

Memorandum

DATE: October 30, 2015

TO: Russell McGlothlin and Jena Shoaf **FILE NO:** 017669.1, 018331.1

FROM: Jessica Diaz

RE: The Use of Joint Powers Authorities for Sustainable Groundwater Management

I. Introduction

A joint powers agreement allows two or more public agencies to jointly exercise any power common to those agencies.¹ It is a flexible tool that can be adapted to a range of situations where objectives can be met most effectively through cooperation across multiple agencies.² This memorandum provides an overview of the key considerations and legal constraints in crafting a joint powers agreement, with an eye towards the formation of Groundwater Sustainability Agencies under the Sustainable Groundwater Management Act.

II. The Role of Joint Powers Agreements in the Sustainable Groundwater Management Act

To facilitate groundwater management planning, the Sustainable Groundwater Management Act (SGMA) provides for the designation of Groundwater Sustainability Agency (GSA's), which are required in medium- and high-priority basins.³ SGMA expressly provides that a GSA may be formed through a joint powers agreement.⁴

Typically, the parties to a joint powers agreement are limited to public agencies.⁵ But where a joint powers agreement is used to create a GSA, the public agencies may wish to involve non-public entities in GSA governance, such as mutual water companies, agricultural stakeholders, and other groundwater user groups. The relevant legal implications are discussed in further detail below.

A note on terminology: the acronym "JPA" is often used interchangeably to refer to joint powers *agreements*, *agencies*, and *authorities*. For clarity, this memorandum avoids the term "JPA" and refers

¹ Cal. Gov. Code § 6502.

² For a discussion on the flexibility of joint powers agreements, see CALIFORNIA STATE SENATE LOCAL GOVERNMENT COMMITTEE', GOVERNMENTS WORKING TOGETHER: A CITIZEN'S GUIDE TO JOINT POWERS AGREEMENTS (August 2007), available at <http://www.wdcwa.com/images/uploadsdoc/JPACitizen27sGuideAttachment3.pdf>.

³ Cal. Water Code §§ 10722.4(d), 10723, 10735.2(a)(1),

⁴ *Id.* § 10723.6(a)(1).

⁵ Gov. Code § 6502. As discussed in further detail below, the statute provides an exception for mutual water companies. *Id.* § 6525(a), as amended by AB 656 (2015).

instead to joint powers “agreements” and “authorities.” It should be noted that although not every joint powers agreement creates a new entity (i.e., a joint powers authority), that is the focus of this memorandum. Finally, the phrase “JPA member” can be ambiguous. Since a joint powers agreement is a contract, this memorandum refers to the public-agency parties to a joint powers agreement as the “*contracting agencies*,” and to members of an authority’s board of directors as “*board members*.”

III. Crafting a Joint Powers Agreement

Public agencies entering into a joint powers agreement must make a number of choices critical to the success of a new joint powers authority. In addition, the Joint Exercise of Powers Act⁶ *requires* that certain provisions be included in an agreement. This memorandum covers five key aspects of a joint powers agreement and notes the relevant statutory requirements, key considerations, and sample provisions.

Topics Covered

- 1) Formation Fundamentals
 - Creation of the authority
 - Purpose of agreement or powers to be exercised
 - Amendment of agreement
 - Termination and withdrawal
- 2) Governance
 - Choosing a “procedural parent” agency
 - Board composition and participation by non-public entities
 - Appointment of alternates
 - Brown Act
 - Delegation of board authority
 - Officer elections and terms
 - Board meetings
 - Quorum
 - Additional committees
 - Conflicts of interest
- 3) Decision-making
 - Ratification by contracting agencies
 - Weighted voting
- 4) Staffing
- 5) Finances⁷
 - Designation of treasurer and auditor
 - Auditing requirements
 - Financial contributions
 - Liability

⁶ Gov. Code § 6500, et seq.

⁷ This memorandum does not address statutory requirements involving bond issuance. See, e.g., Gov. Code § 6515.

1. Formation Fundamentals

Statutory Requirements

- The joint powers agreement must specify what agency will administer the agreement, such as a newly formed joint powers authority.⁸
- The agreement must state the purpose of the agreement or the power to be exercised.⁹ A joint powers authority may only exercise powers that *each* party to the agreement could exercise independently.¹⁰

Key Considerations

Authority Powers

Unless politics or other considerations favor limiting the new entity's authority, the joint powers authority should be given the full scope of power common to each of the contracting agencies.¹¹ This will provide the authority with the greatest agility in carrying out SGMA's objectives. However, a joint powers agreement may also forbid the new entity from engaging in certain activities such as the retail sale of water, the funding of capital construction projects, or the regulation of land use.

Difficulty of Amendment

Because a joint powers agreement is a contract, subsequent amendments will require the *unanimous* agreement of all public-agency parties to the agreement.¹² Accordingly, contracting parties should avoid using the agreement to formalize details that may change over time. Those decisions can be left to bylaws or resolutions adopted by the newly constituted board of directors.

Withdrawal of a Contracting Agency

A joint powers agreement should outline a process through which a contracting agency can withdraw. But to the extent politically feasible, the agreement should be crafted to discourage withdrawal. Most importantly, the agreement should prevent a withdrawing agency from receiving a financial return or reimbursement.¹³ Here are two tools for balancing fairness to participating agencies with the need for long-term stability of governance:¹⁴

- Requiring that a withdrawing party reach agreement with the authority as to the withdrawing agency's outstanding financial obligations or commitments of personnel
- Requiring that a contracting agency be given 1) notice before the joint powers authority incurs a financial obligation over a certain threshold and 2) an opportunity to withdraw before the obligation is incurred

⁸ *Id.* § 6506.

⁹ *Id.* § 6503.

¹⁰ *Id.* § 6502.

¹¹ *See id.* § 6502; JOAN L. CASSMAN & JEAN B. SAVAREE, JOINT POWERS AUTHORITIES: OPPORTUNITIES & CHALLENGES (JPA'S: OPPORTUNITIES & CHALLENGES) 4-5.

¹² JPA'S: OPPORTUNITIES & CHALLENGES, AT 6-7.

¹³ *Id.* at 6.

¹⁴ *Id.*

Sample Provisions and Advice	
Creation of the Authority	
<p>Though not required, it is useful to reference the notices that must be filed with the State and local agencies.</p>	<p>“There is hereby created pursuant to the Act a joint powers agency which will be a public entity separate from the parties to this Agreement and shall be known as the Monterey Peninsula Regional Water Authority. Within 30 days after the effective date of this Agreement and after any amendment, the Authority shall cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by Government Code section 6503.5, Within 10 days after the effective date of this Agreement, the Authority shall cause a statement of the information concerning the Authority, required by Government Code section 53051, to be filed with the office of the California Secretary of State and with the County Clerk for the County of Monterey, setting forth the facts required to be stated pursuant to Government Code section 53051(a).”</p>
<p>Though not required,¹⁵ it is helpful to clarify that the joint powers authority is being created as a separate public entity.</p>	<p>“There is hereby created the El Dorado Water and Power Authority to exercise powers and take actions in the manner set forth in this Agreement. The Authority shall be a public entity separate from the Parties. The exercise of any power or the carrying out of any act under this Agreement shall comply with the applicable laws of the State of California.”</p>
<p>Basin boundaries with an attached map will help clarify the scope of the authority. But if boundaries change an amendment to the joint powers agreement itself would be required.</p>	<p>“There is hereby established pursuant to the Joint Exercise of Powers Act a joint powers authority which shall be a public entity separate from the parties to this Agreement. The name of such entity shall be the Sacramento Groundwater Authority ("Authority"). The boundaries of the Authority shall be as follows: north of the American River to the Sacramento County line; bounded on the south by the American River; on the west by the Sacramento River; on the north and east by the Sacramento County line; and including the City of Folsom. A map depicting the boundaries of the Authority is attached hereto and incorporated herein as Exhibit "B".”</p>
Purpose of the Agreement or Powers to be Exercised	
<p>To gain consensus from contracting parties, it may be useful to clarify any powers the authority <i>lacks</i>.</p>	<p>“Each Member Agency has the power to construct, operate, maintain, administer, and manage facilities for the collection, transmission, treatment, and disposal of wastewater, the reuse of treated wastewater, and wastewater byproducts for any beneficial purpose. The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner hereinafter provided. Nothing contained in this Agreement shall obligate any Member Agency to participate in projects undertaken by any other Member Agency financed prior to the date of this Agreement, except for the Facilities defined in this Agreement.”</p>

¹⁵ See Cal. Gov. Code § 6507 (“For the purposes of this article, the agency is a public entity separate from the parties to the agreement.”).

<p>To clarify the ramifications of the “common powers” rule,¹⁶ it is helpful to enumerate what powers are common to <i>all</i> contracting agencies.</p>	<p>“Each Member has in common the power to study, plan, develop, finance, acquire, construct, maintain, repair, manage, operate, control, and govern Water Projects either alone or in cooperation with 'other public or private non-member entities. The purpose of this Agreement is to establish a public entity separate from its Members to jointly exercise some or all of the foregoing common powers, as deemed necessary by the Authority, to: (1) ensure the timely development, financing, construction, operation, repair, and maintenance of one or more Water Projects; and (2) ensure that the governance of such Water Projects includes representation that is directly accountable to the Cities' water users.”</p>
<p>This provision provides the new entity with the maximum scope of power permitted, by clarifying that the listed powers are purely illustrative.</p>	<p>“The Authority, in its own name, shall have the powers to do all acts necessary and convenient for the exercise of the purpose and goals of the Agreement that each of the Parties could do separately. The Authority's power shall include but not be limited to the following . . . ”</p>
<p>Amendment of the Agreement</p>	
<p>It is useful, though not required, to clarify that unanimous consent of the contracting parties is required for amendment.</p>	<p>“This Agreement may be amended upon written approval of any Amendment by all Members. The approval by a Member of an Amendment to this Agreement shall not be effective until a certified copy of the resolution of the governing body of such Member is filed with the Secretary of the CDA, together with a fully executed original of such amendment.”</p>
	<p>“This Agreement may only be amended by the affirmative vote of the governing bodies of all of the parties hereto.”</p>
<p>Membership of the Joint Powers Authority</p>	
<p>The “members” to the authority are the same as the contracting parties to the joint powers agreement.</p>	<p>“The Members of the Authority shall be the City of Carmel-by-the-Sea, the City of Del Rey Oaks, the City of Monterey, the City of Pacific Grove, the City of Sand City, and the City of Seaside, as long as they have not, pursuant to the provisions hereof, withdrawn from this Agreement.”</p>
<p>The agreement should provide for the addition of new parties to the agreement, in the event that basin boundaries change or new agencies wish to participate.</p>	<p>“Any public agency (as defined by the Act) that is not a Member on the effective date of this Agreement may become a Member upon: (a) the approval of the Board of Directors by a supermajority of at least seventy (70) percent of the votes held among all Directors as specified in Article 8 (Member Voting); (b) payment of a pro rata share of all previously incurred costs that the Board of Directors determines have resulted in benefit to the public agency, and are appropriate for assessment on the public agency; and (c) execution of a written agreement subjecting the public agency to the terms and conditions of this Agreement.”</p>
<p>Term of Agreement</p>	

¹⁶ *Id.* § 6502.

Unless required to gain consensus from the contracting parties, the agreement need not specify a termination date. ¹⁷	“The term of this Agreement shall be three years, unless otherwise terminated sooner pursuant to the terms and conditions herein.”
	“The CDA shall continue in existence until dissolved in accordance with the terms of this Article X.”
Termination of Agreement	
If the authority plans to take on debt, dissolution procedures should reflect this.	“This Agreement may be rescinded and the Authority terminated by unanimous written consent of all Members, except during the outstanding term of any Authority indebtedness.”
	“This Agreement may be extended or terminated by written consent of the Member Agencies evidenced by certified copies of resolutions of the Member Agencies’ governing boards.”
Withdrawal of a Contracting Agency	
This provides a relatively easy mechanism for withdrawal, which may be inadvisable unless necessary to gain consensus.	“A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon sixty (60) days’ written notice to the Executive Director.”
This language is recommended to eliminate any financial incentive for withdrawal.	“Any Member Agency of the Authority shall have the right to withdraw its membership upon serving written notice of its intention thereof on all other Member Agencies at least 120 days before the end of any fiscal year; provided, however, that no such withdrawal shall relieve the withdrawing Member Agency from financial obligations incurred by it under this Agreement.”
Keying the required withdrawal notice to the end of the fiscal year may help with authority budgeting.	“Except as provided in Section 2.2 hereof with regard to SARWC, any Member may withdraw from the CDA at any time upon giving each of the other Members written notice 180 days prior to the end of the fiscal year; provided, however, any withdrawing Member shall be obligated for all liabilities and expenses of the CDA and its interim pre formation representative, JCSD, incurred prior to withdrawal, including any commitments to purchase water from the CDA and any other diminution of revenue caused by such withdrawal, unless those obligations are assigned and assumed.”

¹⁷ Gov. Code § 6510 (“The agreement *may* be continued for a definite term or until rescinded or terminated. The agreement *may* provide for the method by which it may be rescinded or terminated by any party.”) (emphasis added).

2. Governance

Statutory Requirements: The joint powers agreement must identify “the method by which the purpose will be accomplished or the manner in which the power will be exercised.”¹⁸ This means identifying one of the contracting agencies whose procedural rules will govern the new authority (i.e., the “procedural parent”).¹⁹

Key Considerations

Choosing a Procedural Parent Agency

The choice of what procedural rules will govern the new joint powers authority cannot be used to expand the substantive powers of the authority, since a joint powers authority can only exercise powers that are common to all of the contracting agencies.²⁰ But the choice of procedures can nonetheless have important implications for the authority’s activities. The contracting parties should choose a “procedural parent” whose procedures are comprehensive and up-to-date.²¹ Certain efficiencies, such as streamlined purchasing authority, may make a particular agency a good procedural parent.²² Finally, an alternate agency should be identified in the event the original procedural parent withdraws.²³

Participation by Non-Public Entities

In establishing a board of directors for a joint powers authority, the contracting agencies may wish to include individuals who are not public agency elected officials or staff. State statute does *not* appear to prohibit such an arrangement.

While statute may limit what types of entities can enter into a joint powers agreement,²⁴ it provides significantly more flexibility as to how an entity *created* by that agreement will be governed. Government Code § 6505 provides the operative guidance: “The agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement *or a commission or board constituted pursuant to the agreement or a person, firm or corporation, including a nonprofit corporation, designated in the agreement.*”²⁵ Given that a joint powers agreement may delegate the agreement’s administration *entirely* to a private entity, it seems only logical that the agreement’s administration could also be delegated to a board of directors composed in part of private entity representatives.

Neither the courts nor the state Attorney General’s office has had occasion to expressly address the question of whether representatives from non-public entities may serve as board members for joint powers authorities. But in a 2003 case, the court of appeal noted that Inland Empire Health Plan – a Health Maintenance Organization (HMO) created by a joint powers agreement – should be treated as a public entity for governmental immunity purposes.²⁶ Although not mentioned in that case, the HMO board is comprised of both county supervisors and appointed members of the public.²⁷

¹⁸ Gov. Code § 6503.

¹⁹ See *id.* § 6509.

²⁰ *Id.* § 6502.

²¹ JPA’S: OPPORTUNITIES & CHALLENGES, at 3.

²² *Id.*

²³ *Id.*

²⁴ In particular, both public agencies and mutual water companies may enter into joint powers agreements. Gov. Code §§ 6502, 6525.

²⁵ Emphasis added.

²⁶ *Inland Empire Health Plan v. Sup. Ct.*, 108 Cal.App.4th 588, 592-93 (2003).

There are several possibilities for involving non-public entity stakeholders:

- Allowing contracting agencies to appoint board members at the agencies' sole discretion (*Example:* The County of A, County of B, City of C, and City of D each get two board members to appoint)
- Giving contracting agencies a certain number of board members to appoint, within specified categories (*Example:* the County of A and County of B each have three board seats to appoint, which must be filled by one county supervisor, one well user representative, and one agricultural representative, respectively)
- Creating a board comprised entirely of public agency representatives, with a specified procedure for convening a standing committee of private stakeholders or "associate," non-voting board members.

Note that *delegation* of board authority to a committee may raise one statutory limitation. Although the governing body of a joint powers authority may "delegate its functions to an advisory body or administrative entity for the purposes of program development, policy formulation, or program implementation," the annual budget for the joint powers authority must be approved by its governing body.²⁸

It is possible to require that non-public entities represented on the board of directors contribute funding towards the newly created agency, as provided in one of the sample provisions below.

Changes to Board Composition

The flexibility of board composition will be determined by the degree of specificity in the joint powers agreement. For instance, if the joint powers agreement requires that board seats be filled by particular types of stakeholders, the contracting parties to the agreement will need to unanimously approve future changes to that arrangement. But in order to convene a board for its initial meeting, the agreement should specify at least the basic parameters of board composition.

Appointment of Alternates

Contracting parties should outline a process for the appointment of alternate board members. The agreement may allow each board member to designate an alternate at his or her sole discretion, or specify more detailed restrictions as to how alternates may be chosen.

Brown Act Open Meeting Requirements

The Brown Act's open meeting requirements apply to any "legislative body" of a local agency.²⁹ For Brown Act purposes, a "legislative body" includes "[a] commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body."³⁰ The statute provides an exception for advisory committees comprised *solely* of members of the legislative body, unless the advisory committee is a

²⁷ IEHP GOVERNING BOARD, <https://ww3.iehp.org/en/about-iehp/governing-board> (last visited Oct. 13, 2015); BOARD ROSTER – INLAND EMPIRE HEALTH PLAN, *available at* [http://cms.sbcounty.gov/Portals/45/At-Large%20\(Countywide\).pdf](http://cms.sbcounty.gov/Portals/45/At-Large%20(Countywide).pdf) (last visited Oct. 13, 2015).

²⁸ Cal. Gov. Code § 6508.

²⁹ *Id.* § 54953(a).

³⁰ *Id.* § 54952(b).

standing committee with “continuing subject matter jurisdiction” or a meeting scheduled fixed by formal action of the legislative body.³¹

Accordingly, the Brown Act would apply to any committee that included individuals beyond those serving on the board of directors.

Sample Provisions and Advice

Board Composition

<p>Under this provision, each contracting agency appoints one board member and one alternate.</p> <p>The final sentence also establishes a deadline by which contracting agencies must fill their board seats.</p>	<p>“Each Member shall appoint one Director and one Alternate Director to the Board of Directors. Alternate Directors shall have no vote, and shall not participate in any discussions or deliberations of the Board, if the Director is present. If the Director is not present, or if the Director has a conflict of interest which precludes participation by the Director in any decision-making process of the Board, the Alternate Director appointed to act in his/her place shall assume all rights of the Director, and shall have the authority to act in his/her absence, including votes on matters before the Board. Each Director and Alternate Director shall be appointed prior to the initial meeting of the Board, as set forth in Section 7.1.”</p>
<p>The agreement may restrict board membership to elected officials.</p>	<p>“Both the Primary Director and Alternate Director shall be an elected member of the governing board of the appointing Member Agency.”</p>
<p>This provision provides for a board on which the <i>entirety</i> of each elected body will serve. Agencies should consider potential quorum and scheduling difficulties before employing such an arrangement.</p>	<p>“The Authority shall be governed by the Board of Directors. The Board shall be a sixteen member Board comprised of fifteen voting directors, and non-voting director(s) as follows:</p> <ul style="list-style-type: none"> • Voting Members: Each director shall have one vote as follows: • Each member of the COUNTY Board of Supervisors (5). • Each member of the EID Board of Directors (5). • Each member of the GDPUD Board of Directors (5).”
<p>This provision provides a model for a GSA with non-public entity board members.</p> <p>Notably, it expressly provides that each private organization will submit recommended appointees to the public agencies for their consideration, but leaves the ultimate appointment authority to the public agencies.</p>	<p>“The governing body of the Authority shall be a Board of Directors of sixteen (16) members consisting of the following representatives who shall be appointed in the manner set forth in Section 7 of this Agreement:</p> <ul style="list-style-type: none"> • An elected member of the governing board or designated employee of each of the following public agencies: the City of Folsom, the City of Sacramento and the Sacramento County Water Agency. • An elected member of the governing board of each of the following public agencies: the Carmichael Water District, the Citrus Heights Water District, the Del Paso Manor Water District, the Fair Oaks Water District, the Rio Linda/Elverta Community Water District, the Sacramento Suburban Water District, and the San Juan Water District.

³¹ *Id.*

	<ul style="list-style-type: none"> • A member of the board of directors, or designee thereof, of each of the following private water purveyors or investor owned utilities: the Arden Cordova Water Company-California-American Water Company, the Natomas Central Mutual Water Company and the Orange Vale Water Company. • One representative of Agricultural Interests within the boundaries of the Authority. • One representative of Commercial/Industrial Self-Supplied Water Users within the boundaries of the Authority. <p>The members of the governing board of the Authority shall be appointed as follows:</p> <ul style="list-style-type: none"> • The City of Folsom representative shall be appointed by the Folsom City Council. • The Agricultural Interests representative shall be appointed by the County Board of Supervisors. • The representative of Commercial/Industrial Self-Supplied Water Users shall be appointed by the Sacramento City Council. • The Citrus Heights City Council shall appoint the representative of the Citrus Heights Water District. • The Sacramento City Council shall appoint the representatives of the following entities: Arden Cordova Water Company, California-American Water Company, the City of Sacramento, Del Paso Manor Water District, the Natomas Central Mutual Water Company, and Sacramento Suburban Water District. • The County Board of Supervisors shall appoint the representatives of the following entities: Carmichael Water District, Fair Oaks Water District, Orange Vale Water Company, Rio Linda/Elverta Community Water District, San Juan Water District and the Sacramento County Water Agency. <p>Prior to the appointment of the representatives of the entities described above, those entities shall submit a recommended appointment for their respective representatives to the appointing authority. The appointing authority shall give consideration to such recommendations, but shall retain the absolute discretion to appoint any person satisfying the criteria for appointment set forth in Section 5 hereof.”</p>
<p>This provision provides a process to consider nominations from specific private groups.</p>	<p>In addition to the representative of the County of Sacramento provided for in Section 7 (a)(v), the following representatives shall be appointed by the Board:</p> <ol style="list-style-type: none"> 1. Agricultural interests. After considering the nomination by the Sacramento County Farm Bureau, as required by sub-section (b) of this Section, the Board shall appoint the representative of agricultural interests. 2. Agriculture-residential groundwater users. After considering the nomination by the Vineyard Community Advisory Council in consultation with adjacent Councils within the Central Basin, as required by sub-

	<p>section (b) of this Section, the Board shall appoint the representative of agricultural/ residential groundwater users.</p> <p>3. Commercial/industrial self-supplied groundwater users. After considering the joint nomination by the Sacramento Metropolitan Chamber of Commerce and the Building Industry Association in consultation with commercial/industrial self-supplied groundwater users and business organizations that are signatories to the Water Forum Agreement, as required by sub-section (b) of this Section, the Board shall appoint the representative of commercial/industrial self-supplied groundwater users.</p> <p>4. Conservation landowners. After considering the nomination by conservation landowners holding a fee or easement interest in two thousand five hundred (2500) acres or more within the Central Basin in consultation with environmental and community organizations that are signatories to the Water Forum Agreement, as required by sub-section (b) of this Section, the Board shall appoint the representative of conservation land owners.</p> <p>5. Omochumne-Hartnell Water District. After considering the nomination by the Omochumne-Hartnell Board of Directors, as required by sub-section (b) of this Section, the Board shall appoint the representative of the Omochumne-Hartnell Water District.</p> <p>6. Public agencies that are self-supplied groundwater users. After considering the nomination by the Southgate Recreation and Park District in consultation with other public agencies which are self supplied groundwater users, as required by sub-section (b) of this Section, the Board shall appoint the representative of public agencies that are self-supplied groundwater users.</p> <p>7. Rancho Murieta Community Services District. After considering the nomination by the Rancho Murieta Community Services District, as required by sub-section (b) of this Section 7, the Board shall appoint the representative of the Rancho Murieta Community Services District.</p> <p>8. Sacramento Regional County Sanitation District. After considering the nomination by the Sacramento Regional County Sanitation District, as required by sub-section (b) of this Section, the Board shall appoint the representative of the Sacramento Regional County Sanitation District. (b) Prior to the appointment of the, representatives of the entities described in subsections (a)(vi) through (a)(ix) above, those entities shall submit a recommended appointment for their respective representatives to the appointing authority identified in subsections (a)(vi) through (a)(ix) of this Section 7, The appointing authority shall give consideration to such recommendations, but shall retain the absolute discretion to appoint any person satisfying the criteria for appointment set forth in Section 5 of this Agreement.</p>
<p>This provision involves a private organization by creating a non-voting, "associate" position on the</p>	<p>The San Joaquin County Farm Bureau may be an associate member of the Authority with a representative serving as an associate member on the Board of the Authority. Associate members shall be entitled to participate in the meetings and discussions of the Board but associate</p>

board of directors.	members shall not have the power to vote on any action to be taken by the Authority or to become an officer or Director of the Authority.
Board Director Terms and Vacancies	
To promote continuity, board members should be allowed to serve until replaced by his or her member agency.	“Each Primary Director and Alternate Director shall hold office until their successor is selected.”
It is helpful to clarify that member agencies retain the power to replace their appointed representatives.	“Each member of the governing board shall serve at the pleasure of the appointing body and may be removed as a member of the governing board by the appointing body at any time.”
Either in the joint powers agreement or bylaws, provisions should be made for filling vacant board positions.	“A vacancy shall occur when a Director resigns, or is removed by his or her appointing Member, or when he or she ceases to hold office on the legislative body of the Member that appointed him or her. Upon the vacancy of a Director, the Alternate Director shall serve as Director until a new Director is appointed by the Member. Members shall submit any changes in Director or Alternate Director positions to the Executive Director in writing and signed by an authorized representative of the Member.”
Board Director Compensation	
The agreement may specify whether board members will be compensated. However, this level of detail may be best left to bylaws adopted by the board, which are easier to amend.	“No Director shall be compensated by the Authority for attendance at meetings of the Board or at any committee created by the Board. No member of a committee created by the Board shall be compensated for attendance at any meetings of that committee. Nothing in this section is intended to prohibit a Member Agency from compensating its representatives on the Board or on a committee for attending such meetings.”
Delegation of Board Authority	
If the joint powers authority will appoint advisory committees or staff, the agreement should expressly provide for the delegation of authority to avoid future disputes over Board responsibilities.	“All the power and authority of the Authority shall be exercised by the Board, subject, however, to the rights reserved by the Member Agencies as set forth herein; provided, however, that the Board may delegate by Resolution such powers and authority to the Administrator as the Board deems appropriate.”
	“Subject to the provisions of the Act, the Board of Directors shall be the policymaking body of the Authority. The business and affairs of the Authority, and all of the powers of the Authority, including without limitation all powers set forth in Article 4 (Powers), are reserved to and, shall be exercised by and through the Board of Directors, except as may be expressly delegated to the Executive Director or others pursuant to this Agreement, Bylaws, or by specific action of the Board of Directors.”

Officer Elections and Terms	
This arrangement may provide for greater continuity of leadership.	“Officers shall be elected at the first Board meeting, and thereafter at the first Board meeting following January 1st of each year. An Officer may serve for multiple consecutive terms.”
Alternatively, it may be necessary to gain buy-in from contracting agencies by ensuring a rotation of officer positions.	“The officers shall hold office for a term of one year commencing on January 1st of each and every calendar year and may serve a maximum of two consecutive years before the rotation of the officer positions.”
Besides the designation of treasurer, there are no statutory requirements governing the appointment of officers. Accordingly, to maximize flexibility, the details of officer positions may be established through the <i>bylaws</i> , rather than in the agreement itself.	“The terms of office of the chair and vice chair shall be set by the Board; provided, however, that the office shall be declared vacant if the person serving the Authority dies, resigns, or is otherwise no longer serving as a representative of the Party to which it is an appointed representative.”
If the agreement outlines specific officer positions to be appointed, it should empower the Board to appoint additional officers as required.	“General Legal Counsel shall be appointed by the Board and shall serve at the pleasure of the Board. Subject to the limits of the Authority’s approved budget, the Board shall also have the power to appoint and employ such other officers, consultants, advisors, and independent contractors as it may deem necessary or convenient for the business of the Authority all of whom shall serve at the pleasure of the Board.”
Board Meetings	
Though not mandatory, the agreement may set a deadline for the initial board meeting.	“The initial meeting of the Board of Directors shall be held in the County of Monterey, California within thirty (30) days of the effective date of this Agreement.”
Though not mandatory, the agreement may establish a minimum frequency for board meetings.	“The Board of Directors shall meet at least quarterly, at a date, time and place set by the Board within the boundaries of the Members, and at such other times as may be determined by the Board.”
If there are sensitivities around geography, it may be helpful to specify a process through which this issue will be resolved. Unless absolutely necessary for contracting party buy-in, it is inadvisable to specify a meeting place in the agreement itself.	“The Board shall meet at the Principal Office of the Authority or such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by Resolution adopted by the Board, a copy of which shall be provided to each Member Agency.”

<p>This meeting language maximizes flexibility.</p>	<p>“The Authority shall provide for regular and special meetings in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) or with any successor provision.”</p>
<p>The agreement may, but need not, allow some percentage of the board to call a special meeting.</p>	<p>“Special meetings of the Board of Directors may be called by the President or by four (4) or more Directors in accordance with the provisions of Government Code section 54956.”</p>
<p>Regardless of the agreement’s terms, the Brown Act would apply to the authority’s board meetings. But it may be useful to include this language to educate the public about transparency of the new entity.</p>	<p>“All meetings of the Board, including, without limitations, regular, adjourned regular and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code, Section 54950 et seq.).”</p>
<p>Quorum</p>	
<p>Under this provision, calculation of quorum is based on the number of directors present.</p>	<p>“A quorum of any meeting of the Board of Directors shall consist of a majority of the Directors appointed. In the absence of a quorum, any meeting of the Directors may be adjourned by a vote of a majority of Directors present, but no other business may be transacted. For purposes of this Article, a Director shall be deemed present if the Director appears at the meeting in person or telephonically; provided the telephone appearance is consistent with the requirements of the Ralph M. Brown Act.”</p>
<p>This quorum language may be used where weighted voting is employed.</p>	<p>“For the purposes of transacting the business of the Board, a quorum shall consist of two-thirds (2/3) of the voting power of the Board.”</p>
<p>Additional Committees</p>	
<p>To avoid the need for later amendment of the agreement, the Board should be given discretion to convene additional committees as needed.</p>	<p>“The Board of Directors may from time to time appoint one or more advisory committees or establish standing or ad hoc committees to assist in carrying out the purposes and objectives of the Authority. The Board shall determine the purpose and need for such committees and the necessary qualifications for individuals appointed to them. Each committee shall include a Director as the chair thereof. Other members of each committee may be constituted by such individuals approved by the Board of Directors for participation on the committee. However, no committee or participant on such: committee shall have any authority to act on behalf of the Authority.”</p>
<p>Designation of a “Procedural Parent”</p>	
<p>Under Government Code §6509, the powers exercised by a joint powers authority are “subject to the restrictions</p>	<p>“The Authority shall have the power to exercise any power common to all of the Parties as authorized by the Law and is hereby authorized to do all acts necessary for the exercise of these common powers, including but not limited to any of the following: [list of substantive powers] . . . h) To</p>

<p>upon the manner of exercising the power of <i>one</i> of the contracting parties, <i>which party shall be designated by the agreement.</i>" This provision fulfills this designation requirement.</p>	<p>the extent not hereinafter specifically provided for, to exercise any powers in the manner and according to the methods provided under the laws applicable to the Coachella Valley Water District."</p>
<p>Conflicts of Interest</p>	
<p>The new entity should approve a conflict of interest code at its first meeting.</p>	<p>"The Board of Directors shall adopt a local conflict of interest code pursuant to the provisions of the Political Reform Act of 197 4 (Government Code sections 81000-91014)."</p>

<p>3. Decision-making</p>
<p><u>Statutory Requirements:</u> The budget of the joint powers authority must be approved by the authority's governing body.³²</p>
<p>Key Considerations</p>
<p><u>Ratification by Contracting Agencies</u></p> <p>Unless the joint powers agreement specifies otherwise, authority decisions need <i>not</i> be ratified by the elected bodies of each contracting agency.</p> <p>One option for increasing buy-in from participating agencies is to ensure that authority board members have an opportunity to consult with their home agencies prior to voting on particular matters. This could be achieved by requiring a first and second reading of specified types of ordinances or resolutions. But it may be advisable to implement this arrangement through the authority's <i>bylaws</i>, as opposed to the agreement itself. This will allow for procedural flexibility if experience proves that more agile decision-making is needed.</p> <p><u>Weighted Voting or Other Alternative Voting Arrangements</u></p> <p>The Joint Exercise of Powers Act provides no restrictions as to voting rules for an authority's board of directors. That said, weighted voting rules may give rise to questions under the Brown Act and other local government laws of general applicability.³³ Generally, overly complex voting rules should be avoided in order to avoid disputes over calculations or quorum. But if necessary to reach political consensus on the formation of a new authority, agencies may wish to require a supermajority for certain decisions, such as fiscal items. Weighted voting may also be employed to take into account entities' respective financial contributions, water sales, extraction from the basin, or land under management. Finally, the agreement can be crafted to require the unanimous consent of the board's public agency representatives for certain items.</p>

³² Cal. Gov. Code § 6508.

³³ JPA'S: OPPORTUNITIES & CHALLENGES, at 4.

Sample Provisions and Advice	
Ratification by Contracting Agencies	
<p>This provision expressly requires that certain decisions be ratified by the individual contracting agencies.</p>	<p>“The Authority is created to coordinate the exercise of those powers in a unified manner, to foster communications among the Parties of the issues that arise in the SMUD UARP proceedings or contemporaneously therewith, and to minimize the burdens of the SMUD Upper American River Project while maximizing its benefits for the Parties, their constituents, and the El Dorado County community as a whole. It is recognized that the Parties individually are participants in the SMUD UARP proceedings, and signatories to certain communications and negotiation protocols. As a consequence, any proposals, settlement offers, and/or negotiated settlement agreements involving the Authority will require separate approval of the affected Parties' governing boards.”</p>
Weighted Voting	
<p>This provision allows weighted voting only at the request of one of more board members.</p>	<p>“Voting by the Board of Directors' shall be made on the basis of one vote for each Director, unless one or more Directors requests weighted voting. If weighted voting is requested, then each Director's vote shall be weighted proportionally to the amount of water delivered to Cal-Am customers Within each City, as determined on a three year running average. Accordingly, to determine the weighted vote for each Director, the annual average amount of metered water delivered by Cal-Am during the preceding three years to customers within each City shall be compared to the annual average of the total metered water delivered by Cal-Am during the preceding three years to customers within all of the Cities combined, and the resulting percentages for each City shall represent the weighted vote for each Director representing each respective City.”</p>
<p>Under this provision, voting will always be weighted.</p>	<p>“Unless otherwise provided herein, each Member, other than its ex-officio Member, shall be entitled to vote. A voting Member's vote shall be weighted according to the relative proportion that each Member's then existing firm commitment to purchase water bears to the total quantity of water then available for purchase from the CDA by all of its Members.”</p>
<p>This weighted voting provision language may be used where the board consists of both agency and non-agency members.</p> <p>Under provisions (b) and (c) certain decisions require approval of both a majority of the directors <i>and</i> a weighted majority (i.e. “a double majority”). It also provides that voting weights will be fixed</p>	<p>“(a) Each member of the governing board of the Authority shall have one vote. With the exception of fiscal items as set forth in subsections (b) and (c) below, a majority vote of all members of the governing board is required to approve any item.</p> <p>(b) Fiscal items related to the Administrative Costs of the Authority shall require approval by a double majority consisting of the following: a majority vote of all members of the governing board and a majority vote weighted according to the financial contribution of each Retail Provider, of Agricultural Interests, or of Commercial/Industrial Self-Supplied Water Users to the total administrative budget for the last complete fiscal year. The weighted vote of each member of the governing board shall be established and fixed annually at the time the Financing Plan for the administrative budget is adopted, and shall remain in effect throughout the succeeding fiscal year and shall apply to all votes on fiscal items</p>

<p>annually, which will help reduce confusion or disputes over voting.</p>	<p>related to the Administrative Costs of the Authority.</p> <p>(c) Fiscal items related to Water Costs shall require approval by a double majority consisting of the following: a majority of all members of the governing board and a majority vote weighted on the basis of Water Production as defined in Section 2(d) hereof.</p> <p>(d) For purposes of subsection (c) hereof, the weighted vote of the representative of Agricultural Interests and the Commercial/Industrial Self-Supplied Water Users representative shall be weighted on the basis of groundwater production by all such interests and users within the boundaries of the Authority, adjusted to reflect any differential rate which may be paid by a particular classification of water users; e.g., if each acre-foot of water pumped equals one vote and Agricultural Interests pump 100,000 acre feet, but pay only 20% of the per acre-foot assessment, fee or charge levied on other types of pumpers, the vote of the Agricultural Interests representative would be calculated at 20,000 votes.”</p>
<p>Non-Weighted Voting</p>	
<p>The agreement should specify the threshold required for particular Board actions.</p>	<p>“Except when this Agreement or applicable law imposes a higher standard, any action of the Board of Directors shall require the affirmative vote of eight directors.”</p>
<p>This will provide for the simplest decision-making process.</p>	<p>“Each Director shall have one vote.”</p>
<p>This arrangement requires a heightened threshold of approval for fiscal items.</p>	<p>“Each member of the governing board of the Authority shall have one vote, With the exception of fiscal items as set forth in subsections (b) and (c) below, an affirmative vote by a majority of all members of the governing board is required to approve any item related to implementation of the Groundwater Management Plan.</p> <p>(b) Fiscal items, including, but not limited to, approval of the annual budget of the Authority and any expenditures, shall require an affirmative vote by a majority of all the members of the governing board that includes affirmative votes by all of the representatives of the Cities of Elk Grove, Folsom, Rancho Cordova and Sacramento and the County of Sacramento.</p> <p>(c) Any change in annual contributions necessary to support the work of the Authority as set forth in subsection (d) below, shall require an affirmative vote of eleven of the sixteen members of the governing board that includes affirmative votes by all of the representatives of the Cities of Elk Grove, Folsom, Rancho Cordova and Sacramento and the County of Sacramento,”</p>

4. Staffing	
<u>Statutory Requirements</u> : None	
Key Considerations	
<p>Besides the designation of a treasurer and auditor, there are no specific statutory requirements as to how a joint powers authority must be staffed.³⁴ That said, staffing of a newly formed authority deserves careful thought.</p> <p>A new authority may lack a revenue stream with which to pay for its own staff. Alternative staffing options include sharing or rotating staff responsibilities among the contracting agencies.³⁵ The statute expressly contemplates, but does not require, that a contracting agency contribute its personnel in lieu of a financial contribution to a joint powers authority.³⁶</p>	
Sample Provisions and Advice	
<p>The agreement may specify who will serve as the authority's executive director. If staffing needs are likely to shift over time, such details should be left to the newly constituted board, rather than articulated in the agreement itself.</p>	<p>"The General Manager of the WATER AGENCY shall act as the Executive Director of the Authority."</p>
<p>Though not strictly necessary, it may be helpful to specify that the executive director will report to the board of directors.</p>	<p>The governing board of the Authority shall appoint an Executive Director who shall be responsible to the governing board for the proper and efficient administration of the Authority as directed by the governing board pursuant to the provisions of this Agreement or of any ordinance, resolution or order of the governing board."</p>
<p>To avoid the need for later amendment of the agreement, staff compensation decisions should be left to the newly constituted board.</p>	<p>"The Executive Director's compensation, if any, shall be determined by the Board of Directors."</p>
<p>It may be helpful, though not strictly necessary, to articulate staff's duties.</p>	<p>"The duties of the Executive Director shall include representation of the Authority in activities and proceedings as authorized by the Authority or as necessary to promote its purpose, serving as staff to the governing Board of the Authority to coordinate ongoing operations and to develop and implement standards, policies and procedures consistent with the Board's direction, develop meeting agendas, meeting minutes, and publishing notices of meetings, provide reports to the Board as requested, and cause to have publicly posted the notices of meetings of the Authority in conformity with the Brown Act."</p>

³⁴ See Cal. Gov. Code §§ 6502-6537.

³⁵ JPA'S: OPPORTUNITIES & CHALLENGES, at 2-3.

³⁶ Gov. Code § 6504(d).

5. Finances and Oversight

Statutory Requirements

- The Agreement must provide for strict accountability of all funds and report of all receipts and disbursements.³⁷
- The Agreement must designate a treasurer, which may be: 1) the treasurer of one of the contracting parties, 2) the treasurer of a county in which one of the contracting parties is situated, 3) a certified public accountant, or 4) an authority officer or employee.³⁸
- If the treasurer is designated pursuant to options (1) or (2) above, then by operation of statute, the auditor for the authority will be the auditor from the same agency as the authority's treasurer. But if a certified public accountant is designated as treasurer, then the agreement must designate an auditor, which may be: 1) the auditor of one of the contracting agencies or 2) the auditor of any county in which a contracting party is situated. Alternatively, the agreement may instead designate an officer or employee of the authority to serve as the auditor.³⁹
- The agreement "shall provide for the disposition, division, or distribution of any property acquired as the result of the joint exercise of powers."⁴⁰ The agreement "shall provide that after the completion of its purpose, any surplus money on hand shall be returned in proportion to the contributions made."⁴¹

Key Considerations

State Oversight

State statute requires an annual audit of a joint powers authority's accounts and records,⁴² unless the authority's governing body votes unanimously to substitute this annual audit with an audit covering a two-year period.⁴³ The audit must adhere to the requirements prescribed by the California State Controller and to generally accepted accounting standards.⁴⁴

The choice of who to designate as the authority's treasurer and auditor will impact auditing requirements. If the authority's treasurer or auditor is an officer or employee of the authority, then there must be an *independent* audit conducted by a certified public accountant or public accountant.⁴⁵ But if neither the authority treasurer nor auditor is themselves an officer or employees of the authority, the audit may be completed by the authority's designated auditor.⁴⁶

Under SGMA, the California Department of Water Resources (DWR) is charged with reviewing a groundwater sustainability plan adopted by a joint powers authority serving as a GSA.⁴⁷ In terms of

³⁷ Gov. Code § 6505(a).

³⁸ *Id.* § 6505.5, 6505.6.

³⁹ *Id.*

⁴⁰ *Id.* § 6511.

⁴¹ *Id.* § 6512.

⁴² *Id.* § 6505(b).

⁴³ *Id.* § 6505(f).

⁴⁴ *Id.*

⁴⁵ *Id.* § 6505.6.

⁴⁶ *Id.* § 6505.5.

⁴⁷ Cal. Water Code § 10733(a).

ongoing financial oversight or governance, however, SGMA does not impose any additional requirements on joint powers authorities serving as GSA's.⁴⁸

Filing Requirements

State statute requires that a joint powers authority file with the Secretary of State within 30 days after the effective date of a joint powers agreement, *or any amendment* to the agreement.⁴⁹ Whenever such a notice is filed, a copy of the full text of the original or amended agreement must also be filed with the State Controller.⁵⁰ Under SGMA, an agency electing to serve as the groundwater sustainability agency (GSA) for a basin must also notify DWR within 30 days of its decision to serve as a GSA.⁵¹

Funding Contributions and Liability

The joint powers agreement can provide a mechanism for initial funding of the newly created entity, including contributions from non-public entities that are represented on the board of directors. The joint powers agreement can also specify that the contracting parties do not intend to be liable for the liabilities, debts, and obligations of the newly formed entity.

Sample Provisions and Advice

Designation of the Treasurer

<p>This provides that the board of the new entity will appoint the treasurer, consistent with Cal. Gov. Code. § 6505.6. But it also allows for the treasurer to be a non-board member, such as a certified public accountant.</p>	<p>“Officers shall be elected annually by, and serve at the pleasure of, the Board of Directors. Officers of the Authority shall be a President, Vice President, Secretary, and Treasurer. The Treasurer shall be appointed consistent with the [Joint Powers Exercise Act]. The Vice President, or in the Vice President's absence; the Secretary, shall exercise all powers of the President in the President's absence or inability to act. The President, the Vice President, and the Secretary must be Directors.”</p>
<p>In contrast, this provision requires that the treasurer be a board member.</p>	<p>“The Board shall elect its own officers, which shall include a Chair, Vice-Chair, and a Secretary-Treasurer, all of whom shall be members of the Board. The Chair shall preside at all meetings of the Board, and shall exercise and perform such other powers and duties as may be assigned by the Board. The Vice-Chair shall perform the duties of the Chair in the absence or disability of the Chair, and shall have such other powers as the Board may prescribe.”</p>
<p>This provision appoints a treasurer from one of the member agencies to serve as both the treasurer and auditor, fulfilling Cal. Gov. Code §6505.5.</p>	<p>“There shall be selected from the membership of the Board, a Chairperson and a Vice-Chairperson. The Board shall also appoint a Secretary who may be a Director. The Treasurer shall be the Treasurer of [Inland Empire Utilities Agency] who shall serve in the combined office of Treasurer and Auditor.”</p>

⁴⁸ *Id.* §§ 10723-10726.8.

⁴⁹ Gov. Code § 6503.5.

⁵⁰ *Id.* § 6503.6.

⁵¹ Water Code § 10723.8(a), as amended by SB 13 (2015).

Audit Requirement	
<p>This fulfills the requirement of Cal. Gov. Code §6505.5 by appointing a county auditor as both the treasurer and auditor of the authority.</p> <p>It may be useful to outline how the agency providing the authority's auditor or treasurer will be reimbursed.</p>	<p>"Pursuant to Government Code section 6505.6, the COUNTY Auditor is appointed as Finance Officer and Auditor of the Authority. The COUNTY Auditor shall comply with the duties and responsibilities of the offices of treasurer and auditor as set forth in subdivisions (a) to (d), inclusive, of section 6505,5, as may now exist or as it may be amended from time to time. The Finance Officer shall serve a two-year term as the depository and have custody of all Authority funds from whatever source, and shall perform the following functions in accordance with applicable law. All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered on all receipts and disbursements, at least annually. The books and records of the Authority shall be open to inspection by the public and the Parties. The Finance Officer shall either make or, upon the approval of the Board, contract with a certified public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted, at a minimum, in accordance with the requirements of the State Controller under section 26909 of the California Government Code, and shall conform to generally accepted auditing standards. The Authority shall provide the COUNTY reimbursement from an equal allocation to each participating Party for the services of the Finance Officer."</p>
<p>This provides for the statutorily required audit while allowing flexibility as to how that requirement will be met.</p>	<p>"The controller of the Authority shall cause an independent annual audit of the Authority's finances to be made by a certified public accountant in compliance with Government Code Section 6505. The treasurer of the Authority shall be the depository and shall have custody of all money of the Authority from whatever source. The controller of the Authority shall draw warrants to pay demands against the Authority when the demands have been approved by the Authority or by its authorized representative pursuant to any delegation of authority adopted by the Authority. 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 of Title 1 of the Government Code</p>
Statement of Financial Accountability	
<p>This fulfills the requirement under Cal. Gov. Code § 6505(a).</p>	<p>"The Board of Directors shall establish and maintain such funds and accounts as may be required by generally accepted public agency accounting practices. The Authority shall maintain strict accountability of all funds and report of all receipts and disbursements of the Authority."</p>
	<p>"Full books and accounts shall be maintained for the Authority in accordance with practices established by, and consistent with, those utilized by the Controller of the State of California for similar public entities. The Authority's Secretary-Treasurer shall comply strictly with the requirements of the statute governing joint powers authorities at Government Code, Section 6500 et seq."</p>

Asset Distribution Upon Dissolution	
<p>This addresses the requirement of Cal. Gov. Code § 6512.</p>	<p>“Upon dissolution of the Authority, each Member Agency shall receive its proportionate (based on contribution) or otherwise defined (e.g. by agreement of the Member Agencies) share of the assets of the Authority (or the equivalent value thereof) within a reasonable amount of time after dissolution and each Member Agency shall contribute its proportionate or otherwise defined share towards the discharge of any enforceable debts or liabilities incurred by the Authority as the same appear on the books of the Authority.”</p>
<p>It may be useful to provide expressly for the possibility that a new entity will assume the functions of the dissolved joint powers authority</p>	<p>“In the event of the termination of the Authority where there will be a successor public entity which will carry on the functions of the Authority and assume its assets, the assets of the Authority shall be transferred to the successor public entity. If there is no successor public entity which will carry on the functions of the Authority and assume its assets, the assets shall be returned to the parties hereto in proportion to the contribution of each party during the term of this Agreement. If there is a successor public entity which will carry on some of the functions of the Authority and assume some of its assets, the assets of the Authority shall be allocated by the governing board of the Authority between the successor public entity and the parties hereto.”</p>
Financial Contributions	
<p>This provision requires non-public entities represented on the board of directors to make financial contributions towards agency operations.</p>	<p>The Authority shall initially be funded as follows:</p> <ul style="list-style-type: none"> (i) An annual contribution by the Cities of Elk Grove, Folsom, Rancho Cordova and Sacramento and the County of Sacramento 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 that described in subsection (d)(ii) below.) (ii) An annual contribution by each of those water purveyors represented on the Governing Board, other than the entities listed in subsection (d)(i) above, that purvey surface water in the amount of six thousand dollars (\$6,000.00). (iii) An annual contribution by each of those water purveyors represented on the Governing Board, other than the entities listed in subsection (d)(i) above, that utilize groundwater, calculated at the rate of two dollars and seven cents (\$2.07) per acre foot of groundwater pumped from the basin, averaged over the three previous years and excluding the first five thousand (5000) acre feet pumped in each of those years. (iv) An annual contribution by agriculture computed at twenty five percent (25%) of the estimated annual pumping (as determined by the Sacramento County Water Agency) at the rate of two dollars and seven cents (\$2.07) per acre foot and paid out of SCW A Zone 13 funds. (v) An annual contribution by agriculture/residential groundwater users computed at twenty five percent (25%) of the estimated annual pumping (as determined by the Sacramento County Water Agency) at the rate of

	<p>two dollars and seven cents (\$2.07) per acre foot and paid out of SCW A Zone 13 funds.</p> <p>(vi) All annual funds shall be paid by July 1 of each year, commencing on July 1, 2006. The annual fee for the first year after the effective date of this Agreement shall be prorated from the date of the last signatory approval establishing the Authority.</p>
Liability	
<p>If not otherwise specified, the contracting agencies to a joint powers agreement <i>are</i> responsible for the debts, liabilities, and obligations of the newly formed entity.⁵²</p>	<p>“The debts, liabilities, or obligations of the Authority shall be the debts, liabilities, and obligations of the Authority alone and not of its Member Agencies.”</p>

⁵² Cal. Gov. Code § 6508.1.