MEMORANDUM OF UNDERSTANDING FORMING THE ENTERPRISE-ANDERSON GROUNDWATER SUSTAINABILITY AGENCY

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of May 5, 2017, between the City of Anderson ("Anderson"), the Anderson-Cottonwood Irrigation District ("ACID"), Bella Vista Water District ("BVWD"), the Clear Creek Community Services District ("CCCSD"), the City of Redding ("Redding") and the County of Shasta ("County"), each a "Member" and collectively the "Members;" and

WHEREAS, on September 16, 2014, Governor Brown signed three bills (SB 1168, SB 1319, and AB 1739) into law creating the Sustainable Groundwater Management Act of 2014 ("SGMA") codified at Water Code section 10720 et seq.; and

WHEREAS, SGMA requires the formation of a Groundwater Sustainability Agency ("GSA") that will be responsible for implementing provisions of SGMA as to medium and high priority groundwater basins, as identified by the State of California Department of Water Resources ("DWR"); and

WHEREAS, under SGMA, each GSA is responsible for assuming its regulatory role by July 1, 2017, and for submitting a Groundwater Sustainability Plan ("GSP") to the California State Water Resources Control Board ("SWRCB") by either January 31, 2020, or January 31, 2022, depending on criteria specified in SGMA; and

WHEREAS, the Enterprise Sub-basin (DWR Basin No. 5-6.04) and the Anderson Sub-basin (DWR Basin No. 5-6.03) have been delineated by the DWR and identified as medium priority basins thereby making both subject to the provisions of SGMA; and

WHEREAS, Water Code Section 10723.6 authorizes a combination of local agencies overlying a groundwater basin to elect to become a Groundwater Sustainability Agency ("GSA") by using a memorandum of agreement.

NOW THEREFORE, incorporating the above recitals herein and all exhibits attached, it is mutually understood and agreed as follows:

SECTION 1. ESTABLISHMENT.

Pursuant to the authority set forth in Water Code Section 10723, the Members hereby establish the Enterprise-Anderson Groundwater Sustainability Agency ("EAGSA") to manage the Enterprise Sub-basin and the Anderson Sub-basin as depicted in Exhibit A.

SECTION 2. PURPOSE.

A. The purposes of this MOU are as follows:

1. Comply with SGMA;

2. Ensure the continued sustainability of the Anderson and Enterprise Subbasins; and

3. Develop, adopt, implement and manage a GSP for the sustainable management of groundwater within the Enterprise and Anderson Sub-basins of the Redding Area Groundwater Basin while keeping the complexity and costs as low as practicable.

B. The Members intend to maintain complete control and autonomy over the surface water and groundwater resources within their respective jurisdictions. Nothing herein is intended, nor shall be construed to affect, impair, or alter the surface water rights and groundwater rights of any Member or the rights of any landowner or customer of any Member.

C. Each Member agrees to exercise its powers under any authority it may have consistent with SGMA, the GSP, and in a manner that does not significantly interfere with any other Member's or the EAGSA's ability to successfully comply with SGMA and to achieve and maintain the sustainability goals of the GSP.

SECTION 3. GOVERNANCE AND ORGANIZATION.

A. **Governing Board:** The EAGSA shall be governed by a Board of Directors who shall serve without compensation or term of office and shall be appointed and/or removed by the legislative body of each Member. The EAGSA Board of Directors shall be composed as follows:

1. One (1) Anderson Council Member
2. One (1) ACID Board Member
3. One (1) CCCSD Board Member
4. One (1) Redding Council Member.
5. One (1) BVWD Board Member.
6. One (1) County Supervisor

B. **Alternative Directors:** Each of the Members may designate one (1) Alternate Director who shall serve only when the Director is absent or when it is anticipated that the Director may have a conflict of interest. Each such Alternate Director must be a member of the legislative body of the Member agency that he or she represents.

C. **Committees:** The Board of Directors of the EAGSA may appoint committees of its members or of staff as it deems necessary. The following Committees are hereby established:

1. **Management Committee:** Comprised of one staff representative from each Member. The Management Committee shall take direction from the Board of Directors, recommend agenda items, recommend proposed action for the Board of Directors and approve staff reports to the Board of Directors.

2. **Technical Advisory Committee:** ("TAC"): Established by the Management Committee. The TAC shall advise the Management Committee on technical matters related to development and implementation of the GSP.

D. **Support Staff:** Member agencies may provide support staff to the GSA on an as-needed basis.

1. Each Director shall have recourse to its Member's legal counsel.

2. In the event that legal counsel is required for any meeting of the Board of Directors and, for purposes of answering questions relating to compliance with the Ralph M. Brown Act (Gov. Code ' 54950 et seq.), the City of Redding shall supply said legal counsel without cost to the other Members.

3. Each Member's designated legal counsel may attend any meeting of the Board of Directors, including any items agendized for closed session.

E. The City of Redding shall serve as fiscal agent and shall, upon approval of the Board of Directors, have authority to enter into any contract necessary to assist the Members in accomplishing the purposes set forth in Section 2 of this MOU. The City of Redding shall be entitled to its reasonable costs solely attributable to contract administration and directly related support. All Members shall pay an equal, pro-rata share within thirty (30) calendar days of invoice by the City of Redding. Each contract entered into by the City of Redding in accordance with this MOU shall state that:

1. Any changes in the scope of work shall require the advance approval of the Board of Directors;

2. The contract may be terminated with or without cause through majority action of the Board of Directors except that any vote to terminate with cause is subject to override by action of the City Council of the City of Redding should it determine, in its sole discretion, that said determination by the Board of Directors would cause City to be in breach of its contract;

3. All written, electronic, and other work product created or retained by the contracting party shall be the joint property of the Members of this MOU and may be used by any Member for any lawful purpose;

4. The contracting party shall provide copies of all documents, work product, and other notices to each Member's representative set forth in Section 12 of this MOU; and

5. Each Member shall be third-party beneficiaries and shall be deemed to have privity of contract with the contracting party.

6. The Board may, upon a majority vote and without amendment to this MOU, provide alternative legal, fiscal, and/or contract management support.

F. **Brown Act:** The Board of Directors shall agendize and conduct all meetings in accordance with the Ralph M. Brown Act. The Board of Directors shall set regular meetings on such dates and times and at such locations as the Board of Directors shall fix by resolution.

SECTION 4. QUORUM.

A. Quorum determinations are dependent upon the nature of the action proposed as follows:

1. **General Board Action Not Specific to a Sub-basin:** Four (4) of the six (6) Board Members shall constitute a quorum.

2. **Action specific to the Enterprise Sub-basin:** Three (3) of the five (5) Members entitled to vote shall constitute a quorum.

3. **Action specific to the Anderson Sub-basin:** Three (3) of the five (5) Members entitled to vote shall constitute a quorum.

SECTION 5. VOTING.

A. Only Members overlying a basin have decision-making authority on issues within their respective sub-basins.

B. For purposes of Board action not specific to a sub-basin, each Member shall have one (1) vote and a majority vote shall be a majority of the Board of Directors.

C. For purposes of Board action specific to the Anderson Sub-basin, a majority vote shall require three (3) votes, and the following represents the voting authority for each Member entitled to vote:

1. Anderson - one (1) vote
2. Redding - one (1) vote
3. County - one (1) vote
4. ACID - one (1) vote
5. CCCSD - one (1) vote

D. For purposes of Board action specific to the Enterprise Sub-basin, a majority vote shall require three (3) votes, and the following represents the voting authority for each Member entitled to vote:

1. Redding - one (1) vote
2. County - one (1) vote
3. ACID - one (1) vote
4. BVWD - one (1) vote
5. Anderson - one (1) vote

SECTION 6. AUTHORITY.

A. The EAGSA shall assume the following authority as set forth in Chapter 5 of the SGMA (Water Code sections 10725 - 10726.9) as of the date of this MOU including and limited to:

1. The authority to conduct investigations necessary to determine the need for groundwater management and to prepare and adopt a GSP pursuant to Water Code section 10725.4(a)(1)-(2)

2. The authority to receive reports of diversion of surface water to underground storage within the GSA pursuant to Water Code section 10726.

3. The authority to direct changes to the GSP in order to take into account for the most recent planning assumptions stated in the general plan of each Member pursuant to Water Code section 10726.9.

4. To develop, approve, and submit a GSP to the SWRCB no later than January 30, 2022.

5. To adopt implementing rules to manage the GSP once established.

6. To meet, confer, and coordinate with other GSA's.

7. To develop and propose to each Member's legislative body standards for measuring and reporting groundwater use.

8. To develop and propose to each Member's legislative body standards to reduce and eliminate overdraft within the boundaries of the EAGSA.

9. To develop and propose to each Member's legislative body best management practices.

10. To develop and propose to each Member's legislative body metering, monitoring, and reporting standards for groundwater pumping.

B. No other authority identified in Chapter 5 of SGMA may be exercised by the Board of Directors without amendment of this MOU and compliance with other applicable law.

C. The authority of the Board of Directors does not extend to or otherwise authorize:

1. The exercise of any power or Authority set forth herein on any Member that has withdrawn from this MOU or provided notice of withdrawal of its participation in this MOU in accordance with Section 7 and has elected upon withdrawal to be its own GSA.

2. The imposition of any fees, charges, assessments, taxes, or other exactions related to groundwater management, extraction, monitoring, and the implementation of SGMA or the GSP on any Member or the landowners within the political boundaries of any Member.

3. The exercise of authority set forth in Water Code section 10726.4, subdivisions (a)(2) and (a)(3), including any regulations limiting, suspending, or controlling groundwater extractions.

D. Unanimous consent of the Members is necessary to expand the authority set forth herein or to add additional limitations on authority.

E. The authority of the EAGSA is based solely upon the contractual consent of the Members participating in this MOU. Any Member that refuses to comply with the General Authority of the EAGSA may be deemed to be in breach of contract, provided that under no circumstance shall a Member be subject to contract damages (excepting only costs for pro rata contract expense contributions per Section 3.E) or other contract or equitable remedies, including specific performance or mandamus of any kind. If the remaining Members of the EAGSA determine by a majority vote of the remaining Members that a Member is in breach of contract then by duly adopted resolution of the remaining Members the defaulting Member may be involuntarily terminated from participation in the

EAGSA. The effect of such involuntary termination shall be identical in legal effect to a voluntary withdrawal of the terminated Member from the EAGSA.

SECTION 7. TERMINATION AND WITHDRAWAL.

A. The Members may, by unanimous consent, determine to terminate this MOU as it relates to one or both sub-basins. The termination may be undertaken with the intent of thereafter forming a separate legal entity under the Joint Exercise of Powers Act (Gov. Code ' 6500 et seq.). The creation of a separate legal entity under the Joint Exercise of Powers Act is not within the authority of the EAGSA and can only occur by independent authorization of the legislative bodies of each Member that may elect to join a new separate legal entity.

B. Any Member may, in its sole discretion, withdraw from this MOU with or without cause upon providing ninety (90) calendar days= written notice to the other Members. Service of notice of withdrawal shall be effective upon deposit of said notice in the United States Mail.

1. The notice of withdrawal shall state whether the withdrawing Member will elect to serve as the GSA for all or any portion of the lands within its boundaries or if the EAGSA shall continue to serve as the GSA for the withdrawing Member's political boundaries. Withdrawal of any Member's participation in this MOU by any Member shall not be construed as operating as a bar on the terminating Member's ability to form a GSA pursuant to SGMA.

2. The withdrawing Member will retain all rights and powers to serve or otherwise participate as the GSA for all or any portion of the lands within its political boundaries. The remaining non-withdrawing Members shall (i) not object to or interfere with the Member's political boundaries being in a separate GSA, as designed in the notice of withdrawal, except to the extent of overlap between Members, not including the County, which will be resolved as set forth in Section 7.B.3, hereafter; (ii) facilitate such transition to the extent reasonably necessary, including conducting GSA formation or modification proceedings as necessary to avoid any overlap or creation of unmanaged areas or to jointly advocate to third parties for the adjustment in GSA designations occurring after the June 30, 2017, deadline set forth in SGMA; (iii) share any data, work product or other information already developed by the EAGSA; and (iv) share in any data, work product, or other information that will be developed pursuant to a contract that the withdrawing Member is responsible for continuing to fund pursuant to Section 7.B.4, hereafter.

3. In the event the withdrawing Member's notice of withdrawal creates overlap with any other Member, not including the County, the Members will engage in the dispute resolution process, as set forth in Section 10.Q.

The overlapping Members will endeavor in good faith to resolve the overlap within the ninety (90) calendar-day period before the effective date of withdrawal.

4. In the event of a withdrawal pursuant to this Subsection (B), the withdrawing Member shall, in accordance with the allocations set forth in Section 9, be responsible to fund its share of any contract made by the City of Redding prior to the date notice of termination was delivered.

SECTION 8. TERM.

This MOU shall remain in effect until terminated.

SECTION 9. COST ALLOCATION.

A. Funding for all matters designated in Section 6 and which are applicable to the EAGSA as a whole shall be required in the proportion set forth as follows:

1. County - 16.67%
2. Redding - 16.67%
3. Anderson - 16.67%
4. ACID - 16.67%
5. CCCSD - 16.67%
6. BVWD - 16.67%

B. Directors representing a Member who is ninety (90) calendar days or more delinquent in any monetary contribution due under this MOU shall lose all voting privileges until the delinquency is brought current. This remedy of suspension of voting is not exclusive and is cumulative to any other remedy for breach of the contract obligations specified under this MOU, including payment obligations required by Section 3.E and Section 7.B.4, and the involuntary termination provision of Section 6.E.

SECTION 10. MISCELLANEOUS PROVISIONS.

A. No Member shall be responsible for any claim or liability occurring by reason of the actions or omission of another Member under or in connection with this MOU.

B. Each Member shall defend, indemnify, and hold harmless each other Member, its agents, officers, elected officials and employees from any claim, action, proceeding, damages, penalties, or judgment when said claim, action, proceeding, damage, penalties, or judgment was due to the negligent, reckless, or willful action or omission of the indemnifying Member. The indemnifying Member further agrees to reimburse the indemnified Member(s) for any costs or fees incurred by the said indemnified Member in responding to any claim, action, or

proceeding, including but not limited to, court costs, staff time, costs for legal counsel, any award of attorney fees, and all other direct or indirect costs associated with the indemnified Members= response to any claim, action, or proceeding.

C. Nothing in this MOU is intended, nor shall it be construed, to create an employer/employee relationship, association, joint venture relationship, trust, or partnership. Each member shall remain responsible for the payment of costs of employment of its Member employees participating in this MOU including, but not limited to, contribution to the Public Employee Retirement System, health insurance, or other employee benefit, FICA, SSI, Workers' Compensation.

D. No provision of this MOU is intended to, or shall be for the benefit of, or construed to create rights in, or grant remedies to, any person or entity not a party hereto.

E. Each Member shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this MOU. These records shall be made available for audit purposes to state and federal authorities, or any authorized representative of a Member having been granted authority by its legislative body to request access. Each Member shall retain such records for three (3) years after the expiration of this MOU.

F. All completed reports and other data or documents, or computer media and other materials provided or prepared as a result of this MOU, remain the property of each of the Members. The Members shall jointly and separately hold any work product created by a consultant retained by the EAGSA as its property. The Members shall jointly and separately retain all intellectual property rights including, but not limited to, copyright and patent rights, in said documents, computer media, and other materials provided by any consultant retained by the EAGSA.

G. Each Member, including its employees, and agents participating in the work authorized by this MOU shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this MOU and each shall comply with all the requirements of the Political Reform Act (Government Code ' 8100 et seq.) and other laws relating to conflicts of interest. With regard to any consultant retained by the EAGSA, said consultant shall not make or participate in a decision made by any Member if it is reasonably foreseeable that the decision may have a material effect on the consultant=s economic interest. Each Member has authority to require any such retained consultant to file financial disclosure forms with said Member.

H. This MOU shall be deemed to have been entered into in Redding, California. All questions regarding the validity, interpretation, or performance of any of its terms or of any rights or obligations of the parties to this MOU shall be governed by

California law. If any claim, at law or otherwise, is made by any Member to this MOU after attempting to informally resolve the dispute through discussions as set forth in Section 10.Q, the prevailing party shall be entitled to its costs and reasonable attorneys' fees to have the claim adjudicated; provided, however, this attorney fee clause shall not apply to disputes to resolve GSA overlaps as set forth in Section 7.B.3.

I. This MOU, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding each may have had prior to the execution of this MOU. This MOU shall not be altered, amended, or modified except by a writing signed by the Members. No verbal agreement or conversation with any official, officer, agent, or employee of any Member, either before, during, or after the execution of this MOU, shall affect or modify any of the terms or conditions contained in this MOU.

J. No covenant or condition to be performed by a Member under this MOU can be waived except by the written consent of all of the Members made in writing. Forbearance or indulgence by a Member in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Each Member shall be entitled to invoke any remedy available to it under this MOU or by law or in equity despite said forbearance or indulgence.

K. If any portion of this MOU or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this MOU shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

L. The headings in this MOU are inserted for convenience only and shall not constitute a part hereof.

M. Each Member hereto declares and represents that in entering into this MOU, it has relied and is relying solely upon its own judgment, belief, and knowledge of the nature, extent, effect, and consequence relating thereto. Each Member further declares and represents that this MOU is made without reliance upon any statement or representation not contained herein of any other Member or any representative, agent or attorney of the other Member. The Members agree that they are aware that they have the right to be advised by legal counsel with respect to the negotiations, terms, and conditions of this MOU and that the decision of whether or not to seek the advice of legal counsel with respect to this MOU is a decision which is the sole responsibility of each of the Members. Accordingly, no Member shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code ' 1654 that contracts are construed against the drafter shall not apply.

N. Each of the Members hereto hereby irrevocably waives any and all right to trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or

tort, at law or in equity, arising out of or in any way related to this MOU or the transactions contemplated hereby. Each Member further waives any right to consolidate any action which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

O. In the event of a conflict between the term and conditions of the body of this MOU and those of any exhibit or attachment hereto, the terms and conditions set forth in the body of this MOU proper shall prevail.

P. The Members shall comply with all applicable laws, ordinances, and codes of federal, state and local governments in the performance of this MOU. Further, the Members shall not discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, religious creed, sex, sexual orientation, disability, age, marital status, political affiliation, or membership or nonmembership in any organization. The Members shall take affirmative action to ensure applicants are employed and that employees are treated during their employment without regard to their race, color, ancestry, national origin, religious creed, sex, sexual orientation, disability, age, marital status, political affiliation, or membership or nonmembership in any organization. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

Q. If a Member believes there exists a dispute related to this MOU, the Member shall provide prompt notice to the other Members of the existence of the dispute. Disputes between two of the members agencies and not the GSA as a whole are not GSA disputes and are not subject to this dispute resolution provision. The Members that are party to the dispute shall set a time and place to meet and confer in person, and such meeting shall take place within fifteen (15) calendar days or as soon as practicable after notice of the dispute has been tendered and shall include the manager and at least one board member from each disputing Member.

Should the Members be unable to resolve the dispute within forty-five (45) calendar days or as soon as practicable after the dispute notice was tendered, the Member representatives shall again meet and confer in person to arrive at a mutually agreeable process to resolve the dispute. At this second meet and confer, the Members will specifically discuss and consider mediation, binding arbitration, appointment of a technical expert, or a panel of technical experts to offer an opinion on any disputes of a technical nature, and other forms of alternative dispute resolution. If within fifteen (15) calendar days or as soon as practicable after this second meet and confer the dispute remains or the Members are unable to arrive at a mutually agreeable process to resolve the dispute or both, then any Member may resort to all available legal and equitable remedies and means to resolve such dispute.

SECTION 11. **SURVIVAL.**

The provisions set forth in Section 10, Subdivisions (A), (B), (C), (E), (F), (H), (K), (M), (N), (O), and (Q) of this MOU shall survive termination of the MOU.

SECTION 12. **REPRESENTATIVES.**

A. Redding's representative for this MOU is Brian Crane, telephone number (530) 225-4170, and email bcrane@cityofredding.org. All questions relating to Redding's participation in this MOU shall be referred to the above-named person, or to the representative's designee.

B. Anderson's representative for this MOU is Jeff Kiser, telephone number (530) 378-6646, and email jkiser@ci.anderson.ca.us. All questions relating to Anderson's participation in this MOU shall be referred to the above-named person, or to the representative's designee.

C. County's representative for this MOU is Pat Minturn, telephone number (530) 225-5661, and email pminturn@co.shasta.ca.us. All questions relating to County's participation in this MOU shall be referred to the above-named person, or to the representative's designee.

D. BVWD's representative for this MOU is David Coxey, telephone number (530) 241-1085, and email dcoxey@bvwd.org. All questions relating to BVWD's participation in this MOU shall be referred to the above-named person, or to the representative's designee.

E. CCCSD's representative for this MOU is Rick Cascarina, telephone number (530) 357-2121, and email rickc@shasta.com. All questions relating to CCCSD's participation in this MOU shall be referred to the above-named person, or to the representative's designee.

F. ACID's representative for this MOU is Mike Battles, telephone number (530) 365-7329, and email mbattlesacid@gmail.com. All questions relating to ACID's participation in this MOU shall be referred to the above-named person, or to the representative's designee.

G. The representatives set forth herein shall have authority to give and receive all notices required herein.

SECTION 13. **DATE OF MOU.**

The date of this MOU shall be the date it is signed by the last Member to sign.

IN WITNESS WHEREOF, the Members have executed this MOU on the days and year set forth below:

CITY OF REDDING,

Dated: May 5th, 2017

Brent Weaver, **Mayor**

ATTEST:

APPROVED AS TO FORM:

BARRY E. DeWALT
City Attorney

for **PAMELA MIZE, City Clerk**

By:

COUNTY OF SHASTA

Dated: April 18 2017

By: DAVID A. KEHOE, CHAIRMAN

ATTEST:

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By **Deputy**

XXXXXXXXXXXXXXXXXXXX, County Clerk

APPROVED AS TO FORM:

RUBIN CRUSE
County Counsel

4/5/17

By: David M. Yorton, Jr.
Senior Deputy County Counsel

CITY OF ANDERSON

Dated: 4/20, **2017**

By: Baron Browning, Mayor

ATTEST:

APPROVED AS TO FORM:

JODY BURGESS
City Attorney

Juanita Barnett, **City Clerk**

By: Jody Burgess, City Attorney

CLEAR CREEK CSD

Dated: April 20, **2017**

By: Johanna Trenerry

ATTEST:

APPROVED AS TO FORM:

WALT McNEIL
General Counsel

_____, **Clerk**

By: Walt McNeill

BELLA VISTA WATER DISTRICT

Dated: May 1, **2017**

By: James Smith, Board President

ATTEST:

APPROVED AS TO FORM:

JOHN KENNY
General Counsel

DAVID J. COXEY, Secretary

By: Rob Taylor for John Kenny

ANDERSON-COTTONWOOD IRRIGATION DISTRICT

Dated: April 13, **2017**

By:

ATTEST:

APPROVED AS TO FORM:

Dustin Cooper
General Counsel

Mike Battles,
General Manager

By: Brenda Haynes, Board President
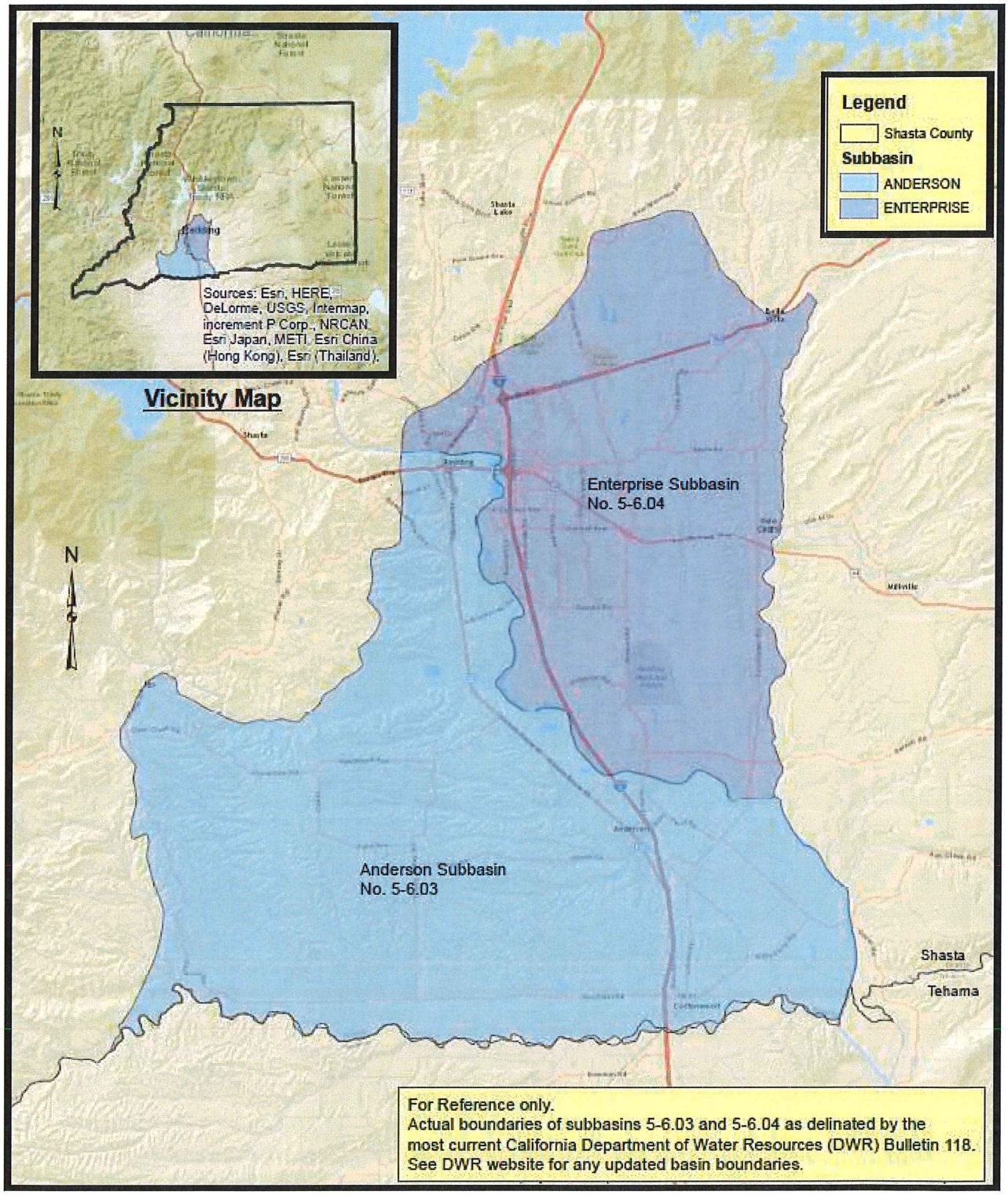
Exhibit A
Redding Area Groundwater Basin