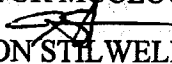


**CITY OF CARMEL-BY-THE-SEA  
STAFF REPORT**

TO: MAYOR MCCLOUD AND COUNCIL MEMBERS  
FROM:  JASON STILWELL, CITY ADMINISTRATOR  
DATE: JANUARY 10, 2012  
SUBJECT: RECEIVE REPORT ON THE FORMATION OF THE MONTEREY PENINSULA REGIONAL WATER AUTHORITY AND ADOPT A RESOLUTION TO AUTHORIZE THE MAYOR TO SIGN THE JOINT EXERCISE OF POWERS AGREEMENT TO FORM THE MONTEREY PENINSULA REGIONAL WATER AUTHORITY

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**RECOMMENDATIONS:**

Authorize the Mayor to join with the Peninsula Cities of Monterey, Pacific Grove, Seaside, Sand City, and Del Rey Oaks (collectively the "Peninsula Cities") to sign the joint exercise of powers agreement to form the Monterey Peninsula Regional Water Authority ("Authority").

The Mayor and City Administrator recommend this authorization as an important step in solving the long-standing water supply deficiency on the Monterey Peninsula.

**BACKGROUND**

The water supply to customers within the City, which is supplied by the California-American Water Company ("Cal-Am"), is subject to a severe and increasing restrictions as a result of both a cease and desist order ("CDO") issued by the California State Water Resources Control Board, limiting withdrawals from the Carmel Valley Groundwater Basin, and a judicial order limiting withdrawals from the Seaside Groundwater Basin. Pursuant to the CDO, Cal-Am will be required to cease all but 3,376 acre feet of diversions from the Carmel River Valley in 2016, which if implemented without a replacement water supply project, will result in catastrophic water shortages for the City.

To obtain replacement water to offset these reductions, Cal-Am applied for and was granted a certificate of public convenience and necessity from the California Public Utilities Commission in December 2010 to participate in a private/public water project, commonly referred to as the Regional Desalination Project ("Regional Project"). Since that approval was granted, multiple impediments have arisen that have delayed and threatened the viability of the Regional Project. Concern has been expressed by the community regarding: the merits of the Regional Project as compared to potential alternatives, governance of the Regional Project, and the need for representation that is directly accountable to the Cal-Am customers who would receive water from the Regional Project.

Any jurisdiction can remove itself from the Agreement at any time if it deems that the Authority is moving in the wrong direction, requires too much staff time, or too much of other city resources. Article 15 of the Agreement establishes these processes.

### **FISCAL IMPACT**

The Agreement is drafted to provide the revenues necessary for the Authority's operations, but it also includes provisions to appropriately limit the Cities' financial exposure. The Authority will require certain minimal operating funds to ensure compliance with the Brown Act and the Joint Exercise of Powers Act. This level of funding should be sufficient for the Authority if its undertakings are limited to the Authority's initial role, which will largely be limited to participation in the oversight/governance of the Regional Project or its alternative. The Agreement provides that each of the Peninsula Cities will only bear financial responsibility for contributions to the Authority's financial requirements in an amount proportionate to their respective weighted voting (determined by the three year weighted average receipt of water from Cal-Am). Staff believes this approach is reasonable and protects the City from excessive financial exposure.

### **STAFF REVIEW**

The City Administrator has participated with the Mayor in discussions pertaining to potential strategies concerning how best to advance the Regional Project, or if necessary, alternative projects, and has also participated in the drafting and refinement of the Agreement. Staff believes that the formation of the Authority is the best present strategy to advance the City's interest in ensuring that a prudent and cost-efficient water supply project is developed in a timely manner to avoid the severe water supply restrictions facing the City.

**JOINT EXERCISE OF POWERS AGREEMENT**

**by and among**

**THE CITY OF CARMEL-BY-THE-SEA**

**THE CITY OF DEL REY OAKS**

**THE CITY OF MONTEREY**

**THE CITY OF PACIFIC GROVE**

**THE CITY OF SAND CITY**

**and**

**THE CITY OF SEASIDE**

**creating the**

**MONTEREY PENINSULA REGIONAL WATER AUTHORITY**

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**JOINT EXERCISE OF POWERS AGREEMENT  
MONTEREY PENINSULA REGIONAL WATER AUTHORITY**

This **Joint Exercise of Powers Agreement** (“**Agreement**”) is made and entered into as of \_\_\_ of January, 2012, by and among the City of Carmel-by-the-Sea, the City of Del Rey Oaks, the City of Monterey, the City of Pacific Grove, the City of Sand City, and the City of Seaside, sometimes referred to herein individually as a “**City**” or “**Member**” and collectively as the “**Cities**” or “**Members**.” Except as otherwise specifically defined in this Agreement, capitalized terms used herein shall have the meanings given to them in Article 1 of this Agreement.

**RECITALS**

A. Each of the Cities is a public agency located within the Monterey Peninsula in Monterey County, and is duly organized and existing under and by virtue of the laws of the State of California.

B. With minor exceptions, the households and businesses within the Cities receive their water supply from the California American Water Company (“**Cal-Am**”) and those customers within the Cities represent the vast majority of Cal-Am’s customers within its Monterey District.

C. Cal-Am presently obtains the majority of the water that it supplies to the Monterey District from groundwater produced from water wells located within the Carmel Valley Groundwater Basin, and to a lesser extent, groundwater produced from the Seaside Groundwater Basin. In both instances, the amount of water supplies available for distribution have been reduced and will continue to be reduced by administrative and court orders. (*See State Water Resources Control Board, WR Order 2009-60 [requiring Cal-Am to reduce the amount of water being diverted from the Carmel Valley Groundwater Basin], and Seaside Basin Decision (defined below) [limiting Cal-Am’s right to produce groundwater from the Seaside Groundwater Basin]*).

D. The Cities have a common interest in the timely development of one or more water supply projects to ensure that a safe and reliable supply of water is available to replace water supplies lost because of the aforementioned mandatory reductions.

E. The Cities also have a common interest in ensuring that the governance of water supply projects that serve the Cities’ water users includes representation that is directly accountable to those water users.

F. The City of Seaside also operates a small water system (approximately 800 customer connections) within its jurisdiction that it supplies with groundwater produced from the Seaside Groundwater Basin. Seaside’s right to produce groundwater from the Seaside Groundwater Basin has been, and will continue to be, limited by the Seaside Basin Decision. Seaside therefore has a separate interest in the development of a water supply project to the extent that the project may provide water to the City to replace this lost groundwater supply.

with the office of the California Secretary of State and with the County Clerk for the County of Monterey, setting forth the facts required to be stated pursuant to Government Code section 53051(a).

2.2 Purpose of the Authority. Each Member has in common the power to study, plan, develop, finance, acquire, construct, maintain, repair, manage, operate, control, and govern Water Projects either alone or in cooperation with other public or private non-member entities. The purpose of this Agreement is to establish a public entity separate from its Members to jointly exercise some or all of the foregoing common powers, as deemed necessary by the Authority, to: (1) ensure the timely development, financing, construction, operation, repair, and maintenance of one or more Water Projects; and (2) ensure that the governance of such Water Projects includes representation that is directly accountable to the Cities' water users.

### **ARTICLE 3 TERM**

This Agreement shall become effective upon execution by each of the Cities and shall remain in effect until terminated pursuant to the provisions of Article 15 (Withdrawal of Members) of this Agreement.

### **ARTICLE 4 POWERS**

The Authority shall possess the power in its own name to exercise any and all common powers of its members reasonably related to the purposes of the Authority, including but not limited to the following powers, together with such other powers as are expressly set forth in the Act:

4.1. To study, plan, develop, finance, acquire, construct, maintain, repair, manage, operate, control, or govern Water Projects, or any portion thereof, and related works and improvements, either by the Authority alone or in cooperation with other public or private non-member entities.

4.2. To perform other ancillary tasks relating to Water Projects, including without limitation environmental review, engineering, and design.

4.3. To obtain rights, permits and other authorizations for, or pertaining to, Water Projects.

4.4. To purvey water and enter into water supply agreements with its Members or other public or private non-members, including without limitation water supply agreements with Cal-Am.

4.5. To exercise the common powers of its Members to develop, collect, provide, and disseminate information concerning Water Projects to the Members and others, including but not limited to legislative, administrative, and judicial bodies, as well the public generally.

4.6. To make and enter into contracts necessary for the full exercise of its powers.

For purposes of Government Code section 6509, the powers of the Authority shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on the City of Seaside.

## **ARTICLE 5 MEMBERSHIP**

5.1 Members. The Members of the Authority shall be the City of Carmel-by-the-Sea, the City of Del Rey Oaks, the City of Monterey, the City of Pacific Grove, the City of Sand City, and the City of Seaside, as long as they have not, pursuant to the provisions hereof, withdrawn from this Agreement.

5.2 New Members. Any public agency (as defined by the Act) that is not a Member on the effective date of this Agreement may become a Member upon: (a) the approval of the Board of Directors by a supermajority of at least seventy (70) percent of the votes held among all Directors as specified in Article 8 (Member Voting); (b) payment of a pro rata share of all previously incurred costs that the Board of Directors determines have resulted in benefit to the public agency, and are appropriate for assessment on the public agency; and (c) execution of a written agreement subjecting the public agency to the terms and conditions of this Agreement.

## **ARTICLE 6 BOARD OF DIRECTORS AND OFFICERS**

6.1 Formation of the Board of Directors. The Authority shall be governed by a Board of Directors.

6.2 Duties of the Board of Directors. Subject to the provisions of the Act, the Board of Directors shall be the policymaking body of the Authority. The business and affairs of the Authority, and all of the powers of the Authority, including without limitation all powers set forth in Article 4 (Powers), are reserved to and, shall be exercised by and through the Board of Directors, except as may be expressly delegated to the Executive Director or others pursuant to this Agreement, Bylaws, or by specific action of the Board of Directors.

6.3 Directors. Each Member shall appoint one Director and one Alternate Director to the Board of Directors. Alternate Directors shall have no vote, and shall not participate in any discussions or deliberations of the Board, if the Director is present. If the Director is not present, or if the Director has a conflict of interest which precludes participation by the Director in any decision-making process of the Board, the Alternate Director appointed to act in his/her place shall assume all rights of the Director, and shall have the authority to act in his/her absence, including casting votes on matters before the Board. Each Director and Alternate Director shall be appointed prior to the initial meeting of the Board, as set forth in Section 7.1.

7.5 Local Conflict of Interest Code. The Board of Directors shall adopt a local conflict of interest code pursuant to the provisions of the Political Reform Act of 1974 (Government Code sections 81000-91014).

## ARTICLE 8 MEMBER VOTING

8.1 Quorum. A quorum of any meeting of the Board of Directors shall consist of a majority of the Directors appointed. In the absence of a quorum, any meeting of the Directors may be adjourned by a vote of a majority of Directors present, but no other business may be transacted. For purposes of this Article, a Director shall be deemed present if the Director appears at the meeting in person or telephonically, provided the telephone appearance is consistent with the requirements of the Ralph M. Brown Act.

8.2 Director Votes. Voting by the Board of Directors shall be made on the basis of one vote for each Director, unless one or more Directors requests weighted voting. If weighted voting is requested, then each Director's vote shall be weighted proportionally to the amount of water delivered to Cal-Am customers within each City, as determined on a three year running average. Accordingly, to determine the weighted vote for each Director, the annual average amount of metered water delivered by Cal-Am during the proceeding three years to customers within each City shall be compared to the annual average of the total metered water delivered by Cal-Am during the proceeding three years to customers within all of the Cities combined, and the resulting percentages for each City shall represent the weighted vote for each Director representing each respective City. A Director, or an Alternate Director when acting in the absence of his or her Director, may vote on all matters of Authority business unless disqualified because of a conflict of interest pursuant to California law or the local conflict of interest code adopted by the Board of Directors.

8.3 Affirmative Decisions of the Board of Directors. Except as otherwise specified in this Agreement, all affirmative decisions of the Board of Directors shall require the affirmative vote of the majority of all appointed Directors (whether present or not), unless weighted voting is requested, in which case all affirmative decisions by the Board shall require the affirmative vote of the majority of the weighted votes held by all Directors (whether present or not), provided that if a Director is disqualified from voting on a matter before the Board because of a conflict of interest, that Director shall be excluded from the calculation of the total number of Directors, or total number of weighted votes, as applicable, that constitute a majority.

## ARTICLE 9 EXECUTIVE DIRECTOR AND STAFF

9.1 Appointment. The Board of Directors shall appoint an Executive Director, who may be, though need not be, an officer, employee, or representative of one of the Members. The Executive Director's compensation, if any, shall be determined by the Board of Directors.



12.2 Fiscal Year. Unless the Board of Directors decides otherwise, the fiscal year for the Authority shall run concurrent with the calendar year.

12.3 Appointment of Treasurer and Auditor; Duties. The Treasurer and Auditor shall be appointed in the manner, and shall perform such duties and responsibilities, specified in the Act..

### **ARTICLE 13 BUDGET AND EXPENSES**

13.1 Budget. Within 90 days after the first meeting of the Board of Directors, and thereafter prior to the commencement of each fiscal year, the Board shall adopt a budget for the Authority for the ensuing fiscal year. In the event that a budget is not so approved, the prior year's budget shall be deemed approved for the ensuing fiscal year, and any assessment(s) of contributions of Members approved by the Board during the prior fiscal year shall again be assessed on the Members in the same amount and terms for the ensuing fiscal year.

13.2 Authority Funding and Contributions. For the purpose of funding the expenses and ongoing operations of the Authority, the Board of Directors shall maintain a funding account in connection with the annual budget process. The Board of Directors shall issue assessments for contributions by the Members to fund said account in the amount and frequency determined necessary by the Board. Assessments for Member contributions shall be made by each Member in proportion to the weighted vote of each member as determined pursuant to Section 8.2, and therefore no Member shall be required to make contributions to the Authority in excess of that portion of each assessment that is equivalent to the weighted vote possessed by its Director. Such contributions shall be paid by each Member to the Authority within sixty (60) days of assessment by the Board.

13.3 Return of Contributions. In accordance with Government Code section 6512.1, repayment or return to the Members of all or any part of any contributions made by Members and any revenues by the Authority may be directed by the Board of Directors at such time and upon such terms as the Board of Directors may decide; provided that (1) any distributions shall be made in proportion to the contributions paid by each Member to the Authority, and (2) any capital contribution paid by a Member voluntarily, and without obligation to make such capital contribution pursuant to Sections 13.2, shall be returned to the contributing Member, together with accrued interests at the annual rate published as the yield of the Local Agency Investment Fund administered by the California State Treasurer, before any other return of contributions to the Members is made. The Authority shall hold title to all funds and property acquired by the Authority during the term of this Agreement.

13.4 Issuance of Indebtedness. The Authority may issue bonds, notes or other forms of indebtedness, as permitted under Sections 4.9 and 4.10, provided such issuance be approved at a meeting of the Board of Directors by unanimous vote of the Directors as specified in Article 8 (Member Voting).

15.4 Return of Contribution. Upon termination of this Agreement, any surplus money on-hand shall be returned to the Members in proportion to their contributions made. The Board of Directors shall first offer any property, works, rights and interests of the Authority for sale to the Members on terms and conditions determined by the Board of Directors. If no such sale to Members is consummated, the Board of Directors shall offer the property, works, rights, and interest of the Authority for sale to any non-member for good and adequate consideration. The net proceeds from any sale shall be distributed among the Members in proportion to their contributions made.

## ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination by the Authority or any of its Members that any action, including without limitation actions relating to Water Projects, shall be undertaken or that any unconditional or irretrievable commitment of resources shall be made, until such time as the required compliance with all local, state, or federal laws, including without limitation the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, has been completed.

16.2 Notices. Notices to a Director or Member hereunder shall be sufficient if delivered to the City Clerk of the respective Director or Member and addressed to the Director or Member. Delivery may be accomplished by U.S. Postal Service, private mail service or electronic mail (provided if by electronic mail, a confirmation of receipt is provided by the recipient).

16.3 Amendments to Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by all of the Members.

16.4 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. There are no oral understandings or agreements related to the subject matter of this Agreement that are not set forth in writing herein.

16.5 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 applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with the Act, this Agreement shall terminate.

16.6 Withdrawal by Operation of Law. Should the participation of any Member to this Agreement be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, the validity of the Agreement as to the remaining Members shall not be affected thereby.

CITY OF PACIFIC GROVE

DATED: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF SAND CITY

DATED: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF SEASIDE

DATED: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

*Seaside*, Monterey County Superior Court, Case No. M66343, together with any and all amendments or modifications to that decision ordered by the court.

- 1.14 “SWRCB Order” means State Water Resources Control Board Order WR Order 2009-60, and any subsequent order concerning Cal-Am’s diversions from the Carmel River Valley that amends or replaces WR Order 2009-60.
- 1.15 “Water Project” means any capital project intended, in whole or in part, to produce water for beneficial use on the Monterey Peninsula, including without limitation projects to replace lost or reduced water supplies as a result of the SWRCB Order or the Seaside Basin Decision, or to comply with the directives or requirements of the SWRCB Order or the Seaside Basin Decision. A Water Project may include, without limitation, wells, diversion infrastructure, conduits, pipes, reservoirs, tanks, pumping plants, desalination plants, water reclamation plants, treatment plants, water conveyance and storage facilities, buildings, and other structures and infrastructure utilized for the diversion, pumping, conveyance, desalination, reclamation, treatment, control, storage, groundwater recharge and delivery of waters for beneficial use within the Monterey Peninsula. “Water Projects” means each and every Water Project, collectively.

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