

**JOINT EXERCISE OF POWERS AGREEMENT
AMONG THE COUNTY OF SAN DIEGO,
THE CITIES OF CHULA VISTA AND IMPERIAL BEACH
AND THE SAN DIEGO UNIFIED PORT DISTRICT
FOR THE DEVELOPMENT OF A WATERSHED
MANAGEMENT PLAN FOR THE OTAY RIVER**

THIS AGREEMENT, dated for convenience as of the 24th day of MARCH, 2004, is entered into by the Cities of Chula Vista and Imperial Beach, California municipal corporations; the County of San Diego, a political subdivision of the State of California; and the San Diego Unified Port District, a public corporation, (collectively, Public Agencies).

WITNESSETH

WHEREAS, the Public Agencies are each empowered by law to develop watershed management plans; and

WHEREAS, the Public Agencies desire to coordinate the development of a single Watershed Management Plan for the entire Otay River hydrologic unit of the San Diego Bay watershed for the benefit of their citizens and the public; and

WHEREAS, joint cooperation and participation among the Public Agencies will be mutually beneficial and in the public interest.

NOW, THEREFORE, the Public Agencies, agree as follows:

SECTION 1. Purpose.

This Agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California commencing with Section 6500 relating to the joint exercise of powers common to the Public Agencies. The Public Agencies possess the powers described in the above recitals. The purpose of this Agreement is to jointly develop a Watershed Management Plan (WMP) for the Otay River hydrologic unit of the San Diego Bay watershed which is consistent with the respective Public Agencies' General Plans, meets water quality standards, protects aquatic and upland resources and provides for flood protection, public recreation and essential public facilities, such as utilities and other infrastructure. In addition, the WMP will include an implementation program describing how each signatory Public Agency could implement the WMP.

SECTION 2. Term.

This Agreement shall become effective when executed by all of the Public Agencies and shall continue in full force and effect until the WMP has been completed and adopted by each signatory Public Agency or until this Agreement is terminated by action of the Policy Committee.

SECTION 3. Adoption of Watershed Management Plan.

After the WMP has been reviewed by the Project Team, the WMP shall be presented to the Policy Committee for its consideration. The Policy Committee shall either approve the WMP or provide direction to the Project Team for making changes to the WMP. If the Policy Committee approves the WMP, it shall then be submitted to each signatory Public Agency for adoption. Each signatory Public Agency may adopt the WMP or recommend changes to the Policy Committee. Nothing in this Agreement obligates a signatory Public Agency to adopt the WMP.

SECTION 4. Boundaries.

The boundaries of the territory within which the Public Agencies shall exercise their powers under this Agreement shall be the Otay River hydrologic unit of the San Diego Bay watershed as delineated on Exhibit A attached hereto and incorporated herein. Exhibit A identifies the anticipated limits of the Otay River hydrologic unit of the San Diego Bay watershed, but the Public Agencies recognize that minor changes in the boundary of the hydrologic unit may be identified as the WMP is developed. The boundaries of the WMP shall be the same as the boundaries of the Otay River hydrologic unit.

SECTION 5. Policy Committee.

A Policy Committee is established consisting of a single representative appointed by each signatory Public Agency. The Policy Committee shall provide direction to the Project Team for administering this Agreement. The representative from the County of San Diego shall be a member of and appointed by the County Board of Supervisors. The representative from the City of Chula Vista shall be a member of and appointed by the City Council. The representative from the City of Imperial Beach shall be a member of and appointed by the City Council. The representative for the Port District shall be a member of and appointed by the District's Board of Port Commissioners. Appointment to the Policy Committee shall be for a term not to exceed the appointee's current term in office.

A quorum for the purposes of conducting business will consist of three members of the Policy Committee. In the absence of a quorum, a single member present may move to adjourn. The Policy Committee shall take action only by unanimous consensus of all Policy Committee members. Less than unanimous consent shall be no action.

If, upon recommendation of the Project Team, the Policy Committee decides that one or more consultants should be engaged to assist with developing the WMP, the Policy Committee shall recommend that each signatory Public Agency pay its "fair share" of the cost for the consultant. The Policy Committee shall determine the cost of the consultant(s) and the recommended fair share for each signatory Public Agency. Each signatory Public Agency shall then consider its recommended fair share and, if approved by the signatory Public Agency, said Public Agency shall pay that amount. All future funding shall be reviewed and approved during the normal budget process of each jurisdiction.

The Policy Committee may adopt bylaws, rules and regulations for conducting its meetings and business. The Policy Committee shall conduct regular meetings at least annually and at such other times as the Policy Committee determines or is provided for in its bylaws. Meetings of the Policy Committee shall be subject to the Ralph M. Brown Act (Gov. Code, § 54950 et seq.), which shall govern the proceedings, noticing and general activities of the Policy Committee.

SECTION 6. Stakeholder Committee.

The Policy Committee may establish, and appoint members to, a Stakeholder Committee. The purpose of the Stakeholder Committee is to advise the Policy Committee and Project Team on the development of the WMP. Stakeholder Committee members shall serve at the pleasure of the Policy Committee for a term to be set by the Policy Committee. A quorum for the purpose of conducting business shall be a simple majority of the members of the Stakeholder Committee. In the absence of a quorum, a single member may move to adjourn. The Policy Committee may determine how often the Stakeholder Committee shall meet.

Meetings of the Stakeholder Committee shall be subject to the Ralph M. Brown Act (Gov. Code, § 54950 et seq.), which shall govern the proceedings, noticing and general activities of the Stakeholder Committee.

SECTION 7. Withdrawal From Agreement.

Upon provision of 30-days advanced written notice to all of the other signatory agencies, a signatory Public Agency may withdraw from this Agreement. If a signatory Public Agency withdraws from

this Agreement after that signatory Public Agency has approved its fair share payment of consultant costs, the Public Agency's withdrawal shall not relieve the Public Agency from paying its full fair share.

SECTION 8. Limitation on Powers and Designation of Lead Agency.

The powers of the Public Agencies under this Agreement shall be subject to those legal restrictions which the County of San Diego has upon the manner of exercising said power pursuant to Government Code Section 6509.

The County of San Diego agrees to act as lead agency for the purpose of scheduling meetings, providing notice of meetings, preparing agendas, recording minutes, maintaining records, entering into and administering contracts approved by the Policy Committee, pursuant to provisions herein, and reporting to the Regional Water Quality Control Board and other appropriate federal and state agencies the progress on and status of the WMP. The County of San Diego shall inform the Policy Committee regarding all actions taken by the County as the Lead Agency.

SECTION 9. Privileges and Immunities.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any of the Public Agencies when performing their respective functions within their territorial limits, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extra-territorially under this Agreement.

SECTION 10. Records and Accounts.

The Public Agencies shall be strictly accountable for all funds and shall report all receipts and disbursements made by the Public Agencies in developing the WMP. Expenditures made by each signatory Public Agency related to this Agreement shall be made in accordance with the respective signatory Public Agency's rules and regulations.

SECTION 11. Notices.

Any notice or notices provided or required by this Agreement to be given or served upon the Public Agencies may be given by depositing the same in the United States mail, postage prepaid, addressed to or to such address as the Public Agencies may subsequently specify in writing.

Walter F. Ekard	Chief Administrative Officer	County of San Diego	1600 Pacific Highway, Room 209	San Diego, CA	92101
David D. Rowlands Jr	City Manager	City of Chula Vista	276 Fourth Avenue	Chula Vista, CA	91910
Gary Brown	Interim City Manager	City of Imperial Beach	825 Imperial Beach Boulevard	Imperial Beach, CA	91932
Bruce Hollingsworth	President/CEO/Executive Director	San Diego Unified Port District	P.O. Box 120488	San Diego, CA	92112-0488

SECTION 12. Governing Law.

This Agreement shall in every respect be binding on the parties hereto and their respective successors and assigns. This Agreement shall be governed by the laws of the State of California.

SECTION 13. Provisions Required by Law.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if for any reason any such provision is not inserted, or is not correctly stated, then upon application of any signatory Public Agency the Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 14. Partial Invalidity.

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

SECTION 15. Future Implementing Agreements.

The Public Agencies acknowledge that additional agreements may be necessary in the future to implement some parts of the WMP. This Agreement does not require any signatory Public Agency to either adopt or implement the WMP after adoption.

SECTION 16. Cooperation in Review of Plans and Projects Affecting Study Area.

Each signatory Public Agency shall, in writing, inform the other parties to this Agreement of all plans and projects proposed in the signatory Public Agency's jurisdiction that may substantially affect the proposed WMP. In addition, each signatory Public Agency shall allow adequate opportunity whenever possible for the other parties to this Agreement to review and provide comments on any such plans and projects, and shall, in good faith, consider any comments received from the other parties to this Agreement. Plans and documents not subject to disclosure under the Public Records Act shall be exempt from this provision.

SECTION 17. Special Area Management Plan.

The Public Agencies acknowledge that the County of San Diego, the cities of Imperial Beach and Chula Vista and the Army Corps of Engineers have executed a Cooperative Agreement for the development of a Special Area Management Plan (SAMP) for the Otay Watershed. Generally, the SAMP is to be a comprehensive plan for identifying, conserving, restoring and managing the aquatic resources in the Otay Watershed. The Public Agencies do not expect the WMP to conflict with the SAMP. However, if a potential or actual conflict between the two plans arises, the conflict shall be presented to the Policy Committee. The Policy Committee shall work to resolve the conflict in a way that will be consistent with both this Agreement and the memorandum of understanding for the SAMP.

If the Policy Committee cannot resolve the conflict in a way that is consistent with both this Agreement and the Cooperative Agreement, the Policy Committee shall refer the conflict to the Executive Committee established under the Cooperative Agreement and request the Executive Committee to recommend a resolution of the conflict. The Policy Committee shall consider the conflict and the recommendation from the Executive Committee, if any, and shall seek to resolve the conflict in a way that is as consistent as possible with both this Agreement and the Cooperative Agreement.

SECTION 18. Entire Agreement.

This Agreement contains the entire understanding of the parties. No party is relying on any other representation, written or oral. No term or provision of this Agreement may be changed, waived, discharged or terminated unless the same be in writing, signed by all of the Public Agencies.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the date first above written.

COUNTY OF SAN DIEGO

By: [Signature]
Chief Administrative Officer

Dated: 3/24/04

CITY OF CHULA VISTA

By: [Signature]
Mayor

Dated: 18 February 2004

Attest: [Signature]
City Clerk

SAN DIEGO UNIFIED PORT DISTRICT

By: [Signature]
President/CEO/Executive Director

Dated: 02/16/04

CITY OF IMPERIAL BEACH

By: [Signature]
Mayor

Dated: 3-17-04

Attest: [Signature]
City Clerk



EXHIBIT A. Otay River hydrologic unit.

