

RESOLUTION 2020-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BEAUMONT-CHERRY VALLEY WATER DISTRICT TO APPROVE A MEMORANDUM OF AGREEMENT TO FORM A COORDINATED GROUNDWATER SUSTAINABILITY AGENCY FOR THE UNADJUDICATED PORTION OF THE SAN TIMOTEO SUB-BASIN AND TO CREATE MULTIPLE GROUNDWATER SUSTAINABILITY PLANS

WHEREAS, in September 2014, the Sustainable Groundwater Management Act (SGMA) was signed into law, with an effective date of January 1, 2015, and codified as California Water Code, Section 10720 et seq.; and

WHEREAS, the legislative intent of the SGMA is to, among other goals, provide for sustainable management of alluvial groundwater basins and 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 with the technical and financial assistance necessary to sustainably manage groundwater; and

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 decide to become a Groundwater Sustainability Agency (GSA) under SGMA; and

WHEREAS, the City of Banning, Beaumont-Cherry Valley Water District, the City of Redlands, and Yucaipa Valley Water District (Parties) each overlie a portion of the unadjudicated portion of the San Timoteo Basin and each has respective groundwater supply and groundwater management responsibilities within the Basin, and will seek authorization from their respective governing board to become part of the coordinated San Timoteo Groundwater Sustainability Agency (STGSA); and

WHEREAS, in accordance with the terms of the attached Memorandum of Agreement, and in furtherance of the shared intent of the Parties to manage local groundwater supplies, maximize funding opportunities, increase transparency, and foster cooperation, the Parties agree that the STGSA shall be reformed to cover the entire Basin except the Adjudicated Area of the Basin.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Beaumont-Cherry Valley Water District as follows:

1. The above recitals, and each of them, are true and correct, and are incorporated as terms of this Resolution.
2. The Board of Directors hereby decides and determines that the Beaumont-Cherry Valley Water District shall become a member of the Coordinated Groundwater Sustainability Agency for the unadjudicated portion of the San Timoteo Sub-basin and to participate in the creation of multiple Groundwater Sustainability Plans pursuant to the attached Memorandum of Agreement.

3. Beaumont-Cherry Valley Water District (District) staff, or staff of one of the other member agencies on behalf of the District, shall submit to the Department of Water Resources, within thirty (30) days of the approval of this Resolution, all documentation and information required by Water Code section 10723.8 to support the Agency's formation of a GSA over the Basin.
4. The Board of Directors hereby finds and determines that the approval of this Resolution and formation of the Coordinated Groundwater Sustainability Agency for the unadjudicated portion of the San Timoteo Sub-basin is not a project pursuant to the California Environmental Quality Act (Pub. Resources Code, §21000 et seq.) or the State CEQA Guidelines (14 Cal. Code Regs., Title 14, § 15000 et seq.) (collectively, CEQA). Specifically, the Board finds that, because it is only electing to form the GSA for the Basin and not approving any specific projects or authorizing any further activities, formation of the GSA is not a project under State CEQA Guidelines §15387 because there is no potential that formation of the GSA will result in either a direct physical change or a reasonably foreseeable indirect change in the environment. The Board further finds that even if formation of the GSA constitutes a project under CEQA, it is exempt from CEQA review pursuant to State CEQA Guidelines § 15061 (b)(3) because it can be seen with certainty that there is no possibility that the formation of the GSA may have a significant effect on the environment, finally, the Board finds that formation of the GSA is further exempt from CEQA review pursuant to State CEQA Guidelines § 15307 and § 15308 as an action authorized by state law and taken by a regulatory agency that will assure the maintenance, restoration, or enhancement of a natural resource and the environment.
5. Beaumont-Cherry Valley Water District is directed to file and post within five (5) business days a Notice of Exemption for this approval with the Clerk of the Board of Supervisors of Riverside County.
6. Resolution 2019-14 is rescinded in its entirety.

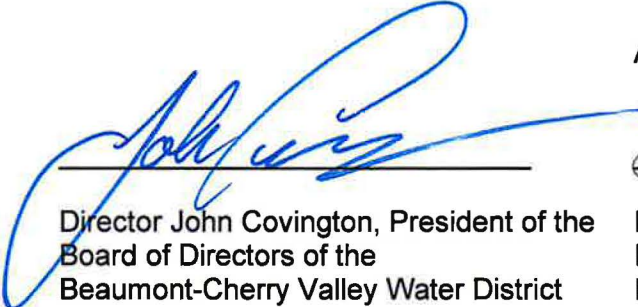
ADOPTED this 27 day of February, 2020, by the following vote:

AYES: Covington, Hoffman, Ramirez, Slawson, Williams

NOES:


ABSTAIN:

ABSENT:



Director John Covington, President of the
Board of Directors of the
Beaumont-Cherry Valley Water District

ATTEST:



Director Lona Williams, Secretary to the
Board of Directors of the
Beaumont-Cherry Valley Water District

**MEMORANDUM OF AGREEMENT TO FORM A
COORDINATED GROUNDWATER SUSTAINABILITY AGENCY
FOR THE UNADJUDICATED PORTION OF THE
SAN TIMOTEO SUBBASIN AND TO CREATE
MULTIPLE GROUNDWATER SUSTAINABILITY PLANS**

This 2019 Memorandum of Agreement (MOA), amending the 2017 Memorandum of Agreement, is entered into by and among Beaumont Cherry Valley Water District (BCVWD), City of Banning (Banning), City of Redlands (Redlands), and Yucaipa Valley Water District (YVWD), which may be referred to herein individually as a "Party" and collectively as the "Parties."

Pursuant to the Sustainable Groundwater Management Act (SGMA) and as further set forth herein, the purpose of this MOA is to form a Groundwater Sustainability Agency (GSA) for part of the unadjudicated portion of the San Timoteo Subbasin (Basin), the members of which GSA shall be Banning, BCVWD, Redlands, and YVWD (herein, the "San Timoteo GSA").

RECITALS

WHEREAS, on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319, and Assembly Bill 1739, collectively known as the Sustainable Groundwater Management Act (SGMA), codified in certain provisions of the California Government Code, commencing with Section 65350.5, and in certain provisions of the California Water Code, including but not limited to, Sections 5200 et seq. and 10720 et seq.; and

WHEREAS, SGMA went into effect on January 1, 2015, and thereafter various clarifying amendments to SGMA were signed into law in 2015, including Senate Bills 13 and 226, and Assembly Bills 617 and 939; and

WHEREAS, the San Timoteo Subbasin (Basin), as further depicted in Exhibit A to this MOA, was originally identified by the California Department of Water Resources (DWR) Bulletin 118 as Subbasin No. 8-02.08 of the Upper Santa Ana Valley Groundwater Basin, and designated by DWR as medium priority, and therefore, except as provided by SGMA, the Basin is subject to the requirements of SGMA; and

WHEREAS, on June 20, 2017, the original parties to the San Timoteo GSA adopted a Memorandum of Agreement pursuant to the requirements of SGMA. The original parties consisted of Beaumont Cherry Valley Water District (BCVWD), Yucaipa Valley Water District (YVWD), City of Redlands (Redlands), and San Geronimo Pass Water Agency (SGPWA); and

WHEREAS, on June 20, 2018, the Board of Directors of Eastern Municipal Water District adopted Resolution No. 2018-083 Initiating a Basin Boundary Modification Request for the San Timoteo Subbasin that was subsequently approved by the Department of Water Resources resulting in a revised Basin boundary as depicted in Exhibit B to this MOA which represents the effective boundary of this San Timoteo GSA; and

WHEREAS, in 2019, the San Timoteo Subbasin was reprioritized and identified as Subbasin No. 8-002.08 of the Upper Santa Ana Valley Groundwater Basin and designated by DWR as a very low priority, and therefore, a Groundwater Sustainability Plan (GSP) is encouraged and authorized, but not required by SGMA (Water Code § 10720.7); and

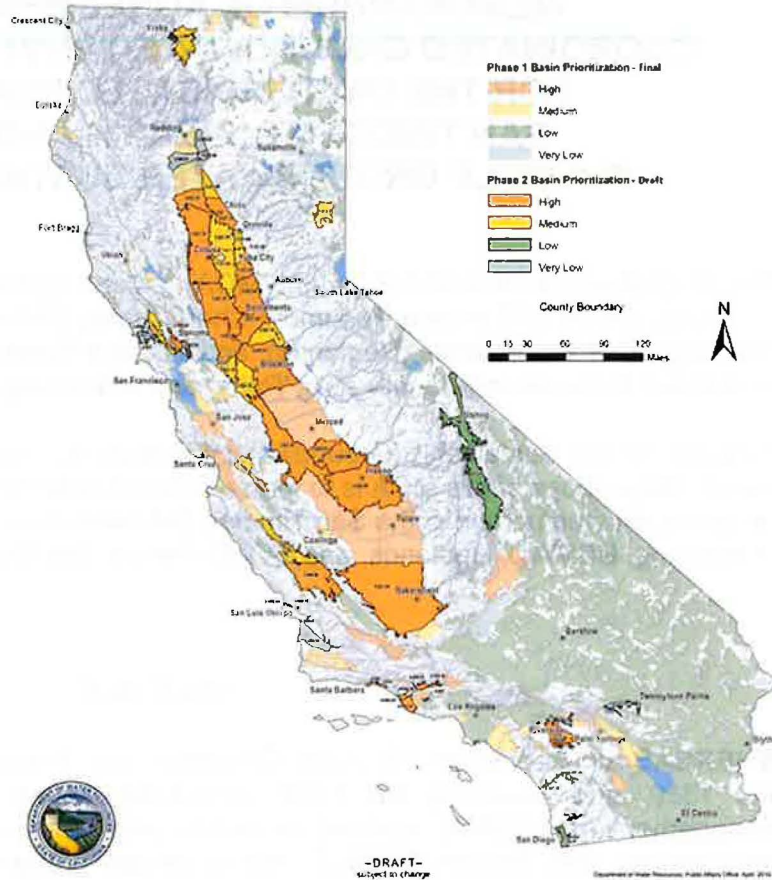
WHEREAS, on June 6, 2019, the General Manager of the San Geronio Pass Water Agency indicated by email message that the San Geronio Pass Water Agency would not be part of the amended San Timoteo GSA due to the very low priority of the Basin; and

WHEREAS, the Parties recognize and agree that a portion of the Basin (herein, the Adjudicated Area) is subject to the Beaumont Basin adjudication and Judgment in the case referred to as *San Timoteo Watershed Management Authority v. City of Banning, et al.*, Riverside County Superior Court Case No. RIC 389197, and that pursuant to SGMA Section 10720.8(a)(1), said portion of the Basin generally is not subject to the requirements of SGMA and will be managed by the Beaumont Basin Watermaster and not the San Timoteo GSA; and

WHEREAS, Banning, BCVWD, Redlands, and YVWD each overlie a portion of the Basin and each has respective groundwater supply and groundwater management responsibilities within the Basin, and have been authorized by their governing board to become part of the San Timoteo GSA; and

WHEREAS, in accordance with the terms of this MOA, and in furtherance of the shared intent of the Parties to maximize funding opportunities, increase transparency, and foster cooperation, the Parties agree that the San Timoteo GSA shall be reformed by this MOA to cover the entire Basin except the Adjudicated Area of the Basin; and

WHEREAS, the Parties mutually desire and intend to work with local stakeholders and interested entities in the Basin that are not Parties to this MOA, including but not limited to City of Beaumont, City of Calimesa, County of Riverside Planning Department, County of San Bernardino Flood Control District, San Bernardino Valley Municipal Water District, Beaumont Basin Watermaster, San Geronio Pass Water Agency, overlying landowners, and others to carry out the policy, purposes, and requirements of SGMA in the Basin.



AGREEMENT

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, it is mutually understood and agreed as follows:

- I. **Incorporation of Recitals.** The Recitals stated above are incorporated herein by reference.
- II. **Purposes.** The purpose of this MOA is to form the San Timoteo GSA for part of the unadjudicated portion of the Basin and to initially create separate Groundwater Sustainability Plans (GSPs) for each Management Area in such a manner that the individual GSPs can be consolidated into a single GSP when the priority of the Basin is changed and a GSP is required.
- III. **Boundaries of San Timoteo GSA.** The boundaries of the San Timoteo GSA, as further depicted in Exhibit B to this MOA, shall be the entire Basin except the Adjudicated Area of the Basin as further specified in this MOA. The Parties understand and agree that the Adjudicated Area of the Basin will not be managed by the San Timoteo GSA.
- IV. **Definitions.** The following terms, whether used in the singular or plural, and when used with initial capitalization, shall have the meanings specified herein. The Parties agree that any definitions set forth herein are intended to be consistent with SGMA, and in the event of any discrepancy between a defined term in this MOA and a defined term in SGMA, the terms of SGMA shall control.
 - A. "Adjudicated Area" refers to that portion of the Basin that is subject to the Beaumont Basin adjudication and Judgment in the case referred to as *San Timoteo Watershed Management Authority v. City of Banning, et al.*, Riverside County Superior Court Case No. RIC 389197, as further depicted in Exhibit B to this MOA.
 - B. "Banning" means the City of Banning.
 - C. "Basin" refers to the San Timoteo Subbasin, designated by the California Department of Water Resources as Subbasin No. 8-002.08, as further specified, and depicted in Exhibit B to this MOA.
 - D. "BCVWD" means the Beaumont Cherry Valley Water District.
 - E. "DWR" means the California Department of Water Resources.
 - F. "GSA" means Groundwater Sustainability Agency, as defined by SGMA.
 - G. "GSP" means Groundwater Sustainability Plan, as defined by SGMA.
 - H. "Management Area" refers to the portions of the Basin that have been identified in Exhibit C that allow each Party to proceed at their leisure to create a site-specific GSP to collect data and support the localized groundwater Management Area.
 - I. "Memorandum of Agreement" or "MOA" refers to this Memorandum of Agreement.

- J. "Party" or "Parties" refers individually or collectively to Beaumont Cherry Valley Water District, City of Banning, City of Redlands, and Yucaipa Valley Water District, as signatories to this MOA.
- K. "Redlands" means the City of Redlands.
- L. "SGMA" refers to the Sustainable Groundwater Management Act.
- M. "San Timoteo GSA" refers to the San Timoteo Subbasin GSA formed under this MOA, the members of which GSA are Banning, BCVWD, Redlands, and YVWD.
- N. "YVWD" means the Yucaipa Valley Water District.

V. Approval of MOA and Formation of the San Timoteo GSA. Approval of this MOA and formation of the San Timoteo GSA shall be accomplished by Banning, BCVWD, Redlands, and YVWD each holding its own noticed meeting and at such hearing approving a Resolution by its governing board to enter into this MOA and jointly form the San Timoteo GSA.

- A. Upon Approval of the MOA, each Party accepts the responsibility to become the Lead Agency for the development of a GSP in their respective Management Area as illustrated in Exhibit C based upon the schedule and timing as determined by the Lead Agency.

Management Area	Lead Agency
A	City of Redlands
B	Yucaipa Valley Water District
C	Beaumont Cherry Valley Water District
D	City of Banning
E	Beaumont Cherry Valley Water District
F	Low Groundwater Production Area

- B. The Lead Agency agrees to incur all costs related to SGMA compliance, or develop an alternative funding mechanism applicable to their respective Management Area to include, but not be limited to, public outreach, websites, annual reports, well installation, groundwater quality monitoring, groundwater elevation monitoring, GSP updates, groundwater replenishment, and other costs associated with SGMA.

VI. Coordination and Cooperation

- A. Management Areas. The Parties acknowledge that SGMA, and provisions of the SGMA regulations promulgated by DWR, including but not limited to Section 354.20 (23 C.C.R. § 354.20), authorize the establishment of Management Areas for the development and implementation of sustainable groundwater management within the Basin, and accordingly the Parties acknowledge that each GSP covering a Management Area shall at a minimum include the following elements which shall be jointly developed, maintained, and modified as appropriate in the future:
 - i. The reason for the creation of each management area;

- ii. The minimum thresholds and measurable objectives established for each Management Area, and an explanation of the rationale for selecting those values
 - iii. The level of monitoring and analysis appropriate for each Management Area;
 - iv. An explanation of how the Management Area can operate under different minimum thresholds and measurable objectives without causing undesirable results outside the Management Area; and
 - v. Specific localized descriptions, maps, and other information sufficient to describe conditions in each area.
- B. Determination to Prepare a GSP. As a very low priority Basin, each Party, as a lead agency, shall retain the sole and absolute discretion to prepare a GSP for their respective Management Area based on the boundary illustrated in Exhibit C.
- C. Continued Cooperation. At least annually, the Parties to this MOA will meet, confer, coordinate, and collaborate to discuss and develop technical, managerial, financial, and other criteria and procedures for the preparation, governance, and implementation of GSPs in the Basin and to carry out the policy, purposes, and requirements of SGMA in the Basin.
- D. Points of Contact. Each Party shall designate a principal contact person for that Party, who may be changed from time to time at the sole discretion of the designating Party. The principal contact person for each Party shall be responsible for coordinating with the principal contact persons for the other Parties in scheduling meetings and other activities under this MOA.
- E. Changes to Water Levels. The Parties shall coordinate and resolve any changes in groundwater elevations within each Management Area to ensure the Parties, stakeholders, and other interested individuals are reasonably protected from damages related to the operation of each individual Management Area.
- F. Development of a Basin-wide GSP. In the event the Department of Water Resources requires, or by unanimous written consent of the Parties adopting this MOA in calendar year 2019, the Parties may consolidate the individual GSPs into one GSP and redefine the cost sharing, voting, and operational parameters for the long-term maintenance and oversight of a Basin-wide GSP.

VII. Roles and Responsibilities

- A. The Parties agree to work in good faith and coordinate all activities to carry out the purposes of this MOA in implementing the policy, purposes, and requirements of SGMA within the boundaries of the San Timoteo GSA.
- B. Banning, BCVWD, Redlands, and YVWD, as members of the San Timoteo GSA, shall coordinate with each other to cause all applicable noticing and submission of required information to DWR regarding formation of the San Timoteo GSA.
- C. Banning, BCVWD, Redlands, and YVWD, as members of the San Timoteo GSA, shall determine the information collected and provided on individual websites for

each Management Area to maintain the integrity and exchange of data with the other Parties and Stakeholders in the Basin.

VIII. Funding and Budgeting. The Parties shall independently be responsible for the development of each GSP within their specific Management Area as provided in Exhibit C.

IX. Stakeholders

- A. The Parties agree to work together in ensuring public outreach and involvement of the public, other interested stakeholders, and other agencies, including but not limited to beneficial uses and users of groundwater as provided in SGMA Section 10723.2 for each Management Area.
- B. The Parties acknowledge, agree, and desire that the preparation, adoption, and implementation of GSPs for the Basin, and the ongoing process of ensuring compliance with the requirements of SGMA in the Basin, will involve coordination and cooperation with stakeholders and other interested parties, including but not limited to those identified in this MOA.

X. Term, Termination, and Withdrawal

- A. Term. This MOA shall continue and remain in effect unless and until terminated by the unanimous written consent of the Parties, or as otherwise provided in this MOA or as authorized by law.
- B. Withdrawal. Any Party may decide, in its sole discretion, to withdraw from this MOA by providing fifteen (15) days written notice to the other Parties. Withdrawal by a Party shall not cause or require the termination of this MOA or the existence of the San Timoteo GSA with respect to the non-withdrawing Parties.

XI. Notice Provisions

All notices required by this MOA shall be made in writing and delivered to the respective representatives of the Parties at their respective addresses as follows:

Beaumont Cherry Valley Water District
Attn: General Manager
560 Magnolia Avenue
Beaumont, California 92223

City of Banning
Attention: Public Works Director
99 E. Ramsey Street
Banning, California 92220

City of Redlands
Attn: Municipal Utilities Director
35 Cajon Street
Redlands, California 92373

Yucaipa Valley Water District
Attn: General Manager
12770 Second Street
Yucaipa, California 92399

Any Party may change the address to which notices are to be given under this MOA by providing all other Parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change. All notices shall be effective upon receipt and shall be deemed received upon confirmed personal service, confirmed courier

service, or on the fifth (5th) calendar day following deposit of the notice in registered first class mail.

XII. General Terms

- A. Amendments. Amendments to this MOA require unanimous written consent of all Parties and approval by the Parties' respective governing bodies.
- B. Successors and Assigns. The terms of this MOA shall be binding upon all successors in interest and assigns of each Party; provided, however, that no Party shall assign its rights or obligations under this MOA without the signed written consent of all other Parties to this MOA.
- C. Waiver. No waiver of any provision of this MOA by any Party shall be construed as a further or continuing waiver of such provision or any other provision of this MOA by the waiving Party or any other Party.
- D. Authorized Representatives. Each person executing this MOA on behalf of a Party hereto affirmatively represents that such person has the requisite authority to sign this MOA on behalf of the respective Party.
- E. Exemption from CEQA. The Parties recognize and agree that, pursuant to SGMA Section 10728.6 and Public Resources Code Section 21065, neither this MOA nor the preparation or adoption of a GSP constitute a "project" or approval of a project under the California Environmental Quality Act (CEQA) or the State CEQA Guidelines, and therefore this MOA is expressly exempt from CEQA review.
- F. Governing Law and Venue. This MOA shall be governed by and construed in accordance with the laws of the State of California. Any suit, action, or proceeding brought under the scope of this MOA shall be brought and maintained to the extent allowed by law in the County of Riverside, California.
- G. Attorney's Fees, Costs, and Expenses. In the event of a dispute among any or all of the Parties arising under this MOA, each Party shall assume and be responsible for its own attorney's fees, costs, and expenses.
- H. Entire Agreement/Integration. This MOA constitutes the entire agreement among the Parties regarding the specific provisions of this MOA, and the Parties hereto have made no agreements, representations or warranties relating to the specific provisions of this MOA which are not set forth herein.
- I. Construction and Interpretation. The Parties agree and acknowledge that this MOA has been developed through a negotiated process among the Parties, and that each Party has had a full and fair opportunity to review the terms of this MOA with the advice of its own legal counsel and to revise the terms of this MOA, such that each Party constitutes a drafting Party to this MOA. Consequently, the Parties understand and agree that no rule of construction shall be applied to resolve any ambiguities against any particular Party as the drafting Party in construing or interpreting this MOA.

- J. Force Majeure. No Party shall be liable for the consequences of any unforeseeable force majeure event that (1) is beyond its reasonable control, (2) is not caused by the fault or negligence of such Party, (3) causes such Party to be unable to perform its obligations under this MOA, and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a force majeure event, the Party unable to perform shall promptly notify the other Parties in writing to the extent practicable. It shall further pursue its best efforts to resume its obligations under this MOA as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.
- K. Execution in Counterparts. This MOA may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.
- L. No Third Party Beneficiaries. This MOA is not intended, and will not be construed, to confer a benefit or create any right on a third party or the power or right of any third party to bring an action to enforce any of the terms of this MOA.
- M. Timing and Captions. Any provision of this MOA referencing a time, number of days, or period for performance shall be measured in calendar days. The captions of the various articles, sections, and paragraphs of this MOA are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, terms, or intent of this MOA.

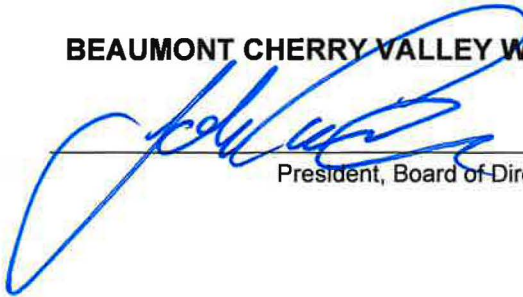
IN WITNESS WHEREOF, the Parties hereto have approved and executed this MOA as of the respective dates specified in the adopting Resolution of each Party as provided above in Article III of this MOA.

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[Signature pages to follow.]

BEAUMONT CHERRY VALLEY WATER DISTRICT

By:




President, Board of Directors

Attest:



Secretary, Board of Directors

Approved as to form:



Counsel, Beaumont Cherry Valley Water District

Participation in the San Timoteo GSA was approved as Resolution No. 2020-05
on February 27, 2020

Notices for the Beaumont Cherry Valley Water District shall be sent as follows:

Attention: General Manager
560 Magnolia Avenue
Beaumont, California 92223

With copies to:

CITY OF BANNING

By: _____
Mayor, City Council

Attest:

Secretary, City Council

Approved as to form:

Counsel, City of Banning

Participation in the San Timoteo GSA was approved as Resolution No. _____
on _____.

Notices for the City of Banning shall be sent as follows:

Attention: Public Works Director
99 E. Ramsey
Banning, California 92220

With copies to:

YUCAIPA VALLEY WATER DISTRICT

By:

President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Yucaipa Valley Water District

Participation in the San Timoteo GSA was approved as Resolution No. _____

on _____.

Notices for the Yucaipa Valley Water District shall be sent as follows:

Attention: General Manager
12770 Second Street
Yucaipa, California 92399

With copies to:

CITY OF REDLANDS

By:

Mayor, City Council

Attest:

Secretary, City Council

Approved as to form:

Counsel, City of Redlands

Participation in the San Timoteo GSA was approved as Resolution No. _____

on _____.

Notices for the City of Redlands shall be sent as follows:

Attention: Municipal Utilities and Engineering Director
35 Cajon Street
Redlands, California 92373

With copies to:

**Exhibit A - Original San Timoteo Subbasin No. 8-02-08
of the Upper Santa Ana Valley - 2017**



**Exhibit B - Modified San Timoteo Subbasin 8-002.08
of the Upper Santa Ana Valley - 2019**



Exhibit C - Management Areas of the San Timoteo Groundwater Sustainability Agency - 2019

