

San Gorgonio Pass Water Agency

DATE: February 14, 2022

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Lance Eckhart, General Manager

SUBJECT: COST-SHARING AGREEMENT TO MANAGE THE SAN GORGONIO PASS GROUNDWATER SUSTAINABILITY PLAN

RECOMMENDATION

Staff recommends the Board of Directors authorize implementation of a cost-sharing agreement to manage the San Gorgonio Pass Groundwater Sustainability Plan.

PREVIOUS CONSIDERATION

- Board of Directors – July 13, 2020: Costs associated with finalizing the Groundwater Sustainability Plan (GSP) and a member agency cost-share were presented to the Board.

BACKGROUND

The [San Gorgonio Pass Groundwater Sustainability Plan](#) was approved by the Board in December of 2021 and subsequently adopted by the San Gorgonio Pass Groundwater Sustainability Agency (GSA) on January 12, 2022, for the San Gorgonio Pass Subbasin (Subbasin). The adoption of the GSP is to comply with the Sustainable Groundwater Management Act (SGMA) of 2014. Three GSAs have contributed to the GSP since 2015 when the GSAs were formed. The majority of work associated with the GSP preparation was funded by a \$1,000,000 grant via the California Department of Water Resources (DWR) Proposition 1 Integrated Regional Water Management Plan program.

Agencies and associated GSAs that are part of the GSP area are as follows:

San Gorgonio Pass GSA Members

- San Gorgonio Pass Water Agency
- City of Banning
- Cabazon Water District
- Banning Heights Mutual Water Company

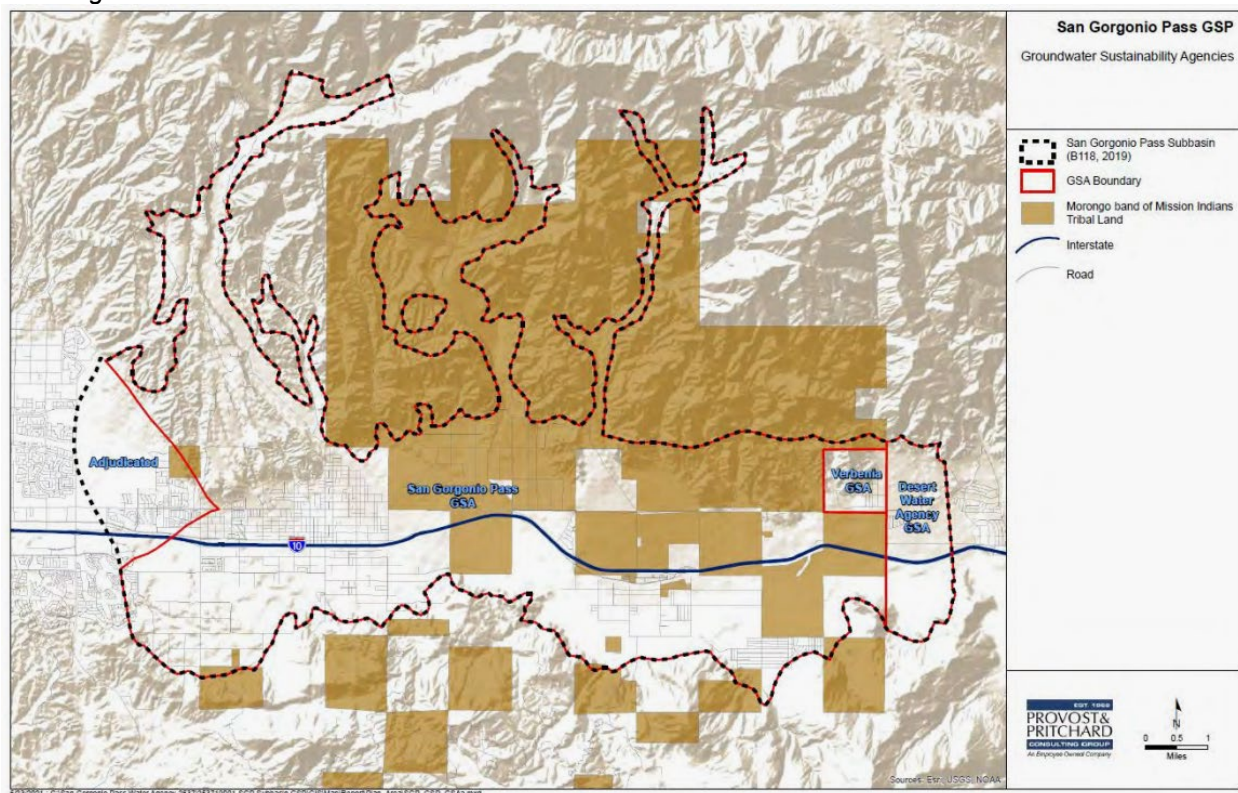
Verbenia GSA Members

- San Gorgonio Pass Water Agency
- Mission Springs Water District

Desert Water Agency GSA Member

- Desert Water Agency

Planning area and GSA entities within GSP



Costs associated with finalizing the GSP along with ongoing annual reporting pursuant SGMA requirements have been discussed by GSA members for several years. It was understood that an ongoing cost-share agreement would need to be in place to fairly share costs between the member agencies.

ANALYSIS

The Agency manages the GSP and covers the majority of the geography of the Subbasin. For this reason, the GSA members have determined the following cost-sharing allocation to be fair and equitable.

The Shared Costs shall be allocated among the Members as follows:

SGPWA:	5/15 of the shared costs or 33.333%
City of Banning:	2/15 of the shared costs or 13.333%
Banning Heights MWC:	2/15 of the shared costs or 13.333%
Cabazon Water District:	2/15 of the shared costs or 13.333%
Mission Springs Water District:	2/15 of the shared costs or 13.333%
<u>Desert Water Agency:</u>	<u>2/15 of the shared costs or 13.333%</u>
Total:	15/15 or 100.0%

The Agency will have a cost allocation of 33% of costs associated with managing the GSP. All other member agencies will have a cost allocation of 13% of costs related to managing the GSP.

A copy of the proposed Member Agency Cost Sharing Agreement is attached.

FISCAL IMPACT

Ongoing costs associated with managing the GSP will occur annually. Costs associated with managing the GSP will be part of the regular annual budget process and/or covered under a separate action if needing Board approval.

ACTION

Motion to authorize implementation of a cost-sharing agreement to manage the San Gorgonio Pass Groundwater Sustainability Plan.

ATTACHMENT

Member Agency Cost-Sharing Agreement for the San Gorgonio Pass GSP

**SAN GORGONIO PASS SUBBASIN
SAN GORGONIO PASS GROUNDWATER SUSTAINABILITY AGENCY
GROUNDWATER SUSTAINABILITY PLAN**

MEMBER AGENCY COST SHARING AGREEMENT

This Member Agency Cost Sharing Agreement ("Agreement") is made as of _____, 2022 ("Effective Date"), by and between CABAZON WATER DISTRICT ("CWD"), CITY OF BANNING ("Banning"), BANNING HEIGHTS MUTUAL WATER COMPANY ("BHMWC"), SAN GORGONIO PASS WATER AGENCY ("SGPWA"), MISSION SPRINGS WATER DISTRICT ("MSWD"), and DESERT WATER AGENCY ("DWA"), each a member agency of the San Gorgonio Pass Groundwater Sustainability Agency ("SGP-GSA"). The member agencies may individually be referred to as a "Member" or collectively as the "Members."

RECITALS

A. The SGP-GSA was formed by memorandum of agreement pursuant to the Sustainable Groundwater Management Act ("SGMA") for the purpose of managing that portion of the San Gorgonio Pass Subbasin ("Basin") encompassed by the Members' collective regulatory jurisdictions; and

B. The Members are responsible for developing a Groundwater Sustainability Plan ("GSP") to be implemented no later than January 1, 2022 and designed to ensure the sustainable management of the Basin by January 1, 2042. The SGP-GSA adopted Resolution 2022-02 thereby adopting the GSP for the Basin in concert with action taken by the Verbenia GSA and the Desert Water Agency GSA to also adopt the GSP for the Basin; and

C. The Members may, from time to time, need to retain consultants or other professional services for the purpose of assisting the SGP-GSA in performing its obligations under SGMA including, but not limited to, Annual Reports for the Basin's 2021 Water Year Annual Report and future Annual Reports which must be submitted to the California Department of Water Resources ("DWR"). A proposal has been submitted by Provost & Prichard Consulting Group ("P&P") to develop the 2021 Water Year Annual Report. Pursuant to Resolution 2022-02, the SGP-GSA authorized P&P to do the following on behalf of the SGP-GSA: (a) submit the GSP to DWR; (b) submit the First Annual Report; and (c) to otherwise serve as the point of contact with DWR on behalf of the SGP-GSA with respect to the GSP and the First Annual Report; and

D. The Members desire to enter into this Agreement to memorialize the allocation of costs attributed to each Member for the use of consultants in the future and to set forth the process for retaining consultants and payment by each Member. The P&P contract and cost allocation will serve as just the first example of how allocations will be made in the future.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions

set forth in this Agreement, and for other good, valuable, and adequate consideration, the parties hereto agree as follows:

1. Contracting For Consultant Services

(a) SGPWA As Plan Manager The SGP-GSA has designated SGPWA as the Plan Manager with the authority to enter into agreements for consulting services upon review and approval by the SGP-GSA as may be provided from time to time.

(b) Retention Of Consultants Upon authorization from the SGP-GSA, SGPWA will be responsible for entering into agreements (“Consultant Agreement”) with consultants (“Consultant”) from time to time. The solicitation of proposals and Consultant Agreements shall be entered into and performed by SGPWA in its reasonable discretion and in accordance with its rights and obligations as a public agency contracting for the applicable services.

(c) Initial Payments To Consultants As the contracting party with a Consultant to a Consultant Agreement, SGPWA will make payments to Consultants in accordance with the Consultant Agreement. The other Members shall be responsible for reimbursing SGPWA for the Members’ cost share as set forth below.

2. Cost Sharing Between Members

(a) Each Member shall be responsible for payment of the periodic and final payment requests under a Consultant Agreement as follows. Upon receipt by SGPWA of each written statement from Consultant regarding the amount due and owing for the applicable time period (“Progress Payment”), each Member shall be responsible for payment of their respective percentage allocation as follows:

The Shared Costs shall be allocated among the Members as follows:

SGPWA:	5/15 of the shared costs or 33.333%
City of Banning:	2/15 of the shared costs or 13.333%
Banning Heights MWC:	2/15 of the shared costs or 13.333%
Cabazon Water District:	2/15 of the shared costs or 13.333%
Mission Springs Water District:	2/15 of the shared costs or 13.333%
<u>Desert Water Agency:</u>	<u>2/15 of the shared costs or 13.333%</u>
Total:	15/15 or 100.0%

(b) No Member, including SGPWA, shall be responsible for payment of any amounts in excess of its percentage share as set forth herein, without the prior written consent of the

Member being requested to pay such additional amount.

(c) SGPWA shall provide a copy of the Progress Payment to each Member along with a cover letter setting forth the calculation of the percentage amount due and owing by the Member. Within thirty (30) days of the date of said cover letter, each Member shall submit payment to SGPWA for the Member's percentage share as set forth in this Agreement.

(d) If a Member objects to any portion of the statement or calculation, it shall provide written notice to SGPWA of said objections within ten (10) days from the date of the SGPWA cover letter and the Members (including but not necessarily limited to, SGPWA and the objecting Member) shall then engage in good faith efforts to resolve such issues through informal discussions. In the event a Member does not submit such an objection to SGPWA within said 10-day period, said Member will be deemed to have approved the statement. In regard to any objection regarding the services performed by the Consultant, all of the Members shall jointly seek to resolve such issues with the Consultant.

3. Term

This Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated by mutual written agreement of the Members. This Agreement may also be subject to expiration or termination pursuant to actions the SGP-GSA may take from time to time.

4. General Provisions

(a) Relationship Nothing in this Agreement creates either: (a) a fiduciary duty among the Members or with any third party; or (b) an attorney-client relationship between any attorney and any Member that is not represented by that attorney as its counsel.

(b) Books and Records Each Member shall maintain appropriate and accurate books of account and records relating to the services utilized by the Members under this Agreement, and such books of account and records shall be accessible for inspection by representatives (including the auditors) of the other Member at any time during normal business hours.

(c) Entire Agreement This Agreement contains the entire agreement and understanding among the Members hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

(d) Alternative Dispute Resolution The Members shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. If a dispute is unable to be informally resolved or settled by the Members, then thirty (30)

days prior to filing any legal action, other than a legal action for temporary injunctive relief, the executive officers of each Member shall meet together in person in good faith to endeavor to reach a mutually beneficial resolution and settlement of such dispute.

(e) Execution in Counterparts This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Member whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Members reflected hereon as the signatories.

(f) Notices Written notices and correspondence must be sent by first-class mail, addressed and delivered as set forth below:

CABAZON WATER DISTRICT

CITY OF BANNING

BANNING HEIGHTS MUTUAL WATER COMPANY

SAN GORGONIO PASS WATER AGENCY

MISSION SPRINGS WATER DISTRICT

DESERT WATER AGENCY

(g) Incorporation of Recitals The Recitals set forth above are incorporated herein and made an operative part of this Agreement.

(h) Invalidity and Severability If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force.

IN WITNESS WHEREOF, each of the Members have caused this Agreement to be executed by its respective duly authorized officers. The effective date of this Agreement shall be the date first above written.

(signatures are on the following pages)

(signature page)

CABAZON WATER DISTRICT

By: _____

Its: _____

Date: _____

CITY OF BANNING

By: _____

Its: _____

Date: _____

BANNING HEIGHTS MUTUAL WATER COMPANY

By: _____

Its: _____

Date: _____

(signature page)

SAN GORGONIO PASS WATER AGENCY

By: _____
Its: _____
Date: _____

MISSION SPRINGS WATER DISTRICT

By: _____
Its: _____
Date: _____

DESERT WATER AGENCY

By: _____
Its: _____
Date: _____