

MEMORANDUM OF UNDERSTANDING

Development of a Groundwater Sustainability Plan

for the East Contra Costa County Portion of the

Tracy Subbasin, (DWR Basin 5-22.15, San Joaquin Valley)

This Memorandum of Understanding for the Development of a Groundwater Sustainability Plan for the East Contra Costa County portion of the Tracy Subbasin, (DWR Basin 5-22.15, San Joaquin Valley) (“**MOU**”) is entered into and effective this 9th day of May, 2017 (“**Effective Date**”) by and among the City of Antioch (“Antioch”), City of Brentwood (“Brentwood”), Byron-Bethany Irrigation District (“BBID”), Contra Costa Water District (“CCWD”), Contra Costa County (“County”), Diablo Water District (“DWD”), East Contra Costa Irrigation District (“ECCID”), and Discovery Bay Community Services District (“Discovery Bay”). Each of the foregoing parties to this MOU is sometimes referred to herein as a “**Party**” and are collectively sometimes referred to as the “**Parties.**”

Recitals

A. In September 2014, the California Legislature enacted the Sustainable Groundwater Management Act of 2014 (“**SGMA**”), which established a statewide framework for the sustainable management of groundwater resources. That framework focuses on granting new authorities and responsibility to local agencies while holding those agencies accountable. The framework also provides for state intervention where a local agency fails to develop a groundwater sustainability plan in a timely manner.

23 B. The Tracy Subbasin (“**Basin**”) is referred to as DWR Basin 5-22.15, San Joaquin Valley
24 and is shown on the map attached hereto as Exhibit A and incorporated herein by reference as if
25 set forth in full. The Tracy Subbasin is located in eastern Contra Costa County and in San Joaquin
26 County, and Alameda County. The portion of the Basin within Contra Costa County is referred to
27 herein as the “**East CC Basin**,” the portion of the Basin within San Joaquin County is referred to
28 herein as the “**SJ Basin**,” and the portion of the Basin within Alameda County is referred to herein
29 as the “**Alameda Basin**.” The Parties collectively overlie all of the East CC Basin.

30 C. Under SGMA, one or more local agencies may form a groundwater sustainability agency
31 (“**GSA**”), by memorandum of agreement, joint exercise of powers agreement, or other agreement.
32 (Wat. Code, §§ 10723(a), 10723.6.) The Parties desire for each Party to be the GSA within all or
33 a portion of that Party’s boundary. The Parties further desire to develop a governance structure
34 for the East CC Basin to be considered during development of the groundwater sustainability plan
35 (a “**GSP**”) for the East CC Basin (the “**East CC Basin GSP**”). The Parties further desire to resolve
36 areas of jurisdictional overlap so that no two Parties serve as GSAs over the same area. The
37 purpose of this MOU is to coordinate the Parties’ activities related to each Party becoming a GSA,
38 development of the East CC Basin GSP, and each Party’s future consideration of whether to adopt
39 a GSP for the East CC Basin.

40 D. The Parties wish to collaborate in an effort to ensure sustainable groundwater management
41 for the East CC Basin, manage the groundwater basin as efficiently as practicable balancing the
42 financial resources of the agencies with the principles of effective and safe groundwater
43 management, while retaining groundwater management authority within their respective
44 jurisdictions. The Parties desire to share responsibility for East CC Basin management under
45 SGMA. The Parties recognize that the key to success in this effort will be the coordination of

activities under SGMA, and the collaborative development of the East CC Basin GSP, which each Party may consider adopting and implementing within its GSA management area. The Parties also will need to confer with GSAs for the SJ Basin and Alameda Basin regarding the terms of an agreement that coordinates the East CC Basin GSP with the GSP(s) of the GSA(s) for the SJ Basin and the Alameda Basin.

E. The Basin has been designated by the California Department of Water Resources (“DWR”) as a medium-priority groundwater basin, which, under the terms of SGMA, means that the Parties must submit an East CC Basin GSP to DWR by January 31, 2022.

F. The Parties wish to memorialize their commitments by means of this MOU.

Understandings

1. *Term.* The term of this MOU begins on the Effective Date, which shall occur upon execution of this MOU by all eight of the parties, and this MOU shall remain in full force and effect until the earliest of the following events: (i) January 31, 2022, (ii) the date upon which the Parties submit an East CC Basin GSP to DWR, or (iii) the date upon which the Parties then party to the MOU execute a document jointly terminating the provisions of this MOU. An individual Party’s obligations under this MOU terminate when the Party withdraws from the MOU in accordance with Section 4.

2. *Development of the GSP*

a. *Parties to Become GSAs.* Each Party, except Contra Costa Water District, agrees to take the necessary actions to become the GSA for all or a portion of that area of the East CC Basin that it overlies, as shown on Exhibit B, attached hereto, no later than April 1, 2017, or shortly thereafter. The Parties shall jointly submit the Parties’

individual elections to become GSAs and this MOU to DWR prior to April 1, 2017, or shortly thereafter. The Parties further agree to develop a governance structure for the East CC Basin to be considered during development of the East CC Basin GSP

- b. *Single GSP.* The Parties will collaborate to develop a single East CC Basin GSP that, at a minimum, satisfies the GSP requirements in the SGMA and the regulations promulgated under the SGMA. The East CC Basin GSP must include an analysis of implementation costs and revenue sources, and must include an analysis of governance structure options. The East CC Basin GSP shall be drafted in a manner that preserves, and does not purport to supersede, the land use authority of each city or county, or the statutory authority of each special district, that is a party to this MOU. The East CC Basin GSP must include provisions for consultation between a GSA and any public agency that the GSA overlaps before the GSA takes any action that may relate to that public agency's exercise of its statutory authority. Unless the Parties later agree otherwise, it is intended that the East CC Basin GSP will be implemented by each Party within its respective GSA management area, and that the Parties will coordinate their implementation of the East CC Basin GSP. The Parties will endeavor to negotiate terms of an agreement with the GSA(s) for the SJ Basin and the Alameda Basin, to ensure that the East CC Basin, SJ Basin, and Alameda Basin GSAs' GSP(s) are coordinated consistent with the SGMA. If the terms of that MOU are negotiated, the Parties will ask their governing bodies to consider approving the MOU.

90 c. *Overlap Areas.* Solely for the purpose of complying with the SGMA requirement
91 that GSA management areas not overlap, the Parties agree that there are no
92 overlapping GSA management areas, as shown on Exhibit B. This MOU does not
93 purport to limit any Party's legal authority to utilize and deliver groundwater or
94 surface water throughout its jurisdictional boundary (as may be amended from
95 time-to-time), which may include area outside of a Party's management area shown
96 on Exhibit B.

97 d. *Cooperation of Efforts.* The Parties will designate staff who will endeavor to meet
98 monthly or more frequently if necessary to develop the terms of the East CC Basin
99 GSP in an expeditious manner.

100 e. *Financing .*

101 (1) The outside technical/consultant costs associated with developing the East CC
102 Basin GSP ("GSP Costs") will be shared equally among the Parties. However,
103 the County, at its sole discretion, may satisfy its share of GSP Costs by providing
104 in-kind services, which may include mapping, graphics, and database
105 management services.

106 (2) The \$118,300 contract with Luhdorff and Scalmanini dated April 1, 2015, for
107 SGMA technical support has been paid one-fifth each by BBID, Brentwood,
108 DWD, ECCID and Discovery Bay. Antioch and CCWD agree that within 60 days
109 of the effective date of this MOU, they shall reimburse BBID, Brentwood, DWD,
110 ECCID and Discovery Bay each \$3,380 in order to reallocate the \$118,300
111 contract cost into one-seventh portions.

f. *Approval of the GSP.* The Parties agree that the East CC Basin GSP will become effective for each Party when all of the Parties adopt the East CC Basin GSP.

3. *Savings Provisions.* This MOU shall not operate to validate or invalidate, modify or affect any Party's water rights or any Party's obligations under any agreement, contract or memorandum of understanding/agreement entered into prior to the effective date of this MOU. Nothing in this MOU shall operate to convey any new right to groundwater to any Party. Each Party to this MOU reserves any and all claims and causes of action respecting its water rights and/or any agreement, contract or memorandum of understanding/agreement; any and all defenses against any water rights claims or claims under any agreement, contract or memorandum of understanding/agreement.

4. *Withdrawal.* Any Party shall have the ability to withdraw from this MOU by providing sixty (60) days written notice of its intention to withdraw. Said notice shall be given to each of the other Parties.

a. A Party shall not be fiscally liable for expenditures following its withdrawal from this MOU, provided that the Party provides written notice at least sixty (60) days prior to the effective date of the withdrawal. A withdrawal shall not terminate, or relieve the withdrawing Party from, any express contractual obligation to another Party to to this MOU or to any third party incurred or encumbered prior to the withdrawal.

b. In the event of a Party's withdrawal, this MOU shall continue in full force and effect among the remaining Parties. Further, a Party's withdrawal from this MOU does not, without further action by that Party, have any effect on the withdrawing Party's

134 decision to be a GSA. A withdrawing Party shall coordinate the development of its
135 groundwater sustainability plan with the other Parties to this MOU.

136 5. *CEQA*. Nothing in this MOU commits any Party to undertake any future discretionary
137 actions referenced in this MOU, including but not limited to electing to become a GSA and
138 adopting the East CC Basin GSP. Each Party, as a lead agency under the California
139 Environmental Quality Act (“CEQA”), shall be responsible for complying with all
140 obligations under CEQA that may apply to the Party’s future discretionary actions pursuant
141 to this MOU, including electing to become a GSA and adopting the East CC Basin GSP.

142 6. *Books and Records*. Each Party shall have access to and the right to examine any of the
143 other Party’s pertinent books, documents, papers or other records (including, without
144 limitation, records contained on electronic media) relating to the performance of that
145 Party’s obligations pursuant to this Agreement, *providing that* nothing in this paragraph
146 shall be construed to operate as a waiver of any applicable privilege and *provided further*
147 that nothing in this paragraph shall be construed to give either Party rights to inspect the
148 other Party’s records in excess of the rights contained in the California Public Records Act.

149 7. *General Provisions*

150 a. *Authority*. Each signatory of this MOU represents that s/he is authorized to execute
151 this MOU on behalf of the Party for which s/he signs. Each Party represents that it
152 has legal authority to enter into this MOU and to perform all obligations under this
153 MOU.

154 b. *Amendment*. This MOU may be amended or modified only by a written instrument
155 executed by each of the Parties to this MOU.

- c. *Jurisdiction and Venue.* This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in the County of Contra Costa, California.
- d. *Headings.* The paragraph headings used in this MOU are intended for convenience only and shall not be used in interpreting this MOU or in determining any of the rights or obligations of the Parties to this MOU.
- e. *Construction and Interpretation.* This MOU has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this MOU. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this MOU.
- f. *Entire Agreement.* This MOU constitutes the entire agreement of the Parties with respect to the subject matter of this MOU and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this MOU.
- g. *Partial Invalidity.* If, after the date of execution of this MOU, any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this MOU, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- h. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU and forbearance to enforce one or more of the remedies provided in this MOU shall not be deemed to be a waiver of that remedy.
- i. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this MOU.
- j. *Compliance with Law.* In performing their respective obligations under this MOU, the Parties shall comply with and conform to all applicable laws, rules, regulations, and ordinances.
- k. *Liability.* Each Party agrees to indemnify and hold every other Party to the Agreement, and their officers, agents and employees, free and harmless from any costs or liability imposed upon any other Party, officers, agents, or employees arising out of any acts or omissions of its own officers, agents or employees.
- l. *Third Party Beneficiaries.* This MOU shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.
- m. *Counterparts.* This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- n. *Notices.* All notices, requests, demands or other communications required or permitted under this MOU shall be in writing unless provided otherwise in this MOU and shall be deemed to have been duly given and received on: (i) the date of

service if served personally or served by electronic mail or facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

City of Antioch

City Manager

P.O. Box 5007

Antioch, CA 94531-5007

Telephone: (925) 779-7011

Facsimile: (925) 779-7003

City Of Brentwood

City Manager

150 City Park Way

Brentwood, CA 94513

Phone: (925) 516-5400

Fax: (925) 516-5441

225 **Byron Bethany Irrigation District**

226 General Manager

227 7995 Bruns Road

228 Byron, CA 94514-1625

229 Telephone: (209) 835-0375

230 Facsimile: (209) 835-2869

231

232

233 **Contra Costa Water District**

234 General Manager

235 Contra Costa Water District

236 P. O. Box H20

237 Concord, CA 94524

238 Phone (925) 688-8032

239 Fax (925) 688-8197

240

241

242

243 **Contra Costa County**

244 Director, Department of Conservation and Development

245 30 Muir Road

246 Martinez, CA 94553

247 Phone (925) 674-7866

248

249 **Diablo Water District**

250 Attn: General Manager

251 P.O. Box 127

252 87 Carol Lane

253 Oakley, CA 94561

254 Phone: (925) 625-3798

255 Fax: (925) 625-0814

256

257

258 **East Contra Costa Irrigation District**

259 General Manager

260 1711 Sellers Avenue

261 Brentwood, CA 94513

262 Phone: (925) 634-3544

263 Fax: (925) 634-0897

264

265

266 **Discovery Bay Community Services District**

267 C/O: Mike Davies, General Manager

268 1800 Willow Lake Road

269 Discovery Bay, CA 94505-9376

270 Telephone: (925) 634-1131

271 Facsimile: (925) 513-2705

272

273 8. Signatures. The Following signatures attest each Party's agreement hereto.

274 **CITY OF ANTIOCH**

275

276 By:  Date: 4/27/17

277 Ron Bernal, ~~Interim~~ City Manager

278 APPROVED AS TO FORM:

279
280 By:  Date: 4/20/17

281 Michael Vigilia, City Attorney

282

283 **CITY OF BRENTWOOD**

284

285 By: _____ Date: _____

286 Gustavo "Gus" Vina, City Manager

287

288 APPROVED AS TO FORM:

289

290 By: _____ Date: _____

291 Damien Brower, City Attorney

292

293 **BYRON BETHANY IRRIGATION DISTRICT**

294

295 By: _____ Date: _____

296 Rick Gilmore, General Manager

297

298 **CONTRA COSTA WATER DISTRICT**

299

300 By: _____ Date: _____

301 Jerry Brown, General Manager

302

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277 Ron Bernal, Interim City Manager

278 APPROVED AS TO FORM:

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280 By: _____ Date: _____

281 Michael Vigilia, City Attorney

282

283 **CITY OF BRENTWOOD**

284

285 By:  Date: 5/9/17

286 Gustavo "Gus" Vina, City Manager

287

288 APPROVED AS TO FORM:

289 By:  Date: 5-8-17

290 Damien Brower, City Attorney

291

292 **BYRON BETHANY IRRIGATION DISTRICT**

293

294 By: _____ Date: _____

295 Rick Gilmore, General Manager

296

297 **CONTRA COSTA WATER DISTRICT**

298

299 By: _____ Date: _____

300 Jerry Brown, General Manager

301

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281 Michael Vigilia, City Attorney

282

283 **CITY OF BRENTWOOD**

284

285 By: _____ Date: _____

286 Gustavo "Gus" Vina, City Manager

287

288 APPROVED AS TO FORM:

289

290 By: _____ Date: _____

291 Damien Brower, City Attorney

292

293 **BYRON BETHANY IRRIGATION DISTRICT**

294

295 By:  _____ Date: 3/27/17

296 Rick Gilmore, General Manager

297

298 **CONTRA COSTA WATER DISTRICT**

299

300 By: _____ Date: _____

301 Jerry Brown, General Manager

302

273 8. Signatures. The Following signatures attest each Party's agreement hereto.

274 **CITY OF ANTIOCH**

275

276 By: _____ Date: _____

277 Steven Duran, City Manager

278 APPROVED AS TO FORM:

279

280 By: _____ Date: _____

281 Michael Vigilia, City Attorney

282

283 **CITY OF BRENTWOOD**

284

285 By: _____ Date: _____

286 Gustavo "Gus" Vina, City Manager

287

288 APPROVED AS TO FORM:

289

290 By: _____ Date: _____

291 Damien Brower, City Attorney

292

293 **BYRON BETHANY IRRIGATION DISTRICT**

294

295 By: _____ Date: _____

296 Rick Gilmore, General Manager

297

298 **CONTRA COSTA WATER DISTRICT**

299

300 By:  acting for Date: 4/27/17

301 Jerry Brown, General Manager

302

303 APPROVED AS TO FORM:

304

305 By: 

Date: 4/19/17

306 District Legal Counsel

307

308 **CONTRA COSTA COUNTY**

309

310 By: _____

Date: _____

311 John Kopchik, Director of

312 Conservation and Development

313 APPROVED AS TO FORM:

314 Sharon L. Anderson, County Counsel

315

316 By: _____

Date: _____

317 Deputy County Counsel

318

319 **DIABLO WATER DISTRICT**

320

321 By: _____

Date: _____

322 Mike Yeraka, General Manager

323

324 **EAST CONTRA COSTA IRRIGATION DISTRICT**

325

326 By: _____

Date: _____

327 Patricia A. Corey, General Manager

328

329 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

330

331 By: _____

Date: _____

332 Michael R. Davies, General Manager

303 APPROVED AS TO FORM:

304

305 By: _____

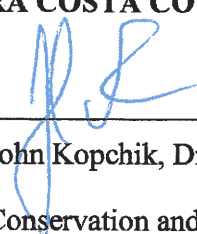
Date: _____

306 District Legal Counsel

307

308 **CONTRA COSTA COUNTY**

309

310 By:  _____

Date: April 25, 2017

311 John Kopchik, Director of

312 Conservation and Development

313 APPROVED AS TO FORM:

314 Sharon L. Anderson, County Counsel

315

316 By:  _____

Date: April 29, 2017

317 Deputy County Counsel

318

319 **DIABLO WATER DISTRICT**

320

321 By: _____

Date: _____

322 Mike Yeraka, General Manager

323

324 **EAST CONTRA COSTA IRRIGATION DISTRICT**

325

326 By: _____

Date: _____

327 Patricia A. Corey, General Manager

328

329 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

330

331 By: _____

Date: _____

332 Michael R. Davies, General Manager

303 APPROVED AS TO FORM:

304

305 By: _____

Date: _____

306 District Legal Counsel

307

308 **CONTRA COSTA COUNTY**

309

310 By: _____

Date: _____

311 John Kopchik, Director of

312 Conservation and Development

313 APPROVED AS TO FORM:

314 Sharon L. Anderson, County Counsel

315

316 By: _____

Date: _____

317 Deputy County Counsel

318

319 **DIABLO WATER DISTRICT**

320

321 By:  _____

Date: 5-1-2017

322 Mike Yeraka, General Manager

323

324 **EAST CONTRA COSTA IRRIGATION DISTRICT**

325

326 By: _____

Date: _____

327 Patricia A. Corey, General Manager

328

329 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

330

331 By: _____

Date: _____

332 Michael R. Davies, General Manager

303 APPROVED AS TO FORM:

304

305 By: _____ Date: _____

306 District Legal Counsel

307

308 **CONTRA COSTA COUNTY**

309

310 By: _____ Date: _____

311 John Kopchik, Director of

312 Conservation and Development

313 APPROVED AS TO FORM:

314 Sharon L. Anderson, County Counsel

315

316 By: _____ Date: _____

317 Deputy County Counsel

318

319 **DIABLO WATER DISTRICT**

320

321 By: _____ Date: _____

322 Mike Yeraka, General Manager

323

324 **EAST CONTRA COSTA IRRIGATION DISTRICT**

325

326 By: Patricia A. Corey Date: 3-29-2017

327 Patricia A. Corey, General Manager

328

329 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

330

331 By: _____ Date: _____

332 Michael R. Davies, General Manager

303 APPROVED AS TO FORM:

304

305 By: _____ Date: _____

306 District Legal Counsel

307

308 **CONTRA COSTA COUNTY**

309

310 By: _____ Date: _____

311 John Kopchik, Director of

312 Conservation and Development

313 APPROVED AS TO FORM:

314 Sharon L. Anderson, County Counsel

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316 By: _____ Date: _____

317 Deputy County Counsel

318

319 **DIABLO WATER DISTRICT**

320

321 By: _____ Date: _____

322 Mike Yeraka, General Manager

323

324 **EAST CONTRA COSTA IRRIGATION DISTRICT**

325

326 By: _____ Date: _____

327 Patricia A. Corey, General Manager

328

329 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

330

331 By:  Date: 4-6-17

332 Michael R. Davies, General Manager

Exhibit A - Contra Costa County Groundwater Sustainability Agency Formation

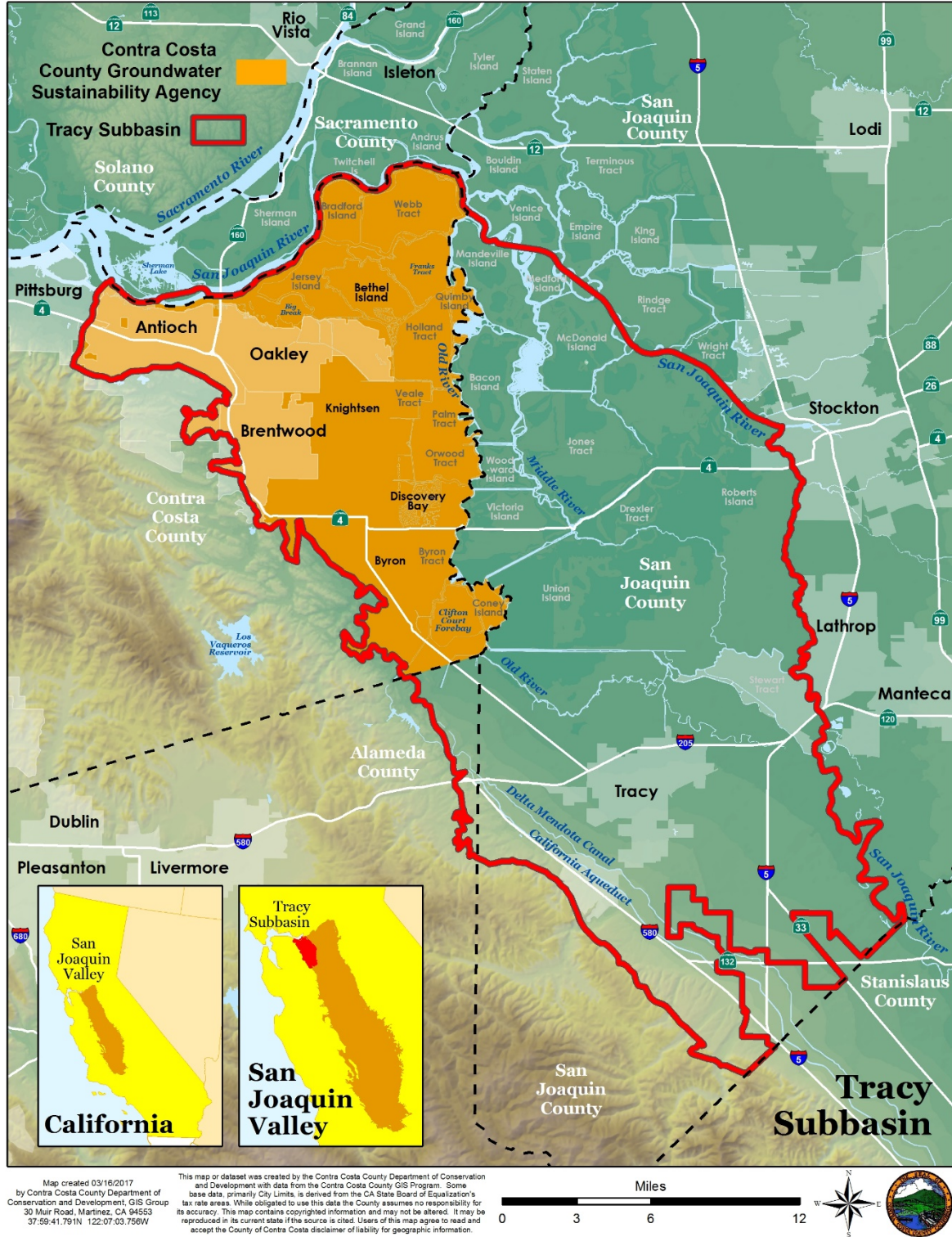


Exhibit B - Contra Costa County Groundwater Sustainability Agency Formation

