

CABY JPA Structure – Template

Note: the following template was prepared at the request of the CABY Fiscal Oversight Committee.

This document will serve as a basis for the eventual development of a Joint Powers Authority (JPA) if, and when, such a structure is needed.

The template describes the basic roles and responsibilities of the JPA and its members, based on input at previous Fiscal Oversight Committee meetings.

DRAFT

TEMPLATE

[XXXX] JOINT POWERS AGREEMENT

This [XXXX] Joint Powers Agreement ("Agreement") is dated as of [date], 2009 and is by and between the following public agencies [*list participating agencies*] (each a "Party" and jointly referred to as the "Parties"). [Note: can be as few as two water agencies or as many as needed. Could include other government agencies if desired, such as counties, Resource Conservation Districts, etc].

WITNESSETH:

1. WHEREAS, the Integrated Regional Water Management Planning Act (Water Code Sections 10530 to 10547) authorizes three or more local agencies, at least two of which have statutory authority over water supply or water management, to enter into a joint powers agreement to establish a Regional Water Management Group; and
2. WHEREAS, [*list participating agencies here*] have adopted the Integrated Regional Water Management ("IRWM") Plan for the CABY region; and
3. WHEREAS, the parties to this Agreement desire to seek and administer funding for projects that implement the IRWMP; and
4. WHEREAS, the parties to this Agreement seek to ensure that an appropriate share of the IRWM funding available in the Sacramento River funding area is allocated to the CABY Region; and
5. WHEREAS, each of the Parties to this Agreement is a "public agency" as that term is defined in Section 6500 of the Government Code of the State of California; and
6. WHEREAS, each of the Parties to this Agreement has the power to apply for funding from the State of California and other sources for the purpose of meeting IRWM goals and objectives through the implementation of IRWM-derived projects; and
7. WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California (commencing at section 6500), commonly known as the Joint Exercise of Powers Act, two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and
8. WHEREAS, it is the desire of the Parties to use all powers common to them for the purposes of seeking and administering funding for implementation of IRWM-derived projects along and within watersheds of the Cosumnes, American, Bear and Yuba rivers; and

9. WHEREAS, the Parties find that it would be to their mutual advantage and the public benefit to coordinate the implementation and funding of IRWM-derived projects along and within the Cosumnes, American, Bear and Yuba river watersheds, within the extent permitted by the laws and regulations governing their respective operations and to the extent each Party finds it desirable to do so, and further find that such coordination shall be understood to include the following:

(a) Formation of an independent joint powers agency, pursuant to this Agreement, to seek and administer funding to the parties for purposes of IRWM implementation;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and agreements herein contained, the parties to this Agreement do hereby jointly exercise their powers to establish the [XXXX] Joint Powers Authority (JPA) and agree as follows:

ARTICLE I

DEFINITIONS

Definitions. Unless the context otherwise requires, the words and terms defined in this Article I shall, for the purpose hereof, have the meanings herein specified.

"Agreement" means this Joint Exercise of Powers Agreement.

"Board" means the governing body, or Board of Directors, of the [XXXX] Joint Powers Authority.

"[XXXX] Joint Powers Authority" or "[XXXX] JPA" means the entity formed to exercise the legal joint powers of the Members as defined within this Article.

"CABY" means the Cosumnes, American, Bear, Yuba river watersheds

"Consensus" means approval of the Members to move forward with a particular action. "Consensus" does not necessarily mean that all Members affirmatively support an action but rather than no Member has opposed the action. A Member may verbally note disagreement with an action but still allow consensus on an action without the Member's support if the action does not affect the Member or compromise the Member's interests.

"Directors" means the representatives appointed to the Board pursuant to Article 4.1.

"Executive Director" means the executive officer of the [XXXX] Joint Powers Authority appointed by the Board.

"Fiscal Year" means the period from January 1 through December 31st.

"Integrated Regional Water Management Plan" or "IRWMP" has the meaning set forth in Water Code Section 10534, which is a comprehensive plan for a defined geographic area, the specific development, content, and adoption of which shall satisfy requirements developed pursuant to Part 2.2 of Division 6 of the Water Code. At a minimum, an integrated regional water management plan describes the major water-related objectives and conflicts within a region, considers a broad variety

of water management strategies, identifies the appropriate mix of water demand and supply management alternatives, water quality protections, and environmental stewardship actions to provide long-term, reliable, and high-quality water supply and protect the environment, and identifies disadvantaged communities in the region and takes the water-related needs of those communities into consideration.

"IRWMP-derived Project" means a project that is described in a formally adopted section of the CABY IRWMP. While adopted projects are generally included in Sections 10 & 11, projects may be referenced elsewhere in the document as well. The IRWMP is updated annually, therefore the projects which are included in the IRWMP will change with each revision. An IRWMP-derived Project is one that is included in the most recent version of the IRWMP.

"IRWM Planning Act" means the Integrated Regional Water Management Planning Act, Part 2.2 of Division 6 of the California Water Code (commencing with section 10530).

"JEP Act" means the Joint Exercise of Powers Act, Articles 1 through 4 (commencing with section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code.

"Member" means a Local Agency Member or a Non-Voting Associate Member.

"Local Agency Member" means a locally based agency, including a county, city, special district, or other political subdivision of the state that (1) is authorized by the JEP Act to enter into an agreement for the joint exercise of powers; (2) is located at least partially within the boundaries of the CABY Region; and (3) has become a party to this Agreement as a Local Agency Member as provided herein.

"Non-Voting Associate Member" means [XXXX].

The "CABY Region" means the drainage areas of the Cosumnes, American, Bear, and Yuba Rivers and all of their tributaries as depicted in the map attached hereto as Exhibit A.

NOW, THEREFORE, the parties agree as follows:

ARTICLE II

PURPOSES

1. Project Funding and Implementation. It is the purpose of this Agreement to establish pursuant to the Joint Exercise of Powers Act an agency to be known as the [XXXX] Joint Powers Authority ("[XXXX] JPA" or "the Agency") for and with the purpose of seeking funding for and administering implementation projects of the CABY IRWMP, and for making more efficient use of the joint powers of the Members of the existing CABY Memorandum of Understanding (MOU) for such purpose.

2. [XXXX] Joint Powers Authority. There is hereby established pursuant to the Joint Exercise of Powers Act an agency which shall be a public agency separate from the parties to this Agreement to be known as the [XXXX] Joint Powers Authority.

ARTICLE III

MEMBERS OF THE
[XXXX] JOINT POWERS AUTHORITY

1. Members. There shall be two (2) classes of membership in the [XXXX]JPA: i. "Local Agency Members" of the [XXXX] JPA consist of each of the [number of participating agencies] public agencies that have executed this Agreement and are synonymous with the "Parties" to this Agreement; and ii. "Non-Voting Associate Members" of the [XXXX] JPA consist of the [other members – could be non-profits or other organizations that are not governmental agencies].

2. Meeting Materials. Each member of the Commission, whether or not a voting member, shall be entitled to receive notices of and attend all meetings of the Commission, to receive all staff reports (other than those related to litigation, personnel or closed session items), and to participate in Commission discussions in the same manner as voting Commission members. Provided, however, that closed sessions of the Commission shall be attended only by voting members of the Commission

ARTICLE IV

ORGANIZATION OF THE [XXXX] COMMISSION

1. Governing Body. The governing body of the [XXXX] JPA shall be a Commission ("the [XXXX] Commission" or "the Commission") composed of [list number] voting members (the XX Local Agency Members and one representative of the Non-Voting Associate Members as defined in 1a and 1b below). The members of the [XXXX] Commission shall be chosen as follows:

(a) Each of the [identify number of members] Local Agency Members of the [XXXX] JPA shall appoint one (1) voting representative to the [XXXX] Commission. Such representative may, but need not be, a member of the governing body of the appointing Member. Such Commissioners shall serve for indefinite terms at the pleasure of the appointing Member.

(b) A majority of the Non-Voting Associate Members shall nominate in writing [XX number of persons] to act as a voting member of the [XXXX] Commission. The [number of members, shown in 1a above] Commissioners appointed by the Members pursuant to subparagraph 1(a) shall appoint such nominee as a [number (xth or rd)] voting Commissioner or may disapprove such nomination, in which case the Non-Voting Associate Members shall nominate another person to act as a voting member of the Commission. Such Commissioner shall serve for a term of two (2) years after approval by the remainder of the Commission. Such Commissioner may be renominated by the Associate Members at the conclusion of his or her term.

(d) Local Agency Members and Non-Voting Associate Members shall be responsible for providing written notice to the [XXXX] JPA Executive Director of the appointment or removal of Commissioners.

2. Commission Meetings. The Commission shall provide for regular and special meetings in accordance with the Ralph M. Brown Act, Chapter 9, Part 1, Division 2, Title 5 of the Government Code, beginning with section 54940, or in accordance with such other regulations as the State legislature may hereafter provide. At least three (3) voting members of the Commission shall be required to constitute a quorum for any Commission meeting, and the affirmative vote of three (3) voting members of the Commission shall be required to take any action.

3. Meeting Time and Location. The Commission shall establish a regular meeting time (which shall not be less than twice each year) and location (which shall be within the corporate or political boundaries of one of the Members of the [XXXX] JPA) within Placer, Nevada, or El Dorado County, California. The Commission may from time to time change either the meeting time or location.

4. Advisory Committees. The Commission shall provide for such advisory committees as it may find appropriate and provide general direction for the work of such committees. Such advisory committees may, in the discretion of the Commission, include either non-voting Commissioners or non-Commissioners.

5. Bylaws and Rules of Procedure. The Commission may establish such Bylaws or rules of procedure as it may deem advisable for the conduct of business.

ARTICLE V

OFFICERS

1. Chair and Vice-Chair. The Commission shall annually, at its first meeting of each year, appoint two of its voting members to serve as chair and vice-chair of the Commission for a term of one (1) year. The Chair of the [XXXX] JPA shall preside at meetings of the Commission and perform such other duties as the Commission may instruct. The Vice-Chair shall serve as Chair in the absence of that officer.

2. Administrator as Secretary and Treasurer. The Commission shall appoint an Administrator who shall have charge of, handle, or have access to all of the property of the [XXXX] JPA, and shall file an official bond in an amount determined from time to time by the Commission. *The Administrator of the JPA will act as the Secretary of the organization and may also act as Treasurer.* The Treasurer and the Auditor and Controller of the [XXXX] JPA shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with section 6505 of the Government Code.

The Treasurer shall be the depository and have custody of all the money of [XXXX] JPA from whatever source. The Auditor and Controller of the [XXXX] JPA shall draw warrants or checks to pay demands against the [XXXX] JPA when the demands have been approved by the Commission or the Executive Director pursuant to a delegation of authority therefore adopted by the Commission. The Treasurer and Auditor and Controller shall comply strictly with the provisions

of the statutes relating to their duties found in the Joint Exercise of Powers Act. Such officers shall each file an official bond in the amount determined from time to time by the Commission.

The Treasurer and the Auditor and Controller shall strictly account for all funds, receipts or disbursements of the [XXXX] JPA, and shall report such at each regular meeting of the Commission.

4. Officers. The Commission may appoint such other officers as it deems appropriate or as may be provided for in Bylaws as may be adopted by the Commission.

ARTICLE VI

POWERS AND FUNCTIONS

1. General Powers. The [XXXX] JPA shall exercise, in the manner herein provided, the powers which are common to each of the Members, or as otherwise permitted under the JEP Act, and, necessary to the accomplishment of the purpose, as provided in Article 2.1, of this Agreement. As provided in the JEP Act, the [XXXX] JPA shall be a public entity separate from the Members.

2. Specific Powers. The [XXXX] JPA is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing general powers, including but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents or employees;
- (c) to sue and be sued in its own name;
- (d) to incur debts, liabilities or obligations, provided that no such debt, liability, or obligation shall constitute a debt, liability or obligation of the Members;
- (e) to apply for, accept, receive and disburse grants, loans and other aids from any private organization, foundation or agency of the United States of America or of the State;
- (f) to acquire, construct, manage, maintain or operate any real property, building, works, or improvements;
- (g) to invest any money in the treasury pursuant to section 6509.5 of the JEP Act which is not required for the immediate necessities of the [XXXX] JPA, as the Board determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to section 53601 of the California Government Code *[such investment may not be made without the direct consent or approval of the Commission and must be guided by an investment policy approved by the Commission]*;
- (h) to carry out and enforce all the provisions of this Agreement; and

- (i) to seek funding for and implementation of projects identified in the Integrated Regional Water Management Plan and Program for the CABY region.

3. Restrictions on Powers. Pursuant to section 6509 of the JEP Act, the above powers shall be subject to the restrictions upon the manner of exercising the power of one of the Members, which shall be designated as [water agency name]. In addition, the [XXXX] JPA shall not undertake the following activities and/or exercise any of the following governmental powers:

- (a) The [XXXX] JPA shall not acquire land or water rights through the exercise of eminent domain;
- (b) The [XXXX] JPA shall not enter onto private property without permission;
- (c) The [XXXX] JPA has no authority to establish rules or regulations regarding the use of land or water and shall not establish any such rules or regulations; and
- (d) The [XXXX] JPA has no authority over the operation or organization of special districts and shall not exercise any such authority.

4. Role and Authority of the Parties. All independent authority and discretion of the Local Agency Members is retained by the participating local agencies, and this Agreement does not transfer any authority held by the Local Agency Members to the [XXXX] JPA. The purpose of this Agreement is to promote coordination among the parties in exercising their independent authorities to support funding and implementation of project implementation aspects of the IRWM Plan.

5. Obligations of [XXXX] JPA. The debts, liabilities and obligations of the [XXXX] JPA shall not be the debts, liabilities and obligations of the Members.

ARTICLE VII

FINANCE

1. In-kind Contributions. Upon the request or approval of the [XXXX] JPA, any Local Agency Member or Non-Voting Associate Member may make voluntary payments, advances, or contributions to the [XXXX] JPA from its treasury for any and all purposes set forth herein, and upon request or approval of [XXXX], may voluntarily contribute personnel, equipment or property, to assist in the accomplishment of one or more of the [XXXX] JPA's purposes. Except as otherwise provided or agreed by the [XXXX] JPA, however, such voluntary payments, advances or contributions will not be treated as debts of the [XXXX] JPA, and may be disbursed and used by the [XXXX] JPA in its discretion.

2. Contributions.

ARTICLE VIII

CONTRIBUTIONS, ASSETS AND DISTRIBUTION UPON TERMINATION

1. Contributions. The Members may make contributions from their treasuries for the purpose set forth in Section 2.01, make payments of public funds to defray the cost of such purpose, make advances of public funds for such purpose, and/or use its personnel, equipment or property in lieu of other contributions or advances. The provisions of section 6512 of the JEP Act are hereby incorporated into this Agreement by reference.

2. Distribution of Assets upon Termination. Unless agreed to otherwise by the Local Agency Members in an agreement addressing termination and distribution of assets, upon termination of this Agreement and after resolution of all debts, liabilities and obligations, all property, both real and personal, of the [XXXX] JPA shall be divided among the Local Agency Members in proportion to each such Member's direct financial contribution in the prior five-year period. In-kind contributions, such as staff time, shall not be considered in distributing assets.

ARTICLE IX

INDEMNIFICATION AND INSURANCE

1. Indemnification of Members. The [XXXX] JPA shall indemnify, defend and hold harmless each of the Members and their authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and /or liability arising from the [XXXX] JPA's acts, errors or omissions and for any costs or expenses incurred by the Member(s) on account of any claim therefore, except where such indemnification is prohibited by law.

2. Member Indemnification. Pursuant to the provisions of California Government Code section 895 et seq., and except as provided in Section 6.01 herein, each Local Agency Member agrees to defend, indemnify and hold harmless each other Local Agency Member from any liability, claim, or judgment for injury or damages caused by sole negligence or wrongful act or omission of any agent, officer and/or employee of the indemnifying Local Agency Member which occurs or arises out of the performance of this Agreement.

3. Insurance. The Board shall provide for insurance covering liability exposure in an amount as the Board determines necessary to cover risks of activities of the [XXXX] JPA.

4. Third Party Beneficiaries. This Agreement and the obligations thereto are not intended to benefit any party other than its Local Agency Members, except as expressly provided otherwise therein. No entity not a signatory to the Agreement shall have any rights or causes of action against any party to the Agreement as a result of that party's performance or non-performance under the Agreement, except as expressly stated in the Agreement.

ARTICLE X

MISCELLANEOUS PROVISIONS

1. Notices. Notices hereunder shall be in writing and shall be sufficient if addressed to the offices listed below and shall be deemed given upon deposit in the U.S. mail, first class, postage prepaid, provided, however, that notices of all meetings and general correspondence may be distributed by e-mail in lieu of mailed notice:

LIST WATER AGENCIES HERE

The Members and [XXXX] JPA may change the above addresses for notice purposes by written notification as provided above to each of the other Members.

2. Law Governing. This Agreement is made in the State of California under the constitution and laws of the State, and is to be so construed.

3. Amendments. This Agreement may be amended at any time, or from time to time, by one or more supplemental agreements executed by all Local Agency Members.

4. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

5. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Local Agency Members, respectively. None of the Local Agency Members may assign any right or obligation hereunder without the written consent of the others.

6. Section Headings. All article and section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

7. Multiple Counterparts. This Agreement is executed in multiple counterparts, any one of which shall be deemed an original for any purpose.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their duly authorized officers.

ARTICLE XI

TERMINATION

1. Termination of [XXXX] JPA. This Agreement is for an indefinite term. Provided, however, that upon the passage of resolutions by the governing bodies of any three (3) Parties to this Agreement, this Agreement shall terminate on a date two (2) years from the passage of the third such resolution.

2. Asset or Fund Distribution Upon Termination. In the event of the termination of this Agreement, each Party shall receive a pro-rata share of any assets or funds then owned or held by the [XXXX] JPA if not encumbered by contractual agreement.

3. Withdrawal of Non-voting Associate Member. Any Non-Voting Associate Member may withdraw from the [XXXX] JPA upon six (6) months prior written notice.

ARTICLE XII

EFFECTIVE DATE

1. **Effective Date.** This Agreement shall become effective as of the date of its execution by all of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

By: _____
Its: _____

By: _____
Its: _____

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Approved as to form:

Approved as to form:

JOINDER BY NON-GOVERNMENTAL ORGANIZATIONS AS ASSOCIATE MEMBERS

_____,
a _____

_____,
a _____

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____