

Inyo-Mono IRWMP Organizational Structure Research Overview

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1. 501(c)(3) Non-profit/Non-governmental Organization

Definition/Description:

501(c)(3): A type of non-profit corporation classified by the IRS as either a “public charity” or a “private foundation.” Within these two broad categories, a 501(c)(3) is further designated as one or more of the following:

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| *Religious | *Literary |
| *Educational | *Testing for Public Safety |
| *Charitable | *Fostering National or International Amateur Sports Competitions |
| *Scientific | *Promoting the Prevention of Cruelty to Children or Animals |

Non-profit organizations don't exist to earn money for owners, stakeholders or employees. Distribution of profits is strictly prohibited and must be used to further the mission of the organization.

A non-profit organization is a separate legal entity incorporated under State law (Nonprofit Public Benefit Corporation Law). Non-profit organizations are, as a 501(c)(3) qualification, able to receive tax-deductible charitable contributions and is exempt from business income and property taxes.

STEPS TO ESTABLISHING 501(C)(3) STATUS:

You must:	You should:	You can:
<ul style="list-style-type: none">• Formulate a mission statement• Form a Board• Develop a business plan• Develop a budget• Develop a record keeping system• Develop an accounting system• File for 501(c)(3) status• File for a Federal Employee Identification Number• File for state tax exemption• File for local tax exemption• Fulfill charitable solicitation law requirements	<ul style="list-style-type: none">• File articles of Incorporation• Draft Bylaws• Develop a Strategic plan	<ul style="list-style-type: none">• Apply for a nonprofit permit

Pros/Cons:

	PROs:	CONs:
<i>Non-profit Corporation</i>	<ul style="list-style-type: none">• Separate legal entity with power to hire staff, contract, acquire property, sue and conduct financing.• No need to contract with separate fiscal sponsor; no danger of level of participation fluctuating• Ability to seek funding outside of Prop. 84, such as foundation funding• Limited liability for IRWMP participants.• Ability to seek 501(c)(3) status for charitable donations and tax exemptions.• Flexibility in determining composition of governing board.• Evidence of commitment to Plan implementation.• Perpetual existence (unless dissolved).• Staff solely dedicated to the organization• Better control over policy and financial decisions• Better flow between oversight committee and staff	<ul style="list-style-type: none">• More expensive and time-consuming than MOU.• Ongoing federal and State accounting and reporting obligations.• Insurance obligations.• Record keeping.• Recruiting, hiring, retaining staff• Likely requires formal action by governing body of each IRWMP participant.• Observing corporate formalities• Need staff with experience in non-profit administration and administering grants• Need to be able to front money to pay salaries, overhead, project costs (before reimbursement)

2. Joint Powers Authority (JPA)**Definition/Description:**

A JPA is an entity permitted under the laws of some states of the USA, whereby two or more public authorities can operate collectively. This is a separate public agency formed under State law (Joint Exercise of Powers Act), exercising shared powers of constituent agencies as defined in joint powers agreement. Public authorities can be: local governments, utility, or transport districts. Joint Power Authorities may be used where:

- An activity naturally transcends the boundaries of existing public authorities.

- By combining their commercial efforts, public authorities can achieve economies of scale or market power.

Joint Power Authorities are particularly used in California, in which they are permitted under Section 6500 of the State Government Code (JPAs can also be found in other states).

A joint powers authority is distinct from the member authorities; they have separate operating boards of director. These boards can be given any of the powers inherent in all of the participating agencies. The authorizing agreement states the powers the new authority will be allowed to exercise. The term, membership, and standing orders of the board of the authority must also be specified. The joint authority may employ staff and establish policies independently of the constituent authorities.

Joint powers authorities receive existing powers from the creating governments; thus they are distinct from special districts, which receive new delegations of sovereign power from the state.

- From information that Cynthia read, Tribes can enter into Joint Powers Authority with other governing bodies, Indian Tribes, States, Counties, or the Federal Government. As Sovereign Nations, Tribes should not be excluded from entering into a Joint Powers Authority since it is an entity permitted under the laws of some states whereby two or more public authorities can operate collectively.
 - For example: the Northern Arapaho Business Council is given the authority to enter into a Joint Powers Authority with no loss of Sovereignty and has stated this as such under Code Title 6. Executive and Administrative Affairs, Section 103: Joint Powers.
 - The Hoopa Valley Tribe and the County of Humboldt also are in a Joint Powers since May 30, 1995.

Pros/Cons:

	PROs:	CONs:
<i>JPA</i>	<ul style="list-style-type: none"> • Separate public agency with powers common to public agency constituents. • Able to apply for funding only available to government agencies. • Flexibility in structuring governing bodies. • Ability to limit liability. • Public agency constituents retain budgetary control. • Ability to offer CalPERS' health and retirement benefits to attract and retain staff. • Evidence of commitment to Plan implementation. 	<ul style="list-style-type: none"> • More time-consuming and expensive than MOU. • Requires formal action by each party to JPA agreement. • Open meeting (i.e. Brown Act) and public record obligations for entity. • Public financial disclosure requirements for officials and officers.

3. Memorandum of Understanding

Definition/Description:

Written document memorializing goals and expectations of signatories. Good faith commitment, not a binding contract. Can be used to define governance, structure, decision-making, etc. for a group. Can be short, broad, and generic, or longer and detailed.

Pros/Cons:

	Pros	Cons
<i>MOU</i>	<ul style="list-style-type: none">• Greatest flexibility in structuring the relationship of the parties.• Less formal, time-consuming and expensive than incorporation or formation of JPA.• Easy to amend over time.• Avoid accounting, reporting and disclosure requirements.	<ul style="list-style-type: none">• Does not create a separate legal entity.• May be seen as less of a commitment to Plan implementation than formation of JPA or non-profit corporation.• Parties remain liable for Inyo-Mono IRWMP actions.• Parties remain responsible for and must conduct all IRWMP hiring, contracting, financing, purchasing, etc.• Likely requires formal action by governing body of each IRWMP participant.• Fiscal sponsor may want some kind of financial benefit or profit; danger of fiscal sponsor unilaterally making policy or financial decisions, or level of participation fluctuating.

4. Other IRWMP Structures

- San Diego Region IRWMP: This RWMP is currently deciding their organizational options for a long-term institutional structure. Below is an explanation of their approach:
 - The RWMP members and other agencies could create a regional legal authority (Joint Powers Authority or JPA) to oversee IRWMP Plan implementation. The JPA could include all interested agencies with applicable vested powers as members. Under a JPA, formal membership is limited to agencies that share vested powers and would therefore exclude non-governmental organizations. The JPA could establish advisory committees and/or levels of associate membership to provide for

water management input from stakeholders, non-government organizations and regulatory agencies.

- Regional Committee/Council through a MOU. The RWMG and stakeholders could form a regional committee or council through a structure created under a MOU. The MOU could include provisions for formal governing meetings of the committee/council and the hiring of professional staff. The MOU could also include all interested government agencies and non-governmental groups. Membership is achieved through signing a MOU, which can be easily and quickly revised. Additionally, the MOU can be structured to provide for tiered levels of membership.
 - After review of the two structural options and input received from the RAC, the RWMG recommends that the MOU approach be pursued initially in formulating the Region's IRWM institutional structure. As IRWM planning matures through implementation, the structure could evolve into a more formal structure, such as a JPA or a non-profit corporation.
- American River Basin IRWMP: In April 2004, RWA launched the Integrated Regional Water Management Planning Program. In partnership with the United States Army Corps of Engineers and the Sacramento County Water Agency, RWA has developed an Integrated Regional Water Management Plan (IRWMP) for the American River Basin as well as associated tools to identify the regional projects and partnerships that will help the region best meet its future needs. The RWA is a Joint Powers Authority (JPA) formed in 2001 as a forum to discuss and address regional water issues. The RWA replaced the Sacramento Metropolitan Water Authority in 2001 to serve and represent the regional water supply interests and to assist members in protecting and enhancing the reliability, availability, affordability and quality of water resources. The RWA has nineteen members and three associate members in Sacramento, Placer, El Dorado, and Yolo counties. Nearly all of the RWA members are signatories of the WFA.
 - Thus, each member agency of the RWA and FRWA has agreed to share its respective legal powers in common to the extent described in the JPA. Furthermore, when executing a specific project or program, participating agencies execute a Project Agreement to accomplish a specific, focused activity which may involve some or all of the member agencies. Program Agreements enumerate the objective or effort to be accomplished, along with necessary terms and conditions related to the effort. In the instance of the ARB IRWMP effort, the Participants have obligated themselves financially to the successful conduct and implementation of the work. While the Project Agreement contains participant withdrawal provisions, it would be virtually impossible for the RWA, FRWA or a Participant to withdraw from the Agreement without purposefully onerous repercussions. It is on this basis that upon executing the Project agreement, that the RWA and FRWA have the full force of intention and authority; legally and otherwise to ensure the successful completion and implementation of the Project.
- Cosumnes, American, Bear, and Yuba Rivers IRWMP (CABY): Plan completed; in implementation now. They have formed a 501(c)(3) to be able to apply for foundation funding. The Regional Water Management Group, however, is NOT a 501(c)(3) and is governed by an MOU. They have also put together a template for a JPA in case they decide to form one; this would allow them to go after funding only available to government agencies. They do not have participation by counties and towns within their planning area. Their Coordinating Committee is comprised of four water agencies and four non-profit conservation organizations. Their Planning Committee has about 40 stakeholders.

- Tahoe-Sierra IRWMP: Plan adopted and revised once; eligible to apply for Supplemental Prop. 50 IRWM Implementation funding. RWMG is governed by an MOU.
- Antelope Valley IRWMP: Plan recently adopted (2008 or 2009). RWMG governed by MOU-type agreement (available online). RWMG is composed of a Stakeholders Group and an Advisory Team.
- North Coast IRWMP: RWMG consists of seven counties in northern California. Policy Review Panel: two representatives from each county; serves as oversight committee. Technical Review Peer Committee: technical staff, consultants, agency representatives appointed by each county (water agencies, conservation groups, education). Governed by Memorandum of Mutual Understanding.
- Mokelumne, Amador, Calaveras IRWMP (MAC): Developed and adopted Plan in 2006. Governed by Governing Procedures Guidebook (available on website). Regional Participants Committee is the main governing body. Consensus decision making is the goal; majority opinion accepted for certain recommendations. They also have technical working groups.