

Draft 03/15/17

Version 4 – Redline to 02/22/17 Draft (clean) with comments from Legal Workgroup and Governance Workgroup from 02/23/17 meeting + Draft Comments from 3/21/17 Legal Review Subcommittee Meeting

## JOINT EXERCISE OF POWERS AGREEMENT

### ESTABLISHING THE COLUSA GROUNDWATER AUTHORITY

THIS AGREEMENT is entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“**Effective Date**”), pursuant to the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.* (“**JPA Act**”) by and among the entities listed in Exhibit A attached hereto and incorporated herein (collectively “**Members**”).

### RECITALS

A. On August 29, 2014, the California Legislature passed comprehensive groundwater legislation contained in SB 1168, SB 1319 and AB 1739. Collectively, those bills, as subsequently amended, enacted the “Sustainable Groundwater Management Act,” or “SGMA.” Governor Brown signed the legislation on September 16, 2014 and it became effective on January 1, 2015.

B. Each of the Members overlies the Colusa Subbasin of the Sacramento Valley Groundwater Basin, California Department of Water Resources Basin No. 5-021.52 as its boundaries may be modified from time to time in accordance with Cal. Water Code Section 10722.2 (“**Basin**”).

C. Each of the Members is authorized to become, or participate in, a Groundwater Sustainability Agency (“**GSA**”) under SGMA.

D. The Members desire, through this Agreement, to form the Colusa Groundwater Authority, a separate legal entity, for the purpose of acting as the GSA for the Colusa County portions of the Basin; ~~and further, to provide for a governance framework for each of the that allows any Members that has previously filed to be a GSA to withdraw or rescind or their respective rights under SGMA to become a such GSA status concurrent with this Agreement. The boundaries of the Authority are depicted on the map attached hereto as Exhibit A and incorporated herein.~~

E. The mission of the Authority is to provide a dynamic, cost-effective, flexible and collegial organization to ensure compliance with SGMA within the Basin.

F. The Authority will serve a coordinating and administrative role in order to provide for sustainable groundwater management of the Basin. Each of the Members (or groups of Members) will have ~~primary authority and~~ responsibility to implement SGMA within the Management Areas or the individual jurisdictions managed by Members or groups of Members.

**THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, the Members agree as follows:**

### ARTICLE 1: DEFINITIONS

**Comment [mf1]:** 3/21/17 – delete everything after “...portions of the Basin”

**Comment [RED2]:** Still need to clarify the respective roles of the Members and GSA. Yolo JPA is potential model.

**Comment [mf3]:** 3/21/17 – this is a policy issue to be decided by the GSA Workgroup.

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1.1 **Definitions.** As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

a. **“Agreement”** shall mean this Joint Exercise of Powers Agreement Establishing the Colusa Groundwater Authority.

b. **“Authority”** shall mean the Colusa Groundwater Authority established by this Agreement.

c. **“Basin”** shall mean the Colusa Subbasin of the Sacramento Valley Groundwater Basin, California Department of Water Resources Basin No. 5-021.52, as ~~such~~ boundaries may be modified from time to time in accordance with Cal. Water Code Section 10722.2. The Basin is depicted in Exhibit A.

d. **“Board of Directors”** or **“Board”** shall mean the governing body formed to implement this Agreement as established herein.

e. **“DWR”** shall mean the California Department of Water Resources.

f. **“Effective Date”** shall be as set forth in the Preamble of this Agreement.

g. **“Groundwater Sustainability Agency”** or **“GSA”** shall mean an agency enabled by SGMA to regulate defined portions of the ~~Subb~~Basin cooperatively with all other Groundwater Sustainability Agencies in the Basin, in compliance with the terms and provisions of SGMA.

h. **“Groundwater Sustainability Plan”** or **“GSP”** shall have the definition set forth in SGMA.

i. **“GSA Boundary”** shall mean those lands located within the ~~Member boundaries that overlie~~ the ~~Subb~~Basin ~~and areas~~ depicted in Exhibit A.

j. **“JPA Act”** shall mean the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.*

~~k. **“Management Areas”** shall mean the areas depicted in Exhibit B.~~

Comment [mf4]: 3/21/17 – remove 1.1 (k). We do not have M.A.s defined.

~~k.~~ **“Member”** shall mean any of the signatories to this Agreement and **“Members”** shall mean all of the signatories to this Agreement, collectively. Each of the Members shall be authorized to become, or participate in, a Groundwater Sustainability Agency under SGMA.

~~m.~~ **“SGMA”** shall mean the California Groundwater Management Act of 2014 and all regulations adopted under the legislation (SB 1168, SB 1319 and AB 1739) that collectively comprise the Act, as that legislation and those regulations may be amended from time to time.

## ARTICLE 2: ORGANIZING PRINCIPLES

2.1 The Members intend to work together in mutual cooperation to develop and implement a GSP for the Basin in compliance with SGMA, consistent with the organizing and guiding principles set forth in that certain Memorandum of Agreement among the Members and other stakeholders, attached hereto as Exhibit B.

2.2 ~~Prior to June 30, 2017, any Member that has previously notified DWR of its intent to be a GSA in the Basin shall formally notify DWR, in writing, of its intent to withdraw or rescind such notification to allow the Authority to become the GSA for the Basin. To the extent any Member determines, in the future to become a GSA separate and apart from the Authority, the Authority will take all actions necessary to allow such Member to become a GSA and the Authority will work cooperatively with such Member to coordinate implementation of SGMA within the Basin.~~

~~2.3~~ ~~2.3~~—The Members intend through this Agreement to take advantage of economies of scale to obtain the most cost-effective consulting, technical and professional services for the development and implementation of a GSP, including without limitation particular for the development of water budgets balances.

~~2.4~~ To the extent any Member determines in the future to become a GSA separate and apart from the Authority, the Authority will take all actions necessary to allow such Member to become a GSA and the Authority will work cooperatively with such Member to coordinate implementation of SGMA within the Basin.

## ARTICLE 3: FORMATION, PURPOSE AND POWERS

3.1 **Recitals:** The foregoing recitals are incorporated by reference.

3.2 **Certification.** Each Member certifies and declares that it is a legal entity that is authorized to be a party to a joint exercise of powers agreement and to contract with each other for the joint exercise of any common power under Article 1, Chapter 5, Division 7, Title 1 of the Government Code, commencing with section 6500 or other applicable law including but not limited to Cal. Water Code § 10720.3(c).

3.3 **Creation of the Authority.** Pursuant to the JPA Act, the Members hereby form and establish a public entity to be known as the “Colusa Groundwater Authority.”

3.4 **Purposes of the Authority.** The purposes of the Authority are to:

- a. provide for the joint exercise of powers of the Members and powers granted pursuant to SGMA (subject to the restrictions contained in this Agreement);
- b. cooperatively carry out the purposes of SGMA;

**Comment [mf5]:** 3/21/17 Remove, it can be done online

**Comment [RD6]:** Should this Section also state the parties understanding that the GSA formed by this Joint Powers Agreement shall otherwise continue in full force and effect, and consistent with all SGMA GSA formation requirements, notwithstanding the withdrawal or involuntary removal of any Member?

**Comment [mf7]:** 3/21/17 this portion of 2.2 is moved to it's own Article 2.4. Add to this language that withdrawal of a party does not impede the GSA

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**Comment [mf8]:** 3/21/17 Delete everything after GSP. Add language about coordination with other GSAs in the subbasin.

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**Comment [RD9]:** Should this Section also state the parties understanding that the GSA formed by this Joint Powers Agreement shall otherwise continue in full force and effect, and consistent with all SGMA GSA formation requirements, notwithstanding the withdrawal or involuntary removal of any Member?

**Comment [mf10]:** Add language re: public entity separate and apart from the member agencies.

**Comment [RED11]:** Comment: SGMA has several requirements for engaging the public and stakeholders in the development of a GSP. See, for example, Water Code sections 10723.4 [maintenance of interested persons list], 10732.3 [consideration of all interests of all beneficial uses and users of groundwater], and 10727.8 [public notification and participation; advisory committee of interested parties]. Given the high profile and potentially controversial nature of the SGMA work that lies ahead, it could be prudent to acknowledge within the Agreement that the Authority will have the authority and the responsibility to meet these requirements. One possible place would be as an additional clause in Section 3.4(b). This could also be a separate section.

**Comment [mf12]:** 3/21/17: Ann to send language from Article 5 of SGMA to include here regarding outreach responsibilities/requirements.

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- c. become a GSA for purposes of management of the Basin in accordance with SGMA; and
- d. develop, adopt and implement a legally sufficient GSP for the Basin, subject to the limitations set forth in this Agreement.

3.5 **Powers of the Authority.** To the extent authorized by the Members through the Board of Directors, and subject to the limitations set forth in this Agreement, the Authority shall have and may exercise any and all powers commonly held by the Members and any and all additional powers granted by SGMA in pursuit of the Authority's purposes, as described in Article 3.4, including but not limited to the power:

- a. To take any action for the benefit of the Members necessary or proper to carry out the purposes of the Authority as provided in this Agreement and to exercise all other powers necessary and incidental to the exercise of the powers set forth herein;
- b. To borrow funds and to apply for grants and loans for the funding of activities within the purposes of the Authority;
- c. To adopt rules, regulations, policies, bylaws and procedures related to the purposes of the Authority; and
- d. To sue and be sued.

3.6 **Powers Reserved to Members.** Each of the Members reserves the right, in its sole and absolute discretion, to:

- a. Withdraw from this Agreement and become its own GSA, to the extent authorized by SGMA, and to thereafter exercise the powers conferred to a GSA, within the Member's boundaries;
- b. Maximize input to the Plan chapter or section of the GSP adopted by the Authority as applicable within the Member's boundaries or the Management Area managed in whole or in part by such Member;
- c. Subject to the provisions of Article 8 of this Agreement, implement the GSP adopted by the Authority within the Member's boundaries or the Management Area managed in whole or in part by such Member.

Nothing set forth in this Agreement is intended to impede or abrogate the powers of any Member, including but not limited to the Member's police power and land use authority.

3.7 **Term.** This Agreement shall be effective as of the Effective Date and shall remain in effect until terminated in accordance with Article 6.5 of this Agreement.

**Comment [RED13]:** Comment: Suggest considering whether this list of enumerated powers should include more provisions. Although Item (a) is broadly inclusive, including more specifics would serve the interest of transparency and understanding by the public of the many powers afforded under SGMA and the key tasks that will be undertaken. Some examples include:

- Entering into contracts and employing agents, employees, consultants and others
- Conducting all necessary research and investigations and compile reports, collect data, etc.
- Imposing fees authorized by SGMA
- Acquiring real and personal property
- Adopting an operating budget and setting Member contributions
- Cooperating and contracting with other agencies such as the federal government or other entities the Board deems necessary
- Enforcing SGMA requirements in the Subbasin as allowed by law
- Registering and monitoring wells
- Establishing and administering projects
- Representing Members in discussions and transactions with other local agencies or GSAs as may be required to ensure SGMA compliance
- Establish committees and working groups as needed

**Comment [mf14]:** 3/21/17, okay to leave out the detailed list in above comment

**Comment [mf15]:** Move this to the bottom of the section so it doesn't start out sounding negative.

**Comment [mf16]:** Remove Management Area reference.

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3.8 **Boundaries of the Authority.** The geographic boundaries of the Authority and that portion of the Basin that will be managed by the Authority pursuant to SGMA are depicted in Exhibit A.

3.9 **Role of Members.** Each Member agrees to undertake such additional proceedings or actions as may be necessary in order to carry out the terms and intent of this Agreement. The support of each Member is required for the success of the Authority. This support will involve the following types of actions:

~~a. On or before June 30, 2017, or if this Agreement is not executed before that date, upon execution of the Agreement, each Member that has previously filed notification with DWR to become a GSA will immediately take the steps necessary to formally rescind or relinquish/withdraw its respective individual GSA status within the boundaries of the Authority, such that the Authority is the sole GSA in the Basin.~~

~~b. The Members will provide support to the Board of Directors and any third party facilitating the development of the GSP by making available staff time, information and facilities within available resources.~~

~~e. Policy support shall be provided by the Members to either approve, or respond quickly to, any recommendations made as to funding shares, operational decisions, fare structures, and other policy areas.~~

~~d. Each Member shall contribute its share of operational fund allocations, as established by the Board of Directors in the annual budget, as approved by the Board of Directors.~~

~~e. Contributions of public funds and of personnel, services, equipment or property may be made to the Authority by any Member for any of the purposes of this Agreement provided that no repayment will be made for such contributions.~~

3.10 **Other Officers and Employees.** The Members do not anticipate that the Authority will have any employees. However, the Authority may do the following:

a. Provide that any employee of a Member, with the express approval of that Member, may be an *ex officio* employee of the Authority, and shall perform, unless otherwise provided by the Board, the same various duties for the Authority as for his or her other employer in order to carry out this Agreement.

b. The Board shall have the power to ~~employ~~ contract with competent registered civil engineers and other consultants to investigate and to carefully devise a plan or plans to carry out and fulfill the objects and purposes of SGMA, and complete a GSP.

Comment [mf17]: 3/21/17: Remove a through e

Comment [mmf18]: Needs discussion

Comment [mf19]: 3/21/17 Look at language in the Yolo draft. It talks about employees remaining under their agency's employment.

Comment [RED20]: Needs further discussion to public employment/gift of public fund limitations, and potential CalPers/employment issues.

Comment [mf21]: 3/21/17 revision

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#### ARTICLE 4: GOVERNANCE

4.1 **Board of Directors.** The business of the Authority will be conducted by a Board of Directors that is hereby established, and that shall be initially composed of representatives of the Members, as follows:

- One member of the County Board of Supervisors, appointed by the County Board of Supervisors;
- One member of the Colusa City Council, appointed by the City of Colusa City Council;
- One member of the Williams City Council, appointed by the City of Williams City Council;
- One member of the Board of the Glenn Colusa Irrigation District, appointed by the Glenn Colusa Irrigation District;
- One member of the Board of the Maxwell Irrigation District or the Westside Water District, said appointment to alternate every two years beginning with an appointment by the Maxwell Irrigation District of one of its Board members;
- One member of the Board of the Princeton-Cordora-Glenn Irrigation District or the Provident Irrigation District, said appointment to alternate every two years beginning with an appointment by the Princeton-Cordora-Glenn Irrigation District of one of its Board members;
- One member of the Board of the Colusa County Water District, appointed by the Colusa County Water District;
- One member of the Board of Reclamation District 108, appointed by Reclamation District 108;
- One member of the Board of Reclamation District 479, appointed by Reclamation District 479;
- One ~~member representative~~ of the Board of the Colusa Drain Mutual Water Company, appointed by the County Board of Supervisors upon the recommendation of the Colusa Drain Mutual Water Company;
- ~~One~~ Two members who ~~is~~ are private groundwater pumpers, appointed by the County Board of Supervisors, who (a) operateing a production groundwater well that is not located within the boundaries of any of the above referenced entities, and (b) are members of the Colusa County Groundwater Commission upon recommendation of the Colusa County Groundwater Commission, appointed by the County Board of Supervisors;
- [If West Butte Subbasin added to JPA; One member of the Board of Reclamation District 1004, appointed by Reclamation District 4791004;]

Comment [mf22]: 3/21/17

Comment [RD23]: Comment: Can the appointment be made by the GSA? [Answer: possibly, but that will require an appointment after a quorum of the Board is seated and votes. We recommend adding the new text allowing the Mutual to make recommendation to BOS.]

Comment [RD24]: Not sure if this comment is accurately captured.

Comment [mf25]: 3/21/17

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Without amending this Agreement, the composition of the Board of Directors may be altered from time to time to reflect the withdrawal of any Member and/or the admission of any new Member. Each Member may designate one alternate to serve in the absence of that Member's appointed Director, and such alternate member may be an elected member of the Member's governing board or an employee of the Member entity, in the discretion of the appointing authority as so designated above. All members of the Authority Board of Directors and all alternates will be required to file a Statement of Economic Interests (FPPC Form 700). Each Member shall notify the Authority in writing of its designated representative on the Authority Board of Directors.

4.2 **Term of Directors.** Each member of the Authority Board of Directors will serve two year terms or until replaced by the appointing Member. Notwithstanding the prior sentence, the terms of the initial Members of the Board of Directors of the Authority appointed to represent the County of Colusa, the City of Colusa, the City of Williams, the Glenn-Colusa Irrigation District, the Colusa Water District, and Reclamation District 108 shall be three years.

Comment [RED26]: Comment: it has been suggested that Directors can serve indefinite terms at the pleasure of their appointing authorities.

Comment [mf27]: 3/21/17 the group agreed on indefinite terms. Update this language

4.3 **Officers.** The Board of Directors shall elect a chairperson, a vice chairperson, a secretary and a treasurer. The chairperson and vice-chairperson shall be directors of the Board and the secretary and treasurer may, but need not, be directors of the Board. The chairperson shall preside at all meetings of the Board and the vice-chairperson shall act as the chairperson in the absence of the chairperson elected by the Board. The treasurer shall meet the qualifications set out in Government Code section 6505.5 as a depository of funds for the Authority.

4.4 **Powers and Limitations.** All the powers and authority of the Authority shall be exercised by the Board, subject, however, to the rights reserved by the Members as set forth in this Agreement.

4.5 **Quorum.** A majority of the Members of the Authority Board of Directors will constitute a quorum for the purpose of conducting business, unless there is an equal number of Directors on the Authority Board of Directors, in which case a quorum may be established with half the Members.

4.6 **Voting.** Except as to actions identified in Section 4.7, the Authority Board of Directors will conduct all business by vote of a majority of the directors present, if a quorum shall be established, and each Directors shall have one (1) vote. Prior to voting, the Members shall endeavor in good faith to reach consensus on the matters to be determined such that any subsequent vote shall be to confirm the consensus of the Members. If any Member strongly objects to a consensus-based decision prior to a vote being cast, the Members shall work in good faith to reasonably resolve such strong objection, and, if the same is not resolved collaboratively, then the matter will proceed to a vote for final resolution under this Article 4.6 or Article 4.7 below, as applicable.

4.6a. At the first Board meeting following the two-year anniversary of the Effective Date of this Agreement, the Board of Directors shall consider whether to recommend to the Members that the voting structure described in this Article 4.6 be modified in any respect.

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If the Board of Directors recommends such modification, the governing body of each Member shall consider the recommended modification(s) and shall report back to the Authority Board of Directors regarding the Member’s position thereon.

4.7 **Supermajority Vote Requirement for Certain Actions.** The following actions will require a two-thirds (2/3) vote of the directors present:

- a. Approval of the Authority’s annual budget and amendments to the annual budget;
- b. Decisions related to the levying of taxes, assessments, regulatory fees, or property related other fees and charges;
- c. Decisions related to the expenditure of funds by the Authority beyond expenditures approved in the Authority’s annual budget;
- d. Adoption of rules, regulations, policies, bylaws and procedures related to the function of the Authority;
- e. Decisions related to the establishment of the Members’ percentage obligations for payment of the Authority’s operating and administrative costs as provided in Article 5.1, or any amendments or modifications of Members’ percentage obligations; and
- f. Approval of a GSP and amendments and any amendments or modifications of a GSP.

**Comment [RED28]:** Comment: Suggest considering the following additions:  

- Decisions about property acquisition or ownership
- Approval of contracts over a certain threshold
- Initiation or settlement of enforcement actions, claims and litigation
- Adoption of ordinances
- Issuance of bonds or other indebtedness

Any decisions related to basin boundary modifications

**Comment [mf29]:** 3/21/17

**Comment [mf30]:** 3/21/17

4.8 **Meetings.** The Board shall provide for regular and special meetings in accordance with Chapter 9, Division 2, Title 5 of Government Code of the State of California (the “Ralph M Brown Act” commencing at section 54950), and any subsequent amendments of those provisions.

~~4.9 **By Laws.** The Board may adopt by laws to supplement this Agreement. In the event of conflict between this Agreement and the by laws, the provisions of this Agreement shall govern.~~

**Comment [RED31]:** Comment: Consider also adding:  
The Board may adopt such other rules, policies, and regulations as it deems proper, consistent with all applicable laws, this Agreement and any Authority bylaws adopted by the Board.

4.10.9 **Administrator.** The Members hereby designate Colusa County to serve as administrator of, and keeper of records for, the Authority.

**Comment [JMA32]:** Should this be a super-majority action, under Section 4.7?

**Comment [mf33]:** 3/21/17 Strike 4.9. This is addressed in 3.5 c

**Comment [KO34]:** Need to discuss whether this will be the County or some other entity.

**Comment [mf35]:** 3/21/17 Members of the LRS were fine with this.

**ARTICLE 5: FINANCIAL PROVISIONS**

5.1 **Contributions and Expenses:** Members shall share in the general operating and administrative costs of operating the Authority in accordance with the percentages set forth in Exhibit C attached hereto and incorporated herein (this Exhibit C document has yet to be developed). ~~Each Member will be assessed quarterly, beginning on January 1 of each year. Members shall pay assessments within thirty (30) days of receiving assessment notice from the Treasurer. Each Member will be solely responsible for raising funds for payment of the Member’s~~



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~~share of operating and administrative costs. The obligation of each Member to make payments under the terms and provision of this Agreement is an individual and several obligation and not a joint obligation with those of the other Members. Each Member shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Member shall be under the control of or shall be deemed to control any other Member. No Member shall be precluded from independently pursuing any of the activities contemplated in this Agreement. No Member shall be the agent or have the right or power to bind any other Member without such Member's express written consent, except as expressly provided in this Agreement. Contributions of grant funding, from state, federal, or county funding other sources may be provided as funding or a portion of funding on behalf of Members.~~

~~5.2 Initial Contributions. Upon execution of this Agreement, each of the Members shall contribute XXXXXXXX to the Authority for initial administrative costs. Such funds may be used in the discretion of the Authority Board of Directors to fund the activities and work of the Authority including, without limitation, engineering services.~~

~~5.35.2 Indemnification. Members, directors, officers, agents 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. To the fullest extent permitted by law, The Authority shall hold harmless, defend and indemnify the Members and their officers, employees and agents, and members of the Authority Board of Directors, from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the activities of the Authority or its Board, officers, employees or agents under this Agreement. These indemnification obligations shall continue beyond the Term of this Agreement as to any acts or omissions occurring before or under this Agreement or any extension of this Agreement.~~

~~5.45.3 Repayment of Funds. No refund or repayment of the initial commitment of funds specified in Article 5.2 will be made to a Member ceasing to be a Member of this Agreement whether pursuant to removal by the Board of Directors or pursuant to a voluntary withdrawal. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, the terms and conditions of this Agreement or other agreement of the Authority and withdrawing Member.~~

~~5.55.4 Budget. The Authority's fiscal year shall run from January 1 through December 31, July 1-June 30. Each fiscal year, the Board shall adopt a budget for the Authority for the ensuing fiscal year. Within ninety (90) days of the effective date of this Agreement, the Board shall adopt a budget. Thereafter, a budget shall be adopted no later than December 1 of the preceding fiscal year. The budget must be adopted by unanimous vote of the Board.~~

~~5.65.5 Alternate Funding Sources. The Board may obtain State of California or federal grants.~~

~~5.75.6 Depository. The Board shall designate a Treasurer of the Authority, who shall be the depository and have custody of all money of the Authority, from whatever source, subject to~~

**Comment [RD36]:** Comment: only GSA's have revenue raising authorities under SGMA via the financial authorizations in the Act (e.g., regulatory fees and assessments). As such, there issue about how Members (e.g., a District) raise funds from their members/landowners/constituents other than pursuant to the Member's own revenue authorities, which generally are more limited than SGMA. One possible solution is that all GSA-eligible members retain GSA status. Another possibility is that only the GSA raises revenues under the SGMA revenue authority. A third option is some sort of delegation process to allow Members to exercise the GSA's revenue-raising authorities (if that is legally possible). Both the Legal and Policy groups need to work through this issue.

**Comment [RED37]:** Comment: Suggested moving this text to Art. 3.6 or 3.9.

**Comment [mf38]:** 3/21/17 in the Yolo Agreement, this portion was moved to the Reservation Section (3.7)

**Comment [mf39]:** 3/21/17: Need clarification and agreement that the JPA members will self-fund the effort for the first two years (separate funding Agreement). After two years, or sooner, a single Prop. 218 will be instated over the County portions of the basin(s) to fund the agency.

**Comment [mf40]:** 3/21/17 Strike this

**Comment [mf41]:** 3/21/17 LRS agreed to adding insurance provisions.

**Comment [RED42]:** Comment: Suggest considering an Insurance provision. Here is possible language:

The Authority shall be required to obtain insurance, or join a self-insurance program in which one or more of the Members participate, appropriate for its operations. Any and all insurance coverages provided by the Agency, and/or any self-insurance programs joined by the Agency, shall name each and every Member as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named insured in the performance of this Agreement. Minimum levels of the insurance or self-insurance program shall be set by the Agency in its ordinary course of business. The Agency shall also require all of its contractors and subcontractors to have insurance appropriate for their operations.

**Comment [RED43]:** Comment: The recently filed MOU forming the Stanislaus and Tuolumne Rivers GSA has a repayment provision that allows a Party's funding contributions or a portion of them to be reimbursed upon termination of participation and approval by majority vote of the governing body.

This might be worth considering to cover unfore...

**Comment [mf44]:** This is the County's fiscal year. The LRS agreed to July-June.

**Comment [mmf45]:** Need to discuss

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the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Member or any other person or entity. The Treasurer shall perform the duties specified in Government Code sections 6505 and 6505.5.

**Comment [mf46]:** 3/21/17 This should be addressed at the next GSA Workgroup meeting.

~~5.85.7~~ **Accounting.** Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. The books and records of the Authority shall be open to inspection by the Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.

~~5.95.8~~ **Audit.** A qualified firm, serving in the capacity of auditor, shall audit the records and the accounts of the Authority annually in accordance with the provisions of section 6505 of the Law. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the Fiscal Year under examination.

~~5.105.9~~ **Expenditures.** All expenditures within the designations and limitations of the applicable approved budget shall be made upon the approval of any officer so authorized by the Authority Board of Directors. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the approval and written order of the Board. The Board shall requisition the payment of funds only upon approval of claims or disbursements and requisition for payment in accordance with policies and procedures adopted by the Board.

~~5.11~~ **Reconsideration of Voting Structure and Allocation of Expenses.** ~~At the first Board meeting following the two year anniversary of the Effective Date of this Agreement, the Board of Directors shall consider whether to recommend to the Members that the voting structure described in Article 4.6 and/or the allocation of expenses described in this Article 5.11 be modified in any respect. If the Board of Directors recommends such modification of Article 4.6 or Article 5.1, the governing body of each Member shall consider the recommended modification(s) and shall report back to the Authority Board of Directors regarding the Member's position thereon.~~

**Comment [RD47]:** A parallel change was added to Article 4.6, regarding amendment to voting structure.

**Comment [mf48]:** 3/21/17 Strike

~~5.12~~ **Initial Staffing Contributions.** ~~The Authority initially intends to contribute to the goals and objectives identified in this Agreement by utilizing the staff of certain Members, at the Members' own cost, to pursue those operations, investigations and programs;~~

**Comment [mmf49]:** To be determined by the workgroup

**Comment [mf50]:** 3/21/17 Strike

**ARTICLE 6: CHANGES TO MEMBERSHIP, WITHDRAWAL AND TERMINATION**

6.1 **Changes to Membership.** The Authority Board of Directors will have the authority to (1) approve the addition of new members to the Authority, and (2) remove a Member involuntarily, in accordance with this Article. In the event of the approval of new Members or the involuntary removal of an existing Member the Members (and any new Members) shall execute an addendum or amendment to this Agreement describing all changes in Members. In the event of

the involuntary removal of a Member the removed Member shall remain fully responsible for its proportionate share of all liabilities incurred by the Authority prior to the effective date of the removal.

6.2 **Noncompliance.** In the event any Member (1) fails to comply with the terms of this Agreement, or (2) undertakes actions that conflict with or undermine the functioning of the Authority or the preparation or implementation of the GSP, such Member shall be subject to the provisions for involuntary removal of a Member set forth in of Article 6.3 of this Agreement. Such actions of a Member shall be as determined by the Board of Directors and may include, for example, failure to pay its agreed upon contributions when due, refusal to participate in GSA activities or to provide required monitoring of sustainability indicators; ~~refusal to enforce controls~~ implement measures as may be required of the Member by the GSP, or which the Member has authority to impose on landowners and pumpers within the Member's jurisdiction; refusal to implement any necessary actions as outlined by the approved GSP minimum thresholds that are likely to lead to "undesirable results" under SGMA.

6.3 **Involuntary Termination.** The Members acknowledge that SGMA requires that multiple GSAs within a given Bulletin 118 groundwater basin must coordinate, and are required to use the same data and consistent methodologies for certain required technical assumptions when developing a GSP, and that the entire Basin must be implementing a GSP for the Basin to be deemed in compliance with SGMA. As a result, upon the determination by the Board of Directors that the actions of a Member (1) fail to comply with the terms of this Agreement, or (2) conflict with or undermine the functioning of the Authority or the preparation and implementation of the requirements of the GSP, the Board of Directors may terminate that Member's membership in this Authority, provided that prior to any vote to remove a Member involuntarily all of the Members shall meet and confer regarding all matters related to the proposed removal.

6.4 **Withdrawal of Members.** A Member may, in its sole discretion, unilaterally withdraw from the Authority, effective upon ninety (90) days' prior written notice to the Authority, provided that (a) the withdrawing Member will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority, in accordance with Article 5.1. A withdrawing Member will not be responsible for any obligation or liability that the Member has voted against or has voiced its disapproval on at a Board meeting, providing the Member gives notice of its withdrawal from the Authority as soon thereafter as is practicable. In the event the withdrawing Member has any rights in any property or has incurred obligations to the Authority, the Member may not sell, lease or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed by it and the Authority. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawing Member.

6.5 **Termination.** This Agreement and the Authority may be terminated by a majority vote of the Members. However, in the event of termination each of the Members will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority, in accordance with Article 5.1. Nothing in this Agreement will prevent the Members

**Comment [mf51]:** 3/21/17: there was much discussion as to whether the JPA will accept existing agencies that decide to join later, or just newly formed agencies. Will the GSA Board allow anyone to join, or will the Board have to approve them? Rob to check this section in the Yolo JPA.

**Comment [RED52]:** Comment: Members may not have SGMA's expended authorities to implement, enforce, impose or carry out actions within their jurisdictional or service areas unless they are a GSA. Possible options: (1) Members can become GSAs; (2) the GSA can enforce directly vs. landowners/pumpers within a particular jurisdiction/area, (3) the GSA can delegate GSA authorities to eligible members (if legally possible).

**Comment [mf53]:** 3/21/17: Include language on dispute resolution/mediation in the Miscellaneous Provisions section and reference it here.

**Comment [RED54]:**

**Comment [RED55R54]:** Comment: Consider combining Art. 6.2 and 6.3

**Comment [JMA56]:** Should this require a super-majority vote?

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from withdrawing as provided in this Agreement, or from entering into other joint exercise of power agreements.

6.6 **Disposition of Property Upon Termination.** Upon termination of this Agreement, the assets of the Authority shall be transferred to the Authority’s successor, provided that a public entity will succeed the Authority, or in the event that there is no successor public entity, to the Members in proportion to the contributions made by each Member. If the successor public entity will not assume all of the Authority’s assets, the Board shall distribute the Authority’s assets between the successor entity and the Members in proportion to the any obligation required by Articles 5.1.

6.7 **Rights of Member to Become GSA in Event of Withdrawal or Termination.** Upon withdrawal or involuntary termination of a Member, or termination of this Agreement pursuant to Article 6.5, whether occurring before or after June 30, 2017, the withdrawing or terminated Member will retain all rights and powers to become or otherwise participate in a GSA for the lands within its boundaries. In such event the Authority and its remaining Members (i) shall not object to or interfere with the lands in the withdrawing or terminated Member’s boundaries being in a GSA, as designated by the withdrawing or terminated Member or otherwise, (ii) shall facilitate such transition to the extent reasonably necessary, and (iii) shall withdraw from managing that portion of the Basin within the boundaries of the withdrawing or terminating Member and so notify the California Department of Water Resources.

6.8 **Use of Data.** Upon withdrawal, any Member shall be entitled to use any data or other information developed by the Authority during its time as a Member. Further, should a Member withdraw from the Authority after completion of the GSP, it shall be entitled to utilize the GSP for future implementation of SGMA within its boundaries.

## ARTICLE 7: SPECIAL PROJECTS

7.1 **Special Project Agreements.** Fewer than all of the Members may enter into a special project agreement to achieve any of the purposes or activities authorized by this Agreement, and to share in the expenses and costs of such special project, for example, to share in funding infrastructure improvements within the boundaries of only those Members and their Management Areas. Special project agreements must be in writing and documentation must be provided to each of the Members to this Agreement. No Special Project Agreement undertaken pursuant to this Section 7.1 shall conflict with the terms of this Agreement or the GSP.

7.2 **Expenses.** Members that enter into special project agreements agree that any special project expenses incurred for each such special project are the costs of the special project participants, respectively, and not of any other Members to this Agreement not participating in the special project, and the special project expenses shall be paid by the parties to the respective special project agreements.

**Comment [mmf57]:** 3/21/17: Combine Article 7 and Article 8 to include GSP-related items, stated in broad terms; what shall be CONSIDERED in a GSP rather than what shall be IN a GSP. Reference to potential development of Management Areas in this new section.

**Comment [58]:** Comment: In addition to this additional clause, it might be good to consider whether Special Project Agreements should be approved by the Board.

7.3 **Indemnification of Other Members.** Members participating in special project agreements, if conducted by the Authority, shall hold each of the other Members who are not parties to the special project agreement free and harmless from and indemnify each of them against any and all costs, losses, damages, claims and liabilities arising from the special project agreement. The indemnification obligation of Members participating in special project agreements shall be the same as specified in Article 5.1 for Members in general, except that they shall be limited to liabilities incurred for the special project.

**ARTICLE 8: ACTIONS BY THE AUTHORITY WITHIN MANAGEMENT AREAS AND INDIVIDUAL JURISDICTIONS**

8.1 **Role of the Authority.** Except to the extent requested by a Member with respect to lands within its boundaries, the Authority will serve primarily a coordinating and administrative role in order to provide for sustainable groundwater management of the Basin in a manner that does not limit any Member’s rights or authority over its own water supply matters, including, but not limited to, a Member’s surface water supplies, groundwater supplies, facilities, operations, water management and financial affairs. Subject to the provisions, limitations and restrictions contained in this Agreement, activities unrelated to coordinating and administrative tasks necessary for groundwater management shall not be undertaken by the Authority.

8.2 **Members’ Authority within Management Areas and Individual Jurisdictions.** Except as otherwise expressly provided in Article 8.5, each of the Members (or groups of Members) will have primary authority and responsibility to implement SGMA and the GSP adopted by the Authority within the Management Area or the individual jurisdictions managed in whole or in part by such Member or groups of Members, as designated in the GSP.

8.3 **Water Budgets.** The GSP will provide for the preparation of water budgets by Members or groups of Members for the Management Areas or the individual jurisdictions managed in whole or in part by such Members or groups of Members. The GSP will specify the elements to be included in water budgets and the timing for completion.

8.4 **Sustainability.** In the event a water budget prepared in accordance with Article 8.3 shows that groundwater pumping within a Management Area or an individual jurisdiction exceeds such area’s sustainable yield, as defined in Cal. Water Code § 10721(v) and (w), the Member or group of Members with groundwater management responsibility over such area shall develop and implement a plan to achieve sustainability within that area. The GSP will specify the elements to be included in the plan and timing for implementation.

8.5 **Reservation of Authority.** In the event of a failure by a Member or group of Members to develop and implement a plan to achieve sustainability within a Management Area or individual jurisdiction as provided in Article 8.4, the Authority reserves and retains all requisite authority to develop and implement a plan to achieve sustainability within such area. The GSP will specify the procedures for development and implementation of a sustainability plan under such circumstances.

**Comment [RED59]:** Comment: Section 7.3 refers to indemnification obligations for members forming special project agreements to be the same as Section 5.1. However, indemnification is also addressed in 5.3. These should be reviewed and aligned.

**Comment [RD60]:** Governance Workgroup needs to decide if this model (from the draft Yolo JPA) works for the Colusa Subbasin. Possible alternative approach might allow for the use of Management Agreements to provide for Members to develop technical work and management recommendations for their respective areas, but confirm the authority of the GSA to coordinate and implement the GSP (this division of responsibility is probably required to comply with SGMA). For example, the individual Members may want to retain authority to fund particular activities within their individual jurisdictions, rather than participate in a basin-wide funding level, but the GSA probably needs to reserve the ultimate authority to implement and enforce the management measures in the GSP in order to comply with SGMA. This is an important Policy discussion that needs to happen soon so that the Legal Committee can draft this section of the JPA.

**Comment [mf61]:** 3/21/17: Broaden Article 8 to include the concept of elements of a GSP in very broad terms: ie: Management Areas, Groundwater Banking, possibly special projects.

**Comment [RED62]:** Comment: This comment addresses 8.1 and 8.2.

“Coordinating and administrative role” is unclear. While each member retains both authority and responsibility to implement the GSP in its territory (Sections 3.6(c) and 8.2), there may be tasks in the future that will be more cost efficient and appropriate for the Authority to do, such as required information reporting to the state, issuing bonds, ...

**Comment [mf63]:** 3/21/17: This is not the case in Colusa County and needs to be defined.

**Comment [RED64]:** Comment: This language may require some work to ensure consistency with GSA authority and obligations under SGMA.

**Comment [mmf65]:** This limits the authorities of the GSA

**Comment [RED66]:** See prior comments regarding role and authority of Members.

**Comment [RED67]:** Comment: SGMA requires a water budget for the entire basin. These provisions for separate water budgets could cause confusion in the future Unless there is some strong reason for ...

**Comment [RED68]:** Comment: The JPA should provide for groundwater banking in the GSP.

**Comment [mf69]:** 3/21/17: 8.3 and 8.4 are getting too much into details of a GSP.

**Comment [RED70]:** See prior notes regarding relative roles and authorities of GSA and Members.



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## ARTICLE 9: MISCELLANEOUS PROVISIONS

Comment [mf71]: 3/21/17: include in Article 9 language about future development of Management Areas and Dispute Resolution/Mediation.

9.1 **Amendments.** This Agreement may be amended from time to time by a unanimous vote of the Members.

9.2 **Binding on Successors.** Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without a unanimous vote by the Members. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto.

9.3 **Notice.** Any notice or instrument required to be given or delivered under this Agreement may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of 72 hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery, as follows:

[To be added]

9.4 **Counterparts.** This Agreement may be executed by the Members in separate counterparts, each of which when so executed and delivered shall be an original. All such counterparts shall together constitute but one and the same instrument.

9.5 **Choice of Law.** This Agreement shall be governed by the laws of the State of California.

9.6 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement is held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

9.7 **Headings.** The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Members to this Agreement.

9.8 **Construction and Interpretation.** This Agreement has been arrived at through negotiation and each Member has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Member shall not apply in the construction or interpretation of this Agreement.

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9.9 **Entire Agreement.** This Agreement constitutes the entire agreement among the Members and supersedes all prior agreements and understandings, written or oral. This Agreement may only be amended by written instrument executed by all Members.

IN WITNESS WHEREOF, the Members have executed this Agreement on the day and year first above-written.

[Signature blocks]