

EXHIBIT 1-A

DRAFT
Monterey Bay Regional Water Authority
Formation Agreement

This Agreement is made and entered into as of the first day of _____, among the following public agencies

County of Monterey
City of Carmel-by-the-Sea
City of Del Rey Oaks
City of Marina
City of Monterey
City of Pacific Grove
City of Salinas
City of Sand
City of Seaside
FORA
Monterey Peninsula Water Management District
Monterey Regional Water Pollution Control Agency
Monterey County Water Resources Agency
Marina Coast Water District
Castroville Water District

WHEREAS, on November 30, 2004 the Board of Supervisors of the Monterey County Water Resources Agency (hereinafter the Board of Supervisors) directed the Agency to begin a collaborative process to explore management and governance strategies with a broad cross section of general purpose governments and water/wastewater service agencies for development of regional water supply solutions for the Monterey Peninsula, and the northern communities of Monterey County, including Salinas; and,

WHEREAS, on April 19, 2005 the Board of Supervisors endorsed and directed drafting an inter-agency agreement to form a policy board that would provide Monterey Bay Water Authority policy direction, and which would be comprised of elected officials from the County, Cities, and water and wastewater agencies, and to identify funding sources that would enable the Monterey Bay Water Authority (MBWA) to engage a program management firm to assist in developing and implementing a strategy to meet the long-term urban water supply needs of the coastal and northern region of Monterey County; and,

WHEREAS, the County and Agencies desire to establish and participate in a MBWA policy board, hereinafter "MBWA Policy Board"; and,

WHEREAS, the County and Agencies desire to collaborate and facilitate water supply planning and projects for the coastal and northern urban areas of Monterey County; and,

WHEREAS, the County, through the Monterey County Water Resources Agency, is willing and able to furnish start-up resources in support of a mutually agreeable cost sharing plan; and,

WHEREAS, the MBWA Policy Board is deemed to be a "transitional" governance model selected as the most practical method to quickly create an intergovernmental decision-making entity charged with developing (during Phase 1) and implementing (in Phase 2) a strategy to address Monterey Bay Water Authority needs and oversee the start-up of a water supply project management function; and,

WHEREAS, this MBWA Policy Board Formation Agreement ("Agreement") is intended to "sun set" in three years; and the County and Agencies are committed to evolve the MBWA governance structure into a permanent Joint Exercise of Powers Agency, or to seek State legislation to create an independent MBWA agency with a directly elected governing board; and,

WHEREAS, the MBWA Policy Board recognizes and respects that member entities exercise independent control over their individual sub-regional projects; and,

WHEREAS, through this Agreement, the County and Agencies desire to give the MBWA Policy Board a scope of responsibility to include the development of a strategy for meeting the long-term urban water needs through a publicly-owned Moss Landing desalination plant and/or other regional public project(s); and,

WHEREAS, the MBWA Policy Board will coordinate the review of all regional and sub-regional water supply projects to ensure that through the collective efforts of all member entities the urban water supply needs of the region are fully met; and,

WHEREAS, in order to fulfill the stated purposes of this Agreement, each of the parties hereby acknowledges that it is a public agency duly authorized and empowered to contract for the joint exercise of powers under California Government Code Section 6500 et. seq., and that each of the parties possess the common power and authorization to carry out the purposes described in the operative sections of this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. TERM AND RENEWAL OF THE AGREEMENT

- A. The initial term of this Agreement shall be for three years commencing from the date of adoption.
- B. Following completion of the initial three-year term, this Agreement shall either be automatically renewed for successive periods of one year, or be replaced with an

independent agency governing the proposed Monterey Bay Water Authority project or projects created by state legislation.

2. **TERMS AND CONDITIONS**

- A. During Phase 1 development of the MBWA Policy Board implementation strategy, financial contribution and legal risk among participating parties, will be limited to \$250,000 from the County and \$5,000 from each Agency to fund MCWRA start-up consultant work, i.e. to compile the region's near- and long-term urban water supply needs; evaluate potential regional desalination project and other project options to meet water needs; and, to determine project delivery and financing alternatives.
- B. During Phase 1 a Project Management Team (PMT) will be created that is comprised of the chief appointed officer (or designee) from each Agency. This PMT will be supported by MCWRA management staff, and the PMT will be responsible for all technical, financial and managerial decisions not specifically reserved to MBWA Policy Board.
- C. Following completion of Phase 1, and subject to approval of the County and each Agency, further financial contributions, assignment of functional responsibilities and legal risk sharing among participants will be determined through an amended Agreement. The amended Agreement would include the scope of a Phase 2 MBWA Policy Board strategy for creating a publicly owned regional desalination or other water supply project(s), i.e. permitting/entitlement, environmental clearance, financing/debt issuance, wholesale water agreements, and competitive selection of company or entity for design/construct/operation of regional desalination facility.
- D. The amended Agreement would include the basic terms of MBWA Policy Board wholesale water supply agreements; direct and indirect cost allocation formulae; and, each purchasing entity's proportionate share of projected water supply from one or more water supply projects.

3. **REMEDY FOR IRRESOLVABLE DISSATISFACTION IN SERVICES**

- A. It is the intent of the County and all Agencies to work cooperatively in developing policies for Monterey Bay Water Authority projects, and to resolve disagreements in a timely manner. In the event there are unresolved disagreements, the County and Agencies through their boards and councils shall inform the MBWA Policy Board in writing, clearly stating the cause(s) of disagreement, and allow the County and the MBWA Policy Board an opportunity to effectively remedy the situation in a reasonable and timely manner.
- B. In the event that a majority of the member Agencies determines that the MBWA Policy Board or the County's performance under this Agreement is deemed to be

unsatisfactory, this Agreement may be terminated for cause pursuant to the procedure set out in Sec. 9.1.....

4. **FINANCIAL CONTRIBUTIONS**

- A. In consideration of the foregoing, the Agencies will contribute \$5,000 and the County will contribute \$250,000 for the proposed services to be provided by a Program Manager in a scope of work to be approved by the Parties.
- B. Should a need arise during Phase 1 for financial contributions in addition to the amounts set out in this section, the County will advise the MBWA Policy Board and each Agency in writing of such proposed additional amounts prior to the expenditure of 90% of the sum of all contributions made under this section.

5. **FORMATION OF POLICY BOARD**

- A. The Parties agree to the formation of the MBWA Policy Board to assist in formulation of policies and operational processes governing the formation of an independent governance organization to promote and develop regional water supply projects.
- B. The intended purpose of the MBWA Policy Board is to provide the Parties the means to participate in the generation of policy direction on appropriate matters pertaining to fiscal, developmental, operational, and implementation of matters relating to the MBWA.
- C. The MBWA Policy Board will be comprised of one (1) elected or appointed official from each entity signatory to this Agreement, including MCWRA. Alternative representatives, including senior staff, from each organization may serve.
- D. The Board of Supervisors and MPWMD Board each will select two (2) elected official representatives to serve on the MBWA Policy Board, due to the County's acceptance of a greater financial contribution and managerial responsibility under the terms of this Agreement, and because the water users within the jurisdiction of MPWMD require the majority of new water resources needed within the urban region of the county.
- E. Each Agency may designate an alternate elected official to serve in the absence of its regular MBWA Policy Board representative.
- F. (Note: need to add standard clauses setting out MBWA Board authority and responsibility to: 1) set regular meeting time and place, not less than once per month, and special or adjourned meetings pursuant to Ralph M. Brown Act; 2) adopt rules creating officers, voting procedure and meeting quorum for action; 3)

6. **INDEMNIFICATION**

- A. County hereby agrees to indemnify and save harmless each Agency, its officers, agents, employees, and authorized volunteers of and from any and all claims, demands, judgments or decrees made or rendered against the Agency, its officers, agents or employees by reason of any injury, death or damage suffered or sustained by any person or entity caused by, or alleged to have been caused by the negligent act or omission or willful misconduct of County under this agreement.
- B. Further, as to such acts or omissions, County, at its own cost, expense and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third parties against the Agency, its officers, agents, employees or authorized volunteers or any such claim or demand, and shall pay and satisfy any judgment or decree that may be rendered against the Agency, its officers, agents or employees in any such suit, action, or other legal proceedings.
- C. Each Agency hereby agrees to indemnify and save harmless County, its officers, agents, and employees of and from any and all claims, demands, judgments, or decrees made or rendered against County, its officers, agents, or employees by reason of any injury, death, or damage suffered or sustained by any person or entity caused by, or alleged to have been caused by the negligent act or omission or willful misconduct of the indemnifying Agency under this Agreement.
- D. Further, as to such acts or omissions, the indemnifying Agency at its own cost, expense and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third parties against County, its officers, agents or employees, or any such claim or demand, and shall pay and satisfy any judgment or decrees that may be rendered against County, its officers, agents, or employees in any such suit, action, or other legal proceedings.

7. **INSURANCE**

Without limiting the foregoing indemnification, all parties shall maintain in force at all times during the performance of this Agreement, a policy or policies of insurance as follows, and in the minimum limits of liability as stated herein:

- A. Comprehensive general liability, including but not limited to premises, personal injuries, products, and completed operations for combined single limit of not less than \$1,000,000 per occurrence.
- B. Comprehensive automobile liability, including but not limited to property damage, bodily injury, and personal injuries for combined single limit of not less than \$1,000,000 per occurrence.
- C. Workers' Compensation covering statutory requirements of the State of California and Employer's Liability of not less than \$100,000 per occurrence.
- D. In the event any party is lawfully self-insured in any or all of the aforementioned insurance areas, a letter certifying those areas of coverage, and in the minimum

amounts as set forth in this Agreement, shall be furnished to the other party prior to execution of this Agreement.

- E. Except with respect to Workers' Compensation insurance, each Agency maintaining commercial insurance or excess insurance shall provide an endorsement naming the County, its officers, agents, and employees as additional insureds and shall provide that such commercial insurance is primary to any other commercial insurance maintained by the County; and the County shall, under any commercial insurance or excess insurance it maintains, provide an endorsement naming each Agency, its officers, agents, and employees as additional insureds and shall provide that such commercial insurance is primary to any other commercial insurance maintained by each Agency.

8. **GENERAL PROVISIONS**

- A. Amendment. This Agreement may be amended or modified only by an instrument in writing duly approved by the County and each Agency and signed by all the parties hereto.
- B. Waiver. Any waiver of any terms and conditions hereof must be in writing and signed by the parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other terms or conditions in this Agreement.
- C. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the parties hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs. Neither the County nor any Agency shall assign its rights or obligations under this Agreement without the consent of all other parties to this Agreement.
- D. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- E. Heading. The section and paragraph headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- F. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- G. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- H. Construction of Agreement. The parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment hereto.

- I. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- J. Authority. Any individual executing this Agreement on behalf of an entity represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such entity and bind the entity to the terms and conditions of the same.
- K. Integration. This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties as of the effective date hereof.
- L. Termination. This Agreement may be terminated and the MBWA Policy Board dissolved by action of the Board of Supervisors and two-thirds (2/3) of the governing bodies of the Agencies.

SIGNATORIES:

County of Monterey Board of Supervisors	<u>WB "Butch" Lindley, Chair</u>	<u>Date</u>
City of Carmel by the Sea	<u>Sue McCloud, Mayor</u>	<u>Date</u>
City of Del Rey Oaks	<u>Joseph P. Russell, Mayor</u>	<u>Date</u>
City of Marina	<u>Ila Metee-McCutchon, Mayor</u>	<u>Date</u>
City of Monterey	<u>Daniel Albert, Mayor</u>	<u>Date</u>
City of Pacific Grove	<u>Jim Costello, Mayor</u>	<u>Date</u>
City of Salinas	<u>Anna Caballero, Mayor</u>	<u>Date</u>
City of Sand	<u>David K. Pendergrass, Mayor</u>	<u>Date</u>
City of Seaside	<u>Ralph Rubio, Mayor</u>	<u>Date</u>
Ft. Ord Reuse Authority Executive Officer	<u>Michael A. Houlemard, Jr.</u>	<u>Date</u>
Monterey Peninsula Water Management District	<u>Michelle Knight, Chair</u>	<u>Date</u>

Monterey Regional Water
Pollution Control District

David K. Pendergrass, Chair

Date

Monterey County
Water Resources Agency

Richard Morgantini, Chair

Date

Marina Coast Water District

Tom Moore, President

Date

Castroville Water District

Nancy Ausonio, President

Date