

## TECHNICAL ASSISTANCE AGREEMENT

This Technical Assistance Agreement is entered into by and between U.S. Geological Survey, a Bureau of the Department of the Interior, through the offices of its Earth Systems Modeling Branch, Menlo Park, CA, hereinafter referred to as the “USGS” and State Water Resources Control Board, Sacramento, CA, hereinafter referred to as “Collaborator.” USGS and Collaborator are sometimes herein referred to as a “Party” and collectively as the “Parties.”

Whereas, the USGS is authorized to perform technical assistance with other Federal agencies, units of State or local government, industrial organizations, private corporations, public and private foundations, and nonprofit organizations (including universities) under the Stevenson-Wydler Act (15 U.S.C. § 3710a(b)(3)(A), as amended);

Whereas, Collaborator is mandated under the California Water Action Plan to enhance instream flows in priority watersheds and has need of USGS expertise in GSFLOW;

Whereas, the project entitled “Ventura River Watershed Modeling” is intended by the Parties to be mutually beneficial and to benefit the people of the United States and the State of California;

Now, therefore, the Parties hereto agree as follows:

- 1. Statement of Work.** See attached Statement of Work (SOW) (Attachment A), incorporated by reference herein.
- 2. Principal Investigator.** The USGS principal investigator (PI) for this project is Richard Niswonger, 775-297-1392, rniswon@usgs.gov, 345 Middlefield Road, Mail Stop 470, Menlo Park, CA 94025. The PI for the Collaborator is Daniel Worth, 916-341-5324, daniel.worth@waterboards.ca.gov, 1001 I Street, 14<sup>th</sup> Floor, Sacramento, CA 95814. In the event that a PI is unable to continue in this project, the sponsoring agency will make every effort to substitute a replacement acceptable to the other Party.
- 3. Title to Equipment.** There will be no joint property purchased as a result of the work outlined in the SOW. Each Party will provide its own equipment necessary to support its participation in the technical evaluation.
- 4. Term.** The technical assistance contemplated by this Agreement will commence on the effective date of this Agreement. The effective date of this Agreement shall be the date of the last signature by the Parties. The expiration date of this Agreement shall be 12/31/2019. The Agreement may be extended by mutual written agreement of the Parties.
- 5. Funding.**
  - (a) The Collaborator will provide \$0 in funds to the project. The Collaborator is providing in-kind services valued at \$1,000.00.

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- (b) The USGS requires an advance of \$0.
- (c) The USGS is providing in-kind services valued at \$ 1,000.00.

**6. Termination.** This Agreement may be terminated by either Party on 30 days written notice to the other. The USGS shall also supply a copy of the evaluations completed as of the Effective Date of Termination in the event of an early termination of the project.

## **7. Publications/Reports.**

(a) Each Party is free to publish the non-proprietary or non-confidential information and data developed in the performance of this agreement. Before a Party submits the information and data for publication or otherwise intends to publicly release or disclose scientific information and data that is jointly developed, the Party shall have a review period of fifteen (15) business days to ensure that the draft publication or presentation does not contain Confidential or Proprietary Business Information. Upon expiration of the review period with no comments received from the other Party, the first Party will proceed with submission of the publication and presentation. The 15 days review period is provided as a courtesy to review the publications or presentations to ensure confidential or proprietary information is not disclosed and ensure that there is not inadvertent release of such information that could be used for a patent or invention application. All comments provided within the review period will be forwarded to the contacts identified in section 9. The Parties acknowledge that USGS is required to provide timely public access to the results of scientific information and data that does not contain sensitive protected information. This may include using machine-readable and open formats, data standards, and common core and extensible metadata for all new non-protected information created and collected in accordance with USGS Fundamental Science Practice regarding the review, approval, and release of information set out in Survey Manual Chapter 502.4 and 502.8, Fundamental Science Practices: Metadata for USGS Scientific Information Products Including Data, 502.7 and OMB M-13-13.

(b) Under the authority of 15 USC § 3710a (c)(7)(B), as amended, the Parties will have the opportunity, as part of the technical assistance, to identify protected research and development information, which is defined as information generated by the research which would have been proprietary information had it been obtained from a non-Federal entity. Each Party may designate as protected research and development information, any information generated by its own employees, and with the Agreement of the other Party, mark any information produced by the other Party's employees. Such protected research and development information shall be exempt from disclosure under 5USC § 552(b)(4). After the protected research and development information period has expired, the USGS may publish the results of the research as part of open literature (journal and proceeding articles) or as USGS open file reports.

(c) Generated information and results which have been created and marked as protected research and development information may be protected from release or disclosure for a period of two (2) years, unless an earlier date is agreed upon by the Parties.

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## 8. Proprietary Information/Intellectual Property/Background Intellectual Property.

- (a) Proprietary Information means information which embodies trade secrets developed at private expense outside of this Agreement or which is confidential technical, commercial, or financial information under the Freedom of Information Act 5 U.S.C. § 552(b)(4).
- (b) All rights in intellectual property, which are defined as new/improved patents, copyrights, new inventions, patentable discoveries, biological materials, or software, created in the course of the SOW, shall be the property or joint property of the organization employing the respective individual who made the invention or discovery. Any such inventions ("subject inventions") shall be reported to the Principal Investigator within 60 days of creation, who in turn will notify their own management and the other Party's PI. In the event that the intellectual property is a joint invention not described in paragraph (c) below, the Parties agree to meet and negotiate a commercialization plan within 60 days of the receipt of a written request from the other Party.
- (c) For purposes of this Agreement, background intellectual property refers to intellectual property, which was in existence prior to or first produced outside of this Agreement, and was developed by a Party either alone or with others, using one or more separate funding sources not related to the Agreement. Background intellectual property is not considered a subject invention. In this Agreement, the Collaborator is providing valuable patented/copyrighted material specified in the SOW to which the USGS may/could value. In the event that the joint efforts of the Parties build upon the preexisting background intellectual property of the Collaborator, the Collaborator may take ownership of the patent/copyright but must agree to negotiate a Government Purpose license or revenue sharing arrangement with the USGS that reflects USGS's contributions to the joint project.

**9. Notices.** Any notice required to be given or which shall be given under this Agreement shall be in writing and delivered by first-class mail to the Parties as follows:

USGS:

**Technical:**

Richard Niswonger  
Research Hydrologist  
U.S. Geological Survey  
IMPD  
345 Middlefield Road  
Menlo Park, CA 94025  
650-329-4463  
[rniswon@usgs.gov](mailto:rniswon@usgs.gov)

Collaborator:

**Technical:**

Daniel Worth  
Senior Environmental Scientist  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
916-341-5324  
[Daniel.Worth@waterboards.ca.gov](mailto:Daniel.Worth@waterboards.ca.gov)

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**Administrative:**

Melanie Estep  
Administrative Officer  
U.S. Geological Survey  
IMPD  
Box 25046, MS 410  
Denver, CO 80225  
303-236-4551  
[mestep@usgs.gov](mailto:mestep@usgs.gov)

**Administrative:**

Kevin DeLano  
Geologist  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
916-319-0631  
[Kevin.delano@waterboards.ca.gov](mailto:Kevin.delano@waterboards.ca.gov)

**Financial Contact Information for Collaborator:**

Kevin DeLano  
Geologist  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
916-319-0631  
[Kevin.delano@waterboards.ca.gov](mailto:Kevin.delano@waterboards.ca.gov)

**10. Independent Entity.** For purposes of this Agreement and all research and services to be provided hereunder, each Party shall be, and shall be deemed to be, an independent Party and not an agent or employee of the other Party. Each Party shall have exclusive control over its employees in the performance of the work. While in field locations, a Party's employees shall adhere to the safety and technical requirements imposed by the Party controlling the work site.

Neither Party shall have authority to make any statements, representations, or commitments of any kind, or take any action, which shall be binding on the other Party, except as may be explicitly provided for herein or authorized in writing. Neither Party may use the name of the other in advertising or other forms of publicity without the written permission of the other.

**11. Governing Law/Liability.**

(a) This Agreement is subject to interpretation under applicable State and Federal laws. Where there is inconsistency between the laws, Federal law is controlling. Each Party agrees to be responsible for the activities, including the negligence, of their employees. The USGS responsibility for the payment of claims for loss of property, personal injury, or death caused by the negligence or wrongful act or omission of a USGS employee, while acting within the scope of their employment, is limited to provisions of the Federal Tort Claims Act, 28 USC §§ 2671-80.

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(b) The USGS and the Collaborator make no express or implied warranty as to the conditions of the research, merchantability or fitness for a particular purpose of the research, data, or resulting product incorporating data developed and exchanged under the SOW. These provisions shall survive the termination of the Agreement.

(c) The USGS shall not indemnify Collaborator or any third party against any liabilities, costs, attorney's fees, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal costs and all other professional costs and expenses suffered or incurred by Collaborator or any third party arising from the work conducted under this technical assistance agreement.

**12. Force Majeure.** Neither Party shall be liable for any unforeseeable event beyond its control, not caused by the fault or negligence of such Party, which causes such Party to be unable to perform its obligations under this Agreement, and which it is unable to overcome by the exercise of due diligence including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes; epidemic, war, riot, civil disturbance, or disobedience; strikes, labor disputes, or failure, threat of failure, or sabotage; or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the Party unable to perform shall promptly notify the other Party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

**13. Entire Agreement.** This Agreement contains all of the terms of the Parties and supersedes all prior Agreements and understandings related thereto. This Agreement can be changed or amended only by a written instrument signed by the Parties. Due to the specialized nature of the work, this Agreement is non-assignable by both Parties.

**14. Disputes.** The signatories to this Agreement shall expend their best efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the signatories are unable to resolve shall be submitted to the Director of the USGS or his/her designee and the Executive Director of the Collaborator or his/her designee for resolution. If no resolution is reached, the parties agree that the courts of the United States shall have jurisdiction over any claims arising out of work under this Agreement.

**15. Miscellaneous Provisions.**

**(a) Anti-Deficiency Act.** Pursuant to the Anti-Deficiency Act, 31 U.S.C. §§ 1341 (a)(1)(A) and (B) and 31 USC § 1517(a), nothing herein contained shall be construed as binding the USGS to expend in any one fiscal year any sum in excess of its appropriations or funding in excess of what it has received for the collaborative work outlined in the SOW or involving the Federal government in any obligation to pay money before funds have been appropriated for that purpose unless otherwise allowed by law.

**(b) Import/Export.** The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to

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export Information or to permit any disclosure in violation of law, regulation, or Department of Interior policy. The exporting Collaborator is responsible for obtaining any export licenses that may be required by U.S. Federal law.

**(c) Third Parties.** The Parties acknowledge and agree to allow disclosure of Proprietary Information or Background Intellectual property to third parties (such as, students, contractors, subcontractors and or consultants) or external collaborators for the purposes of carrying out this Agreement. If a Party engages a new third party to perform any portion of the SOW after the Effective Date of this Agreement, such Party will notify the other Party and provide information about the third-Party involvement within 7 days of engagement. However, these participants are not Parties to the Agreement. The Parties agree that they will comply with and advise any third parties they have engaged to conduct the Agreement activities to comply with, all applicable Executive Orders, statutes, and regulations. The Parties agree that they will ensure that third party participants are under written obligation not to disclose Proprietary Information or Background Intellectual Property, except as required by law or court order, before the third parties have access to any Proprietary Information or Background Intellectual Property. No foreign personnel shall be engaged by the Collaborator as a contractor, consultant, grantee or third-party collaborator for the performance of any work under this Agreement without first identifying the individual, his country of origin, and the work to be performed to USGS so that USGS may determine whether the agency requires advanced approval by an authorized agency official before working with the foreign contractor, consultant, grantee or third-party collaborator, and whether any data, technology or products shared with or used by a foreign contractor, consultant, grantee or third-party collaborator as part of the technical assistance under this agreement are in accordance with all U.S. laws and regulations, including national security export controls and U.S. Department of State regulations and policies.

**(d)** The Exhibits, Forms, or Special Terms requested by the Collaborator are accepted to the extent that such terms do not conflict with applicable Federal laws and regulations.

**16. Survivability.** The following provisions shall survive the termination of this Agreement: 7. Publications/Reports; 8. Proprietary Information/Intellectual Property/Background Intellectual Property; and 14. Disputes.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the last date listed below.

U.S. GEOLOGICAL SURVEY

By: \_\_\_\_\_

Name: Stephen Moulton II \_\_\_\_\_

Title: Chief Operating Officer \_\_\_\_\_

Date: \_\_\_\_\_

COLLABORATOR

By: 

Name: Eileen Sobeck

Title: Executive Director

Date: 11/5/2019

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**Attachment A: Statement of Work****I. Background**

As directed under the California Water Action Plan, the California State Water Resources Control Board (State Water Board) is taking actions to enhance instream flows in priority watersheds across California. Under this effort, the State Water Board is developing a surface water-groundwater model of the Ventura River watershed, a priority watershed, to simulate water supply, surface water flows, and groundwater levels.

**II. Purpose**

This proposal describes an agreement by which the USGS will share a preliminary/draft USGS GSFLOW model (in integrated surface water and groundwater interaction model) package code and documentation, hereafter referred to as the preliminary/draft USGS Agricultural (Ag) Package, with the State Water Board. The code and documentation will be released to the public within 6 months of this agreement taking effect. The USGS may surrender all intellectual property to the public domain.

**III. Objectives or Specific Aims**

The agreement will allow the State Water Board, and its contractors, to evaluate the preliminary/draft Ag Package and determine whether to use it to simulate water use in an in-development GSFLOW model of the Ventura River watershed.

**IV. Term and Proposed Project Schedule/Milestones**

The agreement term, and sharing of the preliminary/draft Ag Package, shall begin upon execution of the agreement. The agreement will end upon USGS providing the Ag Package modeling code and documentation to the State Water Board.

**V. Collaborator's Role and Expertise**

The State Water Board and its contractors are developing a GSFLOW model of the Ventura River watershed. The model will serve as a tool to inform water resource policy in the Ventura River watershed. The State Water Board and its contractors shall not share the preliminary/draft Ag Package with parties outside the Agreement unless required to do so by law.

**VI. USGS' Role and Expertise**

The USGS will provide the State Water Board with the preliminary/draft Ag Package and participate in discussions to facilitate knowledge transfer. The USGS is not responsible for any problems with the preliminary/draft Ag Package nor with how the State Water Board uses the preliminary/draft Ag Package.

**VIII. Anticipated Outcomes/Expected Results (Outcomes and Results)**

The State Water Board will determine whether to use the preliminary/draft Ag Package in development of a GSFLOW model of the Ventura River watershed.

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