

**JOINT POWERS AGREEMENT  
FOR FORMATION OF THE EL DORADO WATER AND POWER AUTHORITY  
AMONG  
EL DORADO COUNTY, EL DORADO COUNTY WATER AGENCY,  
EL DORADO IRRIGATION DISTRICT, AND  
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT**

THIS AGREEMENT is made and entered into pursuant to the Joint Exercise of Powers Act (Government Code section 6500 et seq.) by and among the County of El Dorado, a political subdivision of the State of California ("COUNTY"), the El Dorado County Water Agency, a body politic and corporate pursuant to Water Code, Appendix Section 96-1 et seq. ("WATER AGENCY"), the El Dorado Irrigation District, an irrigation district under the laws of the State of California ("EID"), and the Georgetown Divide Public Utility District, a public utility district under the laws of the State of California ("GDPUD").

**RECITALS**

This Agreement is made with reference to the following facts:

A. Pursuant to Title I, Division 7, Chapter 5 of the Government Code and commonly known as the Joint Exercise of Powers Act, commencing with Government Code section 6500 et seq., two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties.

B. The WATER AGENCY Board of Directors is comprised of Board members appointed by the COUNTY and members duly appointed by the participating districts, EID, GDPUD, Grizzly Flats Community Services District, Tahoe City Public Utility District, and South Tahoe Public Utility District.

C. COUNTY, EID, GDPUD and WATER AGENCY (on its own behalf and as representative or other organizations) are each authorized to, and/or are currently participating in the administrative proceedings for the Federal Energy Regulatory Commission relicensing of the SMUD Upper American River Project, FERC Project 2101, including the Alternative License Process (hereinafter referred to as the "SMUD UARP proceedings").

D. COUNTY, EID, WATER AGENCY, and GDPUD have determined it is in the best interests of the participants, their constituents, and the citizens of the County of El Dorado to form and participate in a joint powers agency in relation to water supply, socioeconomic, and power issues that arise within or contemporaneously with the SMUD UARP proceedings in order to identify all of the benefits and burdens of having the SMUD Upper American River Project located within the El Dorado County watershed inclusive of socioeconomic interests, water supply issues, power

generation, etc., and have these benefits and burdens considered and resolved as part of the SMUD UARP proceedings or contemporaneously therewith.

FOR, AND IN CONSIDERATION OF THE ABOVE, IT IS HEREBY EXPRESSLY AGREED BY THE PARTIES THAT:

### **ARTICLE I: DEFINITIONS**

**Section 1.** The following definitions shall apply to the provisions of this Agreement:

- a. "Authority" shall mean the El Dorado Water and Power Authority, a joint exercise of powers authority created by this Agreement.
- b. "Board of Directors" or "Board" shall mean the governing body of the Authority.
- c. "Party" shall mean the COUNTY, WATER AGENCY, EID, or GDPUD, respectively.
- d. "Contribution" shall mean the sum of a Party's deposit and additional deposits determined in the Authority's annual budget.

### **ARTICLE II: CREATION OF THE AUTHORITY**

**Section 1.** There is hereby created the El Dorado Water and Power Authority to exercise powers and take actions in the manner set forth in this Agreement. The Authority shall be a public entity separate from the Parties. The exercise of any power or the carrying out of any act under this Agreement shall comply with the applicable laws of the State of California. The principal office of the Authority shall be located at the WATER AGENCY offices located at 3932 Ponderosa Road, Suite 200, Shingle Springs, California 95682.

### **ARTICLE III: PURPOSES**

**Section 1.** This Agreement is made to provide for the joint exercise of powers common to the Parties as conferred by the laws of the State of California, regarding water supply, socioeconomic, and power issues that arise in or contemporaneously with the SMUD UARP proceedings. Each Party is empowered by the laws of the State of California to participate in the SMUD UARP proceedings and to negotiate settlements of protection, mitigation and enhancement measures (the "PM&E's") as well as other issues that have arisen or will arise therein or contemporaneously therewith. The Authority is created to coordinate the exercise of those powers in a unified manner, to foster communications among the Parties of the issues that arise in the SMUD UARP proceedings or contemporaneously therewith, and to minimize the burdens of the SMUD Upper American River Project while maximizing its benefits for the Parties, their constituents, and the El Dorado County community as a whole.

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It is recognized that the Parties individually are participants in the SMUD UARP proceedings, and signatories to certain communications and negotiation protocols. As a consequence, any proposals, settlement offers, and/or negotiated settlement agreements involving the Authority will require separate approval of the affected Parties' governing boards.

#### **ARTICLE IV: POWERS OF AUTHORITY**

**Section 1.** The Authority, in its own name, shall have the powers to do all acts necessary and convenient for the exercise of the purpose and goals of the Agreement that each of the Parties could do separately. The Authority's power shall include but not be limited to the following:

- a. To make or enter into contracts with legal counsel and/or consultants as may be necessary or convenient to carry out the purposes of the Agreement;
- b. To adopt annually a budget setting forth all administrative, operation and capital expenses for the Authority, together with the apportionment of such expenses by Contribution of each Party as set forth herein;
- c. To incur debts, liabilities and/or obligations, subject to the limitations set forth in the Agreement herein;
- d. To apply for and accept grants, advances and contributions including contributions of cash, personnel, equipment or property;
- e. To participate with public or private entities or individuals in the SMUD UARP proceedings, related proceedings, including but not limited to PM&E's settlement negotiations, and other formal or informal processes contemporaneous therewith;
- f. To sue or be sued in its own name;
- g. To enter into contract to further the purpose of this Agreement;
- h. To perform resource investigations regarding water, socioeconomic, and power issues, and to participate with public or private entities or individuals on improvement programs.

#### **ARTICLE V: BOARD OF DIRECTORS AND EXECUTIVE DIRECTOR**

**Section 1.** The Authority shall be governed by the Board of Directors. The Board shall hold one regular meeting each month, and may provide for the holding of special meetings at more frequent intervals. The meetings will be held at the WATER AGENCY offices located at 3932 Ponderosa Road, Suite 200, Shingle Springs, California 95682. The date and hour upon which such regular meetings will be held shall be fixed by the Board. All meetings of the Board shall be called, held, noticed and conducted subject to the provisions of the Ralph M. Brown Act, commencing with Section 54950, et seq. of the California Government Code.

**Section 2.** Members of the Board of Directors shall serve without compensation other than that approved and paid by the Party that the director represents. Reimbursable expenses of directors shall be the responsibility of the Party that the director represents.

Section 3. The Board shall be a sixteen member Board comprised of fifteen voting directors, and non-voting director(s) as follows:

Voting Members: Each director shall have one vote as follows:

- Each member of the COUNTY Board of Supervisors (5).
- Each member of the EID Board of Directors (5).
- Each member of the GDPUD Board of Directors (5).

Non-voting Directors: A majority of the WATER AGENCY Board of Directors are also members of other participating Parties. As a consequence, any non-Party member of the WATER AGENCY Board shall be a member of the Authority's Board of Directors as a non-voting director. At the time of formation of the Authority, there is one non-Party member of the WATER AGENCY Board.

Section 4. A quorum of the Board for the transaction of business shall consist of a majority of all directors. The Board shall select a chair from among the directors who shall be the presiding officer at all Board meetings and a vice chair among the directors who shall serve in the absence of the chair. The terms of office of the chair and vice chair shall be set by the Board; provided, however, that the office shall be declared vacant if the person serving the Authority dies, resigns, or is otherwise no longer serving as a representative of the Party to which it is an appointed representative.

(i) Except when this Agreement or applicable law imposes a higher standard, any action of the Board of Directors shall require the affirmative vote of eight directors.

(ii) Right to Call for 4/5ths Vote. Any Party has the right to call for a 4/5ths majority vote on any item, as follows: Prior to the time that the Chair calls for the vote on an item, any director may call for the item to be approved by a 4/5ths majority vote of all voting members. If three or more directors representing any single Party calls for a 4/5ths majority vote, the Chair will then call for the vote, which will require 12 affirmative votes for passage.

Section 5. The WATER AGENCY shall provide a staff member to act as secretary, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority. In addition, the Authority may employ such other employees or officers as it deems necessary to carry out the purposes of this Agreement.

Section 6. Executive Director. The General Manager of the WATER AGENCY shall act as the Executive Director of the Authority. The duties of the Executive Director shall include representation of the Authority in activities and proceedings as authorized by the Authority or as necessary to promote its purpose, serving as staff to the governing Board of the Authority to coordinate ongoing operations and to develop and implement standards, policies and procedures consistent with the Board's direction, develop meeting agendas, meeting minutes, and publishing

notices of meetings, provide reports to the Board as requested, and cause to have publicly posted the notices of meetings of the Authority in conformity with the Brown Act.

## **ARTICLE VI: BUDGET AND CONTRIBUTIONS BY PARTIES**

**Section 1.** The fiscal year of the Authority shall begin July 1 and end June 30. For each fiscal year, the Authority shall adopt a budget in accordance with applicable laws. Affirmative votes of eight directors representing a majority as set forth in Article V shall be necessary for a budget to be adopted. At the same time that a budget is adopted, the Authority shall establish the Contribution of each Party, if necessary. Each Party shall be responsible for the payment to the Authority of the Contribution which is set at the time of adoption of each budget.

**Section 2.** The Authority shall incur no costs associated with the operation of the Authority except as authorized by separate action of the Party or Parties to whose benefit the costs are incurred.

**Section 3.** Pursuant to Government Code section 6505.6, the COUNTY Auditor is appointed as Finance Officer and Auditor of the Authority. The COUNTY Auditor shall comply with the duties and responsibilities of the offices of treasurer and auditor as set forth in subdivisions (a) to (d), inclusive, of section 6505.5, as may now exist or as it may be amended from time to time. The Finance Officer shall serve a two-year term as the depository and have custody of all Authority funds from whatever source, and shall perform the following functions in accordance with applicable law. All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered on all receipts and disbursements, at least annually. The books and records of the Authority shall be open to inspection by the public and the Parties. The Finance Officer shall either make or, upon the approval of the Board, contract with a certified public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted, at a minimum, in accordance with the requirements of the State Controller under section 26909 of the California Government Code, and shall conform to generally accepted auditing standards. The Authority shall provide the COUNTY reimbursement from an equal allocation to each participating Party for the services of the Finance Officer.

## **ARTICLE VII: WITHDRAWAL AND TERMINATION**

**Section 1.** The term of this Agreement shall be three years, unless otherwise terminated sooner pursuant to the terms and conditions herein.

**Section 2.** Any Party may withdraw from this Agreement, subject to written notice submitted to each member of the Board at least one month prior to the effective date of the withdrawal. The membership of any Party which ceases to have the powers in common with the Parties to this Agreement shall terminate thirty (30) days after the occurrence of the requisite events specified in this section. In the event a Party withdraws from this Agreement or otherwise ceases to be a member, the Authority shall wind up and dissolve its affairs.

Section 3. In the event that the Authority is terminated or otherwise ceases to exist, Authority funds, including any interest earned on deposits, and property remaining after payment of all obligations, shall be returned to each Party in proportionate share with that Party's Contribution. All decisions of the Board of Directors of the Authority with regard to allocation of remaining funds and property upon termination or cessation shall be final.

#### **ARTICLE VIII: INDEMNITY**

Section 1. No voting or non-voting member, officer or employee of the Authority, or any member Party, its officers, directors, employees, and representatives shall be individually or personally liable for any claims, losses, damages, costs, injury or liability of any kind, nature and description arising from the actions of the Authority undertaken pursuant to this Agreement. To the full extent permitted by law, the Authority shall indemnify, defend, and hold each of the Parties, their respective elective and appointive boards, officers, representatives, agents and employees harmless from any liability for damage or claims for damage for personal or real property injury of any type, which may arise or are alleged to have arisen from any of the Authority's operations, actions, or activities under the terms of this Agreement.

#### **ARTICLE IX: AMENDMENT OR ASSIGNMENT OF AGREEMENT**

Section 1. This Agreement may be amended only by an affirmative vote of the governing boards of each Party.

Section 2. The rights and duties of a Party to this Agreement may not be assigned or delegated without the advance written consent of the Parties, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void.

#### **ARTICLE X: NOTICES**

Section 1. Any notice authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the following addresses, or to changed addresses as are communicated to the Authority or the Parties in writing, as follows:

**FOR COUNTY:**

County of El Dorado Board of Supervisors  
330 Fair Lane  
Placerville, California 95677

**FOR WATER AGENCY:**

El Dorado County Water Agency  
3932 Ponderosa Road, Suite 200  
Shingle Springs, California 95682

FOR EID:

El Dorado Irrigation District  
2890 Mosquito Road  
Placerville, California 95667

FOR GDPUD:

Georgetown Divide Public Utility District  
6425 Main Street  
Georgetown, California 95634

**ARTICLE XI: ADDITIONAL PROVISIONS**

Section 1. Entire Agreement. This Agreement is intended to, and does, contain the entire agreement of the parties regarding this matter and is intended to, and does, supersede all previous written and oral correspondence between the Parties.

Section 2. Third Party Beneficiary. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto. Nothing contained in this Agreement shall give or allow any claim of right of action whatsoever by any third person. It is the express intention of the Parties hereto that any such person or entity receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

Section 3. Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

Section 4. Headings. References to articles shall be to the Articles herein. All headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of the Agreement.

Section 5. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 6. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Venue shall be the County of El Dorado, State of California.

Section 7. This Agreement consists of eight (8) pages including signature pages.

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NOW, THEREFORE, the Parties hereto have cause this Agreement to be executed and attested by their duly authorized representatives. The effective date of this Agreement shall be the last date written hereinbelow.

DATED: 2-24-2004

COUNTY OF EL DORADO

Attest: Margaret M. Madley, Clerk  
Board of Supervisors

Rusty Dupray  
**RUSTY DUPRAY**, CHAIRMAN

DATED: 2-23-2004

EL DORADO COUNTY WATER AGENCY

Attest: Cynthia Johnson, Clerk  
Board of Directors 2-23-04

Charlie Paine  
CHAIRMAN, CHARLIE PAINE

DATED: 3/1/04

EL DORADO IRRIGATION DISTRICT

Attest: Tom A. T., Clerk  
Board of Directors

[Signature]

DATED: 3-2-04

GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

Attest: [Signature], Clerk  
Board of Directors

John A. Shepherd