Appendix A

Association Memorandum of Understanding

MOU

ORIGINAL COPY

5/96

MEMORANDUM OF UNDERSTANDING RELATING TO THE FORMATION AND OPERATION OF THE STANISLAUS AND TUOLUMNE RIVERS GROUNDWATER BASIN ASSOCIATION

1. PARTIES:

The Parties to this Memorandum of Understanding (MOU) are: County of Stanislaus, a political subdivision of the State of California; Oakdale Irrigation District, a California irrigation district; the City of Oakdale, a California public agency; the City of Riverbank, a California public agency; the City of Modesto, a California public agency; and Modesto Irrigation District, a California irrigation district.

2. RECITALS:

This MOU is entered into with regard to the following facts and circumstances, among others:

2.1 Groundwater and surface water resources within the Stanislaus and Tuolumne Rivers Groundwater Basin are vitally important resources, in that they provide the foundation to maintain current and fulfill future environmental, agricultural, domestic, municipal and industrial needs, as well as other needs, and to maintain the economic viability and prosperity of the Basin area.

2.2 Agriculture has been prominent in making Stanislaus County one of the world's foremost agricultural areas, and has played a major role in the development of the economy of Stanislaus County; in an era of increasing competition for the area's finite water resources, it is important to understand and plan for the utilization of all the area's water resources in order to preserve all elements of the local economy vital to the area's well being.

2.3 In 1994, the Parties to this MOU, together with others, created an association known as the Stanislaus and Tuolumne Rivers Groundwater Association (the "former Association").

2.4 The former Association ceased to exist as of December 31, 1997, pursuant to the terms of the agreement among the Parties creating it.

2.5 During the period following termination of the former Association, the Parties have continued to conduct business that might have been conducted by the former Association.

2.6 The Parties desire to form an association, to provide a mechanism for the Parties to cooperate in working toward the purposes and goals established in this MOU.

2.7 **Purposes and Goals:** The purposes and goals for the formation of the Association are:

2.7.1 To determine and evaluate the Basin's existing groundwater supply.

2.7.2 To promote coordination of groundwater management planning activities developed during the first term of this MOU;

2.7.3 To develop a hydrologic groundwater model of the groundwater supplies;

2.7.4 To determine the Basin's need for additional or improved water extraction, storage, delivery, conservation, and recharge facilities; and

2.7.5 To provide information and guidance for the management, preservation, protection and enhancement of groundwater quality and quantity in the Basin.

2.8 The Parties believe that independent and non-coordinated action by water providers and users within the Basin could result in unregulated competition for finite resources resulting in adverse impacts to the groundwater and surface water supplies within the Basin.

2.9 The Parties believe that a groundwater management plan or plans, whether developed under the umbrella of the Association or through individual agency efforts coordinated through the Association, for water suppliers and water users within the Basin is necessary to protect the groundwater and surface water resources and to meet the needs of all uses of such resources within the Basin.

2.10 A desirable step in the implementation of such a plan is the development and the proper use and application of a hydrologic groundwater model.

2.11 Because of the enactment of State legislation that has extended additional authority for local groundwater management pursuant to Water Code section 10750 et seq. (Assembly Bill 3030 adopted in 1992), it is now clear to the Parties that local management of water resources is necessary and desirable in order that local control be maintained over such resources.

2.12 The Parties hereto desire to enter into this MOU in order to reauthorize the Association to promote certain goals and provide coordinated planning to make the best use of available water resources to meet the needs of the Parties and respective constituents and service territories in the mutual best interests of the inhabitants and resources of the Basin.

2.13 In forming the Association, it is the Parties' desire that the Association not be formed as a separate governmental entity, nor have any enforceable regulatory

authority over any Party's facilities or any Party's respective surface water or groundwater supplies or rights nor duplicate any services, duties or authority of any other agency.

3. AGREEMENT:

The Parties agree as follows:

4. DEFINITIONS:

The following terms, whether in the singular or the plural, and when used herein with initial capitalization, shall have the meanings specified in this Section 4:

4.1 **Annual Budget:** A budget will be developed only after the Association's governing body has approved certain project(s) to advance the goals and objectives of this MOU.

4.2 **Basin:** The Stanislaus and Tuolumne Rivers Groundwater Basin, which is geographically defined as that area in the State of California bounded on the west by the San Joaquin River; on the north by the Stanislaus River, on the east by the base of the Sierra Nevada foothills; and on the south by the Tuolumne River, and includes the area of land overlying that basin and all tributaries therein.

4.3 **Committee:** That body, consisting of one representative from each of the Parties, which governs the Association, as established pursuant to Section 5.2 of this MOU.

4.4 **Budget:** Either an Annual Budget or Initial Budget necessary to complete necessary projects pursuant to Section 4.1 of this MOU.

4.5 **Coordinator:** The individual appointed by the Committee pursuant to Section 6 is otherwise responsible for coordinating a work plan.

4.6 **Governing Bodies:** The legislative bodies of the governmental Parties to this MOU.

4.7 **MOU:** This Memorandum of Understanding Relating to the Formation and Operation of the Stanislaus and Tuolumne Rivers Groundwater Basin Association.

4.8 **Parties:** Each of those entities named in Section 1 of this MOU, or those Parties added pursuant to section 5.4 of this MOU.

4.9 **Voting Percentage:** A Party's Voting Percentage as set forth in Section 8.3 of this MOU.

5. THE ASSOCIATION

5.1 Powers and Purposes: The Parties to this MOU hereby form the Stanislaus and Tuolumne Rivers Groundwater Basin Association.

5.1.1 The purpose of the Association is to provide a forum in which the Parties can work cooperatively; to combine the available talent of the Parties' respective staffs; and to accomplish the purposes described in Section 2 of this MOU.

5.1.2 This Association shall have no enforceable regulatory authority over any person or entity, including Parties or Parties' facilities or rights.

5.1.3 The Association shall have the power to sue or be sued in its own name.

5.2 **Committee:** The Association shall be governed by a Committee whose membership and responsibilities are set forth herein.

5.2.1 Each Party shall designate one person to serve as a member of the Committee, and one or more alternates. The names of the member and alternates, shall be submitted to the Coordinator. Each member of the Committee and each alternate, shall serve at the pleasure of the Party appointing such member. A Party's alternate may serve in the place of that Party's member in the absence of such member and, in such case, the alternate shall have the powers of the member.

5.2.2 The Committee shall elect a chair and vice chair from its members at the first meeting of each calendar year. The chair will be responsible for presiding over meetings of the Committee, and shall notify committee members and the Coordinator of meetings of the Committee. The Committee will establish a date, time and place for its regular meetings, and may hold special meetings when required for the proper transaction of business. All meetings of the Committee shall be held in accordance with the provisions of the Brown Act, California Government Code Section 54950 et seq. The Committee will prescribe such procedures for the conduct of its business as it deems appropriate.

5.2.3 A quorum shall consist of a simple majority of the Voting Percentage of the Committee, except that less than a quorum may adjourn meetings of the Committee from time to time. Alternatively, the Coordinator may adjourn a meeting of the Committee to a specified time, date and place if there is less than a quorum of members present for a meeting.

5.2.4 The Committee shall have the following duties and responsibilities:

a. Develop and implement the activities, including work schedule, designed to achieve the objectives of the Association as set forth in Section 2 of this MOU.

b. Enter into contracts, and approve all amendments thereto, for and on behalf of the Association, necessary to carry out the powers and duties of the Association.

c. Establish an Annual Budget for the Association, and approve proposed revisions to such budget, provided that no action of the Association shall be deemed to bind any party to contribute such funds absent approval of Governing Bodies.

d. Recommend for approval by the Governing Bodies Budget(s) necessary to carry out proposed project(s).

e. Establish such committees as may be necessary or desirable to carry out the purposes of the Association, and to exercise general supervision over such committees.

5.2.5 Except for actions for which a different approval standard is set forth in this MOU, all actions of the Committee shall be approved by a majority of the members present.

5.3 **Staff:** The Association shall have the authority to hire or retain agents, contractors and consultants as the Committee shall determine necessary and appropriate.

5.4 **New Parties**: New parties may join the Association, provided that they meet the requirements set forth in this Section 5.4.

5.4.1 Any county or local public agency, whose territory or service area includes land located within that portion of Stanislaus County east of the San Joaquin River, which provides water service within its service area, and whose service area includes all or a portion of the Stanislaus and Tuolumne Rivers groundwater basin (as defined in Section 4.2), may apply for membership in the Association.

5.4.2 A water corporation regulated by the California Public utilities Commission, or a mutual water company whose service area includes land located within that portion of Stanislaus County east of the San Joaquin River, which provides water service within its service area, and whose

service area includes all or a portion of a ground water basin, may apply for membership in the Association.

5.4.3 Application for membership shall be subject to approval by the Governing Bodies of the Parties; approval shall require the affirmative vote of the Governing Bodies of a simple majority of the Parties.

5.4.4 Any new Party to this Agreement shall, as a condition of admission to the Association, be required to first pay its proportionate share of back contributions as determined by the Committee.

6. COORDINATOR:

6.1 **Appointment:** The Committee shall appoint a Coordinator, who shall have the duties and responsibilities set forth in this Section 6. The Coordinator shall be an employee of a Party, unless otherwise approved by the Committee.

6.2 **Duties and Responsibilities:** The Coordinator will have the following duties and responsibilities:

6.2.1 Develop and submit for consideration of approval by the Committee a work plan and schedule of activities designed to accomplish the goals of the Association as established in this MOU or as may be directed by the Committee.

6.2.2 Propose an Annual Budget, and from time to time such revisions as the Coordinator may feel necessary or desirable, to the Committee for its review and approval.

6.2.3 Submit to the Committee as directed by the Committee, a progress report as to the Association's activities, and a Budget report which compares expenditures with the adopted Budget.

6.2.4 Execute and administer contracts as directed by the Committee.

6.2.5 Maintain proper records and accounts of Work performed by the Association and its committees.

6.2.6 Receive and disburse funds at or under the direction of the Committee.

6.2.7 Act as secretary/treasurer to the Association, and acting in that capacity, prepare, record and distribute minutes of all Committee meetings.

6.2.8 Perform such other actions as may be necessary or desirable to promote the work of the Committee and the Association.

7. ASSOCIATION BUDGET AND COSTS:

7.1 **Budget Cycle:** The budget cycle of the Association shall be on a calendar year basis.

7.2 **Annual Budget:** The Coordinator shall prepare an annual financial budget for each calendar year that the Committee determines certain projects are necessary. The Coordinator's proposed Annual Budget should be delivered to the Committee members no later than June 1 of each year. The Committee should approve or revise the proposed Annual Budget and distribute the proposed Annual Budget to each Party no later than July 1 of each year. The Committee should meet to review input from the Parties' Governing Bodies no later than August 1, and should approve a final budget no later than September 1. The respective Governing Bodies of the Parties should review the Annual Budget of the Committee no later than October 1 of each year and notify the Coordinator that it has allocated or appropriated its respective contribution to the annual Budget no later than October 15 of each year. The Committee shall then adopt and approve the annual Budget and have it in place and effect by January 1 of that budget year as approved by the Parties.

7.3 **Allocation of Funds:** Within the annual financial budget adopted pursuant to Section 7.2, the Committee shall have the authority to make minor adjustments in the allocation of funds between budget categories; provided, however, that the cumulative change in the budget category does not exceed ten percent (10%) of the amount authorized in the Annual Budget and the total amount of the Annual Budget is not increased. Other budget adjustments require approval of the Governing Bodies.

7.4 **Budget Increases**: Increases in the total amount of a Budget must be approved by the Governing Bodies of a simple majority of the Parties.

7.5 **Failure to Pay**: If any Party fails to pay its respective share of any Budget or Budget increase when due, whether or not that Party's Governing Body approved the Annual Budget or the Budget increase, then that Party shall be ineligible to vote on any subject or issue unless such failure is excused by the Committee. During any period of time during which a Party is ineligible to vote on a matter by reason of the application of this Section 7.5, such Party shall not be counted as a Party in determining a quorum, or in determining a "majority" with regard to the approval of any action. In order to restore its eligibility to vote, a Party must be current on all amounts due, including any expenditures approved by the Association while such Party was ineligible to vote.

7.6 **Expenditures:** Association funds may be properly expended for all costs approved by the Committee and properly incurred in the performance of the work

approved by the Committee, or under such authority as may be delegated to the Coordinator by the Committee.

7.7 **Non-Reimbursable Costs:** Costs incurred by any Party in connection with any functions of the Association, or any committee established by the Committee, and expenses of a party's personnel including, without limitation, the regular and alternate members appointed by a Party to any committee while performing such functions, shall not be reimbursed by the Association except upon approval of the Committee, provided that a Party shall be reimbursed for the services performed by such Party's employees while serving as staff to the Association as approved through the Budget process.

8. FUNDING AND VOTING PERCENTAGES:

8.1 **Funding:** Each Party shall be responsible for its proportionate share of the funding requirements of the Association. The proportionate shares of each Party shall be determined by dividing the funding requirements of the Association by the number of Parties. During Committee approval of certain projects that beneficially affect one Party over another, equitable project funding shall be determined by the Committee.

The Parties shall provide funding consistent with the Budgets adopted by the Committee at times set forth in such Budgets, or on call of the Coordinator. Funding needs of the Association payable by the Parties shall be determined by the Committee, and such funds shall be transmitted by the Party to the Coordinator within sixty (60) days of project approval. Upon receipt, the Coordinator will immediately deposit funds in an interest-bearing bank account. The funds in such account shall remain the property of each Party and interest earned thereon shall belong to each Party.

8.2 **Payment Reduction:** Each Party agrees that the Parties' respective obligations to make payments hereunder shall not be subject to any reduction, whether by offset, counter claim, recoupment or otherwise. A Party's funding contributions to this Association or a portion thereof may be reimbursed upon termination of that Party's participation in the Association and approval by a simple majority vote of the Committee.

8.3 **Voting Rights:** Each Party's representative on the Committee shall be entitled to one vote; provided, however, that if a matter being decided by the Committee will have a disproportionate effect on the financial obligations of the Parties as contemplated in Section 8.1, each Party shall be entitled to vote weighted in proportion to the financial obligation or benefit of the Parties.

8.4 **Modification by Party:** Funding Percentages and/or Voting Percentages may be changed only upon the approval of the Governing Bodies of a simple majority of the Parties.

9. RELATIONSHIP OF PARTICIPANTS:

9.1 **Each Party's Action is Independent of the Other**: The obligation of each Party to make payments under Section 8.1 of this MOU is an individual and several obligation and not a joint obligation of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this MOU. No Party shall be under the control of or shall be deemed to control any other Party or the Parties collectively. No Party shall be the agent of or have the right or power to bind any other Party without such Party's express written consent, except as expressly provided in this MOU.

9.2 **Indemnity:** No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this MOU. The Parties further agree, pursuant to Government Code section 895.4, that each Party shall fully indemnify and hold harmless each other Party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Party under this MOU.

In no event, except for any claim, demand, liability, loss or damage arising out of or resulting from any action taken or not taken by one Party at the direction of its directors, officers, or employees of management or administrative responsibility, which is knowingly or intentionally taken or not taken with conscience indifference to the consequences thereof or with the intent that injury or damage would result or would probably result therefrom, shall a Party be liable to any other Party for any indirect or consequential damage claim, demand, liability, loss, expense (including attorney's fees), or damage arising out of or in any way connected with this Agreement, including any negligence in connection therewith.

9.3 **No Creation of a Joint Powers Agency:** The Parties agree that by this MOU they do not intend to provide for the creation of an agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

10. TERM OF THIS MOU: The term of this MOU shall commence on November 1, 2001 and shall terminate on December 31, 2006, or unless approved by letter of extension by each individual Party to this MOU. Any substantive change to this MOU will require a full evaluation prior to extension of the MOU.

Upon termination of this MOU, the Committee shall determine the assets and liabilities of the Association; make every effort to satisfy all obligations within sixty (60) days of the termination of the agreement; and distribute the remaining fund balance equitably to each Party in proportion to each Party's funding contribution to the Association.

Any work following the development of a groundwater management plan, or beyond the scope of developing such a plan, shall be done, if at all, pursuant to a separate agreement, among the entities desiring to pursue such work.

11. GENERAL PROVISIONS GOVERNING MOU:

11.1 **Invalidity of any Term not to Invalidate the Entire Memorandum:** In the event that any of the terms, covenants or conditions of this MOU or the application of any such term, covenant or condition shall be held invalid as to any Party, person or circumstance by any court of competent jurisdiction, all other terms, covenants or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOU.

11.2 **Construction of Terms:** This MOU is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties or imposing obligations on a party to any person other than another party.

11.3 **Good Faith:** Subject to the right of a Party to withdraw or terminate its membership in the Association, each Party shall use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.

11.4 **Withdrawal or Termination of Membership:** Except in the event of the termination of this MOU pursuant to Section 10, a Party who withdraws or terminates its membership in the Association shall not be entitled to a refund of its funding contributions. Any Party may terminate membership and withdraw from this Association upon thirty (30) days written notice of termination to the Association. If a Party withdraws from the Association when the Party is in arrears as to its funding contributions to the Association, that Party's entitlement to use any groundwater model or other work product of the Association as provided for herein shall be determined by the Committee.

11.5 **Amendment:** This MOU may be amended by first receiving the affirmative vote of the Governing Body of a simple majority of the Parties.

11.6 **Counterpart Execution:** This MOU may be executed in counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11.7 **Governance:** This MOU is made under and shall be governed by the laws of the State of California.

11.8 **Reasonable Delivery of Documents:** The Parties agree to act in good faith to promptly execute any documents that are necessary, or may become necessary, to implement activities approved by the Governing Bodies in the Annual Budget subject to the authority and the right of the Governing Bodies to terminate participation in this MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

Date: OCT 15 2001

COUNTY OF STANISLAUS, a political subdivision of the State of California

Chair, Board of Supervisors

Attest: Christine Ferraro
Secretary Clerk of the Board

Director, Dept. of Environmental Resources

Approved as to Legal Form:

John P. Doering
Deputy County Counsel

Date: September 3, 2002

OAKDALE IRRIGATION DISTRICT, a California irrigation district

President

Attest:
Secretary

Approved as to Legal Form:

Date: 10/23/01

CITY OF OAKDALE, a California public agency

City Manager

Attest: Rebecca A. Pelusso
City Clerk

Approved as to Legal Form:

Date: 10-23-01

CITY OF RIVERBANK, a California public agency

City Manager

Attest: Lori Grigsby
City Clerk

Approved as to Legal Form:

Date: October 9, 2001

CITY OF MODESTO, a California public agency

City Manager, JACK R. CRIST

Attest: Jean Zahr
City Clerk, JEAN ZAHR

Approved as to Legal Form:

MIKE MILICH, City Attorney

Date: 10-17-01

MODESTO IRRIGATION DISTRICT, a California irrigation district

Allen Short
General Manager

Approved as to Legal Form:

RESOLUTION NO. 2001-128
APPROVING THE MEMORANDUM OF UNDERSTANDING RELATING TO THE FORMATION AND OPERATION OF THE STANISLAUS AND TUOLUMNE RIVERS GROUND WATER BASIN ASSOCIATION

WHEREAS, Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code (commonly referred to as AB3030) permits certain local agencies, including Modesto Irrigation District (the "District"), to adopt and implement a groundwater management plan; and

WHEREAS, the District recognizes that the groundwater and surface water resources within its service territory are vitally important to the well-being of the area's economy; and

WHEREAS, the District believes that it is in the best interests of the District and its inhabitants to study the groundwater basin and promote the formulation of a groundwater management plan for the entire groundwater basin lying between the Stanislaus and Tuolumne Rivers; and

WHEREAS, the District has been working with other water suppliers within the District's service territory in order to combine the talents and resources of those agencies to develop a groundwater management plan that has the widest possible support within the basin; and

WHEREAS, the various agencies, along with the District, have agreed to form an association, which will provide the means by which the parties can work together to study the groundwater basin and its hydrology, and draft a groundwater management plan for the comprehensive management of the groundwater basin for the benefit of all those who are served by the resource and those who are charged with the responsibility of managing the resource.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Modesto Irrigation District as follows:

1. The Memorandum of Understanding Relating to the Formation and Operation of the Stanislaus and Tuolumne Rivers' Groundwater Basin Association is hereby approved, and the General Manager is authorized and directed to execute the Memorandum on behalf of the District.

2. The General Manager is authorized and directed to take all necessary actions to carry out the purposes and intent of this resolution.

Moved by Director Warda, seconded by Director Kidd, that the foregoing resolution be adopted.

The following vote was had:
Ayes: Directors Billington, Hensley, Kidd, Van Groningen, and Warda
Noes: Directors None
Absent: Directors None
The President declared the resolution adopted.

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I, Vickie Ehrler, Secretary of the Board of Directors of the MODESTO IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of said Board of Directors held on the 11th day of September 2001.

Secretary of the Board of Directors
of the Modesto Irrigation District