

KERN GROUNDWATER AUTHORITY
for the Tulare Lake Basin portions of KERN COUNTY
JOINT POWERS AGREEMENT

THIS AGREEMENT (“Agreement”) is made and effective as of May 27, 2014, pursuant to the Joint Exercise of Powers Act (Government Code Sections 6500, *et seq.*) by and between the public agencies listed on the attached Exhibit A in order to form the Kern Groundwater Authority.

This Agreement is made with reference to the following facts.

A. Each of the parties to this Agreement provide water service to landowners and/or residents and/or provide water to retail water entities within their respective service areas and the County of Kern has various oversight and active roles relative to water resources within the County, including, but not limited to, flood control and water service.

B. Part 2.75 of Division 6 (commencing at section 10750) of the California Water Code (herein “Groundwater Management Act”, sometimes referred to as “AB 3030”) authorizes the development, adoption and implementation of Groundwater Management Plans by local agencies, including the parties to this Agreement. In adopting AB30303, the Legislature intended to “encourage local agencies to work cooperatively to management groundwater resources within their jurisdictions.” (Section 10750(a)).

C. The Groundwater Management Act further provides that joint powers authorities of local public agencies that provide water service are “local agencies” (section 10752(g)) that in turn may develop Groundwater Management Plans.

D. The parties to this Agreement (General Members) wish to cooperate to carry out the purposes of the Groundwater Management Act cited above and develop, adopt and implement a Groundwater Management Plan that is available to those lands within the Members boundaries and within the Tulare Lake Groundwater Basin (“Plan Area”). The parties agree that the Kern Groundwater Authority will not have the authority to limit the respective Members’ rights and authorities over their own internal matters, including, but not limited to, a Member’s surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects.

THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, it is agreed by and among the parties hereto as follows:

Article I: Definitions

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

(a) "Associate Members" shall mean those Members of the Authority admitted in accordance with the terms and provisions of this Agreement that are not General Members. The Board of Directors may from time to time admit Associate Members on terms and conditions determined by the Board. Representatives of Associate Members may not serve on the Board and/or Board Committees. Likewise, while the Board of Directors welcomes their input, the Representatives of Associate Members shall be non-voting and their presence shall not be counted in determining whether a quorum is present.

(b) "Authority" shall mean the Kern Groundwater Authority, being the separate entity created pursuant to the provisions of Government Code sections 6500 *et seq.* by this Agreement.

(c) "Board of Directors" or "Board" shall mean the governing body of the Authority as established by Section 3.01 of this Agreement.

(d) "Committee" shall mean any committee established pursuant to Section 3.03 of this Agreement.

(e) "Fiscal Year" shall mean that period of 12 months established as the Fiscal Year of the Authority pursuant to Section 4.01 of this Agreement.

(f) "General Members" shall mean those Members of the Authority more particularly identified as General Members on Exhibit A, and any parties which shall hereafter become General Members in accordance with the terms and provisions of this Agreement. A public agency may participate as a General Member on its own behalf or join with one or more agencies as a single General Member. Multiple agencies which elect to coordinate their representation as one General Member shall, for purposes of this Agreement, be treated as one General Member.

(g) "Members" shall mean the General Members and Associate Members.

(h) "Parties" or "party" shall mean the public agencies which are General Members of the Authority and have executed this Agreement and any subsequent General Members joined in accordance with this Agreement.

(i) "Special Activities" shall mean activities that are consistent with the purpose of this Agreement, but which are undertaken by fewer than all the parties in the name of the Authority pursuant to Section 3.07.

(j) "Plan Area" shall mean those lands located within the Member boundaries that are within the Tulare Lake Groundwater Basin, as defined in the 2003 Department of Water Resources Bulletin 118 as shown on Map 1.

Article II: Creation of Authority

Section 2.01 – Creation.

The parties, pursuant to their joint exercise of powers under the provisions of Government Code sections 6500 *et seq.*, hereby create a public entity to be known as the “Kern Groundwater Authority.”

Section 2.02 – Term.

This Agreement shall become effective upon 12 General Members executing same. This Agreement shall remain in effect until terminated by agreement of a majority of then participating General Members. Unless it is terminated, this Agreement shall remain in effect and be binding upon the parties hereto and upon all subsequent parties joined herein for such a period as the Authority engages in any activities under this Agreement. Except as specifically provided in this Agreement, the foregoing provision shall not apply to any party which withdraws or is terminated from its participation in the Authority in accordance with this Agreement. This Agreement shall supersede the Interim Funding Agreement effective 2013. Any monies collected pursuant to the Interim Funding Agreement which have not been expended as of the date of this Agreement shall be credited towards each Member’s financial commitment as identified herein.

Section 2.03 – Purpose.

The purpose of this Agreement is to provide for the joint exercise of powers common to each of the General Members, through the Authority, to cooperatively carry out the purposes of the Groundwater Management Act and develop, adopt and implement a legally sufficient Groundwater Management Plan that encompasses the Plan Area in a manner that does not additionally limit, or empower, a respective Members’ rights and authorities over their own water supply matters, including, but not limited to, a Member’s surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects. The Authority is formed solely to coordinate and carry out such activities related to groundwater management. Activities unrelated to such activities concerning groundwater management shall not be undertaken by the Authority.

Section 2.04 – Powers.

(a) The Authority shall have the power to take any action to carry out the purposes of this Agreement. Notwithstanding the foregoing, the Authority shall not have the power to control, limit or empower a Members rights and authorities over their own water supply matters, including but not limited to surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects. Likewise, the Authority shall have no power to interfere with a Member’s rights, use or management of the Member’s water or water supply, so long as such use is consistent with applicable law. Furthermore, the Authority shall have no right to interfere with individual landowner’s rights to utilize, apply, store, or otherwise use surface or groundwater, so long as such use is consistent with applicable law. The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers provided that said acts are duly adopted by the then seated Board of Directors and are consistent with this

Agreement. Except as provided in Section 4.05, the Authority may not levy assessments on its Members. In accordance with California Government Code Section 6509, the foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Cawelo Water District.

(b) Notwithstanding anything to the contrary in this Agreement, the Authority shall not undertake any activities within the geographic or service area boundaries of any of its Members pursuant to the Groundwater Management Act or any Groundwater Management Plan developed or adopted by the Authority, unless (a) the Member has formally adopted the Groundwater Management Plan, or (b) the Member has formally and expressly consented and agreed to the activity proposed.

Article III: Internal Organization

Section 3.01 – Governing Body.

Except to the extent certain powers are delegated to a Committee pursuant to Section 3.03, the Authority shall be governed by a Board of Directors which is hereby established and which shall be initially composed of the General Members, as shown on Exhibit A. Without amending this Agreement, the Board of Directors composition shall be altered from time to time to reflect the termination and/or admission of any new General Members. The Board of Directors may also designate one board member at large who will serve a term determined by the Board at the time of appointment.

Each General Member shall select a representative from its governing body or the governing body of one of the agencies within the General Member to serve as their Board member.

Any board member at large shall be selected by an action of the other members of the Board, shall not be a member of the governing body of any of the General Members..

A General Member may designate from their governing body or the governing body of one of the agencies within the General Member to serve as their alternative Director. The role of each alternate Director shall be to assume the duties of the Director appointed by his/her member entity in case of the absence or unavailability of such Director, including without limitation such Director's duties as a member of any Committee established pursuant to Section 3.03. The Directors and alternates so named shall continue to serve until their respective successors are appointed.

Section 3.02 – Officers.

The Board shall select a Chair from among the Board of Directors who shall be the presiding officer of the Board meetings. The Board shall select a Vice Chair from among the Board of Directors who shall serve as the presiding officer in the absence of the Chair. The Board shall also select a Secretary, who need not be a member of the Board of Directors. The terms of such Officers shall be established by the Board of Directors from time to time and as necessary.

Section 3.03 – Committees.

There shall be established such Committees as the Board of Directors shall determine from time to time. Each such Committee shall be comprised of representatives of General Members, shall exist for the term specified in the action establishing the Committee, shall meet as directed by the Board of Directors, and shall be make recommendations to the Board of Directors on the various activities of the Authority. The Board of Directors may delegate authority to the Committee to administer and implement the various activities of the Authority.

Section 3.04 – Seal; Bylaws.

The Board may (but need not) adopt an official seal for the Authority and adopt such bylaws as it may deem necessary to regulate the affairs of the Authority in accordance with this Agreement. The bylaws may be amended from time to time by the Board of Directors as it may deem necessary.

Section 3.05 – Voting; Quorum.

(a) Two-thirds of the representatives on the Board of Directors shall constitute a quorum for the transaction of Authority Business. Each Board Director (or in his/her absence alternate Director) shall be entitled to one vote. Any Board member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

(b) Any action by the Board of Directors shall require a two-thirds vote of all the General Members. Any amendment of this Agreement shall be governed by Section 7.01.

(c) Two-thirds of the members of a Committee shall constitute a quorum. All questions and matters of any nature whatsoever coming before any Committee shall be determined, provided a quorum is present, by the concurrence of 75% of the members of such Committee (as applicable) present and voting on such matter. Any Committee member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

Section 3.06 – Meetings.

Meetings of the Board of Directors and any Committee (to the extent applicable) shall be conducted in accordance with the Ralph M. Brown Act, California Government Code Sections 54950, *et seq.*

Section 3.07 - Special Activities.

(a) With the prior approval of the Board of Directors, Members may undertake Special Activities in the name of the Authority. Prior to undertaking a Special Activity, the Members electing to participate in the Special Activity shall enter into an activity agreement. Such activity agreement shall provide that (i) no Special Activity undertaken pursuant to such agreement shall conflict with the terms of this Agreement and (ii) the Members to the activity agreement shall indemnify, defend and hold the Authority, and the Authority's other Members, harmless from and against any liabilities, costs or expenses of any kind arising as a result of the Special Activity described in the activity agreement. All assets, rights, benefits, debts, liabilities and obligations attributable to a Special Activity shall be assets, rights, benefits, debts, liabilities and obligations solely of the Members that have entered into the activity agreement for that Special Activity, in accordance with the terms of the activity agreement, and shall not be the assets, rights, benefits, debts, liabilities and obligations of those Members that have not executed the activity agreement. Members not electing to participate in the Special Activity shall have no rights, benefits, debts, liabilities or obligations attributable to such Special Activity.

(b) If and to the extent a Groundwater Management Plan is developed, the Members shall consider the adoption and implementation thereof as a Special Activity.

Article IV: Financial Provisions

Section 4.01 – Fiscal Year.

The Fiscal Year of the Authority shall be from January 1 through December 31 of each year.

Section 4.02 – Funds; Accounts.

(a) The North Kern Water Storage District shall serve as the Fiscal Agent and Treasurer for the Authority unless otherwise directed by the Board. The Fiscal Agent shall be responsible for all money of the Authority from whatever source.

(b) All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements at least quarterly during the Fiscal Year. The books and records of the Authority shall be open to inspection by the Members.

(c) The Authority shall contract with a certified public accountant to make an audit or review of the accounts and records of the Authority which shall be conducted in compliance with Section 6505 of the California Government Code. The Fiscal Agent shall have the right to reject any proposed certified public accountant. All costs associated with this Audit will be the full responsibility of the Authority.

Section 4.03 – Property; Bonds.

The Board of Directors shall from time to time designate the officers and persons, in addition to those specified in Section 4.02 above, who shall have charge of, handle, or have access to any property of the Authority. Each such officer and person shall file a bond in an amount designated by the Board of Directors.

Section 4.04 – Budget.

By a date set by the Board of Directors each Fiscal Year, the Board of Directors shall adopt a budget for the Authority for the ensuing Fiscal Year; provided, that except as provided in Section 4.05, the Authority shall not impose assessments or other charges on Members.

Section 4.05 – Payments To The Authority.

- (a) All fees, costs and expenses incurred by the Authority shall be funded (i) from voluntary contributions from third parties, (ii) assessments on the General Members, levied from time to time by the Board of Directors to carry out the activities of the Authority generally applicable to all General Members, which shall be equal per General Member, as initially shown on Exhibit A.
- (b) No Member shall be bound, financially or otherwise, by any obligation, contract or activity undertaken by the Authority unless and except to the extent agreed upon by the Member, except that each Member shall be obligated to fund its then current annual share of the general basic budget of the Authority, provided such budgets are otherwise approved as provided herein. Funding of other matters shall be through Special Activity agreements or as otherwise agreed to by the Members in writing.

Article V: Management

Section 5.01 – Management.

In addition to, or in lieu of, hiring employees, the Authority may engage one or more parties to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors. A party so engaged may, but need not, be a Member. Any party so engaged shall have such responsibilities as are set forth in the contract for such party's services.

Article VI: Relationship of Authority And Its Members

Section 6.01 – Separate Entity; Property.

In accordance with California Government Code Sections 6506 and 6507, the Authority shall be a public entity separate and apart from the parties to this Agreement. Unless, and to the extent otherwise agreed herein, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the Member entities. The Authority shall own and hold title to all funds, property and works acquired by it during the term of this Agreement.

Section 6.02 – Admission, Withdrawal and Termination of Members.

(a) Additional qualified parties may join in this Agreement and become General Members upon the approval of the Board of Directors, subject to terms and conditions as may be established by the Board of Directors. Associate Members may be admitted on terms and conditions established by the Board of Directors. Prior to being admitted as a new Member, an entity shall execute an agreement to be bound by the terms of this Agreement as if such entity had been an original signatory hereto.

(b) Notwithstanding anything herein to the contrary, any Member may withdraw from this Agreement by giving 30 days written notice of its election to do so, which notice shall be given to the Board of Directors and to each of the other parties.

(c) Upon withdrawal, the Member shall not be relieved of all obligations for assessments to pay costs or liabilities of the Authority which were incurred prior to the date of withdrawal.

(d) Any Member may be terminated by a three-fourths vote of the Board of Directors representing the General Members not subject to the termination vote, and upon termination they shall no longer be a member of the Authority.

(e) Upon termination, the Member shall be entitled to a reimbursement for all assessments collected within 12 months prior to the termination vote and they shall be relieved of all ongoing obligations for assessments to pay costs or liabilities of the Authority which were incurred prior to the date of the termination.

(f) Upon withdrawal or termination as a Member, the provisions of Section 2.04(b) shall remain applicable to any such withdrawing or terminated Member.

Section 6.03 – Disposition Of Property Upon Termination Or Determination By Board Of Directors Of Surplus.

(a) Upon termination of this Agreement or upon determination by the Board of Directors that any surplus money is on hand, such surplus money shall be returned to the Members of the Authority which contributed such monies in proportion to their contributions. The distribution of said surplus shall be proportionate to the current year percentages as shown in Exhibit A, or as modified after the inclusion of new Members.

(b) The Board of Directors shall first offer any surplus properties, works, rights and interests of the Authority for sale to the Member entities and the sale shall be based on the highest bid. If no such sale is consummated, then the Board of Directors shall offer the surplus properties, works, rights and interests of the Authority for sale in accordance with applicable law to any governmental agency, private entity or persons for good and adequate consideration.

Section 6.04 –Liability For Debts.

The Members do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Provided, however, if any General Member(s) of the Authority are, under such applicable law, held liable for the acts or omissions of the Authority caused by negligent or wrongful act or omission occurring in the performance of this Agreement, such parties shall be entitled to contribution from the other Members so that after said contributions each General Member shall bear an equal share of such liability, as initially shown on Exhibit A.

Article VII: Miscellaneous Provisions

Section 7.01 – Amendment.

This Agreement may be amended from time to time by the concurrence of 75% of all of the General Members. To provide non-concurring parties an opportunity to withdraw from the Authority as provided herein, an amendment shall be binding on all parties 45 days after the required concurrence has been obtained.

Section 7.02 – Severability And Validity Of Agreement.

Should the participation of any party to this Agreement, or any part, term or provision of this Agreement be decided by the courts or the legislature to be illegal, in excess of that party's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each party hereby agrees it would have entered into this Agreement upon the remaining terms and provisions.

Section 7.03 – Assignment.

Except as otherwise provided in this Agreement, the rights and duties of the parties to this Agreement may not be assigned or delegated without the advance written consent of the Authority, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Authority then in effect. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This section does not prohibit a party from entering into an independent agreement with another agency regarding the financing of that party's contributions to the Authority or the disposition of proceeds which that party receives under this Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the parties under this Agreement.

Section 7.04 – Execution In Parts Or Counterparts.

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the parties hereto. Facsimile or electronic signatures shall be binding.

Section 7.05 – Notices.

Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the parties hereto on Exhibit "A" of this Agreement, or to such other changed addresses communicated to the Authority and the Member entities in writing, and to such other entities that become Members.

Section 7.06 – Dispute Resolution.

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the parties involved shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s). If the parties are unsuccessful in resolving such matter(s) through an informal meeting process within sixty (60) days, they shall attempt to resolve such matter(s) through mediation. If they are unable to resolve such matter(s) through mediation within ninety (90) days, they may attempt to settle such issue(s) by arbitration under the rules and regulations of the American Arbitration Association. Any party requesting arbitration under this Agreement must make a request on the other parties by registered or certified mail with a copy to the American Arbitration Association.

Section 7.07 – Integration.

All revenues and expenses authorized by and pursuant to the Interim Funding Agreement, effective 2013, shall be assumed by the JPA and shall be reconciled and allocated pursuant to Article IV herein. Any contract entered into on behalf of the parties to the Interim Funding Agreement shall be assigned to the JPA and administered pursuant to this JPA.

IN WITNESS WHEREOF, the parties hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

NAME OF MEMBER: Kern County Water Agency

By:



James M. Beck

Its:

General Manager

Dated:

5/27/14

3200 Rio Mirada Drive

Bakersfield, CA 93308

(address)

Section 7.06 – Dispute Resolution.

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the parties involved shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s). If the parties are unsuccessful in resolving such matter(s) through an informal meeting process within sixty (60) days, they shall attempt to resolve such matter(s) through mediation. If they are unable to resolve such matter(s) through mediation within ninety (90) days, they may attempt to settle such issue(s) by arbitration under the rules and regulations of the American Arbitration Association. Any party requesting arbitration under this Agreement must make a request on the other parties by registered or certified mail with a copy to the American Arbitration Association.

Section 7.07 – Integration.

All revenues and expenses authorized by and pursuant to the Interim Funding Agreement, effective 2013, shall be assumed by the JPA and shall be reconciled and allocated pursuant to Article IV herein. Any contract entered into on behalf of the parties to the Interim Funding Agreement shall be assigned to the JPA and administered pursuant to this JPA.

IN WITNESS WHEREOF, the parties hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

NAME OF MEMBER: Improvement District No. 4

By: J. M. Bl

Its: General Manager

Dated:

June 25, 2014

3200 Rio Mirada Drive
Bakersfield, CA 93308
(address)

Section 7.06 – Dispute Resolution.

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the parties involved shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s). If the parties are unsuccessful in resolving such matter(s) through an informal meeting process within sixty (60) days, they shall attempt to resolve such matter(s) through mediation. If they are unable to resolve such matter(s) through mediation within ninety (90) days, they may attempt to settle such issue(s) by arbitration under the rules and regulations of the American Arbitration Association. Any party requesting arbitration under this Agreement must make a request on the other parties by registered or certified mail with a copy to the American Arbitration Association.

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IN WITNESS WHEREOF, the parties hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

NAME OF MEMBER: Kern Water Bank Authority

By: 

Its: General Manager

Dated: March 17, 2014

1620 Mill Rock Way, Suite 500
Bakersfield CA 93311
(address)