

Know Your Options:

A Guide to Forming Groundwater Sustainability Agencies



Know Your Options:

A Guide to Forming Groundwater Sustainability Agencies

September 2015

AUTHORS:

Valerie Kincaid

Ryan Stager

CONTACT:

Valerie Kincaid

vkincaid@olaughlinparis.com

ABOUT THE AUTHORS:

Valerie Kincaid is a partner at the firm of O’Laughlin & Paris LLP, whose practice focuses on water law, including water rights, water transfers, and water quality issues. She also handles environmental law issues related to the use of water resources, including state and federal endangered species law, habitat conservation planning, public trust issues, and state and federal environmental regulations. Ms. Kincaid represents various public irrigation districts, water districts, and water authorities in the areas of permitting, enforcement, and regulatory matters at both the administrative and judicial levels.

Ryan Stager is a second year law student at the University of California at Davis.



This report was made possible through the generous support of the California Water Foundation, an initiative of Resources Legacy Fund.

TABLE OF CONTENTS

Executive Summary	1
Introduction	2
CHAPTER 1: The Sustainable Groundwater Management Act (SGMA)	3
SGMA Requirements	3
GSA Formation Options	3
Election Requirements	3
CHAPTER 2: Non-Public Agency Representation	4
CHAPTER 3: Governance Through An MOA	6
MOA Basics and Options	6
MOA Structure and Development	6
Recitals • Definitions • Decision-Making Procedures and MOA Implementation • Funding •	
Dispute Resolution • Providing Proper Notice and Interagency Communication •	
Termination of the Agreement and Individual Member Withdrawal • Amending the Agreement •	
Indemnification • Ownership of Intellectual Property or Developed Intellectual Property •	
Ralph M. Brown Act Considerations • Public Records Act Requests • Term of the Agreement •	
Miscellaneous Provisions	
CHAPTER 4: GSA Formation through a Joint Powers Agreement (JPA) to Create a Separate Entity	12
JPA Basics and Options	12
Benefits and Challenges of Creating a JPA	12
JPA Structure and Development	13
Recitals, Definitions, and Term of Agreement • Creation of Joint Powers Agency •	
Internal Organization	
CHAPTER 5: Template: Memorandum of Agreement	25
CHAPTER 6: Template: Joint Powers Agreement Forming the [name of basin] Basin Groundwater Sustainability Agency	30
References	40
Appendix/Sample MOAs and JPAs	<i>Available as a separate document</i>

EXECUTIVE SUMMARY

In September 2014, Governor Jerry Brown signed into law the Sustainable Groundwater Management Act (SGMA). SGMA’s spirit and purpose is for local agencies and stakeholders to coordinate groundwater basin management. Local agencies are required to manage their basin by forming Groundwater Sustainability Agencies (GSAs). After a GSA is formed, it must develop and implement a Groundwater Sustainability Plan (GSP), or an alternative plan, that will meet SGMA’s long-term sustainability goals.

This Groundwater Sustainability Agency Formation Guide (Guide) is meant to provide local agencies with a resource for GSA formation and GSP coordination. This Guide focuses on memorandums of agreement and joint powers agreements, two legal agreements mentioned in SGMA that can be used by local agencies for GSA formation and GSP development and implementation. Under SGMA, memorandums of agreement and joint powers agreements will likely be used for different types of arrangements and management relationships. The table below compares the two legal agreements.

This Guide explains SGMA’s requirements generally and introduces important GSA formation and election considerations. The Guide provides options for involving parties in the GSA decision-making process that are not public agencies. These options include delegating voting power to non-public agencies, creating an associate

member arrangement, forming a new public agency, or drafting a legal voting arrangement. The Guide goes into detail on GSP coordination through memorandums of agreement, including the considerations of finances, indemnification, and decision-making procedures GSAs coordinating their GSPs will need to address. To provide examples, the Guide examines relevant case studies from actual memorandums of agreement, provided in the appendix, to highlight how past agreements have navigated the discussed topics. The Guide discusses the potential of GSA formation through a joint powers agreement. The benefits and challenges of joint powers agreements are highlighted and potential “problem areas” such as governing board voting powers, agency finances, and the GSA’s authority that parties will want to consider are explained. The Guide examines previous joint powers agreements to highlight how these agreements have addressed challenging topics. Finally, the Guide provides templates of both a memorandum of agreement for GSAs coordinating their respective GSPs and a template joint powers agreement for local agencies to use for creating a joint powers agency to serve as a GSA. These template agreements may help agencies organizing management structures to better identify the challenges of governance and structure coordination to meet these challenges.

Comparing JPAs and MOAs								
<i>Type of Agreement</i>	<i>Governing Law</i>	<i>Primary Use</i>	<i>New Public Entity</i>	<i>Issue Bonds</i>	<i>Required Audits</i>	<i>Brown Act</i>	<i>Protect Members from Liability</i>	<i>SGMA Authorities</i>
Joint Powers Agreement (JPA)	California Government Code 6500 et. seq.	Create a separate public entity.	Yes	Yes	Yes	Yes, must comply	Yes, JPA is more protective	Exercised by JPA
Memorandum of Agreement (MOA)	California contract law	Memorialize agreement among parties	No	No	No	No, likely no Brown Act Requirements	No, generally an MOA does not offer the same protection as a JPA	Exercised by members

INTRODUCTION

In September 2014, Governor Jerry Brown signed Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act. The purposes of SGMA are to provide sustainable management of groundwater basins, enhance local management of groundwater, establish minimum standards for sustainable groundwater management, provide local groundwater agencies with the authority and tools necessary to sustainably manage groundwater, and allow for state oversight and intervention if locals do not act. SGMA requirements apply to groundwater basins and sub-basins that are designated medium or high-priority by the California Department of Water Resources (DWR), based on specific criteria. Basin priorities were confirmed in January 2015.

The text of SGMA is voluminous and complex. This (Guide) is intended to serve as a helpful tool for local agencies and other stakeholders seeking to comply with SGMA's new governance requirements. Specifically, this Guide focuses on the legal options for GSA formation and coordination related to GSP development and implementation. It introduces key provisions, vocabulary used in the act, and related compliance deadlines. This Guide then introduces and discusses

memorandums of agreement (MOA) and joint powers agreement (JPA), two mechanisms that may be used by local agencies to comply with SGMA. To demonstrate governance options, this Guide provides two templates. The first template is a memorandum of agreement that could be used amongst GSAs seeking to develop and implement a single GSP for their basin. The second template is a joint powers agreement amongst several local agencies creating a separate public entity to serve as a GSA.

The organizational structure of the Guide is:

- **Chapter 1:** The Sustainable Groundwater Management Act
- **Chapter 2:** Non-Public Agency Representation
- **Chapter 3:** Governance Through An MOA
- **Chapter 4:** GSA Formation through a Joint Powers Agreement to Create a Separate Entity
- **Chapter 5:** Template: Memorandum of Agreement
- **Chapter 6:** Template: Joint Powers Agreement Forming the [name of basin] Basin Groundwater Sustainability Agency



The Sustainable Groundwater Management Act (SGMA)

SGMA Requirements

SGMA lays out a process and a timeline for local agencies to comply with specific sustainability goals. One of the first requirements a management entity will need to satisfy is to form a GSA. SGMA defines a GSA as one or more local agencies that implement SGMA's provisions.¹ A local agency is defined as any local public agency that has water supply, water management, or land use responsibilities within a groundwater basin.² Any local agency or combination of local agencies overlying a groundwater basin can elect to be a GSA.³ Once formed, one of a GSA's primary responsibilities is to develop and implement a GSP for their basin or portion of the basin they are managing. A GSP is a plan developed and implemented by a GSA that is developed and adopted pursuant to SGMA's requirements.⁴ The specific GSP requirements are outlined in California Water Code section 10727 et seq., and regulations are currently being developed by DWR.

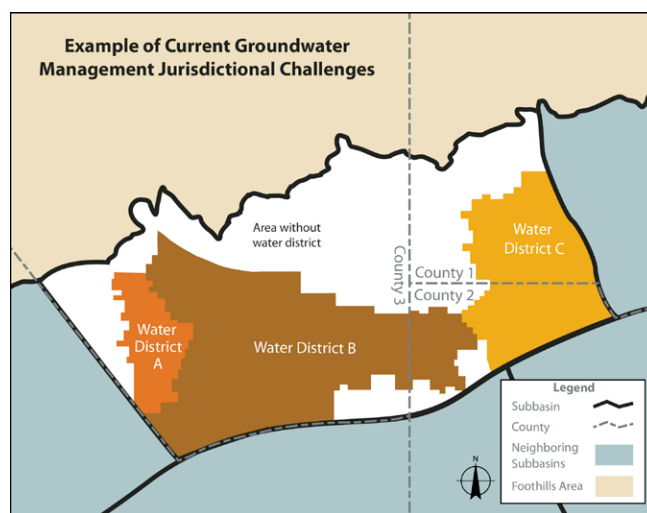
By June 30, 2017 local agencies in each high- or medium-priority basin are required to have created a GSA, or multiple GSAs, covering the *entire basin*.⁵ If a portion of a basin is not managed by GSAs, the county is presumed to be the GSA for that unmanaged area.⁶ By January 31, 2020 basins designated as high- or medium-priority and subject to critical conditions of overdraft must be managed by a single GSP or by multiple coordinated GSPs.⁷ By January 31, 2022 all remaining basins designated as high- or medium-priority must be managed by a GSP or by multiple coordinated GSPs.⁸

Violation of the above listed deadlines/or improper or unsatisfactory GSP implementation may lead to basins being placed on probationary status by the state.⁹ State intervention and probationary status are set forth in California Water Code sections 10735 et seq. and 5200 et seq.

GSA Formation Options

Aside from requiring that GSAs be formed, SGMA does not mandate a single formation approach. This gives local agencies overlying a basin a wide variety of formation options. For example, a single local agency whose service area encompasses an entire basin could elect to be the sole GSA for a basin.¹⁰ Alternatively, multiple local agencies could come together to form a single

GSA that manages the entire basin. Or, a basin could be managed by multiple GSAs who each manage separate portions of a basin through either a single GSP or coordinated GSPs.¹¹ Given the likelihood that multiple local agencies overlying a basin may elect to participate in managing the basin, this guide focuses on the different ways multiple local agencies can come together to create a GSA and coordinate with other GSAs.



This example illustrates the challenge of effectively managing groundwater subbasins with multiple entities and overlapping jurisdictions.

Pursuant to SGMA, a combination of local agencies can form a GSA through a joint powers agreement, a memorandum of agreement, or "other legal agreement."¹² As noted above, SGMA limits formal GSA members to local public agencies, a limitation which raises questions about whether and how non-agency parties (individuals, community groups, non-profit organizations) might participate in a GSA.¹³ There are two general approaches: first, the non-agency parties might form a new agency; second, the non-agency parties might be incorporated into the decision-making process for the GSA without becoming a separate agency. Each of these approaches are addressed in Chapter 2 of this guide, below.

Election Requirements

Aside from deciding how to structure their GSA, local agencies will need to follow SGMA's requirements to officially become the GSA for their basin or portion of their basin. Before electing to be the GSA the local agency

or agencies considering GSA election are required to publish a notice pursuant to Section 6066 of the Government Code.¹⁴ After publishing the notice, the local agency or agencies shall hold a public hearing in the county or counties overlying the basin.¹⁵ Then, within 30 days of forming a GSA, the GSA shall inform DWR of its election or formation and its intent to undertake sustainable groundwater management.¹⁶ The GSA notification to DWR shall include the following: (1) service area boundaries, (2) the boundary the agency is proposing to manage, (3) the other GSAs operating within the basin, (4) a copy of the resolution forming the new agency, (5) a copy of any new bylaws, ordinances, or new authorities adopted by the local agency, and (6) a list of interested parties developed pursuant to California Water Code section 10723.2 with an explanation of how their interests will be considered in the development and operation of the GSA and the develop and implementation of the agency's GSP.¹⁷

After ninety (90) days following the posting of the GSA formation notice by DWR, the GSA shall be presumed to be the exclusive GSA within the area of the basin the agency is managing as described in their notice, so long as no other notice was submitted.¹⁸ Readers should note, legislation has recently passed (SB 13, Pavley) in the current 2015-16 session that modifies GSA election procedures.¹⁹ The proposed legislation would make clear that competing elections over the same geographic boundaries could not be successful. Specifically the legislation requires local agencies to seek to reach an agreement regarding management and states that if there is an area with competing GSA elections, the elections are not valid until worked out at the local level. For additional GSA election and formation information, please refer to the following Department of Water Resources website link: <http://www.water.ca.gov/groundwater/sgm/gsa.cfm>.

CHAPTER 2:

Non-Public Agency Representation

SGMA limits GSA membership to local public agencies and water corporations regulated by the Public Utilities Commission.²⁰ Legislation passed in the 2015-16 session (SB 13, Pavley) that seeks to modify GSA membership rules to (a) remove the public agency approval component of PUC regulated water corporations and (b) allow the inclusion of a mutual water company in a joint powers structure.²¹ As SGMA is currently written, all other non-public agency parties cannot form a GSA or directly be a member of a GSA. This limitation causes a significant challenge to individual groundwater users that would like to be involved in the management of groundwater. In addition, SGMA creates a challenge for public agencies that will need to represent non-public agency interests in the management of the basin; representation of such interests is critical to ensuring that all affected interests are considered, to limit exposure to litigation, and to improve the defensibility of decisions made by the GSA. The following discussion addresses four options available to GSAs seeking to represent the interests of parties who are not local public agencies.

1. Delegate Voting to Non-Public Agencies.

GSA members may provide or delegate voting

power to representatives from groups who are not local public agencies. Both the Sacramento Groundwater Authority and Sacramento Central

Representation of non-public interests is critical to ensuring that all affected interests are considered.

Groundwater Authority (SCGA) represent examples of this option. In both cases, the JPAs were drafted and signed by local cities and counties. However, in both cases the cities and counties delegated governing board seats to irrigation districts, private water purveyors and investor owned utilities and various other representatives such as an “agricultural interest” representative and a “conservation landowners” representative etc. Additionally, the SCGA requires non-member governing board representatives to contribute funding to the agency. Thus, GSAs seeking to include non-local public agencies could look to those two JPAs as examples for this option.

2. **Associate Membership Arrangement.** GSAs may also involve non-local public agencies without delegating member's voting powers by opting for an associate membership arrangement. Under this option, a GSA's formation agreement could designate specific representatives, or provide the governing board the authority to designate associate representatives. For example, in the Eastern San Joaquin County Groundwater Basin Authority JPA, the parties could empower associate members with the ability to participate in meetings — without conferring voting power.
3. **Form a New Public Agency.** Individuals that do not have public agency status may decide they would like to form a public agency in order to satisfy SGMA. Once an entity becomes a local agency, it would then be eligible for GSA membership under SGMA. Parties could also explore the potential to become a local agency by creating a new general act or special act district. A general act district is created by following the rules set forth in various provisions of the Water Code or Government Code. A special act district is created through legislation passed by the state legislature. Once a new district is created through a general act or special act process, the district may then elect to be a GSA. Theoretically a similar approach might involve incorporate of unincorporated communities. In this regard, there are many practical and other complexities

associated with forming new local public agencies, and additional complexities associated with the ability of such brand-new agencies to effectively participate in the GSA process. Due to the unique requirements and considerations associated with these processes, this guide does not discuss them further. This guide instead focuses on GSA election and coordination through memorandums of agreement (MOA) and joint powers agreements (JPA) of existing public agencies. If parties choose to form a new local agency in order to participate in the GSA process, this guide will be a useful reference for the new agency after formation.

4. **Legal Voting Arrangement.** Lastly, parties could also seek to establish a legal agreement with a GSA governing board member such as a county, with voting power in a GSA overlying their basin. Under this agreement, parties could stipulate that the governing board member may vote only after receiving the recommendation of the non-public agency that is a party to the agreement.

Additional strategies for integrating diverse stakeholders are outlined in Collaborating for Success: Stakeholder Engagement for successful Sustainable Groundwater Management Act Implementation: https://d3n8a8pro7vhmx.cloudfront.net/community-watercenter/pages/52/attachments/original/1438102537/SGMA_Stakeholder_Engagement_White_Paper.pdf?1438102537



Photo by John Chacon/CA DWR

Governance Through An MOA

MOA Basics and Options

An MOA is simply a contract between parties. Unlike joint powers agreements, which are governed by California Government Code section 6500 et seq., MOAs are governed by state contract law and common law. An MOA's structure, content, and purpose can vary considerably. MOAs range from non-binding agreements among parties to discuss cooperating on a potential project to comprehensive agreements committing parties to specific actions and funding obligations.²² Additionally, the terms MOA and Memorandum of Understanding (MOU) are commonly used interchangeably. There is no established legal distinction other than name and level of formality.

Under SGMA, an MOA is most likely to serve one of three functions. First, multiple local agencies could use an MOA to form a single GSA, although this poses concerns described below.²³ Second, multiple local agencies could use an MOA as an initial agreement to memorialize their collective intent to form a joint powers authority at a later date. Third, and the likely most common function, multiple GSAs could use an MOA to coordinate GSA responsibilities and authorities such as the development and implementation of a GSP or GSPs.

Although SGMA lists an MOA as a GSA formation option, the remainder of language in SGMA suggests a GSA should be a separate entity. MOAs do not generally create separate entities. Some have interpreted SGMA to authorize multiple agencies to jointly become a GSA without creating a separate entity. Choosing this path is complicated and is likely to lead to confusion. Parties electing to have multiple agencies collectively elect to be a single GSA will need to be clear regarding the sharing of SGMA's new GSA authorities without creating an entity to act as the GSA. This guide primarily focuses on using an MOA as an instrument of coordination between GSAs.

The use of an MOA as a coordination tool between GSAs could take one of two forms. Multiple GSAs seeking to develop a single collective or coordinated GSP could use an MOA to coordinate development and implementation responsibilities amongst the GSAs. Alternatively, an MOA could be useful to coordinate multiple GSPs. In this case, SGMA requires that if a

basin is managed under multiple GSPs, the GSPs must be coordinated through a single coordination agreement.²⁴ An MOA could serve as this coordination agreement.

MOAs range from non-binding agreements on a potential project to comprehensive agreements committing parties to specific obligations.

MOA Structure and Development

This section addresses formation and implementation considerations that GSAs utilizing an MOA should consider. Regardless of whether GSAs are seeking to coordinate their respective GSPs, or coordinate in order to form a single basin-wide GSP, the topics below are applicable.

Recitals. Recitals typically list each signatory/party to the agreement and explain the types of entities and the background for the agreement. Parties typically list their history, interest in the geographic area and history with each other. Parties also commonly list the purposes for their agreement such as complying with legislation, coordinating resources, or taking on a specific project. Some MOAs have a separate purposes and authorities section, whereas others include their purpose and authority to enter into the agreement in the recitals section. Recitals can be as short or long as parties wish, depending on the agreement and style of construction. Recitals vary widely.

For an MOA related to SGMA, GSAs (as the parties) may wish to memorialize their intent to comply with relevant sections of SGMA. Depending on the purpose of the MOA, the parties will likely cite different sections. Chapter 6 — California Water Code sections 10727 through 10728.4 addresses specific GSP requirements. Additionally, California Water Code section 10720.7 contains planning deadlines related to GSA formation and GSP submittals.

Definitions. Depending on the terms used in the MOA, the GSAs may find it helpful to define specific words or terms of art used in their agreement. For example,

parties commonly define the term “act” to refer a specific piece of legislation.²⁵ While this section is not mandatory, including a definitions section is common and can help clarify otherwise potentially ambiguous terms.

How parties will make decisions and implement their agreement are two of an MOA's most important provisions.

Decision-Making Procedures and MOA Implementation. How parties will make decisions and implement their agreement are two of an MOA’s most important provisions. These provisions are also where MOAs and joint powers agreements differ greatly. This is because joint powers agreements generally create a public agency that operates as a separate entity from its members. These newly created public agencies are then generally governed by a commission or executive

board and commonly run by an executive director. Alternatively, MOAs generally do not create separate entities from their members. Because MOAs are used for so many different purposes, their procedures for implementation and member decision-making vary substantially. Members use a wide range of decision-making structures and implementation procedures — ranging from a mandate for consensus on all decisions to creating multi-tiered committee structures that are each delegated specific responsibilities.

The following discussion provides five implementation and decision-making examples of arrangements utilized by MOAs in the appendix. GSAs have great discretion with how they choose to structure their agreements. In addition to the examples below, GSAs seeking more formal and binding governance should consider any governance structures discussed in the following chapter on joint powers agreements. *See Appendix for copies of the following agreements.*

MOA Implementation and Decision-Making: Five Examples

1. Memorandum of Understanding: Four County (Butte, Colusa, Glenn, and Tehama Counties) Regional Water Resource Coordination, Collaboration, and Communication. This MOU is an example of a general agreement to cooperate amongst parties. This two-page agreement memorializes the counties’ respective intent to voluntarily coordinate their regional water resources. The agreement explicitly stipulates that participation in the agreement is voluntary, non-binding, and can be terminated at any time. Specifically, the agreement calls for the collective study and investigation of water resources common to the participants, monitoring and reporting, information dissemination and sharing between counties and with other county departments, public outreach and education, and “other activities” at the agreement and direction of individual county and governing bodies. This agreement does not delegate specific responsibilities to member agencies. Nor does the agreement provide for a detailed procedure for collective decision-making, mandating only that “consensus” shall be sought when the need for a decision arises. *This MOA could serve as an example for local agencies seeking to memorialize their intent to initiate cooperative efforts to explore formation of a GSA.*

2. Agreement between the Regional Water Authority (RWA) and the Sacramento Groundwater Authority (SGA) For Administrative and Management Services. The RWA and SGA signed this agreement to coordinate administration and management of services, and ownership of assets and property held in common. Both the RWA and SGA serve common constituents and perform numerous common functions and activities. This agreement lays out a cost-sharing arrangement between the parties related to specific employees, goods and services, and property ownership (each of these terms is defined in the agreement). Similar to the Four County MOU discussed above, this agreement does not create a board or any separate governing or decision-making body. However, this agreement does lay out specific responsibilities for each party. RWA is responsible for employing all employees, contracting for goods and services, and paying for all common costs. SGA is responsible for paying RWA for SGA’s share (typically 50 percent) of common costs within 15 days of receiving an invoice of RWA. *While this agreement is limited specifically to a cost-sharing arrangement, it could represent a useful example for GSAs desiring a straight-forward implementation structure that clearly spells out each party’s responsibilities.*

3. Memorandum of Agreement between San Joaquin County Flood Control and Water Conservation District and East Bay Municipal Utility District Relative to a Groundwater Banking Demonstration Project. This agreement was formed to coordinate activities such as preliminary engineering, environmental documentation, permitting, and public outreach related to developing a Groundwater Banking Demonstration Project. This agreement outlines a month-by-month timeline for implementing the agreement and spells out each party's responsibilities such as acquiring specific permits and responsibility for specific costs. Differing from the two examples above, the parties here created a "Technical Coordination Team" responsible for implementing portions of the agreement. Specifically, this team is responsible for coordinating and performing project development activities such as selecting project consultants, managing the work of project consultants, reviewing and approving work products, and providing technical input. The parties also specify membership and responsibilities of the Technical Coordination Team.

Aside from delegating specific responsibilities to the Technical Coordination Team, the agreement does not provide any sort of voting or decision-making structure for this team. Except for matters specifically delegated to one of the parties, the agreement suggests that all decisions, including those related to resolving delays, developing budgets, and cost sharing agreements, will be developed through agreement of both parties. *This agreement could represent a useful example of an initial coordination agreement where parties specify an arrangement for future coordination.*

4. Memorandum of Agreement between Metropolitan Water District of Southern California and U.S. Army Corps of Engineers, Los Angeles District. This agreement was created to establish a framework for the Metropolitan Water District of Southern California (District) to provide the U.S. Army Corps of Engineers (Corps) with additional money for expedited permit evaluation services for projects requiring Corps approval. The agreement outlines the amounts of money the District will provide and how specifically the Corps will use the funds. This agreement is very explicit on each party's responsibilities related to funding deadlines, notice procedures, staffing requirements, etc. The agreement does not outline any sort of committee creation or separate body empowered with decision making authority. *This agreement's structure could be a useful in an arrangement where one or more GSAs primarily provide funding and subsequently delegate GSP development or implementation to another GSA.*

5. Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance For the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan. The California Department of Water Resources, the U.S. Department of the Interior's Bureau of Reclamation (Reclamation), and certain contractors and representatives of contractors for water from the State Water Project and federal Central Valley Project entered into this MOA to collaborate on timely analysis of appropriate habitat conservation and water supply measures developed in the Bay Delta Conservation Planning process. This MOA's decision making and implementation structure utilizes a three-tier structure: (1) an Executive Committee; (2) a Core Team; (3) and two Program Managers.

The Executive Committee is comprised of representatives, typically either directors, general managers, or chief executives, from each signatory. The Executive Committee's primary responsibilities are to provide information and individual advice on matters such as: progress on meeting goals and objectives, progress on implementing actions undertaken pursuant to the MOA and resolving issues related to those actions, and formulating measures to increase efficiency in reaching the MOA's goals. Executive Committee members also provide direction and oversight regarding activities that should be undertaken by their agency's representative on the Core Team.

The Core Team is comprised of one representative from each member of the Executive Committee. The Core Team meets on a bi-weekly basis and is responsible for providing individual advice regarding the direction

and coordination of activities such as planning, financing, environmental review, permitting, and preliminary design of planning options. The Core Team meets with the Executive Committee on a quarterly basis. Lastly, this MOA is partially administered by two Program Managers — one appointed by the DWR and the other by the Reclamation. The Program Managers are responsible for updating the Executive Committee on the status of the MOA's activities and work cooperatively with the Core Team to assist in implementing their objectives.

This structure could be a helpful example for GSAs seeking to establish a management structure in order to develop and implement activities addressed in their MOA. Similar to the four previous examples, this MOA does not have a voting structure. The language indicates decisions likely need to be made through member consensus.

Funding. Depending on the subject and scope of the MOA, parties commonly stipulate how the projects, activities, or preparation for projects and activities addressed in the agreement will be funded. GSAs have considerable flexibility with how they wish to fund GSP related coordination, development, and implementation matters. Some MOAs are non-binding, and thus do not commit parties to any action requiring specific provision of funds. Other MOAs are binding on the parties and commit signatories to providing funds pursuant to the terms of the agreement.

Non-binding provisions simply state that parties will be expected to contribute financial resources needed to develop the contemplated project(s).²⁶ Given the provisions are not binding, the parties really are not bound to provide contributions. Other agreements stipulate that each party is responsible for paying their own costs and expenses incurred under the agreement.²⁷ Alternatively, some agreements contain detailed funding provisions, stipulating the amount of money each party is expected to contribute and the date(s) parties need to provide funding by.²⁸ Others contemplate parsing out the funding obligations, such as a budget and cost-share agreement, in a subsequent agreement at a later date.²⁹ Lastly, some agreements simply call for an equal split of costs for related activities outlined in the MOA.³⁰ The specificity with which a GSA will spell out binding funding requirements depends on the nature and circumstances of their agreement.

Dispute Resolution. GSAs may want to include a section related to how disputes arising between parties will be resolved. Development of MOAs often take time, effort, and resources. A dispute resolution provision may be a wise section to include in order to potentially avoid a breakdown of the agreement through withdrawal or

termination. For example, some agreements include language committing members to constant communication or other forms of non-binding alternative dispute resolution approaches.³¹ Whether or not to include a dispute resolution section and or what type(s) of dispute resolution to include is the sole discretion of the GSAs.

GSAs may want to include a section related to how disputes arising between parties will be resolved.

Providing Proper Notice and Interagency Communication. To encourage consistent and effective communication among parties, GSAs may want to consider designating an individual or group of individuals from each GSA to act as principal representatives for each GSA. Additionally, GSAs may wish to stipulate how notices, invoices, payments, statements etc. shall be sent between parties, and should include addresses and other contact information.

The MOA between the Metropolitan Water District of Southern California and the U.S. Army Corps of Engineers, Los Angeles District, is an example of an agreement that specified both principle representatives and proper notice guidelines. The parties each name specific employee as their principal point of contact.³² Additionally, the parties specify that all notices, statements, or payments in the MOA were properly given if put in writing and either delivered personally, given by prepaid telegram, or mailed by first-class, registered, or certified mail to the addresses listed in the agreement.³³

Termination of the Agreement and Individual Member Withdrawal. GSAs drafting an MOA will want to establish how their agreement can be terminated and

whether a member can withdraw and, if so, on what terms. These provisions range from general to rather specific, depending on the level of commitment and scope of the agreement. An MOA between two parties commonly enables parties to terminate the agreement after giving proper written notice — usually 30 days.³⁴ Additionally, some agreements empower members to terminate the agreement after the occurrence, or non-occurrence, of a contemplated event that frustrates the purposes of the MOA — such as if the contemplated projected is not permitted.³⁵ Some agreements also enable members to terminate upon mutual written consent of all the parties.

Agreements with more than two members commonly contain withdrawal provisions. Withdrawal provisions typically require the withdrawing party to give proper written notice of their intent to withdraw.³⁶ The difference between an individual member withdrawal provision and a termination provision is that if a member or members terminate the agreement, it no longer exists, while a withdrawal from a multi-member agreement may still allow the remaining parties to have a valid agreement.

Lastly, some agreements further stipulate member responsibilities in the event of a withdrawal or termination of the agreement. For example, some agreements require terminating or withdrawing parties to pay for their portion of costs and obligations incurred up to the date of the termination or withdrawal.³⁷ Additionally, others stipulate that the withdrawing party is not entitled to a refund of any funding contributions.³⁸

Amending the Agreement. GSAs will want to include a section on the procedure for amending their MOA. Commonly, agreements stipulate that an MOA can be amended or modified by unanimous written consent of the parties.³⁹ In addition to requiring unanimous written consent, some agreements require each member agency's governing board to approve the amendment to the agreement at an open meeting.⁴⁰ Alternatively, some MOAs stipulate that the agreement can be amended after an affirmative vote from of the governing body of a simple majority of the parties.⁴¹ When considering the amendment provision, GSAs will want to take into consideration the purpose of their agreement, the likely term of its existence, and how many parties will be part of the agreement.

Indemnification. To the extent that the MOA calls for sharing employees or services between the parties,

GSAs may want to consider outlining specific indemnification provisions related to potential liability. Agreements without provisions calling for sharing services or employees likely do not need detailed indemnification sections. GSAs seeking to memorialize their intent not to be liable for the actions or omissions of other MOA members could include language stating that no member

Under SGMA, MOAs will likely be used for coordination between GSAs. Conversely, JPAs will likely be used to form a new GSA.

shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another party in connection with the MOA. The template provided in Chapter 4, in addition to the case studies provided in the appendix, contain examples of indemnification clauses parties to MOAs have used.

Ownership of Intellectual Property or Developed Intellectual Property. To the extent that the MOA calls for modeling, development of reporting systems, environmental analysis, or development of any proprietary information or data, parties may want to consider memorializing who owns the developed property. Agreeing upon ownership of intellectual property upfront could help avoid potentially costly and time-consuming disputes between GSAs in the future.

Ralph M. Brown Act Considerations. The Ralph M. Brown Act requires all meetings of a local agency's legislative body must be open and public, and that all persons must be permitted to attend any meeting of the legislative body of a local agency except as otherwise provided in the Act. Assuming meetings amongst MOA members do not create a quorum of any member, meetings between MOA members over matters outlined in the MOA likely do not fall under the Brown Act. This is because those meetings are not meetings of any local public agency's legislative body. Parties might fall under the Brown Act if their MOA creates an association-type arrangement with a governing board that has voting powers and the authority to independently enter contracts and own property. In that instance, the association is arguably acting like a separate entity and thus may run into Brown Act compliance issues if the association does not notice and hold open meetings.

Public Records Act Requests. An MOA should address how GSAs will respond to public records act requests. Given the MOA is not creating a separate entity, each individual GSA will likely need respond to each public records act request as it relates to them. Memorializing the GSAs' procedures for public records act requests could avoid confusion should the parties receive a public records act request.

Term of the Agreement. Parties will want to define how long their agreement will remain in effect. Some MOAs stipulate that the agreement will remain in effect until terminated by one of the parties. Others list an expiration date with the option to renew through agreement of the parties. Alternatively, some MOAs provide for expiration after a contemplated event, such as the completion of a project.

SGMA has a compliance period that extends some 20 years beyond the initial development of the GSP, and includes provisions for periodic GSP updates during this period. Given this long-term compliance period, GSAs might want to consider designating their MOA term as lasting until terminated by the parties. This way, parties can ensure they will not be caught off-guard by an unexpected expiration of the agreement. If the arrangement outlined in the MOA is not working, each party is able to preserve the option to withdraw from and or possibly terminate the agreement.

Miscellaneous Provisions. The following addresses provisions MOAs commonly include under a "Miscellaneous" heading.

Severability Clauses. These clauses typically read that if any portion of the agreement is determined to be invalid or unenforceable, then the remaining provisions will remain in force and unaffected to the fullest extent under the law.

Integration Clause. These clauses typically read that the MOAs contents represent the entire agreement between the parties related to the topics addressed in the MOA. Commonly, these clauses then stipulate that all prior or contemporaneous agreements, understandings, representations, and oral or written statements are merged into the agreement and have no further force or effect.

Construction of Terms. This clause typically reads that both parties negotiated the agreement and had a full and fair opportunity to revise the terms of the agreement. Thus, the normal rule of interpreting ambiguities against the drafting party does not apply.

Counterpart Execution. This clause typically reads that the agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

Choice of Law. This clause typically states that the MOA was made in the State of California and shall be interpreted under California law.



Photo by Florence Low/CA DWR

CHAPTER 4:

GSA Formation through a Joint Powers Agreement (JPA) to Create a Separate Entity

JPA Basics and Options

Under a joint powers agreement, two or more local public agencies, who are each authorized by their governing bodies, may enter into an agreement to jointly exercise any power common to the contracting parties.⁴⁷ Parties to a joint powers agreement can elect to create a separate public entity, or designate parties to carry out specific responsibilities.⁴⁸ This Guide will focus on the creation of a separate entity through a JPA, largely because this is most common and because this form is more distinct from an MOA approach. Once a separate entity is created through a JPA, it is a separate legal entity from its member agencies.

The acronym “JPA” can be a source of confusion. JPA can stand for a joint powers agreement, a joint powers authority, or a joint powers agency. A joint powers authority and joint powers agency are simply separate public entities created through a joint powers agreement. For clarity’s sake, as described in Chapter 1, this Guide uses the term JPA to describe a joint powers agreement.

Under SGMA, MOAs and JPAs will likely be used for different functions. MOAs will likely be used for coordination between GSAs for GSP development or implementation or for parties considering forming a joint powers authority. Conversely, JPAs will likely be used by local public agencies to form a GSA. Unlike MOAs, which are primarily governed by state contract law, JPA are governed by California Government Code section 6500 et seq. Consequently, JPAs have specific statutory requirements regarding the agreement’s contents, governance, and compliance provisions. Section C below, “Structure and Development of JPA Formation” will discuss, in-depth, the statutory requirements and considerations parties drafting JPAs will want to address.

Benefits and Challenges of Creating a JPA

This section will briefly introduce benefits for parties electing to form their GSA as a joint powers agency and challenges these parties will need to address.

Benefits. As mentioned, parties choosing to structure their GSA as a joint powers agency are creating an entirely new and separate public entity from the

members. The new joint powers agency can exercise any power common to the contracting parties.⁴⁹ For example, a GSA formed as a joint powers agency, and authorized by its members, can do any of the following in its own name: make and enter contracts, employ agents and employees, acquire and operate buildings and property, incur debts, liabilities, and obligations, and sue and be sued.⁵⁰

Parties choosing to structure their GSA as a joint powers agency are creating an entirely new and separate public entity from the members.

Additionally, local agencies can give their GSA the authority to invest funds from its treasury that are not required for the immediate necessities of the agency.⁵¹ Keep in mind these funds must be invested in the same manner and under the same conditions as local agencies pursuant to section 53601 of the Government Code.⁵² In addition to investing, parties can empower their GSA with the authority to issue revenue bonds.⁵³ Parties can also structure their GSA’s JPA so that members are not responsible for any debts or liabilities the JPA agency may incur.⁵⁴ This enables member agencies to protect their assets should the GSA incur liabilities. Lastly, once a joint powers agency is designated a GSA, it can exercise all the new authorities created by SGMA. As the reader will see in Section C of this chapter and in the provided case studies, parties commonly pick and choose which powers to give their joint powers agency, depending on the purpose and needs of the parties.

Challenges. GSAs creating a separate agency through their JPA will need to address both regulatory and governance structure challenges. One of the first regulatory requirements a GSA will encounter is the requirement to provide notice of its creation and a copy of its JPA to both the Secretary of State and the Controller.⁵⁵ Additionally, the GSA will need to provide proper notice to both the Secretary of State and Controller each time the JPA is amended.⁵⁶ If a GSA fails to give proper notice

of its creation through a JPA or of an amendment of its JPA, it is prohibited from issuing bonds or incurring debts until the proper filings are completed.⁵⁷

Aside from notice requirements, the GSA will need to provide for strict accountability of funds by reporting all of its receipts and disbursements.⁵⁸ The GSA will need to undergo either an annual audit or an audit covering a two-year period.⁵⁹ Additionally, the GSA will need to designate a treasurer, who can be either the treasurer of one of the parties to the agreement, the county treasurer of a county in which one of the contracting parties is situated, a certified public accountant, or an officer or employee of the GSA.⁶⁰ The GSA's treasurer is the depository of the agency and has custody over all of the agency's funds.⁶¹ Pursuant to California Government Code section 6505.5, the treasurer has specific statutory responsibilities such as receiving agency money and paying out money due by the agency and providing written reports four times per year to the agency and contracting parties regarding the state of the GSA's finances.⁶² GSAs will likely need to comply with additional statutory compliance requirements should they elect to invest GSA funds and or issue bonds.

In addition to statutory compliance requirements, parties will also likely face governance and funding challenges. Joint powers agencies, in this case a GSA, can be governed by one or more parties to the agreement, a commission or governing board created by the JPA, or a firm or corporation.⁶³ The case studies examined in this section and provided in the appendix reflect how commonly joint powers agencies are governed by a governing board. Parties will need to agree on how to structure their board by addressing matters such as membership structure, appointment rules, division of voting, quorum, and other matters.

Lastly, parties will need to discuss how their GSA will be funded. Whether members will be required to contribute funds to fund the agency, whether contributions will be the same amount or will different members contribute different amounts, and the basis for funding will all need to be considered. These following sections will address these considerations by examining the case studies provided in the appendix to show how previous JPAs have addressed these challenges.

JPA Structure and Development

This section addresses formation and governance considerations that a GSA will need to consider when utilizing

a JPA. Some sections are mandated by California Government Code section 6500 et seq. while others are not mandatory but commonly included. A number of sections such as Recitals and Definitions will likely be very similar between an MOA and JPA. Nearly any governance examples discussed in the MOA "Formation and Structure" section could likely be utilized in a JPA. As with MOAs, parties have considerable flexibility with how they structure their GSA's JPA. The following section is meant to familiarize readers with required, and commonly included sections, and provide examples of how parties to existing JPAs have formed new agencies. Lastly, as the case studies show, JPAs are organized in a variety of manners. While Cal. Government Code 6500 et seq. mandates JPAs contain certain requirements, parties have flexibility to organize their agreement in a manner that fulfills the needs of the members. Thus the organization and headings used in this section are suggestions rather than requirements for parties drafting a JPA.

Recitals, Definitions, and Term of Agreement. The "MOA Structure and Development" discussion in the previous chapter provides information on these three sections. These sections in a JPA are similar to those in an MOA. The Recitals in a JPA explain the parties, purpose, and background information for the Agreement. JPAs usually always have a separate "Purposes" section whereas some MOAs list purposes for the agreement in the "Recitals." Definitions define special key terms or phrases. Term usually sets out indefinite term or until the purpose of the JPA has been achieved.

Creation of Joint Powers Agency. This section will likely include the following subtopics: (1) Creation of a separate entity; (2) Purpose of entity; and (3) Powers of the entity. A JPA is required by law to state the purpose of the agreement or the power to be exercised.⁶⁴ The agreement must also provide for the method the purpose will be accomplished or the manner in which the power will be exercised.⁶⁵ In practice, to comply with this requirement JPAs usually simply create separate "Purposes" and "Powers" sections. The following paragraphs will separately discuss purposes and powers.

Creation of a Separate Entity. In this provision, the parties typically indicate their intent to form a joint powers agency as a separate entity that is separate and apart from the members.⁶⁶ Parties also commonly list the name of their new agency (for this guide's purposes — the GSA) and its geographic boundaries.⁶⁷ Lastly, some

parties also state where their agency's principal offices will be located.⁶⁸

Purpose of the Agreement Creating a Separate Entity. This section states why the parties came together under the JPA. Some JPAs keep this section rather brief, stating their purpose is to create a separate entity in order to accomplish stated goals (another section of the JPA) and speak with one voice.⁶⁹ Other JPAs have very thorough "Purposes" sections, citing compliance with specific legislation, the desire to sustainably manage specific natural resources, develop specific projects, or formulate environmental plans for a region.⁷⁰

For the purposes of SGMA, parties will likely want to address their intent to have this joint powers agency elect to be the GSA for their basin or a portion of their basin. Additionally, parties may want to discuss developing and implementing a GSP, their intention to collaborate with other GSAs in their basin, their intent to sustainably manage their basin's groundwater supplies, and otherwise comply with SGMA.

Powers of the Entity. This section typically addresses the powers of the joint powers agency and the manner those powers will be exercised. Pursuant to California law, the JPA must designate one member's procedures and restrictions for exercising power as the restrictions and procedures for exercising power the new joint powers agency will need to follow.⁷¹ For example, a joint powers agency composed of an irrigation district, a city, and a county would need to specify in their JPA which member's procedures and restrictions for exercising its power the joint powers agency would follow. If the JPA designated the county, then the joint powers agency would need to follow the county's procedures and restrictions when, for example, purchasing property or hiring employees. GSAs with diverse local public agency membership should consider the GSA's likely activities and which member's procedures and restrictions on exercising power would be desirable.

Parties will also likely want to address which powers their GSA will exercise. While a joint powers agency can exercise all powers held in common amongst the contracting parties, some JPAs explicitly limit their joint powers agency's authority. Unique to SGMA, GSAs formed by a JPA are granted additional statutory powers not currently held in common by the members.

For example, to limit the powers of the joint

powers agency, some JPAs forbid their joint powers agency from engaging in the retail sale of water or funding capital construction projects or regulating land use.⁷² Additionally, some agreements limit their joint powers agency's authority to undertake any activities within a member's geographic or service area unless that member has formally adopted a specific plan or formally consented to the proposed activity.⁷³

Unique to SGMA, GSAs formed by a JPA are granted additional statutory powers not currently held in common by the members.

In addition to limiting their joint powers agency's authority, parties will need to empower their new agency with authority. Agreements here go one of two directions: (1) either list out the agency's powers or (2) give the agency the power to do all necessary acts to achieve the purposes of its existence. For example, in some agreements this section is a multi-page detailed discussion that enumerates specifically what the agency can do.⁷⁴ Conversely, other agreements simply empower their joint powers agency to do "all acts necessary" to achieve the goals of its existence.⁷⁵

Under SGMA, California Water Code section 10725 et seq. grants GSAs additional statutory powers. A joint powers agency cannot exercise these SGMA powers until after it successfully elects to be a GSA and adopts and submits to DWR a GSP or an alternative plan.⁷⁶ Thus, parties may want to include conditional language regarding their joint powers agency exercising SGMA powers, such as, "... in the event that this joint powers agency successfully elects to be a GSA for X basin, then it will have additional authorities, including..." Alternatively, parties could simply amend their JPA after successful GSA election to address SGMA powers. Lastly, members will likely wish to spell out in their JPA which SGMA authorities, if any, they anticipate delegating to either committees or specific members. Because SGMA grants GSAs and not individual members, new powers, parties seeking to have individual members perform specific SGMA functions will likely want their JPA to explicitly delegate these powers from the joint powers agency to the respective members.

Internal Organization. The following discussion addresses joint powers agency governance matters typically included in JPAs. The following topics on internal organization are discussed below:

1. Establishment of governing body
2. Associate members
3. Voting procedures
4. Designation of other agency officials
5. Meeting rules and requirements
6. Internal committee formation
7. External advisory committee formation
8. New member guidelines
9. Special projects involving less than all members
10. Agency budget and payments from members

1. **Establishment of Governing Body.** As mentioned above, commonly joint powers agencies are governed by a commission or board of directors. Amongst other considerations, parties drafting their JPA may want to consider the size of their board, board membership, who gets to vote, who gets to appoint board members, what interests members want represented on the board, term of board member's service, and board member removal. The following section will examine four governing board structures utilized by JPAs provided in the appendix. Parties have near complete discretion with how they structure their GSA's governing board.

Governing Board Structures Utilized by JPAs

a) Joint Exercise of Powers Agreement Eastern San Joaquin County Groundwater Basin

Authority. The Eastern San Joaquin County Groundwater Basin Authority ("ESJCG Basin Authority") is an 11 party joint powers agency. To manage their agency, the parties created a governing board with 12 seats. Eleven of the 12 seats went to the parties to the agreement — with each party getting a single seat. The twelfth seat was assigned to a representative from the California Water Service Company (an investor owned water utility) to be appointed by the City of Stockton (a member of the Agreement). Board members are required to be an individual from the appointing party's governing body. For example, the City of Stockton's board member would likely need to be someone who sat on the Stockton City Council — the city's governing body. In addition to appointing their board member, parties also designated two alternate board members who would fill the seat if the appointed board member was unavailable. This JPA did not set term limits for the board members. Lastly, board members serve at the pleasure of the appointing party — meaning the member who appointed them could remove them at any time for any reason. *This JPA is a model for GSAs seeking to include a non-public agency stakeholder on the governing board.*

b) Joint Powers Agreement Forming the State and Federal Water Contractors Agency. The State and Federal Contractors formed a JPA with six member agencies. The members created a governing board with nine seats. Four of the parties were each given one seat. One party was given three seats and another party was given two seats. Unlike the previous example, appointed board members could be officers, directors, or employees of the appointing party. For the parties who themselves were joint powers agencies, this agreement allowed them either to appoint a director, officer, or employee from their agency or an agency of one of their members. Like the previous example, parties' board members served at the pleasure of the appointing party. Additionally, appointing parties were required to designate an alternate board member should the appointed board member be unavailable. *This JPA provides an example of an agreement that allocates different numbers of board seats to different members.*

c) Joint Powers Agreement Creating the Sacramento-Groundwater Authority. Four parties formed the Sacramento Groundwater Authority (SGA). *The SGA provides a model for a joint powers agency that sought to include a diverse set of interested stakeholders on its governing board and in its decision making process.* To govern the agency, the parties created a sixteen seat governing board. Three seats went to elected members from three of the parties to the agreement. Seven seats went to an elected member from the governing board of seven specified water districts — who were not members of the joint powers agency. Four seats went to a member of the board or designee from four specified private water purveyors or investor owned utilities — also not members of the joint powers agency. One seat went to an “Agricultural Interest” representative (defined in the agreement) within the boundaries of the agency. The final seat went to a “Commercial/Industrial Self-Supplied Water User” representative within the boundaries of the authority.

In addition to composing the board with a diverse set of area stakeholders, this agreement stipulated specific processes for appointing the various board members. For example, although members to the agreement were responsible for appointing specific board members, with certain board appointments, they were required to consider recommendations from various specified parties before making appointments. Additionally, the SGA JPA includes a section titled “Adjustment to Composition of the Governing Board” which allows any person or entity to petition the parties to the JPA to add or delete representatives to the governing board in order to accurately reflect groundwater production within the authority. Finally, this agreement set term limits at four years for board members and created staggered term limits by designating two board members whose initial terms would be two years. Appointing parties are also required to appoint alternate board members and all board members serve at the pleasure of the appointing body.

d) Joint Powers Agreement Between the City of Elk Grove, the City of Folsom, the City of Rancho Cordova, the City of Sacramento and the County of Sacramento Creating the Sacramento Central Groundwater Authority. The Sacramento Central Groundwater Authority (SCGA) shares a number of close similarities with the SGA JPA discussed above. *This example is presented to highlight a slight difference between each agency’s respective governing boards.* Here, five parties created the SCGA JPA, and formed a 16-member governing board. Six of the seats were designated to elected members of the governing board from a group of area cities, the County of Sacramento, and the Sacramento Regional County Sanitation District. Additionally, three of the seats were reserved for elected members of the governing board from an area community services district and two area water districts. Two of the seats went to a member of the board of directors or designee from two private water purveyors or investor owned utilities. Finally, the last five seats were reserved for a representative from each of the following: “Agricultural Interests,” “Agriculture-Residential Groundwater Users,” “Commercial/Industrial Self-Supplied Groundwater Users,” “Conservation Landowners,” and “Public Agencies that are Self-Supported Groundwater Users.” This agreement assigned appointing power between the five parties to the agreement, mandated parties appoint alternate board members, and created term limits for board members.

e) Common Miscellaneous Governing Board Provisions. As the examples above show, governing boards can vary considerably in their size and membership. This paragraph will briefly touch on common provisions included in the governing board sections. First, JPAs typically designate a chair, vice chair, and secretary for their governing body. Some agreements stipulate which board members will serve in those roles.⁷⁷ Alternatively, others state the board will determine those roles as an order of business.⁷⁸ Commonly agreements stipulate each officer’s responsibilities and how long each officer will serve in that capacity. Some agreements have specific board membership vacancy provisions — outlining a timeline and procedures for when new board members must be appointed by when a vacancy arises.⁷⁹ Finally, other agreements outline when the first governing board meeting will be and where it will be held.⁸⁰

2. **Associate Members.** A number of the examples above represent instances where parties included non-members on their joint powers agency's governing board and gave them voting power. Parties seeking to similarly give non-members a voice in agency actions and meetings, without conferring voting powers, might consider creating an associate membership option. For example, in the "Eastern San Joaquin County Groundwater Basin Authority" JPA, the parties designated the San Joaquin County Farm Bureau as an associate member on the governing board. The associate member is allowed to participate in meetings and discussions but not allowed to vote on any actions or hold officer positions on the board.

3. **Voting Procedures.** Like governing board formation decisions, deciding the rules for how the agency's governing board will vote on agency business is very important. This section will present examples of different voting structures that JPAs identified in the case studies have utilized. These examples are meant to give the reader a sample of various voting structures available to joint powers agencies. Parties should feel free to be creative in crafting a voting structure that works best for their arrangement. In addition to the considerations identified below, parties might consider whether a particular voting structure allows the GSA to integrate the perspectives of a variety of affected interests, and how the voting structure would be perceived in the event of public, judicial, or news media scrutiny of the GSA.

a) One vote-per-board member, majority required to conduct business. Some of the most straightforward agreements grant each governing board member a single vote.⁸¹ Typically, to conduct business there must be a quorum present and the matter before the board must receive an affirmative vote from a majority of the governing board members present at the meeting. Parties desiring a very straightforward,

easy to understand, and equal voting structure might find this as an option that will work.

b) One vote-per-board member, different thresholds required to pass governing board or committee related business. The Kern Groundwater Authority grants each board member a single vote. In order for the governing board to conduct business, there must be a quorum present (two-thirds of board of directors) and the matter must receive an affirmative vote from two-thirds of present voting members. This agency authorizes its governing board to delegate specific tasks and responsibilities to various committees that are comprised of general member representatives. For committee-related

Parties might consider whether a particular voting structure allows the GSA to integrate the perspectives of a variety of affected interests.

votes, this JPA requires that a quorum of committee members be present and all matters subject to a vote before the committee must receive an affirmative vote from seventy-five percent of present committee members.

c) One vote-per-board member, additional requirements when board votes on fiscal items. In the Sacramento Central Groundwater Authority, each member of the sixteen-member governing board has a single vote. As discussed previously, the Sacramento Central Groundwater Authority has only five members, (four area cities and the County of Sacramento), but chose to fill their governing board with representatives from private water purveyors, water districts, and various other agricultural, conservation, and community interests. Thus, this agency's voting structure is slightly more detailed. With the exception of certain fiscal items (specified in the agreement) an affirmative vote from a majority of

the governing board members is required to pass agency business. Passing and approving fiscal items, including but not limited to approving the agency's annual budget, required a majority vote of all the members of the governing board and affirmative votes from the five agency members (the four cities and the County of Sacramento). Finally, any vote related to adjusting the amount in annual financial contributions necessary to fund the agency required an affirmative vote from eleven of the sixteen governing board members, including an affirmative vote from each of the five agency members.

d) Voting power allocated based on land under management, financial contribution, or basin extractions. Under this option, a GSA could allocate their governing board's voting allocation based off the respective member's land under management, financial contribution to the GSA, or extractions from the basin. Whichever approach the GSA chooses, the parties will likely want to determine an acceptable ratio that converts their metric into votes. For example, a GSA covering 1000 acres and comprised of three (3) members (one with 300 acres under management, the second with 500 acres under management, and the last with 200 acres under management) could give members one vote per 100 acres under management. Under this scenario, member one would get three (3) votes, member two five (5) votes, and member three two (2) votes. Alternatively, a GSA could structure

voting power based on members' financial contributions to the GSA from the previous year. For example, assume a hypothetical GSA with six members, who each contributed different amounts of funds, and a total budget of \$1,000,000. Assume members one through four each contributed \$50,000, member five contributed \$300,000, and member six contributed \$500,000. This GSA would then need to determine a ratio for funds contributed to voting power. A straightforward possibility would be to give each member one (1) vote per \$50,000 contributed. Under this scenario, members one through four would each get one (1) vote, member five would get six (6) votes, and member six would get ten (10) votes. Lastly, a GSA could utilize the same ratio approach that equates voting powers based on of the quantity of groundwater extracted from the basin.

e) Multi-tiered voting structure, depending on whether board is voting on fiscal items. The Sacramento Groundwater Authority has two separate voting bodies. For all matters the SGA provides each member with a single vote. For each fiscal matter vote, there is a second voting body, whose votes are distributed based on financial contribution. For non-fiscal matters, a majority vote of all members of the governing board is required to approve the item. However, approval of items with fiscal impacts requires a "double-majority" approval consisting of: (1) a majority vote of all members of the governing



board and (2) a majority vote weighed by the financial contribution of each “Retail Provider,” “Agricultural Interests,” or of “Commercial/ Industrial Self-Supplied Water Users” to the total administrative budget for the last complete fiscal year. Under this second approach, a governing board member’s voting power on fiscal matters would be weighed according to the amount of money they contributed to the authority the previous year. Similarly, fiscal items related to water costs require a double-majority voting structure requiring: (1) a majority vote of all members on the governing board and (2) a majority vote weighted on the basis of water production (as defined by the agreement).

4. **Designation of Other Agency Officials.** In addition to a chair, vice chair, and secretary, JPAs commonly designate other officials such as an executive director, a treasurer and or auditor. As discussed above, the JPA is required to designate who will serve as the new agency’s treasurer. Additionally, agreements commonly designate a party or provide for who will perform the agency’s required audit.⁸²

Some JPAs designate an individual to act as the chief executive or executive director of the newly formed agency.⁸³ For example, the Sacramento Central Groundwater Authority JPA called for their governing board, with concurrence of the Sacramento County Water

Agency, to appoint an executive director to be responsible to the governing board for administration of the authority as directed by the governing board.⁸⁴ In addition to assigned duties, this executive director is responsible for organizing and directing agency activities, authorizing expenditures within the designations and limitations of the budget, making recommendations or requests of the governing board concerning any matter to be performed by the governing board, appointing, disciplining, assigning, and supervising employees or contractors hired by the agency, and to have charge of and access to any property of the authority.⁸⁵ Parties will need to consider the likely size, authority, and finances of their GSA to determine whether or not they want to have an executive director.

5. **Meetings Rules and Requirements.** Topics commonly addressed in this section are when, and how, the first meeting of the new agency’s governing body will be called, granting the governing body the authority to formulate bylaws, establishing quorum rules and meeting adjournment procedures, noting the significance of member voting abstentions, and Brown Act considerations. Commonly, versions of Robert’s Rules of Order or Rosenberg’s Rules of Order are adopted for conducting meetings/ parliamentary procedure.⁸⁶ Note: while many



Photo by Kelly M. Grow/CA DWR

JPAs address the above mentioned topics, some give each topic its own section or place these topics in other sections such as “Miscellaneous” or in the governing board or voting sections. The following discussion is equally relevant whether parties address these topics on a single section or separately throughout their JPA.

Commonly, JPAs assign the responsibility of calling the new agency’s first meeting to one of the agency’s members.⁸⁷ Alternatively, some agreements charge the governing board with the authority to call the first meeting. Additionally, agreements commonly empower their governing board with the authority to establish bylaws governing meetings and the day-to-day operation of the agency.⁸⁸

JPAs generally establish how many governing board members must be present in order to have a quorum. Commonly, a quorum is a majority of governing board members.⁸⁹ However, some JPAs require a higher threshold for a quorum, such as two-thirds of voting members.⁹⁰ Most agreements also typically stipulate that less than a quorum can vote to adjourn a meeting.⁹¹

Some JPAs include specific rules for member abstentions. Some agreements hold that any abstaining members will be counted for quorum purposes, but will not be deemed to be voting.⁹² Alternatively, to avoid complacency amongst their members, some JPAs stipulate that unless a member is abstaining due to a conflict of interest, any abstention is counted as an affirmative vote in support of the majority vote.⁹³ Parties forming their GSA have complete discretion with how they wish to address abstention matters.

Finally, nearly all agreements stipulate that their meetings will be scheduled and conducted pursuant to the provisions of the Brown Act (Government Code section 54950 et seq.). GSA governing board meetings will likely fall under the Brown Act because they represent the agency’s legislative body. Specific Brown Act compliance provisions should be directed to respective party’s counsel.

6. **Internal Committee Formation.** While not in all JPAs, some agreement have an internal committee formation section outlining the role

internal committees can play in governing the agency. The role of internal committees can be small or large, depending how GSA members wish to delegate authority. Some agreements create limited roles for internal committees by empowering the agency’s governing board to appoint committees to assist with carrying out the agency’s objectives, but explicitly prevent committees from acting on behalf of the agency.⁹⁴ Alternatively, other JPAs delegate substantial authority to internal committees. For example, in the San Joaquin River Group Authority JPA case study, the parties created a “Management Committee,” staffed by a general

If parties to the JPA anticipate future agencies may join, they might wish to address the procedures a prospective new agency must follow.

manager or similar managing officer of each party and empowered this committee with the authority and responsibility for program development and implementation. Parties may find it helpful to memorialize the roles, if any, internal committees can take in the new agency.

7. **External Advisory Committee Formation.** Under SGMA, GSAs are required to encourage active involvement of “... diverse social, cultural, and economic” elements of the population within their basin before and during the development and implementation of the GSP.⁹⁵ GSAs are required to make available to the public and DWR a written statement describing how interested parties may participate in the development and implementation of the GSP.⁹⁶ Creating an external advisory committee comprised of diverse social, cultural, and economic public interests and stakeholders could be a useful mechanism for a GSA seeking to comply with this requirement. In order to foster better communication between the advisory committee and the GSA governing board, GSAs are encouraged to appoint one or more GSA representatives to attend and participate in advisory committee meetings.

8. **New Member Guidelines.** In this section, some agreements list the requirements for adding new members at a later date. If parties to the JPA anticipate that future agencies may one day join their GSA, they might wish to address the procedures their agency and the prospective new member must follow. For example, some JPAs agreements allow a prospective public entity to join the agency upon: (1) approval of the agency's governing board; (2) payment of all previously incurred costs the governing board determines have resulted in benefit to the public entity; (3) payment of applicable fees and charges; (4) written agreement to the terms and conditions of the JPA.⁹⁷ Parties to the JPA have near complete discretion over the extent to which new agencies may join their GSA.

9. **Special Projects Involving Less Than All Members.** Some JPAs authorize members to undertake specific projects, in the name of the agency, involving fewer than all of the members. Typically these sections outline the specific procedures members must take in order to engage in a project involving fewer than all the members.⁹⁸ These sections usually require the members participating in a special project to craft a special agreement that outlines the funding, roles and responsibilities, and assets and liabilities details. Additionally, JPAs that authorize special projects commonly contain a provision enabling the agency's governing board to prevent the project from occurring should it disapprove of the proposed special activity. Below, this section will examine special projects provisions from two of the provided case studies as examples for how some agreements have formed this section.

Under the Kern Groundwater Authority JPA, members seeking to engage in a special project in the name of the authority must first gain prior approval from the agency's governing board. In addition to gaining approval, the members are required to enter into a special project agreement. The agreement must state that no special activity can conflict with the terms of the JPA. The agreement must state that parties to the special agreement will

indemnify, defend, and hold the authority and the authority's non-participating members harmless from any liabilities, costs or expenses arising from the special activity. Additionally, the special agreement must state that all assets, rights, benefits, debts, liabilities and obligations shall be those of the members who entered

Members seeking to engage in a special project in the name of the authority must first gain prior approval from the agency's governing board.

into the special project agreement — and not those of those members who did not enter into the special project agreement. Lastly, the JPA stipulates that non-participating special project members shall have no rights, benefits, debts, or liabilities or obligations related to the special activity.

Like the Kern Groundwater Authority, the State and Federal Water Contractors Agency JPA allows for specific projects involving fewer than all of the members. This JPA requires the participating members to enter into a project agreement that contains the terms and conditions related to project participation. The agreement states that all assets, rights, benefits, and obligations attributable to the project are those of the members participating in that project and not non-participating members. Additionally, any debts, liabilities, obligations, or indebtedness incurred by the agency in regard to a particular project are those of the members participating in the specific project and not non-participating members. For specific projects involving fewer than all of the members of the agency, the participating members are required to appoint a representative to a project committee for that project. Finally, the agency's board of directors has the authority to disapprove of any project agreement after determining the project has specific, substantial adverse impacts upon non-participating members.

10. **Agency Budget and Payments from Members.**

Within this section, JPAs typically define their agency's fiscal year and stipulate the process for adopting an annual budget. Additionally, while some JPAs state their intention to achieve financial sustainability through collecting fees and or receiving public or private grants, some agreements provide for annual or periodic financial contributions from members.

The following discussion will examine four JPAs, focusing on their budget and membership funding structures. As the reader will see, JPAs utilize a variety of member funding models to operate their new agency.

a) The Sacramento Central Groundwater Authority JPA mandates that an annual budget shall be adopted within ninety (90) days after the first governing board meeting and thereafter prior to the commencement of each fiscal year (defined as July 1 through June 30). The JPA outlines a very detailed funding arrangement from its members and parties represented on its governing board. The JPA calls for an annual \$10,000 contribution from the five member agencies. Additionally, surface water purveyors are required to each pay \$6,000 annually. Lastly,

the agency levies annual assessments on governing board members based on their annual groundwater extraction.

b) The San Joaquin Tributaries Authority JPA mandates that its governing board shall approve an annual budget at its initial meeting and before the beginning of each fiscal year thereafter. Funding for the budget is provided in equal proportion by each member, except for matters related to special projects which are separately funded by participating members. The agreement also requires each member's governing body to authorize its funding contribution before the beginning of the fiscal year.

c) The Kern Groundwater Authority empowers the agency's governing board to set a date each fiscal year as a deadline to adopt a budget for the ensuing fiscal year. The JPA stipulates that the agency shall be funded by both voluntary contributions from third parties and assessments on general members which are to be equal and used towards activities generally applicable to all members. This agreement stipulates that no member shall be financially bound to the agency except for its share of the annual assessment.



Photo by Kelly M. Grow/CA DWR

Any further special activities or projects are to be funded separately through a project agreement.

d) The State and Federal Water Contractors Agency JPA splits their agency's funding into two separate categories: general expenses and project expenses. In order to fund the general expenses for the ongoing operations of the agency, the parties created a general expenses account. This account is funded through 50 percent contributions from the State Water Project Contractors Authority and 50 percent from the San Luis & Delta-Mendota Water Authority. For project expenses, the JPA stipulates that each project is to be funded by participating members at levels established in separately prepared project agreements.

Unique to SGMA, GSAs that include representatives from small agriculture and or disadvantaged communities on their governing board may find these representatives are necessary to develop a management structure but unable to contribute funding to the agency. A potential solution to this issue could be to require a city, county, or other appointing agency to cover the costs of all of its appointed members.

Under this approach, small agriculture and or disadvantaged communities will be represented, without a financial burden on their part, and the GSA will remain funded.

Liabilities and Indemnification. California law states that members are responsible for a newly formed joint powers agency's debts, liabilities, and obligations unless their JPA specifies otherwise.⁹⁹ Thus, JPAs commonly state that members do not intend to be liable, either jointly or severally, for the new agency's liabilities, debts, and obligations.¹⁰⁰ In practice, this means that members can choose to not be responsible for the joint powers agency's debts, liabilities, or obligations, shielding members from individual liability for the agency's actions.

Additionally, JPAs allowing special or specific projects amongst members commonly contain language stating that all obligations, liabilities, and debts related to the specific project are those of the members to the project agreement and not the non-participating parties.¹⁰¹ This language is intended to shield members from the liabilities, debts, and obligations of the joint powers agency. A number of the case studies and the JPA template provided in this Guide (Chapter 6) show examples of the kind of language used related to member, project, and agency liabilities.



Photo: CA DWR

The ability to protect members from liability may be limited with regard to tort action.¹⁰² Specifically, California Government Code section 895.2 provides that when public entities enter an agreement, they are jointly and severally liable for the for any liability imposed by law on any one of the entities or any entity created by the agreement that is caused by negligent or wrongful acts or omissions occurring in the agreement.¹⁰³ This section appears to conflict with California Government Code section 6805.1, which empowers member entities to choose whether they are responsible for the new agency's liabilities, debts, and obligations.¹⁰⁴ However, California Government Code section 895.4 provides that as part of any agreement, the public entities may stipulate indemnification and contribution arrangements amongst the members related to tort liability.¹⁰⁵ In light of this conflict, JPAs typically outline contribution and or identification provisions.

Drafting the appropriate indemnification clause depends on the parties' agreement as it relates to shielding individual members from financial liability and contribution in the event a member or the agency is sued for any tort actions. The JPA case studies in the appendix and the template in the following chapter provide a wide range of indemnification options existing agreements utilize. Parties are encouraged to work closely with their respective counsel to draft appropriate indemnification clauses that suits their GSA member's needs.

Termination and Member Withdrawal. Similar to MOAs, nearly all JPAs have sections related to terminating the agreement and the policies and procedures related to the withdrawal of individual members. Similar to MOAs, termination depends largely on the number of agencies and whether an agency can exist if some members leave. With the exception of addressing distribution of agency assets upon termination, this section will not separately address termination and member withdrawal.

California law requires JPAs to provide for the disposition, division, or distribution of any property acquired by the agency.¹⁰⁶ Additionally, California law requires JPAs to state that after the JPA achieves its purpose, any surplus money on hand shall be returned in proportion to the contributions made.¹⁰⁷ Thus, agreements generally list rather generic clauses citing California Government Code section 6512, stating any surplus money on hand after termination will be returned to members in proportion to their contribution.

Regarding the fate of agency property after dissolution or termination, JPAs can take a number of different approaches. For example, some JPAs stipulate that any property is to be returned, if possible, to the member who initially contributed it. All other property is to be sold and the net proceeds distributed to members in proportion

California law states that members are responsible for a newly formed joint powers agency's debts, liabilities, and obligations unless their JPA specifies otherwise.

to their contributions to initially acquire the property.¹⁰⁸

Alternatively, other JPAs require that all agency property be first offered for sale to the members on conditions determined by the board.¹⁰⁹ If no such sale is consummated, then all property is then offered for sale to the general public with the proceeds distributed amongst the parties in proportion to their financial contributions made to the agency.¹¹⁰ If no such sale is consummated to the general public, then all property shall be given equally to all the members that financed that acquisition of the property.¹¹¹

Lastly, some agreements envision passing along agency property to a successor agency that carries out the functions of the agency.¹¹² If no such successor entity exists, then the assets are to be returned to the parties to the JPA in proportion to the contributions of each party.¹¹³ Finally, if there is a successor public entity that will carry out some of the functions of the agency and assume some of its assets, the JPA calls for the agency's assets to be allocated through coordination between the dissolved agency and the new quasi-successor public agency.¹¹⁴

Aside from the statutory requirements listed above, parties are largely free to dispose of agency property upon dissolution in whatever manner they see fit.

Miscellaneous Provisions. Similar to the discussion in Chapter 3, parties commonly include provisions related to amending the agreement, dispute resolution, construction of terms, providing proper notice, execution in counterparts, severability clauses, and integration or complete agreement clauses. Examples discussed in Chapter 3 or included in any of the provided case studies are likely viable options for parties seeking to include these matters in their GSA's JPA.

CHAPTER 5:

Template: Memorandum of Agreement

Parties

This Memorandum of Agreement (MOA) dated (enter date) is entered into among (party name), (party name), and (party name), collectively referred to as the “Parties.” All Parties are Groundwater Sustainability Agencies located in (name of basin) and formed pursuant to the Sustainable Groundwater Management Act (Act).

Recitals

WHEREAS, on September 16, 2014 Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act; and

WHEREAS, the Act went into effect on January 1, 2015; and

WHEREAS, the legislative intent of the Act is to provide sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, the Parties are each Groundwater Sustainability Agencies overlying portions of (name of basin) basin, a Bulletin 118 designated (high or medium priority) basin; and

WHEREAS, each GSA is responsible for groundwater management and SGMA compliance in their designated management area; and

WHEREAS, Section 10720.7 of the Act requires all basins designated as high-or-medium priority basins designated in Bulletin 118 be managed under Groundwater Sustainability Plans or coordinated Groundwater Sustainability Plans pursuant to the Act; and

WHEREAS, the Parties are interested in collectively developing and implementing a single Groundwater Sustainability Plan to sustainably manage (name of basin) basin pursuant to section 10727 et seq. of the Act;

NOW, THEREFORE, it is mutually understood and agreed as follows:

Section 1: Purpose and Authorities

This MOA is entered into by the Parties for the purpose of establishing a framework to develop and implement a single Groundwater Sustainability Plan to sustainably manage (name of basin) basin that complies with the requirements set forth in the Act.

Section 2: Definitions

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

1. **Act:** refers to the Sustainable Groundwater Management Act, California Water Code section 10720 et seq.
2. **Core Team:** refers to the working group created in Section 3 of this MOA.
3. **Executive Committee:** refers to the working group created in Section 3 of this MOA.
4. **Governing Body:** means the legislative bodies, i.e. governing boards, of the Parties to this MOA.
5. **Groundwater Sustainability Agency:** refers to the agencies created by the Act responsible for implementing the Act’s provisions.
6. **Groundwater Sustainability Plan:** is the basin plan for XXXX basin the Parties to this MOA are seeking to develop and implement pursuant to the Act.
7. **Memorandum of Agreement (MOA):** refers to this agreement.

Section 3: Agreement

I. Establishment of the (name of basin) Basin Groundwater Sustainability Plan (GSP) Executive Committee, GSP Core Team, and Related Processes.

A. Establishment of the (name of basin) Basin Groundwater Sustainability Plan Executive Committee.

1. The Parties hereby establish the (name of basin) Basin GSP Executive Committee (Executive Committee). Each party shall appoint a member to the Executive Committee.
2. Each Executive Committee member's compensation for their service on the Executive Committee will be the responsibility of the appointing Party.
3. Each Executive Committee member shall serve at the pleasure of the appointing Party, and may be removed from the Executive Committee by the appointing Party at any time.
4. The Executive Committee will meet periodically as needed to carry out the activities described below, but at least monthly. The Executive Committee will prepare and maintain minutes of its meetings.
5. The Executive Committee's primary responsibility is to oversee and supervise the Core Team. The Executive Committee will be provided detailed status updates by the Core Team on the activities described in this MOA.
6. The Executive Committee will provide information, guidance, and advice to the Core Team regarding the (name of basin) GSP, on matters such as:
 - a. Developing a GSP that achieves the goals and objectives outlined in the Act;
 - b. Implementing the actions undertaken pursuant to this MOA and resolving any issues related to these actions; and
 - c. Measures that may be implemented in the event insufficient or unsatisfactory progress is being made in developing or implementing the Groundwater Sustainability Plan.
 - d. Developing a stakeholder participation plan that involves the public and area stakeholders in developing and implementing the GSP.
7. Before Withdrawing from this MOA, all Parties agree to bring any disputes over any of the activities discussed in this MOA to the Executive Committee.

B. Establishment of the GSP Core Team.

1. The Parties hereby establish the Groundwater Sustainability Plan Core Team (Core Team) that will develop a process to direct and coordinate GSP activities, including the development, planning, financing, environmental review, permitting, implementation, and long-term monitoring of the GSP.
2. The Core Team will consist of one representative from each Party to this MOA. Each Core Team member serves at the pleasure of their appointing Party and may be removed by their appointing Party at any time. A Party must notify all other Parties to this MOA in writing if that Party has replaced their Core Team member.
3. Each Core Team member's compensation for their service on the Core Team is the responsibility of the appointing Party.
4. The Core Team shall develop and implement, with input and oversight from the Executive Committee, a stakeholder participation plan that involves the public and area stakeholders in developing and implementing the GSP.

C. Core Team Meetings.

1. The Core Team will establish a meeting schedule for regular meetings to discuss Groundwater Sustainability Plan development and implementation activities, assignments, and ongoing work progress.
2. The Core Team may establish and schedule meetings of subcommittees as they see fit to coordinate development and implementation of the Groundwater Sustainability Plan.
3. Attendance at all Executive Committee and Core Team meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available.
4. The Core Team will meet at least quarterly with the Executive Committee, and more frequently as needed, to provide status updates and discuss matters covered in this MOA.
5. The Core Team shall establish a Financial Management and Review Coordinating Committee that will meet monthly and report to the Core Team. The purpose of this committee is to assist the Core Team in monitoring and managing invoicing, payments, cash flow, and other financial matters as directed by the Core Team.

II. Roles and Responsibilities of the Parties.

- A. The Parties will work jointly to meet the objectives of this MOA.
- B. The Parties will appoint representatives to the Executive Committee and Core Team.
- C. The Parties are each responsible for implementing the GSP in their respective management areas.
- D. The Parties will coordinate all activities related to fulfillment of the objectives of this MOA. The Parties shall cooperate with one another and work as efficiently as possible in the pursuit of all activities and decisions described in this MOA and those that are not particularly described but which are related to or arise out of the activities that are described.
- E. Coordinated by the Executive Committee and Core Team, the Parties will participate in public outreach and stakeholder engagement in the development and implementation of the GSP.
- F. As requested by the Executive Committee or Core Team, each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the objectives of this MOA.
- G. After execution of this MOA, the Core Team shall develop a plan that describes the anticipated tasks to be performed under this MOA and a schedule for performing said tasks. The Plan and Schedule shall become part of this MOA through reference and exhibit. The Plan will be referred and amended as necessary to conform to developing information, permitting, and other requirements. Therefore, this exhibit may be revised from time to time upon agreement of the Core Team without constituting an amendment to this MOA.
- H. The Parties will provide support to the Executive Committee and Core Team by contributing staff time, information, and facilities within available resources.

III. MOA Funding. Parties will likely choose A, B, C or a variation thereof to fund their MOA.

- A. *Option One:* Each Party's participation in this MOA is at their sole cost and expense. Each Party may, but is not required, contribute funds towards implementing this MOA's objectives.
- B. *Option Two:* The Parties shall mutually develop a budget and cost sharing agreement for the work to be undertaken by this MOA. Both the budget and cost sharing agreement shall be determined prior to any financial expenditures or incurrence of any financial obligations or liabilities by the Executive Committee or Core Team.

- C. *Option Three:* The parties agree to fund all costs and expenses associated with implementing this MOA equally between one another. With the exception of the compensation of each members' representatives on the Executive Committee and Core Team which shall be borne by the Party. On an annual basis, the Financial Management and Review Coordination Committee shall provide the Executive Committee with an expenses log containing each Party's expenditures from the previous year related to this MOA. The Executive Committee shall send invoices to the appropriate Parties to ensure each Party pays a proportionate share of the costs and expenses under this MOA.

IV. Interagency Communication and Providing Proper Notice.

- A. *Interagency Communication.* To provide for consistent and effective communication between parties, each party agrees to designate their Executive Committee representative as their central point of contact on matters relating to this MOA. Additional representatives may be appointed to serve as points of contact on specific actions or issues.
- B. *Providing Proper Notice.* All notices, statements, or payments related to implementing the objectives of this MOA shall be deemed to have been duly given if given in writing and either delivered personally or mailed by first-class, registered, or certified mail as follows:

NOTE: Here the parties would list their GSA's address for notices to be delivered.

V. Termination and Withdrawal.

- A. *Terminating the Agreement.* This MOA may be terminated upon unanimous written consent of all the Parties.
- B. *Withdrawal.* A Party may unilaterally withdraw from this MOA without causing or requiring termination of the MOA, effective upon thirty (30) days written notice to the remaining Parties' designated addresses as listed in "Providing Proper Notice" section above. A Party that has withdrawn from this MOA shall remain obligated to pay its share of expenses and obligations as outlined in the budget and cost share agreement incurred or accrued up to the date the Party provided notice of withdrawal.

VI. Amending this MOA.

- A. This MOA may be amended only by a subsequent writing, approved and signed by all Parties. Approval from a Party is valid only after that Party's Governing Body approves the amendment at a public meeting. Executive Committee Members, Core Team Members, and individual Governing Board members do not have the authority, express or implied, to amend, modify, waive or in any way alter this MOA of the terms and conditions hereof.

VII. Indemnification. Below are two examples of possible indemnification clauses. Parties are encouraged to work with their counsel on drafting appropriate clauses reflecting the Parties wishes.

- A. *Option One:* To the fullest extent permitted by law, the Parties shall indemnify and hold harmless and defend each other, their directors, officers, employees, agents, and/or authorized volunteers from and against all liabilities, claims, demands, losses, damages, and costs, including reasonable attorney's fees and litigation of all persons in any way arising out of the performance (or actual or alleged non-performance) of the any Party's duty under the MOA.
- B. *Option Two:* 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 MOA. The Parties further agree, pursuant to California 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 MOA.

VIII. Miscellaneous.

- A. *Execution in Counterparts.* The Parties intend to execute this MOA in counterparts. It is the intent of the Parties to hold one (1) counterpart with single original signatures to evidence the MOA and to thereafter forward (# of Parties to MOA) other original counterparts on a rotating basis for all signatures. Thereafter, each Party shall be delivered an originally executed counterpart with all Party signatures.
- B. *Term of MOA.* The term of this MOA is indefinite and will cease existence only upon termination by the Parties pursuant to Section V of this MOA.
- C. *Choice of Law.* This MOA is made in the State of California, under the Constitution and laws of such State and is to be so construed.
- D. *Severability.* If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.
- E. *Entire Agreement.* This MOA constitutes the sole, entire, integrated and exclusive agreement between the Parties regarding the contents herein. Any other contracts, agreements, terms, understandings, promises or representations not expressly set forth or referenced in this writing are null and void and of no force and effect.
- F. *Construction and Interpretation.* The Parties agree and acknowledge that this MOA has been developed through negotiation, and that each party has had a full and fair opportunity to revise the terms of this MOA. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this MOA.

DATED: _____ BY: _____

<<SIGNATURE BLOCK>>



Photo: CA DWR

CHAPTER 6:

Template: Joint Powers Agreement Forming the [name of basin] Basin Groundwater Sustainability Agency

This Joint Powers Agreement (“Agreement”) is made and entered into by and among the (name of party), (name of party), and (name of party), all of which are California irrigation districts, the City of (name of city), a municipal corporation, and the County of (name of county), a political subdivision of the State of California, which are referred to herein individually as a “Party” and collectively as “Parties,” for the purposes of forming a joint powers agency to serve as the Groundwater Sustainability Agency in the (name of basin) basin. This joint powers agency shall hereinafter be known as the (name of basin) Basin Groundwater Sustainability Agency (GSA).

Recitals

WHEREAS, each of the Parties to this Agreement is a local government entity with either water supply, water management, or land use responsibilities within (name of basin) basin; and

WHEREAS, pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code), two or more public agencies may by agreement jointly exercise any power held in common by agencies entering into such an agreement; and

WHEREAS, on September 16, 2014 Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act (the Act); and

WHEREAS, the Act went into effect on January 1, 2015; and

WHEREAS, the Act seeks to provide sustainable management of groundwater basins, enhance local management of groundwater, establish minimum standards for sustainable groundwater management, and provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, upon execution of this joint powers agreement, the Parties intend for the joint powers agency formed pursuant to this Agreement to elect to be the Groundwater Sustainability Agency within the boundaries provided in Exhibit A for (name of basin) basin; and

WHEREAS, section 10720.7 of the Act requires all basins designated as high-or-medium priority basins designated in Bulletin 118 be managed under Groundwater Sustainability Plans or coordinated Groundwater Sustainability Plans pursuant to the Act; and

WHEREAS, this joint powers agency’s service area overlies portions of (name of basin) basin, a Bulletin 118 designated (high or medium priority) basin; and

WHEREAS, the Parties, acting through and by the (name of basin) basin Groundwater Sustainability Agency intend to work cooperatively with other Groundwater Sustainability Agencies operating in (name of basin) basin to manage the basin in a sustainable fashion pursuant to the requirements set forth in the Act.

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the City of (name), the County of (name), and (name of party) hereby agree as follows.

Article 1. Definitions

As used in this Agreement, unless context requires otherwise, the meanings of the terms set forth below shall be as follows:

- 1.1. “Act” refers to the Sustainable Groundwater Management Act.
- 1.2. “Agency” means the (name of basin) basin Groundwater Sustainability Agency.
- 1.3. “Agreement” means this Joint Powers Agreement, which creates the (name of basin) Basin Groundwater Sustainability Agency

- 1.4. “Committee” shall mean any committee established pursuant to Article thirteen (13) of this Agreement.
- 1.5. “Effective Date” means the date on which the last Party executes this Agreement.
- 1.6. “Fiscal Year” means July 1 through June 30.
- 1.7. “Governing Board” means the governing body of the Agency.
- 1.8. “Board Member” or “Board Members” means members of the Agency’s Governing Board.
- 1.9. “Member’s Governing Body” means the Board of Directors or other voting body that controls the individual public agencies that are members of the Agency.
- 1.10. “Member” means a public entity, including each of the Parties that satisfies the requirements of Article fourteen (14) (Membership) of this Agreement.
- 1.11. “Special Project” means a project undertaken by some, but not all Members of the Agency.
- 1.12. “State” means the State of California

Article 2. Creation of a Separate Entity

2.1. Upon the effective date of this Agreement, Basin Groundwater Sustainability Agency (Agency) is hereby created. Pursuant to the provisions of Article I, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with section 6500, the Agency shall be a public agency separate from its members. The principle offices shall be located at (name of city/county) or at such other place as the Governing Board shall determine.

2.2. The boundaries of the Agency shall be as follows [insert boundary description; Example: See Sacramento Central Groundwater JPA, p. 5]. Attached hereto and incorporated herein is Exhibit A, a map showing the boundaries of the Agency.

Article 3. Term

3.1. This Agreement shall become effective upon execution by each of the Parties and shall continue in full force and effect until terminated pursuant to the provisions of Article 18 (Termination and Withdrawal).

Article 4. Purpose of the Agency

4.1. The purpose of this Agreement is to create a joint powers agency separate from its Members that will elect to be the Groundwater Sustainability Agency for (either entire basin or portion of the basin).

4.2. To develop, adopt, and implement a Groundwater Sustainability Plan for (name of basin or portion of the basin) in order to implement the Act’s requirements and achieve the sustainability goals outlined in the Act.

4.3. To involve the public and area stakeholders through outreach and engagement in developing and implementing the (name of basin) Groundwater Sustainability Plan.

4.4. (If applicable) To coordinate and cooperate with other Groundwater Sustainability Agencies operating in (name of basin) basin in order to meet the sustainability requirements outlined in the Act.

Article 5. Powers of the Agency

5.1. *Restrictions on Exercise of Powers.* In accordance with California Government Code section 6509, the following powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to (name a party).

NOTE: As discussed in Chapter 3, JPAs generally either contain a simple, broadly worded statement empowering their agency or a very detailed list of the agency’s powers. This section will present both options.

5.1. **Option One: Powers.** The Agency is hereby authorized, in its own name, to do all acts necessary for carrying out the purposes of this agreement. Upon successfully electing to be a Groundwater Sustainability Agency, the Agency is hereby authorized to exercise all additional powers granted to Groundwater Sustainability Agencies in the Act.

5.1. **Option Two: Powers.** Subject to the limitations addressed herein, the Agency shall have the power, in the name of the Agency to exercise the common powers of the Members, including but not limited to, the following:

5.1.1. Employ agents, consultants, advisors, independent contractors, and employees.

5.1.2. Make and enter into contracts with public or private entities, including the State of California and the United States, and one another.

5.1.3. Acquire, hold, and convey real and personal property.

5.1.4. Incur debts, obligations, and liabilities; and by unanimous vote of the Governing Board to issue bonds, notes, or other similar evidence of debt.

5.1.5. To borrow money.

5.1.6. Accept contributions, grants, or loans from any public or private agency or individual in the United States or any department, instrumentality, or agency thereof for the purpose of financing its activities.

5.1.7. Invest money that is not needed for immediate necessities, as the Governing Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with section 53601 of the California Government Code.

5.1.8. Reimburse Agency members for the actual amounts of reasonable and necessary expenses incurred in attending the Agency's meetings or any committee of the Agency in performing the duties of their officer, subject to Governing Board policy and budget authorization.

5.1.9. Sue and be sued; provided that a Member agency may determine not to participate in the affirmative litigation.

5.1.10. Undertake all other acts reasonable and necessary to carry out the Purpose of this Agreement.

5.1.11. Employ or retain a full time or part time supporting staff.

5.1.12. Exercise and/or delegate all additional powers granted to Groundwater Sustainability Agencies by the Act upon successful election to be a Groundwater Sustainability Agency for (name of basin) basin.

5.2. The Agency shall not have the power to bind any Member to any monetary obligation whatsoever by this Agreement other than that unanimously authorized by the mutual written consent of the Members.

5.3. The Agency and all of its Members confirm that nothing contained herein shall grant the Agency any power to alter any water right, contract right, or any similar right held by its Members, or amend Member's water delivery practice, course of dealing, or conduct without the express consent of the holder thereof.

Article 6. Agency Governing Board

NOTE: This section will present three governing board formation options. Parties may need to edit these clauses to reflect their governing board's seat total, parties represented, and respective member appointing powers.

6.1. Governing Board Option One. Membership of Governing Board. The Agency shall be governed by a Governing Board consisting of one (1) Board Member representing each Member.

6.2. Requirements. Each Board Member must be appointed by one of the Members and sit on the Governing Board of the appointing Member. Each Board Member shall certify to the Secretary in writing that he or she has been appointed to be a Board Member by the Member and that he or she meets the qualifications established by this section, 6.2.

6.3. Alternate Board Members. Each Member shall appoint one Alternate Board Member. The Alternate Board Member must meet the requirements set forth in section 6.2. Alternate Board Members have no vote at Governing Board meetings if the Board Member is present. If the Board Member is not present, the Alternate Board Member shall be entitled to participate in all respects as a regular Board Member.

6.4. Removal of Board Members. Board Members and Alternate Board Members shall serve at the pleasure of their appointing Member's Governing Board and may be removed or replaced at any time. A Board Member that no longer meets the qualifications set forth in section 6.2 is automatically removed from the Agency Governing Board.

Upon removal of a Board Member, the Alternate Board Member shall serve as a Board Member until a new Board Member is appointed by the Member. Members must submit any changes in Board Member or Alternate Board Member positions to the Secretary in writing and signed by the Member.

6.1. Governing Board Option Two. Formation of Governing Board. The Agency shall be governed by a Governing Board consisting of nine (9) seats. (NOTE: Parties should free to change member appointment allocation as needed)

6.1.1. Member 1, Member 2, Member 3, and Member 4 will each appoint one (1) Board Member to the Governing Board.

6.1.2. Member 5 will appoint three (3) Board Members to the Governing Board.

6.1.3. Member 6 will appoint two (2) Board Members to the Governing Board.

6.2. Requirements. The Board Members shall be directors, officers, or employees of the Members. Each Board Member shall certify to the Secretary in writing that he or she has been appointed to be a Board Member by the Member and that he or she meets the qualifications established by this section 6.2.

6.3. Alternate Board Member. Each Member shall appoint one Alternate Board Member for each Board Member it appoints. Alternate Board Members shall have no vote if the Board Member is present. If the Board Member is not present, the Alternate Board Member appointed by the Member to act in his/her place may cast a vote.

6.4. Removal of Board Members. Board Members and Alternate Board Members serve at the pleasure of their respective Members and may be removed or replaced at any time. Upon removal of a Board Member, the Alternate Board Member shall serve as Board Member until a new Board Member is appointed by the Member. Members must submit any changes in Board Member or Alternate Board Member positions to the Secretary in writing and signed by the Member.

6.1. Governing Board Option Three. Membership of Governing Board. The governing body of the Agency shall be a Governing Board of fourteen (14) members consisting of the following representatives who shall be appointed in the manner set forth in (list section of agreement where appointing procedure is addressed). The composition of the Governing Board is as follows:

6.1.1. An elected member of the governing board or designated employee of each of the following public agencies: (List public agencies; examples, cities, counties, sanitation district, water district.)

6.1.2. An elected member from the governing board of each of the following public agencies:

6.1.3. A member of the board of directors, or designee thereof, of each of the following private water purveyors or investor owned utilities:

6.2. Appointment of Members to the Governing Board. In order to represent the constituents of some of the Parties, certain Members will be empowered to appoint representative members to the Governing Board as follows: (NOTE: Parties utilizing this option will want to define the following “interests” in their JPA’s “definitions” section).

6.2.1. County shall appoint the following representative as members of the Governing Board:

- One representative of Agricultural Interests within the boundaries of the Agency.
- One representative of Disadvantaged Communities that rely on groundwater within the boundaries of the Agency.
- One representative of Conservation Interests within the boundaries of the Agency.
- One representative of a Private Water Company or Mutual Water Company that pumps groundwater within the boundaries of the Agency.

6.2.2. (name of water district) Water District shall appoint the following representatives as members of the governing board:

- One representative of de minimus or domestic extractors that use two acre-feet or less per year;

- One representative from mid-sized agricultural groundwater users extracting more than (list number) acre-feet per year;
- One representative from large agricultural groundwater users, extracting more than (list number) acre-feet per year.

6.3. Adjustment to Composition of the Governing Board. Should the circumstances change in the future, any person or entity may petition the Members hereto to amend this Agreement so as to add or delete representatives to the Governing Board to accurately reflect groundwater production within the boundaries of the authority.

6.4. Terms of Office. The term of office for (party name) and (party name) members for each member of the Agency's Governing Board is four (4) years. For the purpose of providing staggered terms of office, the term of the initial representatives appointed by (party name), shall be for a period of two (2) years. Thereafter, the term of officer for each representative appointed by (list party name(s)), shall be for a period of four (4) years. Each member of the Governing Board shall serve at the pleasure of the appointing member and may be removed from the Governing Board by the appointing members at any time. If at any time a vacancy occurs on the Governing Board, a replacement shall be appointed to fill the unexpired term of the previous Board Member pursuant to (provision outlining appointing procedure) and within ninety (90) days of the date that such position becomes vacant.

Article 7. Associate Members

7.1. Associate Member. (name party) may be an associate member of the Agency. Associate members shall be entitled to participate in the meetings and discussions of the Governing Board but associate members shall not have the power to vote on any action to be taken by the Agency or to become an officer of the Agency.

7.2. Removal or Addition of Associate Members. The Governing Board may remove any associate member or appoint any party or individual as an associate member upon an affirmative vote from three quarters of Board Members.

Article 8. Officers

8.1. Officers. The Governing Board shall select a Chairman, Vice-Chairman, Secretary, and any other officers as determined necessary by the Governing Board.

8.1.1. The Chairman shall preside at all Governing Board Meetings.

8.1.2. The Vice-Chairman shall act in place of the Chairman at meetings should the Chairman be absent.

8.1.3. The Secretary shall keep minutes of all meetings of the Governing Board and shall, as soon as possible after each meeting, forward a copy of the minutes to each member and alternate of the Governing Board.

8.1.4. All Officers shall be chosen at the first Governing Board meeting and serve a term for two (2) years. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the commission.

Article 9. Treasurer, Controller, and Legal Counsel

9.1. Treasurer and Controller. The [select specific member] treasurer shall act as treasurer and controller for the Agency. The controller of the Agency shall cause an independent audit of the Agency's finances to be made by a certified public accountant in compliance with California Government Code section 6505. The treasurer of the Agency shall be the depositor and shall have custody of all money of the Agency from whatever source. The controller of the Agency shall draw warrants and pay demands against the Agency when the demands have been approved by the Agency or any authorized representative pursuant to any delegation of Agency adopted by the Agency. The treasurer and controller shall comply strictly with the provisions of statutes relating to their duties found in Chapter 5 (commencing with section 6500) of Division 7 if Title 1 of the California Government Code.

9.2. Legal Counsel. The Governing Board shall appoint legal counsel as it deems appropriate.

Article 10. Executive Director

10.1. Appointment. The Governing Board shall hire an Executive Director who shall be compensated for his or her services, as determined by the Governing Board.

10.2. Duties. The Executive Director shall be the chief administration officer of the Agency, shall serve at the pleasure of the Governing Board, and shall be responsible to the Governing Board for the proper and efficient administration of the Agency. The Executive Director shall have the powers designated in the Bylaws.

10.3. Staff. The Executive Director shall employ such additional full-time and or part-time employees, assistants, and independent contractors that may be necessary from time to time to accomplish the purposes of the Agency, subject to the approval of the Governing Board for any contract in excess of (list dollar amount).

Article 11. Governing Board Voting

11.1. Voting Option One. Quorum. A majority of Board Members shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of the Governing Board may be adjourned from time to time by a majority present, but no other business may be transacted.

11.2. Board Member Votes. Each Board Member shall have one (1) vote. Except as otherwise specified in this Agreement, all decisions, including the decision of whether or not to initiate litigation, shall be made by the affirmative vote of a majority of Board Members.

11.1. Voting Option Two. Quorum. Two-thirds of Board Members shall constitute a quorum for the transaction of Agency business. Any Board Member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

11.2. Board Member Votes. Each Board Member (or in his or her absence Alternate Board Member) shall be entitled to one (1) vote. Any action by the Governing Board shall require a two-thirds vote of all Board Members. Any amendment to this Agreement shall be governed by section 19.3 of this Agreement.

11.3. Committee Voting Procedures. Two-thirds of members of a committee shall constitute a quorum. All questions and matters of any nature coming before any committee shall be determined, provided a quorum is present, by the concurrence of 75 percent of members of such committee (as applicable) present and voting on such matter. Any committee member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

11.1. Voting Option Three. Quorum. A majority of the members of the Governing Board shall constitute a quorum for purposes of transacting business, except less than a quorum may vote to adjourn a meeting.

11.2. Board Member Votes. Each member of the Governing Board of the Agency shall have one (1) vote. With the exception to fiscal items in section 11.3 and 11.4 below, an affirmative vote by a majority of all Board Members is required to approve any item.

11.3. Voting on Fiscal Items. Fiscal items, including but not limited to, approval of the annual budget of the Agency and any expenditures, shall require an affirmative vote by a majority of all the Board Members that includes affirmative votes by all of the representatives of (name parties whose vote must be included).

11.4. Voting on Annual Contributions. Any change in annual contributions necessary to support the work of the Agency shall require an affirmative vote of (list number) Board Members out of the total (list number) Board Members (Example 11 votes out of 16 possible votes) that includes affirmative votes by all of the representatives of (list parties).

Article 12. Agency Meetings

12.1. Initial Meeting. The initial meeting of the Agency's Governing Board shall be called by (name party) and held in (name location (ex. city or county)), California within (number of days) days of the effective date of this Agreement.

12.2. Time and Place. The Governing Board shall meet at least quarterly at a time and place set by the Governing Board, and at such other times as determined by the Governing Board.

12.3. Conduct. All meetings of the Governing Board shall be noticed, held, and conducted in accordance with the Ralph. M. Brown Act to the extent applicable. Board Members and Alternate Board Members may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by the applicable laws.

Article 13. Committee Formation

13.1. Internal Committee Formation. There shall be established such internal committees as the Governing Board shall determine from time to time. Each such internal committee shall be comprised of representatives of the Members, shall exist for the term specified in the action establishing the committee, shall meet as directed by the Governing Board, and shall make recommendations to the Governing Board on the various activities of the Agency. The Governing Board may delegate authority to the internal committee to administer or implement the various activities of the Agency.

13.2. External Advisory Committee Formation. The Governing Board shall establish one or more advisory committees comprised of diverse social, cultural, and economic elements of the population and area stakeholders within (name of basin). The Governing Board shall encourage the active involvement of the advisory committee(s) prior to and during the development and implementation of the Groundwater Sustainability Plan. The Governing Board will ensure that at least one (1) member from the Governing Board or Agency employee attends and participates in each advisory committee meeting.

Article 14. Membership

14.1. Initial Members. The initial Members of the Agency shall be (list all parties) as long as they have not, pursuant to the provisions thereof, withdrawn from this Agreement in accordance with the terms thereof.

14.2. New Members. Additional Parties may join this Agreement and become a Member provided that the prospective new member, (a) is eligible to join a Groundwater Sustainability Agency as provided by the Act, (b) possesses powers common to all other Members, (c) receives an affirmative vote from a majority of Board Members, (d) pays all previously incurred costs that the Governing Board determines have resulted in benefit to their agency, (e) pays all applicable fees and charges, and (f) agrees in writing to the terms and conditions of this Agreement.

Article 15. Specific Projects

15.1. Projects. The Agency intends to carry out activities in furtherance of its purposes and consistent with the powers established by the Agreement with the participation of all Members.

15.2. Member Specific Projects. In addition to the general activities undertaken by all Members of the Agency, the Agency may initiate specific projects or litigation that involves less than all Members. No Member shall be required to be involved in a Project that involves less than all the Members.

15.3. Project Agreement. Prior to undertaking any project or litigation that does not involve all Member Agencies, the Members electing to participate in the Project shall enter into a Project Agreement. A Member may elect not to participate in a specific project or litigation matter by providing notice and not entering into the Project Agreement specific to the matter in which the Member has elected not to participate. Each Project Agreement shall provide the terms and conditions by which the Members that enter into the Project Agreement will participate in the Project. All assets, rights, benefits, and obligations attributable to the Project shall be assets, rights, benefits, and obligations of those Members which have entered into the Project Agreement. Any debts, liabilities, obligations, or indebtedness incurred by the Agency in regard to a particular Project shall be the debts, liabilities, obligations, and indebtedness of those Members who have executed the Project Agreement in accordance with the terms thereof and shall not be the debts, liabilities, obligations, and indebtedness of those Members who have not executed the Project Agreement. Further, to the extent the Project is litigation, the Members who have not entered into the Project Agreement shall not be named or otherwise listed in the pleadings and/or appear on litigation materials.

15.4. Governing Board Approval. The Governing Board shall have the authority to disapprove any Project Agreement upon a determination that the Project Agreement has specific, substantial adverse impacts upon Members that have not executed the Project Agreement.

Article 16. Budget and Expenses

16.1. **Option One. Budget**. The Governing Board shall approve a budget at its initial meeting and before the beginning of each fiscal year thereafter. Funding for the budget shall be provided in equal proportion by each Party, except as to specific projects or litigation matters in which a Member has not elected to participate. Each Member's Governing Body shall authorize its funding contribution before the beginning of the fiscal year.

16.2. Each of the Parties may, but are not required to, contribute additional money, office space, furnishings, equipment, supplies, or services as their respective Governing Boards may deem appropriate.

16.3. Funds may also be derived through State and Federal grants, or other available sources. The Agency may also apply for available State and Federal funds and shall make new and additional applications from time to time as appropriate. The Agency may also establish and collect various fees, leases, or rents as may be authorized by law under the common powers of all the Parties.

16.4. The Agency may accept and expend funds from public or private sources subject to the legal restrictions which are set forth in the common powers of the Parties for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.

16.5. The Agency shall be limited to the making of expenditures or incurring of liabilities in the amount of the appropriations allowed by the budget as adopted and revised by the Agency.

16.1. **Option Two. General Expense Accounts**. For the purpose of funding general expenses for the ongoing operations of the Agency, there shall be established by the Governing Board and approved in connection with the annual budget process a General Expense Account. Contributions to the General Expense Account shall be allocated fifty (50) percent to (name of party) and fifty (50) percent to (name of party).

16.2. **Project Expense**. Expenses associated with each Project shall be allocated among those Members participating in the Project. The method of allocation shall be established by the participating members through the Project Agreement.

16.1. **Option Three**. The Agency shall initially be funded as follows:

16.2. City and County Contributions. Annual contribution by the Cities of (list city) and County of (list county) in the amount of ten thousand dollars (\$10,000.00) each. (These entities shall not be required to pay any additional fee or assessment, such as those described in 16.4.).

16.3. Water Agency Contributions. An annual contribution by each of those Water Agencies represented on the Governing Board in the amount of six thousand dollars (\$6,000.00).

16.4. Groundwater Extractor Contribution. An annual contribution of those water purveyors represented on the Governing Board, other than those entities listed in subsection 16.2 above, that are actively delivering groundwater, calculated at the rate of (list price) per acre foot of groundwater pumped from the basin.

16.5. Budgets. Within ninety (90) days after the first meeting of the Governing Board of the Agency, and thereafter prior to the commencement of each fiscal year, the Governing Board shall adopt a budget for the Authority for the ensuing fiscal year.

16.6. Changing Annual Contributions. The Governing Board of the Agency may, at its discretion, adjust the funding contributions set forth in this article, subject with the voting requirements prescribed in this Agreement.

Article 17. Liability and Indemnification

17.1. Liability. In accordance with California Government Code section 6508.1, the debts, liabilities, and obligations of the Agency shall be the debts, liabilities, and obligations of the Agency alone, and not the Members.

17.2. **Option One. Indemnification.** The Agency shall indemnify, defend, and save harmless the Members, their officers, agents, and employees, from and against any and all claims and losses whatsoever, occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials or supplies to the Agency in connection with the performance of this Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury, or death arising out of or connected with the Agency's performance of its obligations under this Agreement. The Agency may also acquire such policies of directors and officers liability insurance and in such amounts as the Governing Board shall deem prudent.

17.2. **Option Two. Indemnification.** The members of the Governing Board, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the parties to this agreement for any mistake of judgment or any other action made, taken, or omitted by any agent, employee, or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Agency's funds, or failure to invest the same.

17.3. To the extent authorized under California law, no Board Member, officer, or employee of the Agency shall be responsible for any action made, taken, or omitted, by any other Board Member, officer or employee.

17.4. The funds of the Agency shall be used to defend, indemnify, and hold harmless the Agency and any Board Member, officer, or employee of the Agency for actions taken in good faith and within the scope of his or her authority. Nothing herein shall limit the right of the Authority to purchase insurance or to create a self-insurance mechanism to provide coverage for the foregoing indemnity.

Article 18. Withdrawal and Termination

18.1. **Withdrawal.** A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon sixty (60) days written notice the remaining Members.

18.2. **Effect of Withdrawal.** Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations of the Agency incurred or accrued prior to the effective date of such withdrawal, other than debts, liabilities, and obligations incurred pursuant to any Project Agreement to which the withdrawing Member is not a participant.

18.3. **Termination of Agency.** This Agreement may be rescinded and the Agency terminated by unanimous written consent of all Members, except during the outstanding term of any Agency indebtedness. Nothing in this Agreement shall prevent the Members from entering into other joint exercise of power agreements.

18.4. **Disposition of Agency Assets upon Termination.**

18.4.1. **Surplus Funds.** Upon termination of this Agreement, any reserves or surplus money on-hand shall be returned to the Members in the same proportion said Members have funded such reserves or surplus, in accordance with California Government Code section 6512.

18.4.2. **Agency Property.** The Agency shall first offer any assets of the Agency for sale to the Members on terms and conditions determined by the Governing Board. If no such sale to Members is consummated, the Board shall offer the assets of the Agency for sale to any non-member for good and adequate consideration on terms and conditions determined by the Governing Board.

Article 19. Miscellaneous

19.1. **Notices.** Notices hereunder shall be sufficient if delivered via electronic mail, First-Class mail or facsimile transmission to the addresses following the Party signature blocks hereafter.

19.2. **Bylaws.** At, or as soon as practicable after the first Governing Board meeting the Governing Board shall draft and approve Bylaws of the Agency to govern day-to-day operations of the Agency.

19.3. **Amendment.** This Agreement may be amended at any time, by mutual agreement of the Members, provided that before any amendments shall be operative or valid, it shall be reduced to writing and signed by all Members hereto.

19.4. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

19.5. Execution in Counterparts. The Parties intend to execute this Agreement in counterparts. It is the intent of the Parties to hold one (1) counterpart with single original signatures to evidence the Agreement and to thereafter forward (# of Parties to Agreement) other original counterparts on a rotating basis for all signatures. Thereafter, each Party shall be delivered an originally executed counterpart with all Party signatures.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first written above.

<<SIGNATURE BLOCKS>>



Photo: CA DWR

REFERENCES

- ¹ Wat. Code, § 10721, (j)
- ² Wat. Code, § 10721, (m)
- ³ Wat. Code, § 10723, (a)
- ⁴ Wat. Code, § 10721, (k)
- ⁵ Wat. Code, § 10735.2, (a)(1)
- ⁶ Wat. Code, § 10724, (a)
- ⁷ Wat. Code, § 10720.7, (a)(1)
- ⁸ Wat. Code, § 10720.7, (a)(2)
- ⁹ Wat. Code, § 10735.2 et seq.; Although probationary status is basin-wide, there is an exception. The board will exclude from probationary status any portion of a basin for which a GSA can demonstrate compliance with the “sustainability goal” (Wat. Code, § 10735.2 (e))
- ¹⁰ Although the language of SGMA does not expressly prohibit managing outside agency boundaries, the spirit and intent of the act does not contemplate this.
- ¹¹ Wat. Code, § 10735.2, (a)(1)
- ¹² Wat. Code, § 10723.6, (a)(1), (2)
- ¹³ Wat. Code, § 10721, (j)
- ¹⁴ Wat. Code, § 10723, (b)
- ¹⁵ *Id.*
- ¹⁶ Wat. Code, § 10723.8, (a)
- ¹⁷ Wat. Code, § 10723.8, (a)(1) – (4)
- ¹⁸ Wat. Code, § 10723.8, (b)
- ¹⁹ See S.B. 13 “Groundwater” (2015-16)
- ²⁰ Wat. Code, § 10723.6, (b) Water corporations may be a member of a GSA, but only if they are regulated by the Public Utilities Commission and the local agencies approve of membership.
- ²¹ See S.B. 13 “Groundwater” (2015-16)
- ²² See Memorandum of Understanding Four County (Butte, Colusa, Glenn, and Tehama Counties) Regional Water Resource Coordination, Collaboration, and Communication (hereinafter referred to as “Four County MOA”); Memorandum of Agreement Between Metropolitan Water District Of Southern California And U.S. Army Corps of Engineers, Los Angeles District (hereinafter referred to as “Army Corps of Engineers MOA”)
- ²³ Wat. Code, § 10723.6, (a)(2)
- ²⁴ Wat. Code, § 10727, (b)
- ²⁵ Memorandum of Understanding among City of Coachella/Coachella Water Authority, Coachella Valley Water District, Desert Water Agency, City of Indio/Indio Water Authority, and Mission Springs Water District for Development of an Integrated Regional Water Management Plan (hereinafter referred to as “Coachella Valley MOU”), Section 2.1
- ²⁶ Coachella Valley MOU, Section 5.6
- ²⁷ MOU Between Orange County Water District and the City of Anaheim Regarding Collaboration and Implementation of Orange County Water District’s Capital Infrastructure Projects to Improve the Efficiency and Operation of Groundwater Recharge Basins (hereinafter referred to as “Orange County MOU”), Section 4
- ²⁸ US Army Corps of Engineers MOA, Section VI
- ²⁹ Memorandum of Agreement Between San Joaquin County Flood Control and Water Conservation District and East Bay Municipal Utility District Relative to a Groundwater Banking Demonstration Project (hereinafter referred to as “SJC and EBMUD MOA”), Section 4.D.(3).
- ³⁰ Agreement between the Regional Water Authority and the Sacramento Groundwater Authority for Administrative and Management Services (hereinafter referred to as “RWA & SGA Agreement”), pgs. 2-3
- ³¹ Army Corps of Engineers MOA, Section 8
- ³² Army Corps of Engineers MOA, Article 3
- ³³ Army Corps of Engineers MOA, Article 4
- ³⁴ Orange County MOU, Section 6; RWA & SGA Agreement, Section 3; Army Corps of Engineers MOA, Section 10
- ³⁵ SJC and EBMUD MOA, Section 5.B.
- ³⁶ MOA Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance For the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan (hereinafter referred to as “Bay Delta Conservation Plan MOA”), Section 4; Four County MOA, Section 5.7
- ³⁷ SJC and EBMUD MOA, Section 5.B.
- ³⁸ MOU Relating to the Formation and Operation of the Stanislaus and Tuolumne Rivers Groundwater Basin Association (hereinafter referred to as “Groundwater Basin Association MOU”), Section 11.4
- ³⁹ Army Corps of Engineers MOA, Section 10; Bay Delta Conservation Plan MOA, Section 5; SJC and EBMUD MOA, Section 6.A.
- ⁴⁰ RWA & SGA Agreement, Section 15
- ⁴¹ Groundwater Basin Association, Section 11.5
- ⁴² Gov. Code, § 54953
- ⁴³ RWA & SGA Agreement, Section 3; Coachella Valley MOU, Section 5.1
- ⁴⁴ Groundwater Basin Association, Section 10
- ⁴⁵ SJC and EBMUD MOA, Section 5.A.
- ⁴⁶ Wat. Code, § 10727.2 (b) (1); Wat. Code, § 10728.4
- ⁴⁷ Gov. Code, § 6502
- ⁴⁸ See Amended and Restated Joint Exercise of Powers Agreement By and Between The City of Palo Alto, The City of Menlo Park, The City of East Palo Alto, The Town of Atherton, The County of San Mateo and The County of Santa Clara, Section 2.1 (does not create a separate entity); Joint Exercise of Powers Agreement Eastern San Joaquin County Groundwater Basin Authority (hereinafter referred to as “Eastern San Joaquin County JPA”), Section 1.01 (created a separate public entity)
- ⁴⁹ Gov. Code, § 6502
- ⁵⁰ Gov. Code, § 6508
- ⁵¹ Gov. Code, § 6509.5
- ⁵² *Id.*
- ⁵³ Gov. Code, § 6546
- ⁵⁴ Gov. Code, § 6508.1

REFERENCES *(continued)*

- 55 Gov. Code, §§ 6503.5, 6503.6
56 *Id.*
57 Gov. Code, § 6503.5
58 Gov. Code, § 6505
59 *Id.*
60 Gov. Code, §§ 6505.5, 6505.6
61 Gov. Code, § 6505.5
62 *Id.*
63 Gov. Code, § 6506
64 Gov. Code, § 6503
65 *Id.*
66 Eastern San Joaquin County JPA, Section 1.01; Joint Powers Agreement Between the City of Citrus Heights, The City of Folsom, The City of Sacramento and the County of Sacramento Creating the Sacramento Groundwater Authority (hereinafter referred to as the “SGA JPA”), Section 4
67 Joint Powers Agreement Between the City of Elk Grove, The City of Folsom, The City of Rancho Cordova, The City of Sacramento and the County of Sacramento Creating the Sacramento Central Groundwater Authority (hereinafter referred to as the “SCGA JPA”), Section 4
68 Joint Powers Agreement Forming The San Joaquin Tributaries Authority (hereinafter referred to as the “SJTA JPA”), Article 2.
69 Eastern San Joaquin County JPA, Section 1.02.
70 San Joaquin River Group Authority Joint Exercise of Powers Agreement (hereinafter referred to as “SJRGJPA”), Section 1; Joint Exercise of Powers Agreement by and among Santa Margarita Water District and Fenner Valley Mutual Water Company creating the Fenner Valley Water Authority (hereinafter referred to as the “Fenner Valley Water Authority JPA”), Article 2.2; SCGA JPA, Section 4
71 Gov. Code, § 6509
72 SGA JPA, Section 16; SCGA JPA, Section 17
73 Kern Groundwater Authority for the Tulare Lake Basin portions of Kern County Joint Powers Agreement (hereinafter referred to as the “KGA JPA”), Section 2.04(b)
74 SCGA JPA, Section 17
75 Eastern San Joaquin County JPA, Section 2.01
76 An exception to this is a GSA can impose fees under Wat. Code, § 10730 (a) to fund development of a GSP
77 Eastern San Joaquin County JPA, Section 4.01
78 SJRGJPA, Article 4.5
79 SCGA JPA, Section 10
80 Joint Powers Agreement Forming The State and Federal Water Contractors Agency (hereinafter referred to as “State and Federal Water Contractors JPA”), Article 7.1
81 Eastern San Joaquin County JPA, Section 3.04; State and Federal Water Contractors JPA, Section 8.2
82 SGA JPA, Section 13; KGA JPA, Section 4.02
83 SCGA JPA, Section 14
84 *Id.*
85 *Id.*
86 See “Parliamentary Procedure Quick Reference for Special Districts,” <http://www.csdanet.net/wp-content/uploads/2013/02/Parliamentary-Procedure-Quick-Reference.pdf>; See also “Rosenberg’s Rules of Order,” https://www.cacities.org/Resources/Open-Government/RosenbergText_2011.aspx
87 SJTA JPA, Section 7.1; State and Federal Water Contractors JPA, Section 7.1; Fenner Valley Water Authority JPA, Section 7
88 Eastern San Joaquin County JPA, Section 3.06
89 SJTA JPA, Section 8.1; State and Federal Water Contractors JPA, Section 8.1
90 KGA JPA, Section 3.05(a)
91 SGA JPA, Section 9
92 KGA JPA, Section 3.05(a)
93 SJTA JPA, Section 8.2
94 State and Federal Water Contractors JPA, Section XI
95 Cal. Water Code, § 10727.8
96 *Id.*
97 State and Federal Water Contractors JPA, Section 5.2; SJTA JPA, Section 5.2
98 KGA JPA, Section 3.07; State and Federal Water Contractors JPA, Section 10; SJTA JPA, Section 9
99 Gov. Code, § 6508.1
100 KGA JPA, Section 6.01
101 State and Federal Water Contractors, Section 10.3; SJTA JPA, Section 9.3
102 For a more detailed discussion on JPA tort liability, see generally “Joint Powers Authorities: Opportunities and Challenges,” <http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2003/9-2003-Annual;-Cassman-cm-Saveree-Joint-Powers-Agr>
103 Gov. Code, § 895.2
104 Gov. Code, § 6508.1
105 Gov. Code, § 895.4
106 Gov. Code, § 6511
107 Gov. Code, § 6512
108 SJTA JPA, Section 13.1
109 State and Federal Water Contractors JPA, Section 15.5
110 *Id.*
111 *Id.*
112 SGA JPA, Section 19(a)
113 SGA JPA, Section 19(b)
114 SGA JPA, Section 19(c) Gov. Code, § 6509