside at all meetings of the Board, and the vice-chairperson shall act as the chairperson in the absence of the chairperson elected by the Board.

4.4 **Powers and Limitations.** All the powers and authority of the Authority shall be exercised by the Board, subject, however, to the rights reserved by the Members as set forth in this Agreement, and those powers and authorities that the Board may choose to delegate to Authority management.

4.5 **Quorum.** A majority of the Board of Directors will constitute a quorum for the purpose of conducting business, unless there is an even number of Directors on the Board of Directors, in which case a quorum may be established with half plus one Directors. Should SLRIWA choose not to appoint Directors to the Authority Board, then the total number of Directors required to establish quorum shall be six if the Directors have appointed an Agricultural Community At Large Director and five if they have not. Should SLRIWA appoint two Directors to the Board, then quorum will be met when seven Directors are present or six if the Directors have not appointed an Agricultural Community At Large Director to the Board.

4.6 **Voting.** Except as to actions identified in Section 4.7, the Board of Directors will conduct all business by vote of a majority of the Directors present, if a quorum shall be established, and each Director shall have one (1) vote.

- (a) At the first Board meeting following the two-year anniversary of the Effective Date of this Agreement, the Board of Directors shall consider whether to recommend that the voting structure described in this Section 4.6 be modified in any respect.
- (b) If the Board of Directors recommends such modification, the governing body of each Member shall consider the recommended modification(s) and shall report back to the Board of Directors regarding the Member’s position thereon. Modification of the voting structure shall require a unanimous vote of the Members and an amendment to this Agreement.

4.7 **Supermajority Vote Requirement for Certain Actions.** To be approved, the following actions will require a two-thirds (2/3) vote of the Directors in attendance, but in no event less than five affirmative votes:

- (a) Approval of the Authority's annual budget and amendments to the annual budget, consistent with Article 5;
- (b) Decisions related to the levying of taxes, assessments, regulatory fees, or other fees and charges, and any amendments thereto;
- (c) Decisions concerning property acquisition and ownership;
- (d) Decisions related to the expenditure or reimbursement of funds by the Authority beyond expenditures approved in the Authority's annual budget, and concerning contracts exceeding monetary thresholds previously determined by the Board;
- (e) Issuance of bonds or other indebtedness;
- (f) Adoption of Authority rules, regulations, policies, ordinances, bylaws and procedures, and any amendments thereto;
- (g) Decisions related to the establishment of the Members' funding obligations for payment of the Authority's operating and administrative costs as provided in Section 5.1;
- (h) Adoption/approval of a GSP and any amendments or modifications of a GSP;
- (i) Decisions related to Subbasin boundary adjustments;
- (j) Adoption of procedures for the appointment of Officers, At-Large Directors, and alternate Board members, and for the voting rights of such alternates;
- (k) Involuntary removal of any Member pursuant to Section 6.2;
- (l) Any decision that seeks to enforce the involuntary curtailment of water use by any groundwater user within the Subbasin;
- (m) Initiation or defense of litigation or claims against the Authority.
- (n) Such other decisions requiring a two-thirds (2/3) vote per other sections of this Agreement.

If a two-thirds (2/3) vote of all directors present is not achieved on an action requiring a two-thirds (2/3) vote, but more than two-thirds (2/3) of the Member appointed directors voted in favor of such action, then the following shall occur: (i) the President of the Board will ask if any director would like to make a motion for reconsideration; (ii) if such motion is made for reconsideration, is seconded, and passes by vote of a majority of those Directors present, then a revote will be taken on the action requiring a two-thirds (2/3) vote. If the revote results in at least

75% of the Member appointed directors approving the action requiring a 2/3 vote of all directors, the original motion shall be deemed approved.

4.8 **Meetings.** The Board shall provide for regular, special and adjourned meetings in accordance with Chapter 9, Division 2, Title 5 of the Government Code of the State of California (the “Ralph M. Brown Act” commencing at section 54950), and any subsequent amendments of those provisions.

4.9 **Rules, Regulations, By-Laws and Ordinances.** The Board may adopt rules, regulations, by-laws and ordinances to supplement this Agreement and to provide for the effective and efficient administration of the Authority. In the event of conflict between this Agreement and any rule, regulation, by-law, or ordinance, the provisions of this Agreement shall govern.

4.10 **Administrator.** The Members hereby designate Yuima to serve as Administrator of, and keeper of records for, the Authority until all grant obligations of existing grants (DACI and SGMP) have been fulfilled. At that time, the Members can then appoint another Administrator if they so desire. All designated /appointed Administrators shall be reimbursed reasonable operating and administrative costs by the Authority for serving as Administrator of the Authority. Reasonable costs shall include, but are not limited to, staff time associated with administrative tasks not covered by grants, staff time spent applying for, arranging and securing all funding mechanisms, any consulting or legal fees associated with applying for, arranging and securing all funding mechanisms, any legal fees associated with the conducting of regular Authority business, staff time and costs required to perform all GSP implementation responsibilities prior to the establishment of permanent funding mechanisms. These responsibilities could include, but are not limited to, installation of devices to monitor well production, required state reporting, required water quality monitoring costs, and staff time spent performing the above referenced tasks. All reimbursement requests shall be accompanied by backup documentation such as staff time sheets, staff hourly reimbursement calculation nexus and copies of vendor invoices.

## **ARTICLE 5 FINANCIAL PROVISIONS**

5.1 **Funding, Initial Contributions and Expenses.** Upon execution of this Agreement, and for a period not to exceed two (2) years after the close of the current grants, or when an adoption of an alternative funding plan is approved and implemented by the Board, whichever comes later, the Members agree to share the operating and administrative costs of operating the Authority in accordance with the percentages set forth in Exhibit C hereto, with the understanding that costs incurred by any Member on or after July 1, 2019, in furtherance of GSP preparation or GSP/SGMA implementation, or both, will be eligible for reimbursement from any pumping or other fees later established by the Authority, to the extent allowed under SGMA or other applicable law. Each Member will make quarterly payments of its share of the operating and administrative costs of the Authority, within thirty (30) days of receiving an invoice, therefore. Members shall make payments as required in Exhibit C within the timeframes set forth therein. Each Member will be solely responsible for identifying and allocating funds for payment of the Member’s share of operating and administrative costs. The obligation of each Member to make payments under the terms and provision of this Agreement is an individual and separate obligation of the Member and not a joint obligation with those of the other Members. Unless otherwise



limited by law, the Authority is authorized to apply an eight percent 8% per year late penalty, imposed on a quarterly basis, against any outstanding balance a Member fails to pay for its initial costs indicated in Section 5.2 and their share of ongoing operating and administrative costs within thirty (30) days of invoice. Additionally, the Authority is authorized, upon a majority vote of its Board, to initiate legal action against any Member that fails to timely pay for its share of operating and administrative costs. The withdrawal of a Member shall not relieve the withdrawing Member of any funding obligations incurred prior to that Member's withdrawal. Notwithstanding the foregoing, SLRMWD will not be asked to participate in initial or quarterly cost payments other than for a portion of the cost for the Authority's acquisition of insurance that is used to protect the Authority and its members regarding future liability. Should the Authority ask SLRMWD to participate in cost sharing other than for the acquisition of insurance, such request shall occur a minimum of one hundred twenty (120) days in advance of the imposition of such costs on SLRMWD, in order, to allow SLRMWD, if it so chooses, to withdraw from this Agreement per Section 6.3 herein, via written notice to the Authority, without incurring or otherwise being liable for any such costs.

**5.2 Initial Funding.** The Members acknowledge that prior to execution of this Agreement, Yuima has absorbed the costs associated with developing the GSP and otherwise administering the GSA. Initial cost share allocated between the Members shall therefore include all expenditures for Yuima to implement and administer the SGMA process and preparation/submittal of a complete GSP, including payment of required grant match and all other associated non-reimbursed SGMA related costs ("Initial Costs") incurred between July 2019 and extending to the date the Long-Term Funding Plan takes effect ("the Initial Period"). The payment obligation of each Member for Initial Costs during the Initial Period, other than USLRCD and SLRMWD, will be determined by subtracting out \$25,000 (for payment by USLRCD) and then dividing all remaining Initial Costs among the Members based upon the number of directors each member is authorized to appoint to the Board (e.g., PMWD, Yuima, and PVCSD will each pay 1/3 of the remaining Initial Costs<sup>2</sup>). Each Member shall submit its proportional share of Initial Costs to Yuima within 30 days of the execution of this Agreement, and each Member shall be invoiced quarterly by Yuima thereafter. The payment obligations referenced in this Section 5 shall take effect on the Effective Date, and within the timeframes referenced herein. Notwithstanding the foregoing, SLRMWD will not be asked to participate in initial or quarterly cost payments other than for a portion of the cost for the Authority's acquisition of insurance that is used to protect the Authority and its Members from future liability. Should the Authority ask SLRMWD to participate in cost sharing other than for the cost of acquiring insurance, such request shall occur a minimum of one hundred twenty (120) days in advance of the imposition of such costs on SLRMWD, in order, to allow SLRMWD, if it so chooses, to withdraw from this Agreement per Section 6.3 herein, via written notice to the Authority, without incurring or otherwise being liable for any such costs.

**5.3 Funding Plan; Long-Term Funding.** Upon the formation of the Authority, the Board of Directors shall work diligently on the development, adoption and implementation of a long-term funding plan to cover the operating and administrative costs of the Authority. The long-term funding plan shall supersede and replace the initial funding plan described in Section 5.1 above at the earliest possible date. The Members intend that the long-term funding plan, if

reasonably practicable, shall be completed within twelve (12) months following the Effective Date, with implementation beginning within six (6) months after adoption of the long-term funding plan.

- (a) The long-term funding plan shall include provision for reimbursement or offset of the Members' initial funding contributions, including Members' reasonable expenses incurred on SGMA issues pursuant to Section 5.1 above, provided such reimbursement is authorized by law.
- (b) If a long-term funding plan is unlikely to be adopted and implemented within two (2) years of this Agreement, the Board shall meet and confer with representatives of the Members to determine how to fund the activities of the Authority beyond the initial two (2) years, or to take other appropriate action including but not limited to, termination of the Authority and/or transfer of applicable GSA obligations to one or more Members, upon agreement of such Members.
- (c) Nothing herein shall be interpreted to preclude the imposition of fees by the Authority per Water Code sections 10730 or 10730.2 on extractors of groundwater within the Basin.

**5.4 Indemnification.** Members, Directors, officers, agents and employees of the Authority, if any, shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. To the fullest extent permitted by law, the Authority shall hold harmless, defend and indemnify the Members and their officers, employees and agents, and Directors, from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the activities of the Authority or its Board, officers, employees or agents under this Agreement, up to the amount of the insurance carried by the Authority. These indemnification obligations shall continue beyond the term of this Agreement as to any acts or omissions occurring before or under this Agreement or any extension of this Agreement. However, to the extent that a claim for indemnification is made, and the liability associated with such request exceeds the insurance limits carried by the Authority, there shall be no obligation on the part of the Authority to make additional assessments against the other Members of the Authority in order to indemnify a Member that has tendered a claim for indemnification.

- (a) The Authority shall be required to obtain insurance or join a self-insurance program in which one or more of the Members participate, appropriate for its operations, and to fulfill applicable indemnification obligations imposed by this Agreement. Any and all insurance coverages provided by the Authority, and/or any self-insurance programs joined by the Authority, shall, to the extent feasible, name each and every Member as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named insured in the performance of this Agreement. Minimum levels of the insurance or self-insurance program shall be set by the Authority in its ordinary course of business. The Authority shall also require all of its contractors and subcontractors to have insurance

appropriate for their operations and to name the Authority, At-Large Directors, and Members as additional insureds.

**5.5 Repayment of Funds.** Unless the Board determines otherwise, no refund or repayment of the initial commitment of funds specified in Section 5.1 will be made to a Member ceasing to be a Member of this Agreement whether pursuant to removal by the Board of Directors or pursuant to a voluntary withdrawal. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, the terms and conditions of this Agreement or other agreement of the Authority and withdrawing Member.

**5.6 Budget.** The Authority's fiscal year shall run from July 1 through June 30. Each fiscal year, the Board shall adopt a budget for the Authority for the ensuing fiscal year. Within ninety (90) days of the effective date of this Agreement, the Board shall adopt a budget. Thereafter, a budget shall be adopted no later than March 1 for the next fiscal year.

- (a) The budget of the Authority shall be approved by at least a two thirds (2/3) vote of the Board; provided, however, that until a new budget is approved, the Board shall be deemed to have extended, and the Authority shall continue to operate using (and invoicing the Members accordingly), the budget most recently approved by the Board, as adjusted for inflation utilizing the consumer price index for the Los Angeles Metropolitan Statistical Area.
- (b) Each Member hereby agrees to include and approve in its annual budget amounts estimated to be sufficient to pay the Member's full share of budgeted expenses within thirty (30) days of invoice by the Authority.
- (c) A copy of the adopted budget shall be submitted to the County Auditor-Controller for inclusion in the financial system.

**5.7 Alternate Funding Sources.** The Board may, and is encouraged to obtain federal, state and local grant funding to offset the costs to the Authority of complying with SGMA, including but not limited to implementing the GSP. The Members acknowledge and agree that following execution of this Agreement by all Members amending and restating the 2017 MOU, the remaining amounts of the grant awards previously made to Member Yuima from (i) the State of California Department of Water Resources through San Diego County Water Authority IRWM Disadvantaged Community Involvement Grant Program to Yuima for Project No. 4-80057, and (ii) the State of California Department of Water Resources Sustainable Groundwater Program to Yuima for Project No. 3 San Luis Rey Groundwater Sustainability Plan, and (iii) the County of San Diego's agreement to contribute \$150,000 towards the preparation of a GSP for the Subbasin, may be transferred from Yuima to the Authority for administration if the Authority Board so directs by a two-thirds 2/3 vote, and such transfer is otherwise allowed by pertinent grant agreements (as amended), DWR grant regulations, and/or other pertinent legal authority.

**5.8 Depositary, Treasurer, Auditor and Controller.** The Treasurer of the Authority shall initially be the Administrator of the Authority. Thereafter, the Treasurer shall be appointed

by the Board consistent with Government Code Sections 6505-6505.6. and said Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. All funds of the Authority shall be held in a separate account in the name of the Authority and not commingled with any other funds of any Member, or any other person or entity. In accordance with California Government Code sections 6505 and 6505.5, the Treasurer shall draw checks or warrants, requiring two signatures, to pay demands against the Authority when the demands have been approved by any person authorized to so approve under this Agreement, provided sufficient funds are available. Subject to the voting requirements in Section 4.7, the Board may elect to appoint a different Treasurer or person to serve as Auditor and Controller, provided such appointment is subject to the requirements of Government Code sections 6505 and 6505.5.

**5.9 Expenditures.** All expenditures within the designations and limitations of the applicable approved budget shall be made upon the approval of the Treasurer or any officer so authorized by the Board. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the approval of the Board. The Board shall requisition the payment of funds only upon approval of claims or disbursements and requisition for payment in accordance with policies and procedures adopted by the Board.

**5.10 No Member Liability.** As provided by Government Code Section 6508.1, and unless otherwise required by law, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities, and obligations of the Authority only, and not of the constituent Members of the Authority.

## **ARTICLE 6 CHANGES TO MEMBERSHIP, WITHDRAWAL AND TERMINATION**

**6.1 Addition to Membership.** Any local agency within the Subbasin that is qualified to be a GSA pursuant to Water Code section 10723, and which was not a Member of the Authority at the time of the Effective Date, is eligible to become a Member of the Authority subject to the requirements in this Article 6 and any other requirements established by the Authority Board, upon the unanimous approval of the Members. A prospective new member's application to become a Member of the Authority must demonstrate all of the following:

- (a) The local agency is eligible to be a GSA under the applicable requirements of Water Code sections 10721 and 10723;
- (b) The local agency agrees to become a Member of and signatory to this Agreement, and become subject to all requirements, rights and obligations of this Agreement;
- (c) The local agency agrees to contribute a proportionate share of the costs of the Authority, as reasonably determined by the Board of the Authority. Such costs may include, at the discretion of the Board, reasonable reimbursement for costs incurred in the formation and early implementation of the Authority pursuant to Section 5.1 and the Funding Plan.

The Board's vote to add a new Member will serve as an addendum to this Agreement, and to Exhibit A, and shall ratify the admission of the new Member to the Authority. Such addendum does not constitute an Amendment of this Agreement, nor does it require separate approval of this Agreement by the Members. Upon written confirmation by the Board of the new membership, such new Member may appoint a Board member and alternate as provided in Article 4 and shall be entitled to participate in the Authority as provided herein.

**6.2 Noncompliance; Involuntary Removal.** In the event any Member (1) fails to comply with the terms of this Agreement, or (2) undertakes actions that conflict with or undermine the functioning of the Authority or the preparation or implementation of the GSP, such Member shall be subject to the provisions for involuntary removal of a Member set forth in this Section 6.2. Such actions may include, for example and without limitation, failure to pay its agreed upon contributions when due; refusal to participate in GSA activities or to provide required monitoring of sustainability indicators; refusal to implement measures as may be required of the Member by the GSP, or which the Member has authority to impose on landowners and pumpers within the Member's jurisdiction. Involuntary removal may only be exercised by the Board after participating in a meet and confer process regarding the proposed involuntary removal and otherwise pursuing other reasonable efforts to resolve the Member's non-compliance, including third party neutral dispute resolution processes if appropriate as provided in Section 8.6. In the event of the involuntary removal of a Member the removed Member shall remain fully responsible for its proportionate share of all liabilities incurred by the Authority prior to the effective date of the removal.

**6.3 Withdrawal of Members.** A Member may, in its sole discretion, unilaterally withdraw from the Authority, effective ninety (90) days after receipt of written notice to the Authority, provided that the withdrawal will not deprive the Authority of its ability to manage the Subbasin in accordance with the requirements of SGMA or any approved GSP. Subject to the limitations with regard to SLRMWD detailed in Sections 5.1 and 5.2, a withdrawing Member will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority up until the effective date of the Member's withdrawal. In the event the withdrawing Member has any rights in any property or has incurred obligations to the Authority, the Member may not sell, lease or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed by it and the Authority. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawing Member. Upon withdrawal of any Member, the Authority shall continue to exist until such time as all remaining Members decide otherwise.

**6.4 Termination.** This Agreement may be terminated, and the Authority dissolved, by a unanimous vote of the Directors representing the Members. However, in the event of termination, each of the Members will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority, in accordance with Article 5. Nothing in this Section will prevent a Member from withdrawing from this Agreement and the Authority as provided for in this Agreement, or from entering into other joint exercise of power agreements.

**6.5 Disposition of Property Upon Termination.** Upon termination of this Agreement, the assets of the Authority shall be transferred to the Authority's successor, provided that a public entity will succeed the Authority or, in the event that there is no successor public

entity, to the Members in proportion to the contributions made by each Member. If the successor public entity will not assume all of the Authority's assets, the Board shall distribute the Authority's assets between the successor entity and the Members in proportion to any obligation required by Article 5.

6.6 **Use of Data.** Upon withdrawal, any Member shall be entitled to use any data or other information owned and/or controlled by the Authority during its time as a Member. Further, should a Member withdraw from the Authority after adoption of the GSP by the Authority, it shall be entitled to utilize the GSP for implementation of SGMA within its boundaries to the extent otherwise authorized by SGMA in a manner that does not prevent the other Members from complying with SGMA.

## **ARTICLE 7 PROJECTS AND MANAGEMENT ACTIONS**

7.1 **Special Project Agreements.** Members may enter into special project agreements amongst themselves and with the Authority to achieve any of the purposes or activities authorized by this Agreement, and to share in the expenses and costs of such special project, for example, to share in funding infrastructure improvements within the boundaries of particular Members. Special project agreements must be in writing and documentation must be provided to each of the Members to this Agreement. No special project agreement undertaken pursuant to this Section 7.1 shall conflict with the terms of this Agreement or the GSP.

7.2 **Special Project Expenses.** Members that enter into special project agreements agree that any special project expenses incurred for each such special project are the costs of the special project participants, respectively, and not of the Authority or any other Members to this Agreement not participating in the special project. All special project expenses shall be paid by the parties to the respective special project agreements.

7.2.1 Indemnification of Other Members; Special Projects. Members participating in special project agreements, if the Authority is a party to such agreement, shall hold each of the other Members who are not parties to the special project agreement free and harmless from and indemnify each of them against any and all costs, losses, damages, claims and liabilities arising from the special project agreement. The indemnification obligation of Members participating in special project agreements shall be the same as specified in Section 5.4 for Members in general, except that they shall be limited to liabilities incurred for the special project.

7.2.2 Identified Management Actions. In the development of this Agreement certain Members have identified particular activities and strategies that should be considered by the Authority as it develops the GSP and any modifications to the GSP that maybe required by DWR or other applicable regulatory agencies. Without predetermining how these activities and strategies will be considered and implemented, the Members hereby direct the Authority to consider the following in the development of the GSP, including any revisions thereto, without limitation: (a) formation of management areas or other tools to address unique or particular circumstances in the Subbasin; (b) development of water budgets and other accounting practices to facilitate sustainable groundwater management; (c) utilization of groundwater banking concepts

to maximize the use of the Subbasin for the benefit of the Members and other stakeholders in the Subbasin, consistent with SGMA's goals and objectives.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

8.1 **Amendments.** This Agreement may be amended from time to time by the unanimous vote of the Members; except as otherwise provided herein, the Authority may not amend the terms of this Agreement.

8.2 **Binding on Successors.** Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without a unanimous vote by the Members. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto.

8.3 **Notice.** Any notice or instrument required to be given or delivered under this Agreement may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of 72 hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery, delivered to the address or facsimile numbers of the Members listed in Exhibit A.

8.4 **Counterparts.** This Agreement may be executed by the Members in separate counterparts, each of which when so executed and delivered shall be an original. All such counterparts shall together constitute but one and the same instrument.

8.5 **Choice of Law.** This Agreement shall be governed by the laws of the State of California.

8.6 **Dispute Resolution.** The Board of the Authority shall develop rules and policies for third party neutral dispute resolution to resolve disputes that may arise under this Agreement.

8.6.1 Any Director who initiates or threatens to initiate litigation, or who otherwise represents an entity that is involved in a threat of or actual litigation against the Authority, shall be required to recuse himself or herself from participating in any closed session discussion related to the claim or litigation, and the remaining directors may prosecute/defend such litigation in the absence of the recusing director(s).

8.7 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement are held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.8 **Headings.** The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Members to this Agreement.

8.9 **Construction and Interpretation.** This Agreement has been arrived at through negotiation, and each Member has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Member shall not apply in the construction or interpretation of this Agreement.

8.10 **Entire Agreement.** This Agreement constitutes the entire agreement among the Members and amends or supersedes all prior agreements and understandings, written or oral.

IN WITNESS WHEREOF, the Members have executed this Agreement on the day and year first above-written.

By: \_\_\_\_\_  
Pauma Valley Community Services  
District  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Yuima Municipal Water District  
Title: \_\_\_\_\_

Date: April \_\_, 2022

Date: April \_\_, 2022

By: \_\_\_\_\_  
Upper San Luis Rey Resource  
Conservation District  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Pauma Municipal Water District  
Title: \_\_\_\_\_

Date: April \_\_, 2022

Date: April \_\_, 2022

By: \_\_\_\_\_  
San Luis Rey Municipal Water District  
Title: \_\_\_\_\_

Date: April \_\_, 2022



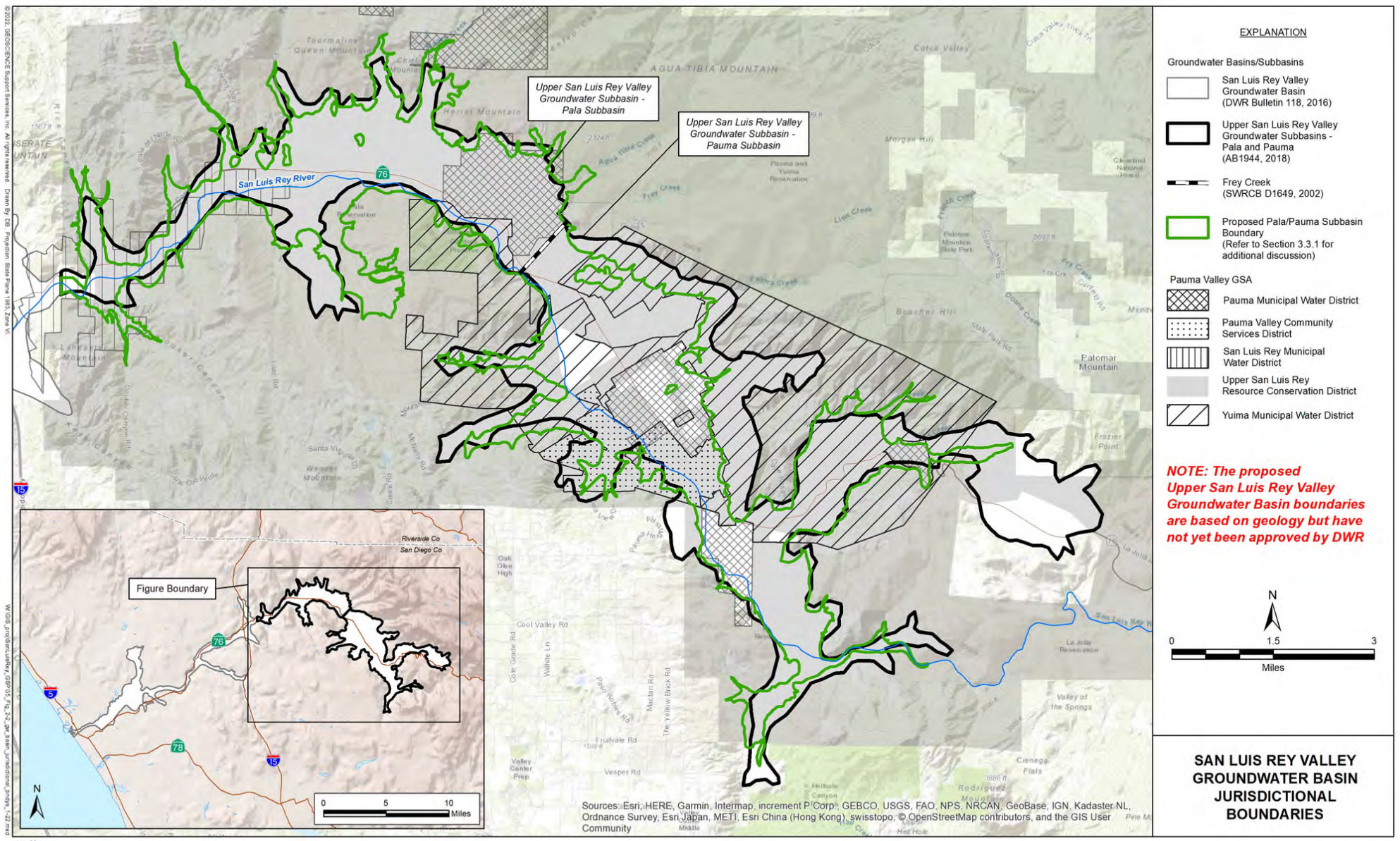
## EXHIBIT A

### Members

- Pauma Valley Community Services District  
Attn: Board President  
33129 Cole Grade Rd.  
Pauma Valley, CA 92061
- Yuima Municipal Water District  
Attn: Board President  
P.O. Box 177  
Pauma Valley, CA 92061-0177
- Upper San Luis Rey Resource Conservation District  
Attn: Board President  
P.O. Box 921  
Pauma Valley, CA 92061-0921
- Pauma Municipal Water District  
Attn: Board President  
P.O. Box 706  
Pauma Valley, CA 92061-0706
- San Luis Rey Municipal Water District  
Attn: Board President<sup>3</sup>  
5328 Highway 76  
Fallbrook, CA 92028

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<sup>3</sup> Copy to Aleshire & Wynder, LLP, 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245



Jan-22  
**PAUMA VALLEY GSA**  
 UPPER SAN LUIS REY VALLEY GROUNDWATER SUSTAINABILITY PLAN

**FIGURE 2-2**  
**GEOSCIENCE**

## EXHIBIT C

### INITIAL COST SHARING PLAN

Total Initial Cost Share	TBD
Less Contribution of the Upper San Luis Rey Resource Conservation District	-\$25,000.00
Equals Remaining Initial Cost Share	TBD
Divided by remaining votes of Contributors *	6
Equals Initial Contribution per Vote	TBD

- Remaining Obligated Contributors:
  - o Pauma Valley Community Services District 2 Votes
  - o Pauma Municipal Water District 2 Votes
  - o Yuima Municipal Water District 2 Votes

Each Member listed as a Remaining Obligated Contributor in this Exhibit C will take the per vote cost and multiply it times the number of votes they are allowed per Section 4.1 of this Agreement to determine their required initial cost share contribution.

**THIRD AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING  
BETWEEN PAUMA VALLEY COMMUNITY SERVICES DISTRICT (“PVCSD”)  
AND THE RANCHO PAUMA MUTUAL WATER COMPANY (“RPMWC”)  
REGARDING FUTURE COLLABORATION AND WATER MANAGEMENT  
WITHIN THE SAN LUIS REY VALLEY GROUNDWATER SUBBASIN**

**THIS THIRD AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as the “MOU”) is entered into as of this 18<sup>th</sup> day of April 2022, by and between PVCSD, a Community Services District organized and existing pursuant to the Community Services District Law, Government Code §§ 61000 et seq. (“CSD Law”), and the Rancho Pauma Mutual Water Company, a California Mutual Water Company organized under Corporations Code §§ 14300 et seq. to provide water service, at cost, to RPMWC's shareholders in a service area that is nearly identical to that of PVCSD. The purpose of this MOU is to memorialize the way that PVCSD and RPMWC intend to cooperatively manage the portions of the Upper San Luis Rey Valley Groundwater Subbasin (“Upper SLR Basin”) within PVCSD's service area in order to protect water quality and prevent undesirable effects associated with excessive drawdown of groundwater levels, and to provide a framework for future collaborative management of the Upper SLR Basin per the Sustainable Groundwater Management Act of 2014 (“SGMA”). PVCSD and RPMWC are collectively referred to herein as the “Parties” or individually as a “Party.”

**RECITALS**

- A. WHEREAS, in 1961 PVCSD was formed to collect, treat, infiltrate, and otherwise manage the wastewater generated within the 1,445 acres and 2.26 square miles of PVCSD's service area, a service area that entirely, or nearly entirely, overlies the Upper SLR Basin; and
- B. WHEREAS PVCSD has continuously provided wastewater management services to its service area as an active community services district since 1961, and as such is authorized per Government Code §61100 (b) to “collect, treat, or dispose of sewage, wastewater, recycled water, and storm water” within its service area in “the same manner as a sanitary district, formed pursuant to the Sanitary District Act of 1923, Division 6 (commencing with Section 6400) of the Health and Safety Code;” and
- C. WHEREAS, PVCSD currently operates the largest wastewater treatment plant in the Pauma Valley portion of the Upper SLR Basin, with a treatment capacity of 175,000 gallons per day (“GPD”), and

an average infiltration of 65,000 GPD of treated effluent that is derived from the domestic water use of RPMWC shareholders; and

- D. WHEREAS, PVCSD percolates the wastewater it treats to the Upper SLR Basin after treatment through PVCSD owned and managed infiltration ponds that overlie the Upper SLR Basin; and
- E. WHEREAS RPMWC operates six (6) potable drinking water wells, and seven (7) non-potable agricultural wells in near proximity to the PVCSD infiltration facilities, and this proximity necessitates close coordination between RPMWC and PVCSD in order to ensure the water in the Upper SLR Basin remains of sufficient quality and quantity to support RPMWC's ongoing water production operations; and
- F. WHEREAS, because of the need for close coordination, RPMWC and PVCSD have jointly funded a groundwater model and SCADA water and wastewater management system that informs PVCSD of the optimal times to infiltrate treated wastewater, while also informing RPMWC which wells should be operated in a manner that ensures drinking water quality meets all state and federal standards while simultaneously preventing excessive drawdown of groundwater levels within the PVCSD/RPMWC service area; and
- G. WHEREAS the RPMWC/PVCSD groundwater model referenced herein was used by RPMWC to reduce groundwater pumping in 2015 by approximately 40% from a 2013 baseline in response to RPMWC's joint management of the Upper SLR Basin in concert with PVCSD upon observing significant declines in groundwater levels in the Pauma Valley portion of the Upper SLR Basin;
- H. WHEREAS, PVCSD, per Government Code 61100 (b), manages, infiltrates, and otherwise disposes of stormwater to the Upper SLR Basin where such stormwater is generated within the drainage easements owned and operated by PVCSD; and
- I. WHEREAS, in September 2014 SGMA was signed into law, with an effective date of January 1, 2015, and codified at California Water Code, Section 10720 et seq.; and
- J. WHEREAS, the legislative intent of SGMA is to, among other goals, provide for sustainable management of alluvial groundwater basins and sub-basins defined by the California Department of Water Resources (“DWR”), to enhance local management of groundwater, to establish minimum

standards for sustainable groundwater management, and to provide specified local agencies, such as PVCSD, with the authority and the technical/financial assistance necessary to sustainably manage groundwater; and

- K. WHEREAS, Water Code section 10723(a) authorizes a “local agency” with water supply, water management or local land use responsibilities, or a combination of local agencies with such responsibilities overlying a groundwater basin, to become a Groundwater Sustainability Agency (GSA) under SGMA;
- L. WHEREAS, sustainable groundwater management of high and medium priority basins as designated by DWR is required by SGMA, and the Upper SLR Basin, part of DWR Basin No. 9-7, is designated by DWR as a medium priority basin; and
- M. WHEREAS, PVCSD is a “local agency” with “water management” responsibilities exercised per Government Code 61100 (b) within PVCSD's service area, including the management and infiltration of treated wastewater throughout the PVCSD service area in accordance with the jointly developed and funded PVCSD/RPMWC groundwater model and water management system, a system that also includes PVCSD's management of stormwater within PVCSD owned drainage easements; and
- N. WHEREAS, PVCSD, on or about July 5, 2016, filed a notice of intent to become a GSA for those portions of the SLR Basin within PVCSD's boundaries and sphere of influence and intends to retain its authorities to manage groundwater per SGMA in the future within its sphere of influence in coordination with San Diego County (“County”), Yuima Municipal Water District (“Yuima”) and other GSA eligible local agencies in the Pauma Valley as part of one coordinated GSA that covers the Basin; and
- O. WHEREAS, it is in the interests of both of the Parties to memorialize the manner in which PVCSD and RPMWC have carried out their interdependent water management responsibilities within their largely co-extensive service areas in the past, and to identify roles and responsibilities for collaborative water management between RPMWC and PVCSD that will result in sustainable groundwater management in the future; and
- P. WHEREAS, negotiations by PVCSD with the other Pauma Valley GSA eligible local agencies during 2016 and 2017 resulted in a decision by PVCSD, after consultation with RPMWC, to participate in a

multi-party GSA—created via agreement (“GSA Agreement”)—with County, Yuima and other GSA eligible local agencies, and

- Q. WHEREAS, the County of San Diego withdrew from the GSA Agreement in December 2018, and the GSA Agreement was thereafter amended in several ways, including to add new parties to the agreement, and
- R. WHEREAS, on or about January 31, 2022, the parties to the GSA Agreement submitted to DWR the final, approved Groundwater Sustainability Plan (GSP) for the Upper SLR Basin, and
- S. WHEREAS, for purposes of cost-effective and streamlined implementation of the GSP, the parties to the GSA Agreement are currently considering transforming the SGMA governance structure to a joint powers agreement (JPA), and
- T. WHEREAS, PVCSD’s participation in the GSA Agreement, a JPA and other subsequent actions and agreements related to SGMA have the potential to impose liability on PVCSD for actions taken for the benefit of water resources in the Upper SLR Basin utilized by RPMWC and, as a result, RPMWC has agreed to indemnify PVCSD for liability incurred by PVCSD as a result of PVCSD’s undertaking of activities per the GSA Agreement, JPA or subsequent agreements, or which occurs as a result of the approval or implementation of a GSP in the Upper SLR Basin, and
- U. WHEREAS, the Parties desire that there be a mutual indemnification obligation applicable to both parties where one Party engages in negligent or otherwise wrongful acts or omissions within the scope of this MOU that cause the other Party to incur liability.

## **COLLABORATION AGREEMENT**

NOW, THEREFORE, in consideration of the matters recited above and the covenants, conditions and promises contained herein, the Parties agree as follows:

### **SECTION 1: Intent**

The intent of this MOU is to ensure continued collaboration between PVCSD and RPMWC regarding water management duties in both the PVCSD and RPMWC service areas, and joint coordination

regarding future implementation of SGMA within the service area of PVCSD and in other relevant areas of the Upper San Luis Rey Basin.

## **SECTION 2: Duties Under MOU**

The duties and obligations described in this Section are goals and shall be performed by the respective parties consistent with the law and pursuant to their sole and reasonable professional judgment and not to any standard not expressed in this Agreement.

A. PVCSD shall be responsible for:

1. Operating the PVCSD wastewater treatment plant in a manner that, consistent with pertinent environmental regulations and industry standards, results in the maximum amount of treated wastewater being reasonably available for infiltration and aquifer recharge;
2. Seeking collaborative opportunities with other local agencies in the Pauma Valley to increase the amount of treated wastewater and stormwater originating in the PVCSD service area that can reasonably be made available for recharge of the Upper SLR Basin in the Pauma Valley;
3. Operating infiltration operations in concert with RPMWC's pumping operations so as to ensure RPMWC's wells continue to meet all federal and state drinking water standards while simultaneously preventing undesirable effects associated with excessive groundwater drawdown in the Upper SLR Basin;
4. Continuing to fund its share of the costs of the jointly funded SCADA system and groundwater model within the PVCSD service area, and working collaboratively with RPMWC to improve the data and hydrologic information available to support sound scientific decision making in the Upper SLR Basin;
5. Assisting in the implementation of the GSP for the Upper SLR Basin in consultation and coordination with RPMWC, and/or developing a GSA/GSP multiparty governance structure such as a JPA collaboratively with RPMWC and other local agencies in the Pauma Valley; and
6. Taking or defending legal action where necessary to protect the interests of PVCSD ratepayers.



B. RPMWC shall be responsible for:

1. Continuing to seek ways to increase water efficiency during times of diminished groundwater availability in the Upper SLR Basin consistent with the requirements of RPMWC's shareholders;
2. Further developing and improving RPMWC's existing groundwater model and groundwater management plan to facilitate improved basin management while sharing data and staff resources with PVCSD so as to facilitate PVCSD's future performance of all obligations imposed by SGMA using existing and enhanced management tools;
3. Continue seeking ways to increase the Upper SLR Basin yield in the Pauma Valley, in concert with PVCSD and other Pauma Valley local agencies and water users;
4. Seeking collaborative solutions with other mutual water companies and private pumpers in the Pauma Valley to ensure existing water management systems are properly integrated into future GSPs, and historic pumping by mutual water companies is properly credited and protected in the implementation of SGMA in the Pauma Valley;
5. Taking or defending legal action where necessary to protect the interests and water rights of RPMWC shareholders; and
6. Reimbursing PVCSD for ninety percent (90%) of all costs incurred by PVCSD related to SGMA, including but not limited to legal, staff, consultant, technical study and other costs, as well as financial contributions made by PVCSD to the GSA and/or in conjunction with GSP implementation.

**SECTION 3: Future Projects and Modifications**

Future water or wastewater projects or joint PVCSD/RPMWC management actions may be added to the list of Duties and Responsibilities in Section 2 upon mutual written agreement of the Parties. The Parties may also by mutual written consent amend other portions of this MOU.

**SECTION 4: Framework for Future Collaboration**

This document and participation under this MOU by the Parties is intended to provide a framework for future collaboration by the Parties with each other, and with other local agencies and stakeholders in the Pauma Valley during the implementation of SGMA in the Upper SLR Basin. It is not intended to suggest either Party is unable to continue other activities, policies and procedures as each Party's board of directors may dictate.

## **SECTION 5. Mutual Indemnification Obligations**

In consideration of the promises made by the Parties under this MOU, both Parties hereby agree to indemnify and hold the other Party, and its officers, directors and employees, harmless in respect of any and all claims, losses, fines, damages, penalties, liabilities and expenses (including reasonable attorneys' fees) (each a "Claim," and collectively, the "Claims") incurred by the other Party as a result of legal actions or governmental proceedings resulting directly or indirectly from actions/omissions of that Party related to activities undertaken per this MOU. The foregoing notwithstanding, neither Party shall be responsible for any Claims to the extent that they result from the negligent act(s) and/or omission(s) or willful misconduct of the other Party, or any of its officers, directors, employees, agents or representatives acting in their capacity as such. The Parties further agree that notwithstanding the mutual indemnification obligations imposed herein, neither Party shall be liable for any punitive, incidental, special or consequential damages of any kind, that may arise as a result of this Agreement.

## **SECTION 6: Indemnification Obligations of RPMWC Associated with GSP Development and Implementation**

Notwithstanding the mutual indemnification obligations otherwise applicable per Section 5 of the MOU, RPMWC hereby agrees to indemnify PVCSD from any legal liability that PVCSD may incur, to include court costs and attorneys' fees, that result directly or indirectly from PVCSD's GSA status, participation in the GSA Agreement, JPA and any subsequent agreements, and participation in the development, approval, and implementation of a GSP for the Upper SLR Basin; provided, however, that the RPMWC indemnification obligation described in this Section 6 shall be inapplicable to any Claims to the extent that they result from the negligent act(s) and/or omission(s) or willful misconduct of PVCSD. In addition, to the extent that PVCSD representatives take action(s) during the GSP development/implementation process over the written objection of the RPMWC Board of Directors, the indemnification obligations described in this Section 6 shall not apply; provided, however, that the RPMWC Board of Directors shall not be required to provide a written objection as to any matter related to GSP development/implementation of which they have not been made aware by PVCSD.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first hereinabove written.

PAUMA VALLEY COMMUNITY SERVICES DISTRICT

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President, Board of Directors

RANCHO PAUMA MUTUAL WATER COMPANY

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President, Board of Directors