

**DRAFT 9/10/18**

**TEMPERANCE FLAT RESERVOIR AUTHORITY  
JOINT EXERCISE OF POWERS AGREEMENT**

This Joint Exercise of Powers Agreement (“**Agreement**”) is entered into by the parties on the attached Exhibit A, which are referred to in this Agreement individually as an “**Member**” and collectively as the “**Members.**”

**RECITALS**

A. Each of the Members is a public agency organized and operating under the laws of the State of California.

B. California Government Code sections 6500 – 6599.3 (the “**Joint Exercise of Powers Act**” or “**Act**”) provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties.

C. The Members desire by this Agreement to establish an independent special agency known as the Temperance Flat Reservoir Authority (“**Authority**”), that will have as its mission, to promote, develop, design, permit, finance, acquire, construct, manage, and operate a dam and reservoir at Temperance Flat and related facilities.

D. The Members each possess the powers to promote, develop, design, permit, finance, acquire, construct, manage and operate water storage and related infrastructure projects.

E. The Members each desire to exercise those powers as provided in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth in this Agreement, the Members agree as follows:

**I. DEFINITIONS**

As used in this Agreement, the following words and phrase will have the meaning set forth in this article:

- 1.1. **Agreement:** This Joint Exercise of Powers Agreement as it currently exists or as it may be amended or revised from time to time.
- 1.2. **Authority:** The legal entity established by this Agreement to be known as the Temperance Flat Reservoir Authority.
- 1.3. **Board of Directors or Board:** The governing body of the Authority as established in Article IV of this Agreement.
- 1.4. **Bylaws:** Additional requirements to those contained in the Agreement related to the construction of the Temperance Flat Reservoir; emphasizing delegations of authority, decision-making; membership types; budgeting; and cost management.

- 1.5. **Central Valley Project or CVP:** The federal reclamation project operated by Reclamation pursuant to federal reclamation law (Act of June 17, 1902 (32 Stat. 388)) and acts amendatory or supplementary thereto.
- 1.6. **Member:** An eligible public agency that is a signatory to this Agreement.
- 1.7. **Non-Member Participating Party:** An agency or entity that is not an Authority Member, but is deemed eligible by the Authority to participate by contract in certain elements of the Project. The Bylaws may provide for additional requirements for such Non-Members.
- 1.8. **Project:** The promotion, development, design, permitting, financing, acquisition, construction, management, and operation of a dam and reservoir and related facilities at Temperance Flat to be carried out pursuant to this Agreement.
- 1.9. **State Water Project or SWP:** The state water facilities defined in California Water Code section 12934(d).

## II. GENERAL PROVISIONS REGARDING THE CREATION, TERM, PURPOSES, AND POWERS OF THE AUTHORITY

- 2.1 **Creation:** Pursuant to the Act a public entity is created to be known as the Temperance Flat Reservoir Authority, which will be a public agency that is separate from the Members.
- 2.2 **Term:** This Agreement will become effective on the first day of the month after **at least two** of the initial public agencies listed on Exhibit A execute this Agreement. The Agreement will remain in effect until terminated pursuant to the provisions of Article VII [Termination].
- 2.3 **Purposes:** The purpose of this Agreement is to establish an independent joint powers authority (“**JPA**”) to exercise powers common to the Members to, among other things, effectively promote, develop, design, permit, finance, acquire, construct, manage, and operate the Temperance Flat Reservoir and all related facilities necessary or incidental to acquire, divert, store and distribute water for beneficial use as well as facilities for recreation and hydro-electric power generation.
- 2.3. **Powers:** The Authority will have the power to pursue the purposes described above and to perform all acts necessary for the exercise of such powers, including, but not limited to, the ability to:
  - 2.3.1. make and enter into contracts necessary for the full exercise of its powers;
  - 2.3.2. perform studies, environmental review, engineering and design, and if appropriate, permitting, construction of water storage facilities, and related conjunctive management;
  - 2.3.3. contract for the services of engineers, attorneys, scientists, planners, financial consultants, and other professionals or to employ such professionals as it deems necessary;
  - 2.3.4. acquire, hold, lease and dispose of any property;
  - 2.3.5. apply for, accept, and receive permits, licenses from any federal, state or local public

agency;

- 2.3.6. apply for, accept, and receive federal, state or local grants, loans, or other aid from any agency of the United States, the state or other public or private entities;
  - 2.3.7. receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity;
  - 2.3.8. issue revenue bonds and other forms of indebtedness to the extent, and on the terms, provided by the Act;
  - 2.3.9. incur debts, liabilities, and obligations;
  - 2.3.10. sue and be sued in its own name;
  - 2.3.11. adopt Bylaws, rules, regulations, and procedures, governing the operation of the Authority;
  - 2.3.12. perform all acts necessary or proper to carry out fully the purposes of this Agreement;
  - 2.3.13. exercise any independent or supplementary powers of a joint powers agency, as provided by the Act or other law.
- 2.4. Manner of Exercise of Powers: To the extent not specifically provided for in this Agreement or the Act, the Authority will exercise its powers subject to the restrictions upon the manner of exercising the powers under the laws applicable to \_\_\_\_\_ (insert name of the Member with the broadest powers).
- 2.5. No Implied Effect on Rights: Except as expressly provided in this Agreement, nothing in this Agreement may be construed as affecting the rights or obligations of the Members, including but not limited to any rights or obligations pursuant to contracts for delivery of water from the CVP or SWP.

### III. AUTHORITY MEMBERSHIP

- 3.1. Generally: Authority membership is comprised of public agencies (as defined in Section 6500 of the Act) that are authorized to be Members, including under Water Code section 79759(a) and (b) if funds are allocated to the Project under Chapter 8 of Division 26.7 of the Water Code beginning at section 79700, and are signatories to this Agreement.
- 3.2. Bureau of Reclamation: The Authority may enter into a contract or other arrangement with the Bureau of Reclamation (“**Reclamation**”) to carry out the purposes of this Agreement.
- 3.3. Department of Water Resources: If the Authority receives funding for the Project under Chapter 8 of Division 26.7 of the Water Code beginning at section 79700, the California Department of Water Resources (“**DWR**”) will be an ex officio Member of the Authority as provided in Water Code section 79759(b), but in accordance with that provision will have no control with respect to the governance, management, or operation of the Project.
- 3.4. Addition of Members: Entities authorized by law to participate in a JPA may subsequently become Members upon the unanimous vote of all Members and the new Member’s

execution of this Agreement, as it may be amended. An entity requesting to become a Member must provide certification of compliance with the membership requirements of this Agreement and the Bylaws. The entity requesting to become a Member may represent a group of other entities. Terms and conditions for a new Member's participation in the Authority, if any, will be set forth in an amendment to this Agreement or in the Bylaws. Such terms and conditions must be consistent with this Agreement and any contracts, resolutions, or indentures of the Authority then in effect.

- 3.5. Membership Types: The Board may approve the creation of different types of memberships that may include governmental agencies, public agencies, or private entities, with respect to the funding and financing of the different elements of the Project. The creation of any additional membership types will be defined in the Bylaws. Admission of non-Members will be upon the affirmative vote of at least seventy-five percent (75%) of the total number of Members.

#### IV. GOVERNANCE AND INTERNAL ORGANIZATION

- 4.1. Board of Directors: The governing body of the Authority is a Board of Directors ("**Board**") that will conduct all business on behalf of the Authority consistent with this Agreement and applicable law. The Board consists of one representative of each Member. To remain in an active status, each Member having representation on the Board must be in "Good Standing" as defined in the Bylaws.
- 4.2. Exercise of Authority: All the power and authority of the Authority will be exercised by the Board subject to the rights reserved by the Members as set forth in this Agreement; provided, however, that the Board may delegate such powers and authority to the Chair or Chief Executive Officer as the Board may determine by motion, resolution or ordinance. The Board may also appoint and delegate such powers and authority to such committees as the Board may determine by motion, resolution or ordinance.
- 4.3. Directors and Alternates:
- 4.3.1. Each Member must appoint a Director to the Board. Each Member must also appoint at least one Alternate Director to the Board. The role of the Alternate Director will be to assume the duties of a Member's Director in case of the absence or unavailability of such Director.
- 4.3.2. The Directors and Alternate Directors must be directors or members of the governing body of the Member agency, or employees [or contractors] of the Member he or she represents.
- 4.3.3. Directors and Alternates both serve at the pleasure of the governing body of their respective Member agency. Authority Member agencies must communicate their initial Director and Alternate selections, and any subsequent changes in representatives, to the Authority in writing and include a certified copy of the resolution of the governing body, minutes of the relevant meeting, or other formal documentation evidencing the appointment.
- 4.3.4. Should a Director who is also an officer of the Board not be in attendance at a meeting, the Member's Alternate Director may not assume the duties of such officer. Should the Chair be absent, the Vice Chair will assume the Chair's responsibilities until the Chair is present, and if both are absent the Board may appoint a temporary Chair.

- 4.3.5. A Director and Alternate Director office will be declared vacant if the person serving dies, resigns, the Member for which the Director or Alternate Director serves withdraws from this Agreement, the membership of the Member for which the Director or Alternate Director serves is terminated, or whenever, at the discretion of the particular Member, the Director or Alternative Director is incapable of serving. Upon the Director office becoming vacant, the Alternate Director, if the office is not vacant, will serve as Director, until the Member appoints a new Director or Alternate, as applicable.
- 4.4. Meetings: The Board must hold at least one regular meeting per year, and may hold regular or special meetings at more frequent intervals. All meetings of the Board will be called, held, noticed, and conducted subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950 and following).
- 4.5. Quorum: A majority of the total number of Directors will constitute a quorum.
- 4.6. Voting:
- 4.6.1. Each Member agency is only entitled to have one vote, either by its Director or the Alternate, at a meeting of the Board.
- 4.7. Officers: The officers of the Authority will be a Chair, Vice Chair, Treasurer and Secretary.
- 4.7.1. Chair; Vice Chair. The Board will select, from among the Directors, a Chair, who will be the presiding officer for all Board meetings, and a Vice Chair, who will preside in the absence of the Chair.
- 4.7.2. Treasurer. The Board, or its designated representative, will contract either with an independent certified public accountant or the treasurer or chief financial officer of any Member, to serve as Treasurer of the Authority. The Treasurer will be the depository of and have custody of funds, subject to the requirements of Government Code sections 6505-6505.6. The Treasurer will have custody of all money of the Authority from whatever source and will perform the duties specified in Government Code section 6505.5. The Treasurer will be bound in accordance with Government Code section 6505.1 and will pay demands against the Authority that have been approved by the Board.
- 4.7.3. Secretary. The Board will also select a Secretary, who will be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority. The Board may combine the positions of Secretary and Treasurer.
- 4.7.4. The Bylaws may further address the duties, responsibilities and administrative requirements for the respective officers.
- 4.7.5. Chief Executive Officer. The Board may appoint a Chief Executive Officer or assign staff of one or more Members to conduct the business of the Authority in accordance with the policies of the Board; provided that no Member's staff will be so assigned without the consent of that Member. The Chief Executive Officer will serve at the pleasure of the Board and may be an employee or a contractor of the Authority.
- 4.7.6. General Counsel. The Board may retain general counsel, who reports to the Board and serves at the pleasure of the Board.

- 4.7.7. **Staff.** The Authority may employ such full-time and part-time employees, assistants and independent contractors as may be necessary from time to time to accomplish the purposes of the Authority.
- 4.8. **Bylaws:** At, or as soon as practical after, the first meeting of the Board of Directors, the Board will approve the Bylaws of the Authority to govern the day-to-day operations of the Authority. The Board may adopt such other policies, rules and regulations for the conduct of its affairs as may be necessary for the purposes of this Agreement in a manner consistent with this Agreement and the Bylaws.
- 4.9. **Liability of Authority, Officers, and Employees:** The Directors, officers, and any employees of the Authority must use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Director, officer, employee or agent will be responsible for any act or omission by another Director, officer, employee, or agent. As further set forth in Section 5.10, the Authority will indemnify, defend, and hold harmless the individual Directors, officers, employees, and agents of the Authority for any action taken within the course and scope of their duties while acting on behalf of the Authority pursuant to this Agreement. The Authority may purchase such insurance as the Board may deem appropriate for this purpose. Nothing in this section may be construed to limit the defenses available under the law, to the Members, the Authority, or its Directors, officers, employees, or agents.

## V. FINANCIAL PROVISIONS

- 5.1. **Fiscal year:** The fiscal year will [run concurrent with the calendar year] [be July 1 through June 31], unless the Directors decide otherwise and will also apply to any Project Agreements.
- 5.2. **Depository:** All funds of the Authority will be held in separate accounts in the name of the Authority and not commingled with the funds of any Member or any other person or entity. Regular reports will be made as directed by the Board, but at least quarterly, to the Board of all receipts and disbursements. The books and records will be open to inspection by the Board and individual Directors upon reasonable notice.
- 5.3. **Budgets:** A draft budget will be prepared for the Member agencies to review at least 45 days before the beginning of the Authority's next fiscal year. The Board will approve the budget no later than 15 days before the beginning of the fiscal year. The budget must include:
- 5.3.1. General and administrative costs for the general operation and administration of the Authority. These costs do not include any costs incurred by the Authority directly as a result of a specific Project Agreement as described in Article VI.
- 5.3.2. Project specific costs will be fully described and specified in a Project Agreement. The Board will ensure that all costs incurred by the Authority directly relating to any specific project will be paid only by the parties to the Project Agreement and will not be paid for by the Authority as general and administrative costs. The Bylaws may include additional requirements and criteria for such costs.
- 5.4. **Initial Contributions:** Upon formation of the Authority, each Member will make an admission contribution of \$ [redacted] for the purpose of funding anticipated

operation and administrative expenses for the initial [REDACTED] months of operation of the Authority.

5.5. Recovery of General and Administrative Costs:

5.5.1. The Board may assess each Member for the general and administrative costs to operate the Authority. Payments of public funds may be made to defray the costs incurred in carrying out such purposes, and advances of funds may be made for use in doing so, to be repaid as provided in this Agreement. Personnel, equipment or property of one or more of the Members may be used in lieu of other contributions or advances, upon Board approval, and will be treated as a contribution from that Member.

5.5.2. General and administrative costs incurred by the Authority in carrying out its purposes, as described in Section 5.3.1, will be shared by the Members as determined by the Board.

5.5.3. The Authority will periodically, as necessary, issue an invoice to each Member reflecting the expenses attributable to that Member in accordance with this Agreement or the applicable Project Agreement, respectively. The Authority must receive payment within 60 days of the date listed on the invoice. Delinquent sums will bear interest at a rate established in the Bylaws, which may include additional requirements.

5.5.4. Upon request of any Member, the Authority will produce and allow the inspection of all documents relating to the computation of expenses attributable to the Members under this Agreement. If a Member does not agree with the amount listed on the invoice, it must make full payment and provide a cover letter accompanying payment to the Authority specifying the amount in dispute and providing a detailed explanation of the basis for the dispute. The Authority will advise the disputing Member of the Authority's determination within 30 business days.

5.6. Recovery of Project Agreement Costs: Each Project Agreement will specify the requirements for recovery of costs.

5.7. Auditor; Audit: An auditor will be chosen annually by, and serve at the pleasure of, the Board. The auditor will make an annual audit of the accounts and records of the Authority. A report will be filed as a public record with the auditor of the county where the Authority is domiciled, consistent with Section 6505 of the Act, and with each agency or entity that is a Member, and to any public agency or person in California that submits a written request to the Authority.

5.8. Bonds: The Board may, from time to time, designate the officers or other persons who have charge of, handle, or have access to any property of the Authority and will require such officers or persons to file an official bond, at the Authority's expense, in an amount to be fixed by the Board.

5.9. No Authority Member Liability: As provided by Government Code section 6508.1, the debts, liabilities, and obligations of the Authority will be the debts, liabilities, and obligations of the Authority only, and not of the individual Members.

- 5.10. Indemnity: Funds of the Authority may be used to defend, indemnify and hold harmless the Authority, each Member, each Director, and any officers, agents and employees of the Authority for their actions taken within the course and scope of their duties while acting on behalf of the Authority, including pursuant to a Project Agreement . Other than for gross negligence or intentional acts, the Authority will indemnify and hold harmless each Member, its officers, agents and employees from and against all claims, demands, or liability, including legal costs, arising out of or are encountered in connection with this Agreement and the activities conducted in performance of this Agreement and will defend each of them against any claim, cause of action, liability, or damage resulting therefrom. The Directors, officers, employees, agents and volunteers of the Authority will be entitled to defense and indemnification by the Authority as provided under Government Code title 1, division 3.6, part 2, chapter 1, article 4 (commencing with Section 825) and title 1, division 3.6, part 7 (commencing with section 995). The indemnification and hold harmless provisions of this section apply in lieu of the right of contribution provisions at Government Code Sections 895-895.8. The provisions of California Civil Code section 2778 regarding the interpretation of indemnity provisions are made a part of this Agreement.

## VI. PROJECT AGREEMENTS

- 6.1. General: The Authority intends to carry out many of the purposes of this Agreement through projects that are consistent with the purposes of the Authority as described in this Agreement. Funding and participation in certain projects undertaken by the Authority will be governed by a "**Project Agreement**". The Authority may undertake all or any portion of each project on its own or it may enter into agreements with the State of California, the United States, or any other public or private entity.
- 6.2. Parties to Agreement: Prior to undertaking a project, the Members and any Non-Member Participating Parties electing to participate in the project must enter into a Project Agreement. No Member will be required to be involved in a Project Agreement.
- 6.3. Project Agreement: All assets, rights, benefits, and obligations attributable to the project will be assets, rights, benefits, and obligations of those Members and Non-Member Participating Parties that have entered into the Project Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Authority in regard to a particular project will be the debts, liabilities, obligations, and indebtedness of the Members and Non-Member Participating Parties who have executed the respective Project Agreement and will not be the debts, liabilities, obligations or indebtedness of the Members and Non-Member Participating Parties that have not executed the Project Agreement, nor of the Authority. The Bylaws may provide additional requirements regarding the implementation of each Project Agreement.

## VII. TERMINATION, WITHDRAWAL, AND SUSPENSION

- 7.1. Termination:
- 7.1.1. Mutual Termination. This Agreement may be terminated by the mutual agreement of at least seventy-five percent (75%) of the total number of the boards or governing bodies of the Member agencies in writing.
- 7.1.2. Termination of a Member by the Authority. This Agreement may be terminated with respect to any Member upon the affirmative vote of all Directors less one. Prior to



any vote to terminate this Agreement with respect to a Member, written notice of the proposed termination and the reason(s) for such termination will be presented at a regular Board meeting with opportunity for discussion. The Member subject to possible termination will have the opportunity at the next following regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote. If a Member is terminated, that Member will be responsible for its proportionate share of any costs incurred by the Authority up to the date of termination.

7.2. Member Voluntary Withdrawal from Authority:

- 7.2.1. Any Member may unilaterally withdraw from the Authority by giving at least 180 days written notice of its election to do so, which notice will be given to the Authority and each Member; provided that such withdrawal does not in any way impair any contracts or obligations of the Authority then in effect. Prior to withdrawal or as soon as an accounting can be completed, the withdrawing Member must pay its proportionate share of (1) general and administrative costs, described in Section 5.5, budgeted and approved prior to the effective date of withdrawal and (2) any multi-year contract entered into by the Authority while it was a member unless the remaining Members agree to assume the withdrawing Member's obligations. The withdrawing Member will also be responsible for its share of any claims, demands, damages, or liability arising from this Agreement through the date of withdrawal.
- 7.2.2. Any Member that withdraws within the 30-day period described in Section 8.1 will only be liable for its share of any claims, demands, damages, or liability arising from this Agreement through the date of withdrawal.
- 7.2.3. With respect to a particular project, and subject to the terms of the applicable Project Agreement, the withdrawing Member will be responsible for its share of all costs, expenses, advances, contractual obligations, and other obligations, including bonds, notes or other indebtedness issued by the Authority while such withdrawing entity was a party to a Project Agreement. The remaining parties to a Project Agreement will have the option of discontinuing a project and/or acquiring the interests of the withdrawing party, as may be more particularly described in the Project Agreement. If the remaining Members to a Project Agreement under Article VI decide to terminate the Project Agreement, any remaining funds will be allocated pursuant to the terms of the Project Agreement and the costs will be allocated to all parties as described in the Project Agreement, including the withdrawing party.
- 7.3. Withdrawal by Operation of Law: Should the participation of any Member be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, such Member must withdraw no later than the date such determination becomes final and must pay its proportionate share of the matters set forth in Section 7.2.1.
- 7.4. Disposition of Assets Upon Termination: Upon termination of this Agreement, any surplus money or assets in the possession of the Authority for use under this Agreement, after payment of liabilities, costs, expenses and charges incurred under this Agreement, will be returned to the then-existing Members in proportion to the contributions made by each. The Board of Directors will first offer the properties, works, rights and interests of the Authority for sale to Members. If not such sale is not consummated or only partially consummated, the Board of Directors will offer to sell the properties, works, rights and interests of the

Authority to any public utility, governmental agency, or other entity or entities for good and adequate consideration. The Authority will have the power to consummate such sales and the net proceeds from the sales will be distributed among the Members in proportion to their contributions.

## VIII. MISCELLANEOUS PROVISIONS

- 8.1. Amendment of Agreement: This Agreement may be amended only by an affirmative vote of at least seventy-five percent (75%) of the boards of the Member agencies; provided, however, this Agreement may not be amended to terminate the participation of a Member without the affirmative vote of all boards of the Member agencies less one. The Authority will provide notice to all Members of amendments to this Agreement, including the effective date of such amendments. To provide non-concurring Members an opportunity to withdraw from the Authority, no amendment will be effective until at least 30 days after the required concurrence has been obtained and notice provided to all Members.
- 8.2. Adoption and Amendment of Bylaws: The Bylaws may be adopted or amended only by an affirmative vote of at least seventy-five percent (75%) of the total number of Directors. The Authority will provide notice to all Members of amendments to the Bylaws, which includes the effective date of such amendments.
- 8.3. Assignment: Except as otherwise expressed in this Agreement, the rights and duties of the Members may not be assigned or delegated without the advance written consent of all the other Members, and any attempt to assign or delegate such rights or duties in contravention of this section will be null and void. This Agreement inures to the benefit of, and is binding upon, the successors and assigns of the Members. This section does not prohibit a Member from entering into an independent agreement with another agency, person or entity regarding the funding or financing of that Member's contributions to the Authority, or the disposition of the proceeds which that Member receives under this Agreement, so long as the independent agreement does not affect or purport to affect, the rights and duties of the Authority or the Members under this Agreement.
- 8.4. Severability: If one or more clauses, sentences, paragraphs or provisions of this Agreement is held to be unlawful, invalid or unenforceable, the remainder of the Agreement will not be affected. Such clauses, sentences, paragraphs or provisions will be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.
- 8.5. Complete Agreement; Counterparts: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement. This Agreement may be executed in any number of counterparts and upon execution by all Members, each executed counterpart will have the same force and effect as an original instrument and as if all Members had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but have attached to it one or more signature pages. Facsimile and electronic signatures will be deemed valid and binding.
- 8.6. Authority Members to be Served Notice: Any notice authorized to be given pursuant to this Agreement will be validly given if served in writing either personally, by facsimile, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (i) personally or by courier service will be

conclusively deemed received at the time of delivery and receipt; (ii) by mail will be conclusively deemed given 48 hours after the deposit thereof if the sender returns the receipt; and (iii) by facsimile, upon receipt by sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety and received at the recipient's facsimile number. All Notices will be sent to the addresses listed in Exhibit A to this Agreement.

- 8.7. Dispute Resolution: Any dispute between or among the Members arising out of this Agreement that cannot be resolved following written notice to the Member or Members of the basis of the dispute and the proposed resolution and a reasonable opportunity for such Member or Members to cure or remedy the dispute, will be submitted to mediation. The mediator will be selected by mutual agreement. If the matter cannot be resolved through mediation, or the Members cannot agree upon a mediator, then the matter will be submitted to arbitration in accordance with the provisions of the California Arbitration Act (California Code of Civil Procedure section 1280 and following).

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES of the Members have executed this Agreement as of the date shown below:

DRAFT

# **TEMPERANCE FLAT RESERVOIR AUTHORITY**

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## **BYLAWS**

**Adopted: \_\_\_\_\_ 2018**

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**BYLAWS OF THE  
TEMPERANCE FLAT RESERVOIR AUTHORITY**

**ARTICLE I. AUTHORITY POWERS**

All powers for the management, government and control of the Temperance Flat Reservoir Authority (“**Authority**”) and its affairs, not conferred on any other person, office or official by law, the then-current Joint Exercise of Powers Agreement (“**Agreement**”), or these Bylaws are reserved in the Board of Directors of the Authority to the maximum extent permitted by law. Unless otherwise defined in these Bylaws, all initially capitalized words and phrases will have the definition set forth in the Agreement. In the event one or more provisions of these Bylaws conflicts with any portion of the Agreement, the Agreement will control.

**ARTICLE II. OFFICE**

The principal office for the transaction of business of the Authority is \_\_\_\_\_, California, \_\_\_\_\_. The Board of Directors (“**Board**”) may change the principal office of the Authority if necessary.

**ARTICLE III. MEETINGS**

Section 1. COMPLIANCE WITH BROWN ACT.

All meetings of the Board and every committee subject to the Ralph M. Brown Act (California Government Code section 54950 and following)(“**Brown Act**”) will be called, held, noticed and conducted according to the provisions of the Brown Act. All meetings of the Board and every committee subject to the Brown Act are open to the public. All Authority committees subject to the Brown Act must comply with the applicable provisions of this Article III, with regard to conducting their meetings.

Section 2. ANNUAL MEETING.

The Authority may hold an annual meeting on a date determined by the Board of Directors.

Section 3. REGULAR MEETINGS.

Except as otherwise determined by the Board, the Board will hold a regular meeting on \_\_\_\_\_ of each month at a location set by the Board starting at \_\_\_\_\_. The Board will cause an agenda for its meetings to be posted in accordance with all applicable requirements of the Brown Act.

Section 4. CHANGE OF TIME AND PLACE OF REGULAR MEETINGS.

The Board, by majority vote recorded and entered in its minutes, may change the place, date, and time of the regular meetings at any time.

Section 5. ADJOURNED MEETINGS.

The Board, or any members of the Board if less than a quorum, may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment in accordance with Government Code section 54955.

Section 6. SPECIAL MEETINGS.

Special meetings of the Board may be called at any time by the Chair of the Board ("**Chair**"), the Vice Chair of the Board ("**Vice Chair**") in the absence of the Chair, or by a majority of the Board by delivering written notice personally or by any other permitted means to each member of the Board in accordance with Government Code section 54956. The written notice may be dispensed with as to any member of the Board who, prior to the time the meeting convenes, files with the Secretary a written waiver of notice or as to any Director who is actually present at the meeting at the time it convenes. The written notice must also be given personally or by any other permitted means to each local newspaper of general circulation, radio or television station requesting notice in writing and must be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice must specify the time and place of the special meeting and the business to be transacted or discussed. No other business may be considered at such special meeting.

The agenda and its posting, and the conduct of the special meeting must comply with all applicable provisions of the Brown Act with respect to special meetings, specifically Government Code section 54956.

Section 7. CLOSED SESSIONS.

The Board may enter into a closed session during a regular, adjourned regular, special or adjourned special meeting to consider matters as may lawfully be considered in such sessions. Prior to any closed session, the item(s) to be discussed will be disclosed and only those matters covered in such disclosure may be considered in such closed session. Disclosure may take the form of a reference to the item(s) as listed by number or letter on the agenda. Due to the fact that the national and state water, environmental, and political issues are so complex, the Board may find that the participation of the Authority's Directors and their Alternates in closed sessions of the Board meetings is essential in order to allow the Alternate Directors to be able to keep abreast of these matters so that they may vote meaningfully upon issues presented at meetings when they are called on to do so. After a closed session, the Board will report publicly, orally or in writing, any action taken in closed session required to be disclosed, as well as the vote or abstention of every Director present as provided by law.

Section 8. CONDUCT OF MEETINGS.

The Chair, or in his or her absence the Vice Chair, will preside at and conduct all meetings of the Board. In the absence of the Chair and Vice Chair at any meeting where a quorum is present, the Board will appoint a director as the Chair Pro Tempore, who will preside at the meeting.

Any Director abstaining from a vote will be counted for purposes of determining the existence of a quorum, but will not be deemed to be voting.



## ARTICLE IV. DIRECTORS AND OFFICERS

### Section 1. QUALIFICATIONS.

Each Member of the Authority will be responsible for selecting its own representative(s) on the Board of Directors of the Authority; provided, however, that such representative must be either an elected official of the Member or an employee **or agent (which includes consultants and contractors)** of the Member.

### Section 2. DUTIES.

The Board and the officers and employees of the Authority will perform all duties established by California law, the Agreement and these Bylaws, and will at all times comply with the Constitution and the laws of the State of California.

### Section 3. GOOD STANDING.

In order to actively participate on the Board and any committee, each Member is required to comply with the following conditions to be in “**Good Standing**”: (a) comply with the terms of the Agreement and these Bylaws as well as the policies and procedures the Board may adopt; (b) provide time payment of the Member’s pro-rata share of Authority costs; and (c) comply with the terms of any Project Agreement the Member has executed.

### Section 4. OFFICERS.

The officers of the Authority Board will be the Chair, Vice Chair, a Secretary, and a Treasurer. The Chair and Vice Chair are required to be directors. No one person may hold more than one office.

### Section 5. CHAIR.

The Chair will preside at all meetings of the Board. The Chair will be an ex-officio member of all Authority standing committees but will not be entitled to participate in the votes of any committee unless the committee has a tie. The Chair will have the right to vote on all matters coming before the Board and will have only one vote, just as the other Board members. The Chair will ensure engagement of Directors and that clear policy direction is provided to Authority staff and agents, consistent with the positions taken by the Board. The Chair is responsible for leadership, control, and content of Board meetings, and the Chair will enforce protocol at meetings, such as designating who can speak and when. As authorized by the Board or these Bylaws, the Chair is empowered to represent the Authority at all times, consistent with Board policy. The Chair will work with the Chief Executive Officer, if any, to ensure that Board policy and directions are implemented. The Chair also will have such other powers and duties as may be prescribed by the Board or these Bylaws.

### Section 6. VICE CHAIR.

In the absence or disability of the Chair, the Vice Chair will perform all the duties of the Chair and when so acting will have all the powers of, and be subject to all the restrictions upon, the Chair. The Vice Chair will have such other powers and perform such other duties as may from time to

time be prescribed by the Board or these Bylaws. The Vice Chair will have the right to vote on all matters coming before the Board and will have only one vote, just as the other Board members. As authorized by the Board or these Bylaws, the Vice Chair will have the authority to act on behalf of the Authority.

Section 7.      TREASURER.

Treasurer will be the depository and have custody of all money of the Authority from whatever source, subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. The Treasurer will perform or cause to be performed the duties specified in Government Code section 6505.5. The Treasurer will cause the Authority to contract with a certified public accountant to make an annual audit of the accounts and records of the Authority which will be conducted in compliance with Government Code section 6505 and a copy of such audit be distributed in accordance with applicable law. Except as delegated by the Board, the Treasurer will have no authority to act on behalf of the Authority without Board approval.

Section 8.      SECRETARY.

The Secretary will keep, at the principal office of the Authority, or such other place as the Board may order, a record of all proceedings had at meetings of the Board. Such record will include the time and place of the meetings, whether regular or special, and if special, how authorized, the notice given, the names of those present at the meetings, and the proceedings of the meeting. The Secretary will cause to be filed all documents pertaining to the Authority's affairs at the office of the Authority and such records will be open to inspection at all times by any person. The Secretary will give, or cause to be given, notice of all meetings of the Board and committees of the Authority as required by California law or these Bylaws, and she/he will keep the seal of the Authority (if any) in safe custody and will have such other powers and perform such other duties as may from time to time be prescribed and required by the Board or the Bylaws. Except as delegated by the Board, the Secretary will have no authority to act on behalf of the Authority without Board approval.

Section 9.      ELECTION OF OFFICERS.

9.1. Initial Election. The Chair, Vice Chair, Secretary, and Treasurer will be chosen at the first Board meeting beginning in 2018. Their term of office will be for **two years** starting in the **January** following their election and each will hold office until he or she resigns, is removed, or is otherwise disqualified to serve, or until his or her successor is elected and qualified to serve.

9.2. Selection of New Officers and Replacements. Beginning in December 2020, the Board will select new officers who will serve a term of two years starting the following January. If any officer resigns or otherwise fails to complete the remainder of his or her term, the Board will nominate a candidate to stand for election to serve out the remainder of that officer's term of office to be voted on at the next Board meeting following the event ending the officer's term of service.

Section 10.      COMPENSATION OF OFFICERS.

10.1. Directors. Unless otherwise provided by a resolution adopted by the Board, no Director will receive compensation from the Authority for his or her attendance at meetings of the

Board or any committee or for any other services rendered as a Director. The amount of any Director compensation provided under any resolution adopted by the Board may not exceed the amount permitted by law for each day's attendance at meetings of the Board and for each day's service rendered as a Director by request of the Board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of duties required or authorized by the Board.

10.2. Secretary and Treasurer. Unless otherwise determined by the Board, the Secretary and Treasurer of the Authority will serve without compensation, other than to receive such allowance as may be authorized by the Board from time to time to cover expenses incurred by the Secretary and Treasurer in the performance of his or her duties on behalf of the Authority.

Section 11. BONDS OF OFFICERS.

The Board may require a bond in an amount to be determined by the Board for any Board officer. The premium for any such bond will be paid by the Authority.

Section 12. REMOVAL OF OFFICERS.

The Board may remove any officer, with or without cause, at any regular or special meeting of the Board by concurrence of 75% of the Directors of the Authority present and voting on such matter.

**ARTICLE V. COMMITTEES**

Section 1. FORMATION AND STAFFING.

The Board may establish any standing or ad hoc committees it deems necessary to carry out the purposes of the Authority. All committees and their members serve at the pleasure of the Board and may be reconstituted, re-formed, reconfigured or disbanded at any time at the discretion of the Board. Every Authority committee will be comprised of an odd number of members and will be chaired by a Director. Every Authority committee will be advisory to the Board, and the power to determine the Authority's course of action will remain with the Board.

The chair of each committee will be responsible for leadership, control and content of committee meetings. Every committee will also have a vice chair. The Chair of the Board will ensure that each committee has adequate Authority staff or contractors to support each committee's work effectively and to communicate with the Board and the Members.

Section 2.      PURPOSE.

At the time the Board establishes a committee, and thereafter from time-to-time, the Board will establish the purposes of the committee, designate whether it is a standing or ad hoc committee, and identify the reporting requirements of the committee to the Board. At the time the Board establishes a committee, the Board may also establish the frequency of the meetings of the committee, but if it does not do so, the committee itself will set its own meeting schedule.

Section 3.      SELECTION OF COMMITTEE MEMBERS AND TERMS.

The Chair of the Board will appoint members of all committees, subject to approval of the Board. Unless otherwise determined by the Board when a standing committee is established, the terms for each standing committee member will end on the same Board meeting in which officers are regularly required to be elected.

If any committee member resigns, or otherwise fails to complete the remainder of his or her term, the Chair of the Board will nominate candidate(s) to stand for election to serve out the remainder of that member's term of office to be voted on at the next Board meeting. Nominations of additional candidates will be taken from the Board at the time of consideration of the appointment.

At all times, the number of Directors participating in a committee meeting must be less than a majority of the Members of the Authority; however, in accordance with the Brown Act, other Directors may attend committee meetings provided that they act only as observers.

Section 4.      VOTING.

Each committee member will have one vote. The committee member must be present at a meeting in order to vote. There will be no proxy or absentee voting on Authority committees. Committee recommendations will be determined by a majority vote of the committee members present and voting at the meeting.

Section 5.      COMMUNICATION AND STAFF COORDINATION.

All recommendations and minutes of every committee will be presented in writing to the Board. Committees and Authority staff or contractors will coordinate meeting schedules and work efforts to allow the maximum time possible for preparation and distribution of committee reports and recommendations before their presentation to the Board. If a committee is to prepare a written report containing recommendations or otherwise make recommendations to the Board, those recommendations will be clearly and concisely stated, with supporting facts and analyses.

**ARTICLE VI. EMPLOYEES AND AGENTS**

Section 1.      AUTHORITY TO EMPLOY STAFF AND AGENTS.

The Board may employ and appoint such employees and agents (including consultants and contractors) as the business of the Authority may require. Each such employee or agent will have such authority and perform such duties, and receive such compensation, as the Board may from

time-to-time determine is appropriate to advance the interests of the Authority. The Board reserves the right to change an employee's or agent's job duties at any time.

**Section 2. CHIEF EXECUTIVE OFFICER.**

If engaged, the Chief Executive Officer of the Authority will, subject to the control and policy direction of the Board, have general supervision, direction and control of all aspects of the administration and operations of the Authority, including regulatory and environmental matters that may impact the Authority's interests; development and management of the Authority's budget; and compliance with all laws and regulations. If a Chief Executive Officer is engaged, the primary responsibility for such position will be ensuring that the Board's policy direction is implemented.

The Chief Executive Officer will communicate with the Chair of the Board between Board meetings, attend all Board meetings, ensure that the Board and the Members are kept educated on pertinent issues, and make recommendations to the Board as appropriate.

Except as the Board otherwise reserves these powers for itself, the Chief Executive Officer will supervise and direct all Authority staff and has the power to hire and terminate Authority employees and to direct their work and the work of the Authority's agents.

The Chief Executive Officer reports to the Board and serves at the pleasure of the Board.

**Section 3. COMPENSATION OF EMPLOYEES AND AGENTS.**

The Board may compensate the Authority's employees with such salaries and benefits as may be fixed by the Board consistent with applicable law and will also establish by contract the compensation for all agents of the Authority.

**Section 4. BONDS OF EMPLOYEES.**

The Board may require a bond in an amount to be determined by the Board for any employee. The premium for any such bond will be paid by the Authority.

**ARTICLE VII. DISCLOSURE OF CLOSED SESSION INFORMATION**

The Directors, including any staff of a Member, that attend a closed session of the Board or any committee may disclose information obtained in a closed session that has direct financial or liability implications for that Member agency to the following individuals: (a) legal counsel of that Member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member; and (b) other members of the legislative body of the Member present in a closed session of that Member agency.

**ARTICLE VIII. AMENDMENT OR REPEAL OF BYLAWS**

These Bylaws may be repealed or amended or new Bylaws adopted by the vote of 75% of a quorum of the Board present and voting. Any Director abstaining from a vote will be counted for purposes of determining the existence of a quorum, but will not be deemed to be voting.

**ARTICLE IX. SAVINGS CLAUSE**

Should any provision of these Bylaws be inconsistent with the laws of the State of California, such laws (and not these Bylaws) will govern and these Bylaws will be interpreted to be consistent with such laws.

Adopted on \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
, Chair of the Board