

# Attachment H



500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814  
OFFICE: 916-446-7979 FAX: 916-446-8199  
SOMACHLAW.COM

## MEMORANDUM

*Via Electronic Mail Only*

TO: Monterey County Water Resources Agency  
FROM: Andrew M. Hitchings, Alexis K. Stevens, and Max Thiele  
SUBJECT: Salinas River Stream Maintenance Program Alternative Governance Structure Options  
DATE: January 9, 2025

---

### **BACKGROUND**

The Salinas River Stream Maintenance Program (SRSMP) was developed in collaboration with the Monterey County Water Resources Agency (MCWRA), the Salinas River Management Unit Association (RMU Association), the Grower-Shipper Association of Central California, The Nature Conservancy, Conservation Collaborative, the Resource Conservation District of Monterey County (RCDMC), and other local entities and contractors. The SRSMP is a coordinated approach to vegetation and sediment management along the mainstem of the Salinas River and three of its tributaries (hereinafter the “Program Area”). The Program Area is divided into seven RMUs, each with its own specific maintenance and treatment areas.

The MCWRA was the lead public agency developing the SRSMP and held the U.S. Army Corps of Engineers’ (USACE) Regional General Permit and the Central Coast Regional Water Quality Control Board’s (Regional Board) Water Quality Certification for the program. The USACE Regional General Permit and the Regional Board Water Quality Certification have been transferred to the RCDMC. The RCDMC is the lead administrator of the SRSMP. The RCDMC also holds the Routine Maintenance Agreement with the California Department of Fish and Wildlife (CDFW), oversees the required biological surveys and monitoring for the SRSMP, performs participant outreach and coordination, and provides all work plan and reporting necessary to run the program. Participation in the SRSMP is voluntary, and maintenance work is conducted by the RMU Association, a non-profit made up of the individual property owners, growers, and municipalities.

The MCWRA is financially supporting this examination of options that may allow the RMUs to more formally organize to improve participation and implementation of the SRSMP within the Program Area. This memorandum provides information about the types of public agencies that possess the authority to operate and maintain flood control facilities, as well as an understanding of these agencies' powers/purposes and how they can be formed. It also provides a brief summary of the process necessary to establish a new public agency with the Local Agency Formation Commission (LAFCo).

## **DISCUSSION**

### **A. Potential Agency Structures**

#### **1. Reclamation Districts (Wat. Code, § 50000 et seq.)<sup>1</sup>**

##### **a. Formation**

A reclamation district can be formed by a petition presented to the board of supervisors at a regular meeting. (§ 50300.) The petitioners must consist of “owners of one-half or more of any body of swamp and overflowed, salt-marsh, or tidelands subject to flood or overflow” with either the desire to reclaim the land or who are in the progress of reclamation and desire to form a district for the maintenance, protection, or repair of the reclamation works. (*Ibid.*)

The petition must state that petitioners desire to reclaim the land, that reclamation is in progress, or that the land has been reclaimed. (§ 50301.) The petition must further include a description of the exterior boundaries of the proposed district, a statement as to the total number of acres within the boundaries, the name of each owner of real property within the boundaries, and the name of each county within which the proposed district lies and if in more than one county, the number of acres of the district in each county. (*Ibid.*) Lastly, the petition must be published once a week for two weeks preceding the presentation of the petition in a newspaper of general circulation published in the principal county setting forth the date/time when the petition will be presented to the board of supervisors. (§ 50302.) If after a hearing on the petition the board of supervisors finds that the statements in the petition are correct, it will make an order approving the petition. (§ 50310.)

##### **b. Governing Body**

After formation, the board of supervisors must call an election where three eligible people will be elected to the reclamation district board of trustees. (§ 50600.) The number of board members can be increased to five or seven at a later election consistent with the bylaws of the district. (§ 50601.) Board members must be landowners within the district or the legal

---

<sup>1</sup> All statutory references are to the Water Code unless otherwise noted.

representatives of landowners. (§§ 50014, 50006, 50015.) Members of the board of trustees will serve four-year terms with member terms staggered. (§ 50602.)

**c. Powers**

A reclamation district may construct, maintain and operate drains, canals, sluices, bulkheads, water gates, levees, embankments, pumping plants, dams, diversion works, irrigation works, or anything else reasonably necessary or convenient which is required to accomplish its purposes. (§ 50932.) The district may also construct, maintain and operate ferry boats, bridges, road systems, and related facilities to provide access to the district's levee, drainage, and irrigation systems. (§ 50933.)

The district's board of trustees must exercise general supervision and complete control over the construction, maintenance and operation of the reclamation works,<sup>2</sup> and generally over the affairs of the district. (§ 50652.) The district may also collect charges and fees via tax bills of the county or counties in which the district is located. (§ 50904.) Additionally, the district may acquire – by purchase, condemnation, gift, lease or other legal means – any real or personal property necessary for accomplishing district purposes (§ 50930), and may take any necessary or convenient actions to accomplish the purposes for which it was formed (§ 50900).

**2. Levee Districts (Wat. Code, § 70000 et seq.)**

**a. Formation**

A levee district may be formed for the protection of district lands from overflow and to conserve or add water to district sloughs and drains. (§ 70030.) A levee district is formed by a petition to the county board of supervisors signed by at least 50 percent of the landowners within the portion of the county that will fall within district boundaries; the petition must also be signed by owners of 50 percent of the land to be included, whether that land is incorporated or not. (§§ 70030-70032.)

The board of supervisors of the county in which the proposed district is situated must consider the petition at a regular meeting, hear arguments for and against the petition, consider written protests from taxpayers who would be situated within the district, and, upon a final determination of the boundaries of the proposed district, determine whether the petition complies with the relevant code sections. (§§ 70036-70038.) The board of supervisors may also change the boundaries of the proposed levee district, subject to certain requirements. (§ 70039.) This hearing on the petition may be held over multiple dates, but may not take

---

<sup>2</sup> “Reclamation works” means public works and equipment necessary “for the unwatering, watering, or irrigation” of district lands or operations. (§ 50013.)

longer than four weeks. (§ 70037.) If the board of supervisors determines that the petition is in compliance, that determination is to be entered into the board's minutes. (§ 70038.)

Upon a final determination of levee district boundaries and compliance, the board of supervisors must call for and give notice of an election to determine whether the district will be formed. (§ 70040.) The date of any such election must not be less than 50 days nor more than 60 days from the date of the final board of supervisors hearing. (*Ibid.*) To vote at any district election, including the formation election, a person must be a "qualified elector of the district" in that they must be a registered voter residing in the district, their name must appear on the last equalized county assessment roll, and they must own property within district boundaries. (§ 70121.)

**b. Governing Body**

Upon formation, a levee district will have a board of three directors. Each director must be an elector of the district and will serve four-year terms, although the first elected directors on formation will serve only until the election of their successors. (§ 70070.) Regular meetings must be held on the second Monday of each month at the levee district office. (§ 70076.) Special meetings may be held when all directors are present or may be ordered by a majority of directors upon at least one day's written notice. (*Ibid.*)

**c. Powers**

A levee district may acquire drains, canals, sluices, bulkheads, watergates, levees, embankments, pumping plants and pipelines by purchase, condemnation, gift or any other legal method. (§ 70150.) A district may also purchase, construct, or otherwise acquire, maintain and keep in repair all reasonable or convenient mechanisms that protect district lands from overflow and conserve or add water to sloughs and drains in the district. (*Ibid.*) The district may also cooperate and contract with the United States, the State of California, or any department or agency of either in order to accomplish any district purpose. (§ 70151.)

The district board of directors is to "avail itself of the equalized assessment roll of the county in which the district is situated, and take such assessments as the basis for district taxation." (§ 70230.) A levee board must meet each year on the first Tuesday after the first Monday in September to determine the tax rate to be levied on behalf of the district in the upcoming tax year. (§ 70234.) The tax amount is estimated by adding (1) amounts necessary to pay interest and principal due for the next tax year; (2) money sufficient for wages and repairs or maintenance; (3) any amounts needed for salvage, fees and delinquencies; and (4) the amount of any floating debt the board desires to pay. Once the board fixes the tax rate, it certifies it to the county auditor, who then computes the tax on district property. (§§ 70235, 70237.) District taxes are collected at the same time and in the same manner as county taxes. (§ 70238.)

**3. Protection District Act of 1880 (Deering's Ann. Water Uncod. Acts)**

**a. Formation**

A protection district can be proposed by a majority of owners of any land not recognized as swamplands but which is susceptible to and in need of protection from overflow to provide that protection. (Protection District Act of 1880 [1880 PDA], Stats. 1880, ch. 63, § 1 (Deering's Ann. Water Uncod. Acts (2024 ed.) Act 810).) The petition must be presented to the board of supervisors of the county in which the larger portion of land is situated and include the proposed district boundaries; protection district boundaries may not include boundaries of any other protection or reclamation district. (*Ibid.*) The petition must include the number of acres or city lots included within the proposed district. (*Ibid.*)

When the petition is received, the board of supervisors must order a hearing for a date not more than 60 days from the date of the order. The petition must also be published in a newspaper of general circulation for four successive weeks prior to the hearing date, and the publication must also include the date, time and place of the hearing ordered. All landowners within the boundaries of the proposed district may appear at the hearing and provide testimony or evidence for or against the petition. (1880 PDA, § 2.) The board of supervisors may consider boundary changes of the proposed district at the hearing to either include improperly omitted lands or exclude lands that have been improperly included. (*Id.*, § 3.)

**b. Governing Body**

After the petition to form a protection district has been granted, the board of supervisors will direct an election for three trustees to be held within 20 days from the date of the order granting the petition. Trustees must be resident landowners of the district. (1880 PDA, §§ 3, 4.) Following the initial election, two of the trustees will serve 2-year terms and one trustee will serve a 4-year term. (*Id.*, § 3.) Thereafter, the term of office for all trustees will be staggered 4-year terms. (*Ibid.*) Within 20 days of their election, the trustees are to meet to elect a chairman and secretary. (*Id.*, § 4.)

**c. Powers**

A protection district board of trustees has the power to acquire, by donation or purchase, any real or personal property needed for the district. The district will hold that property for district use and, when necessary and as provided by law, may exercise the right of eminent domain. (1880 PDA, § 4.)

The board of trustees will be in charge of all protection works, construction, or repair, and will have the power to perform all acts necessary to accomplish district objectives. (1880 PDA, § 4.) The board may also dispose of real or personal property as needed. (*Ibid.*)

The board of trustees, after giving notice and the opportunity to be heard, will have the power to levy assessments on or against each tract or parcel of land, town, or city lot within the district. (1880 PDA, § 7.) The board may also have the power to make further assessments necessary to pay for additions, repairs, and improvements to any district protection works. (*Ibid.*)

#### **4. Protection District Act of 1895 (Deering’s Ann. Water Uncod. Acts)**

##### **a. Formation**

Under the Protection District Act of 1895 (1895 PDA) (Stats. 1895, ch. 201 (Deering’s Ann. Water Uncod. Acts (2024 ed.) Act 820), a protection district may be formed by a county board of supervisors, upon receipt of a petition from 10 landowners, to engage in any or all of the following purposes: (1) protect property from damage; (2) widen, deepen, change, straighten or navigable stream channels, watercourses or washes; (3) construct new channel(s); or (4) erect levees, dikes or other formations to prevent overflow. (*Id.*, § 1.) The resolution approving the petition must include the general character of improvements to be made and the district boundaries (either of which may or may not be the same as those contained within the petition) and that the petitioning landowners own land within the county. (*Ibid.*)

The board’s resolution must identify the time and place of a hearing regarding the board’s intention to form the protection district; the hearing must take place not less than 30 days after the passage of the resolution. (1895 PDA, § 1.) The clerk of the board must then publish the notice of hearing and send a copy of the notice by mail to each landowner in the proposed district boundaries. (*Id.*, § 2.) The board will then hold a hearing to approve or deny the petition where they will hear objections and consider the boundaries of the district. (*Id.*, §§ 2-4.)

##### **b. Governing Body**

A protection district formed under this act will be governed and controlled by the board of supervisors of the county in which it is situated. (1895 PDA, § 6.) After surveying district land to determine necessary construction or repair of improvements, the board appoints three commissioners to estimate costs for the proposed improvements and work required to carry them out. (*Id.*, §§ 6, 7.) Commissioners have the necessary powers to carry out the provisions of the 1895 PDA, and any actions taken by a majority are considered as acts of the board of supervisors. (*Id.*, § 8.)

##### **c. Powers**

Under the 1895 PDA, the board of supervisors has the power to purchase, receive by donation, or acquire by condemnation any real or personal property necessary to carry out district purposes. (1895 PDA, § 6.) The board may employ engineers, surveyors, and others

to survey, plan or locate, or supervise the construction or repair of district improvements. (*Ibid.*) District improvements may include: (1) widening, deepening, changing or straightening navigable stream channels, watercourses or washes; (2) construction of new channels for such watercourses; or (3) construction of levees, banks, dikes, conduits, ditches, and canals for the conveyance of water or to confine watercourses to their respective channels. (*Id.*, § 27.) This work may be performed either inside or outside district boundaries if necessary to properly prevent the overflow of water, protect district land from damage, and secure a free outlet for streams, watercourses, and washes. (*Ibid.*)

Commissioners are to examine district lands to determine their value and estimate the costs of any proposed work to be undertaken or improvements to be made. (1895 PDA, § 10.) After examination, commissioners make a written report to the board of supervisors. (*Id.*, § 11.) After receiving the commissioners' report, the board of supervisors assesses the land within the county or counties where the work is to be performed to fund district purposes. (*Id.*, §§ 10.) The commissioners' report and a notice of hearing regarding consideration of the report must be published in a newspaper of general circulation for at least three weeks prior to the hearing date. (*Id.*, § 15.)

Written objections to the report may be filed with the clerk of the board, and the board will consider any such objections presented at the hearing. (1895 PDA, § 16.) The board may modify the report prior to its adoption by the board or require that a new assessment and report be made. (*Ibid.*) When the Board determines the assessment amount for each year and the number of years the assessment is to continue, the board forwards certified copies of the report and the order adopting it to the tax collector of the county in which the district is situated. (*Id.*, § 17.)

## **5. Flood Control and Flood Water Conservation District Law**

### **a. Formation**

A flood control and water conservation district may be formed whenever a condition exists in any county or counties requiring the control of floods and conservation of flood waters. (Flood Control and Water Conservation District Law [FCWCDL], Stats. 1931, ch. 641, § 1 (Deering's Ann. Water Uncod. Acts (2024 ed.) Act 300).) The district is formed by filing a petition with the board of supervisors in the county where the proposed work is to be performed. (*Ibid.*) The petition must describe the boundaries of the proposed district. (*Ibid.*) Proposed district boundaries must lie entirely within one county and may not include lands within the boundaries of any other flood control district. (*Ibid.*)

The petition must be signed by landowners representing at least 25 percent of the total assessed valuation of all the lands within proposed district boundaries and contain at least 10 signatures of persons who will benefit from the formation of the proposed district and the

proposed work. (FCWCDL, § 1.) The petition must include a general description of the work contemplated, as well as an estimate of the cost. (*Ibid.*)

Once the board of supervisors has determined that the petitioners complied with the petition requirements, it must hold a noticed hearing on the matter where the board may make boundary changes and any person residing within the boundaries (or their agent) may oppose either the creation of the district or its boundaries. (FCWCDL, § 4.) Upon conclusion of the hearing, the board may order approval of the petition, either as originally presented or in a modified form, and declare the establishment of the flood control and water conservation district.

**b. Governing Body**

A flood control and water conservation district is governed and managed by a board of five trustees, appointed by the county board of supervisors. The trustees hold office for a term of four years and receive no compensation but are allowed reimbursement for necessary travel and other expenses incurred in the performance of their duties. (FCWCDL, § 6.) Each trustee must either be (1) a holder of title to land within the district and a resident, or (2) a designated representative of a title holder to district land if the title holder is not a natural person. In the latter event, the title holder must file written evidence of that designation with the district, and the designated representative must also be a resident of the district. (*Ibid.*)

Trustees are responsible for (1) making proper rules and regulations for district management, (2) the control of any district projects or works, and (3) maintenance of all works and projects within the district after they have begun. (FCWCDL, § 9.) However, no dams or reservoirs may be constructed within the district without the concurrence and approval of the board of supervisors of each county which contains land or water rights that may be damaged, infringed, or otherwise affected in any manner by the proposed work. (*Id.*, § 13.)

**c. Powers**

A flood control and water conservation district may acquire and receive land, money, and other property that may be necessary or useful for district purposes by gift, purchase, lease, contract, or any other legal means. (FCWCDL, § 7.) The district also has the power to (1) construct dams, protective barriers, and incidental works necessary to carry out flood control and flood water conservation purposes; and (2) condemn property for the purpose of constructing and protecting dams, protection barriers, and other necessary improvements. (*Id.*, §§ 7, 7.5.)

A district may make and execute all contracts required to carry out the purposes of the district. (FCWCDL, § 7.) Such a district's powers include (1) cooperating, negotiating and contracting with other flood control and water conservation districts to construct or maintain projects, (2) negotiating and contracting with the United States, the State of California, or any

other governmental agency or private corporation, firm, or individual to construct or maintain district works, and (3) perform any other incidental tasks necessary to further district purposes. (*Ibid.*)

The district has the power to receive and disburse money available for flood control and flood water conservation purposes within district boundaries, including money appropriated by the State of California and made available for those purposes. (FCWCDL, § 7.) The board of trustees also has the power to levy assessments upon lands within district boundaries in accordance with the benefits accruing to those lands to pay for district indebtedness when there are no (or insufficient) funds available to maintain, complete, or protect district projects already undertaken or completed. (*Id.*, § 11.)

## **6. Public Agency Created by Special Legislation**

If none of the options identified above are the right fit, another option is to seek special legislation that creates a new entity which can be designed to fulfill the exact needs of the Salinas River. Special legislation is generally appropriate where the area to be covered by the new district or agency has special conditions that are specific to the area and general law cannot address those. The powers granted to districts created by special legislation can be quite broad but tailored to accomplish specific goals. Below are several examples of special legislation created for various flood control entities that could be used as templates for the Salinas River.

### **a. Brannan-Andrus Levee Maintenance District Act**

The legislation designates the territory of the district as lying within three existing reclamation districts. (Brannan-Andrus Levee Maintenance District Act [Brannan-Andrus Act], Stats. 1967, ch. 910, § 4 (Deering’s Ann. Water Uncod. Acts (2024 ed.) Act 100).) The district is governed by a five-member board of directors; each director must be eligible to serve as a trustee of a reclamation district. (*Id.*, §§ 5, 6.) Three board members must be from the reclamation districts (one from each), two are to be elected at large, and all serve four-year staggered terms. (*Id.*, § 7.) District purposes are “to improve, repair, operate, maintain, construct, and reconstruct the levees, works, structures, or other facilities that provide flood control and flood protection to the area encompassed by the district” and the district has the power to do so. (*Id.*, § 9.) Additionally, the legislation provides that the district has “all of the powers and authority of a reclamation district ... .” (*Id.*, § 10.)

### **b. Sierra County Flood Control and Water Conservation District**

This legislation designated the district’s boundaries to encompass the same territory as Sierra County. (Sierra County Flood Control and Water Conservation District [Sierra County FCD], Stats. 1959, ch. 2123, § 1 (Deering’s Ann. Water Uncod. Acts (2024 ed.) Act 1220).) The Sierra County Board of Supervisors serves as the district’s board of directors. (*Id.*, § 9.)

The district's board of directors can establish zones within the district and institute projects for specific zone(s). (*Id.*, § 5.) The board appoints an advisory committee from each affected zone consisting of three people who own land within the zone. (*Id.*, § 7.) County staff support the board of directors without additional compensation. (*Id.*, § 11.)

The legislation gave the district the power to acquire, construct, maintain, and operate all storm and flood control works. (Sierra County FCD, § 3.) The district may exercise eminent domain within the county or outside of the county with the agreement of all affected counties' boards of supervisors. (*Ibid.*) The district may institute projects to finance, construct, maintain, operate, repair, or otherwise improve any work (*id.*, § 6); however, any project must be approved by voters in a special election (*id.*, § 21). The district board can levy taxes within the district as a whole or within zones. (*Id.*, §§ 18, 19.)

### **c. Siskiyou County Flood Control and Water Conservation District**

The legislation creating the Siskiyou County Flood Control and Water Conservation District (Siskiyou County Act) (Stats. 1959, ch. 2121 (Deering's Ann. Water Uncod. Acts (2024 ed.) Act 1240).) gave the district boundaries distinct from those of Siskiyou County. (Siskiyou County Act, § 1.) The Siskiyou County Act designates the Siskiyou County Board of Supervisors as the district's board of directors. (*Id.*, § 9.) The directors are required to elect a chairman to preside over meetings, and county staff supports the board without additional compensation. (*Id.*, §§ 9, 11.) The board of directors is given the power to create zones within the district and institute projects within one or multiple zones. (*Id.*, §§ 5, 6.) When the board institutes a project in one or more zones, it must appoint an advisory committee for each zone consisting of three people who own land within the zone for which they are appointed. (*Id.*, § 7.)

While the board of directors may initiate projects within the district, the board must get project approval from the voters within the particular zone or zones affected by the project. (Siskiyou County Act, § 21.) The district may levy taxes on property within the district or specific zones to pay for any interest and bonded indebtedness. (*Id.*, §§ 18, 19.)

### **B. LAFCo Formation Process**

Formation of any of the above-identified agencies requires compliance with the principal act of the district to be formed and section 56100 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. (Gov. Code, § 56000 et seq.; *id.*, § 56859.) This generally involves filing an application with the local LAFCo, its processing of the application and conducting public hearing(s), protest proceedings, and potentially an election.

Depending on the requirements of the principal act, the LAFCo process can be initiated by a petition of registered voters or landowners or a resolution of an existing district,

city council, or county board of supervisors. (Gov. Code, § 56650.) An application submitted to LAFCo must contain:

- (1) The petition or resolutions of application initiating the proposal;
- (2) A statement of the nature of the proposal;
- (3) A map and description of the boundaries of the affected territory;
- (4) Any data and information as may be required by regulation of LAFCo;
- (5) Additional data and information as may be required by the LAFCo executive officer; and
- (6) The names of the persons who are to be furnished with copies of the report by the executive officer and who are to be given mailed notice of the hearing.

(Gov. Code, § 56652.)

Additionally, the applicant must provide a “plan for providing services” which must include the following:

- (1) An enumeration of the services to be provided along with a description and justification for each service;
- (2) The level and range of those services;
- (3) An indication of when the services will be provided;
- (4) A discussion of any improvements or upgrades to structures/facilities or other conditions the new district would impose or require within its boundaries upon formation; and
- (5) Information about how improvements would be financed.

(Gov. Code, § 56653.)

Generally, within 30 days of receiving an application, LAFCo must determine whether the application is complete. (Gov. Code, § 56658 (c).)<sup>3</sup> If the application is complete and accepted, LAFCo will issue a certificate of filing to the applicant which will specify the date for a public hearing which cannot be more than 90 days after the certificate of filing is issued. (*Id.*, § 56658(c), (f), (h).) At the hearing, the commission will hear or receive oral/written protests, objections, and evidence, as well as consider the report and recommendation of the LAFCo executive officer on the application. (*Id.*, § 56666(b).) No more than 35 days after the conclusion of the hearing, the commission must adopt a resolution making determinations approving or disapproving the application without or with conditions and initiating protest proceedings. (*Id.*, §§ 56880, 56881(d).) Within 35 days of the adoption of LAFCo’s resolution approving the application, the protest hearing will be set and notice provided. (*Id.*, § 57002(a).)

---

<sup>3</sup> This time period does not apply where LAFCo is the lead agency under CEQA. (Gov. Code, § 56658 (c).) Generally, unless the formation is initiated by another government agency, LAFCo will be the lead agency for purposes of CEQA.

At the hearing, LAFCo will again hear and receive oral/written protests, objections, or evidence. (*Id.*, § 57050(b).) If a majority protest exists (i.e., greater than 50 percent), the proceedings are terminated. Depending on the type of district, the majority protest is determined by registered voters, landowner, or the assessed value of land. (*Id.*, § 57078.)

If a majority protest does not exist, LAFCo will determine whether an election is necessary. Generally, an election may be required where:

- (1) An election is required by the principal act (Gov. Code, § 56100(b).); or
- (2) At least a 25 percent protest was received during the protest hearing (see generally, Gov. Code, §§ 57092-94).

If an election is necessary, a majority of the votes cast must be in favor of the proposed formation in order for it to be successful. (Gov. Code, § 57176.) If the election is successful, the final step in the LAFCo process is the issuance and recording of the certificate of completion confirming the formation of the new district. (*Id.*, § 57200.)

## **C. Joint Powers Authority (Gov. Code, § 6500 et seq.)**

### **1. Formation**

Another option that does not require compliance with the LAFCo process described above is the formation of a joint powers authority. A joint powers authority is formed when two or more public agencies execute an agreement to jointly exercise any common power between them. (Gov. Code, § 6502.) The term “public agency” is defined broadly, and includes not just a state agency but also a county or public district. (*Id.*, § 6500.) The agreement must be authorized by the legislative or other governing bodies of the public agencies. (*Id.*, § 6502.) The agreement must state the purpose for the agreement or the power(s) to be exercised, and provide the method by which the agreement’s purposes will be accomplished or the manner in which the power(s) will be exercised. (*Id.*, § 6503.)

When a joint powers agreement (or amendment) creates a new administering agency separate from the parties to the agreement, the new entity must file two copies of a notice of the agreement or amendment with the Secretary of State within 30 days of its effective date, one of which is forwarded to the State Controller. (Gov. Code, § 6503.5.) That notice must include (1) the name of each party to the agreement, (2) its effective date, (3) a statement of the agreement’s purpose and/or powers to be exercised, and (4) a description of the amendments made to the agreement, if any. (*Ibid.*) If such notice is not made, the joint powers authority may not issue any bonds or incur indebtedness until the defect is cured. (*Ibid.*)

## **2. Governing Body**

A joint powers agreement must specify the entity that will administer and carry out the agreement. This entity may be (1) one or more of the parties to the agreement, (2) a commission or board constituted pursuant to the agreement, (3) a person, firm, or corporation (including a nonprofit), or (4) any combination thereof. (Gov. Code, § 6506.) The agreement may be for a specific term or continue until either rescinded or terminated; if the latter, the agreement must provide the method by which it may be rescinded or terminated. (*Id.*, § 6510.) The agreement must include provisions for the distribution or division of any property acquired as a result of the joint exercise of powers and that after completion of its purpose, any surplus money is to be returned in proportion to the contributions made. (*Id.*, §§ 6511, 6512.)

## **3. Powers**

The agency created by a joint powers agreement will possess the common powers specified in the agreement and may exercise them in the manner or method provided in the agreement. (Gov. Code, § 6508.) If the agency is not one or more of the parties to the agreement but instead a separate entity, then pursuant to the agreement, that agency may enter into contracts; employ agents and employees; acquire, construct, manage, maintain or operate any building, works or improvements; or acquire, hold or dispose of property or incur debts, liabilities or obligations. The agency will also have the power to sue and be sued in its own name. (*Ibid.*)