



***Marin Municipal Water District
Board of Directors***

ITEM No.: **1**

MEETING DATE:

July 26, 2010

SUBJECT: Minutes of Board Meeting

SUBMITTED BY: District Secretary

RECOMMENDED ACTION:

Approve the minutes for the meeting of July 14, 2010.

SUMMARY:

ATTACHMENTS:

Minutes

**THE BOARD OF DIRECTORS
OF MARIN MUNICIPAL WATER DISTRICT**

Minutes of the special meeting of the Board of Directors held on Wednesday, July 14, 2010.

Directors present: Directors David Behar, John C. Gibson (via teleconference), Cynthia Koehler, Armando Quintero and Larry Russell

Directors absent: None

1. CLOSED SESSION:

Labor Negotiations - Government Code § 54957.6(a)

Agency Negotiators: Paul Helliker and Mark Williamson

Employee Organization: Mo Kashmiri, SEIU

The Closed Session meeting convened at 9:00 a.m. immediately following the earlier District Financing Committee meeting.

The Board entered into open session and announced that no reportable action was taken during Closed Session.

ADJOURNMENT

There being no further business, the special meeting of July 14, 2010 was adjourned at 9:15 a.m.

President, Board of Directors

ATTEST:

Secretary



**Marin Municipal Water District
Board of Directors**

ITEM No.: 2

MEETING DATE:

July 26, 2010

SUBJECT: San Rafael Pipeline Replacement Project
Award of Contract No. 1622

SUBMITTED BY: Chi Cheung, Project Engineer
Environmental and Engineering Service Division

RECOMMENDED ACTION:

Approve Resolution No. 7998 authorizing award of Contract No. 1622 to Ghilotti Construction Company, in the amount of \$480,858.20.

SUMMARY:

On July 20, 2010, the District received and opened eight bids for the subject contract which involves the installation of approximately 4,490 feet of 8, 6 and 4 inch welded steel and polyvinyl chloride (PVC) pipe with valves, fittings and appurtenances at six different locations in San Rafael.

The lowest responsible bid was submitted by Ghilotti Construction Company in the amount of \$480,858.20. The engineer's estimate for the construction contract is \$530,000. This project is budgeted at a total cost of \$750,000 within Category A1A02A Distribution Pipeline Replacement Fund of the Fiscal Year 2009-10 and 2010-11 Capital improvements Budget.

Ghilotti Construction Company has completed several pipeline projects for the District. Their bid documents have been reviewed. The documents are complete and satisfactory.

NEED FOR PROJECT:

The San Rafael Pipeline Replacement Project is part of the District's ongoing work to eliminate sections of pipe with high concentrations of leaks. Approximately 4,490 feet of 8, 6 and 4-inch welded steel and PVC distribution main will replace existing undersized and badly deteriorated galvanized and cast iron water mains that are between 50 and 120 years old in various streets in San Rafael.

PROJECT DESCRIPTION:

The following table is an overview of the work (see Attachment 3 for site map):

Street and limits	Original Pipe			New Pipe		
	Size	Type	Date	Size	Type	Length (ft)
Sussex Ct from Golden Hind Blvd to the end	4"	CIP	1960	4"	PVC	310
Nye Street from Laurel Pl to Curtis Av	4"	CIP	1923	6"	WSP	340
Mission Av from Nye St to Court St	6"	CIP	1944	6"	PVC	340
Knoll Rd from 59 Knoll Rd to the end	2"	GTP	1949	4"	WSP	210
Clark St from Clorinda Av to Ross Av	3"	GTP	1890	6"	PVC	760
Clorinda Av from Clark St to Marin St	4"	CIP	1895	6"	PVC	710
D Street from San Rafael Av to Antonette Av	6"	CIP	1950	8"	PVC	960
Wolfe Av from Antonette Av to C Street	4"	CIP	1904	6"	WSP	860
TOTAL:						4,490

NOTE: CIP - cast iron pipe, WSP - welded steel pipe, PVC - Polyvinyl Chloride, GTP - Galvanized Threaded Pipe.

ENVIRONMENTAL REVIEW

This project has been determined to be Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15302(c), Replacement or Reconstruction. The project entails the replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. A copy of the draft Notice of Exemption is enclosed as Attachment 3. The Notice of Exemption will be posted with the County Clerk's office following Board action to award the contract.

DESIGN PARAMETERS:

The materials for the new pipelines were chosen based on the stability of the roadway and underlying soils as well as the position of each segment within the system network. PVC pipe will be used in roads with stable soils where the road grade is relatively flat. Welded steel pipe will be used in areas that are unstable, congested with other utilities, steep, winding or unpaved.

PROJECT'S ESTIMATE:

Contract (Engineer Estimate)	\$530,000
Materials	\$70,000
District Design & Construction Mgmt.	<u>\$150,000</u>
Total Funds	\$750,000

PROJECT FUNDING

Funding for this project comes from the budget category A1A02A of the FY2009-10 (\$50,000) and FY2010-11 (\$700,000) Capital Projects Budget.

PROJECT IMPLEMENTATION:

Project Advertisement:	July 2, 2010
Bids Received:	July 20, 2010
Award of Project: (Revised)	July 26, 2010
Time for Completion:	150 calendar days
Estimated Completion Date:	January 3, 2011

Based on their qualifications and their submittal of the lowest responsible bid on this contract, staff recommends that the District award Contract No. 1622 to Ghilotti Construction Company at their bid price of \$480,858.20.

ATTACHMENTS:

1. Resolution No. 7998
2. Final Bid Results
3. Draft Notice of Exemption with Site Map

Job No. D10046

MARIN MUNICIPAL WATER DISTRICT

RESOLUTION NO. 7998

IT IS HEREBY RESOLVED that the bid of \$480,858.20 submitted by Ghilotti Construction Company for the San Rafael Pipeline Replacement Project under Contract No. 1622 was the lowest responsible bid submitted therefor, and said bid is hereby accepted.

BE IT FURTHER RESOLVED that a contract for this project be awarded to said low bidder, and the General Manager and Secretary are authorized and directed to execute said contract on behalf of the District upon receipt of a performance bond, payment bond, proof of insurance, and the executed contract for the work from said bidder.

BE IT FURTHER RESOLVED that upon complete execution of said contract, the bonds and/or checks of the other bidders are to be returned to said other bidders, and all bids other than that of Ghilotti Construction Company are to be rejected.

PASSED AND ADOPTED this 26th day July, 2010, by the following vote of the Board.

AYES:

NOES:

ABSENT:

President, Board of Directors

ATTEST:

Secretary

**Marin Municipal Water District
Bid Results
SAN RAFAEL PIPELINE REPLACEMENT PROJECT
Contract # 1622**

Engineers Estimate: \$530,000

Bid Closing Date: 7/20/2010 @ 10:00 a.m.

Job Number: D10046

Rank	Company Name	Bid Amount
1	Ghilotti Construction Co 246 Ghilotti Av Santa Rosa, CA 95407 Phone # (707) 585-1221 Fax # (707) 585-0129 email address:	\$480,858.20
2	W R Forde Associates 984 Hensley St Richmond, CA 94801 Phone # 510-215-9338 Fax # 510-215-9867 email address:	\$524,040.00
3	Ghilotti Brothers Inc 525 Jacoby St San Rafael, CA 94901 Phone # (415) 454-7011 Fax # (415) 454-8376 email address: MelissaD@ghilottibros.com	\$524,102.90
4	Argonaut Constructors Box 639 Santa Rosa, CA 95402 Phone # (707) 542-4862 Fax # (707) 542-3210 email address: daves@argonautconstructors.com	\$529,763.50
5	Maggiora & Ghilotti Inc 555 Dubois St San Rafael, CA 94901 Phone # (415) 459-8640 Fax # (415) 459-2065 email address:	\$530,168.00
6	NCCI Inc 390 Selby St San Francisco, CA 94124 Phone # (415) 974-0947 Fax # (415) 974-0948 email address: tdrmail@yahoo.com	\$550,077.00

**Marin Municipal Water District
Bid Results
SAN RAFAEL PIPELINE REPLACEMENT PROJECT
Contract # 1622**

Engineers Estimate: \$530,000

Bid Closing Date: 7/20/2010 @ 10:00 a.m.

Job Number: D10046

Rank	Company Name	Bid Amount
7	D & D Pipelines, Inc. 629 Divisadero Street San Francisco, CA 94117 Phone # 415-441-2006 Fax # 415-441-2491 email address: DennisM@DDpipelines.com	\$593,665.00
8	J & M, Inc. 6700 National Drive Livermore, CA 94550 Phone # 925-724-0300 Fax # 925-724-0160 email address:	\$716,109.00

Notice of Exemption



Filing Requested By and When Filed Return To:
 Marin Municipal Water District
 220 Nellen Avenue
 Corte Madera, California 94925
 Attn: Dain Anderson, Environmental Services Coordinator

Project Title: San Rafael Pipeline Replacement Project (D10046)

Project Location – City: San Rafael

Project Location – County: Marin

Project Description: The San Rafael Pipeline Replacement Project is part of the District’s ongoing work to eliminate sections of pipe with high concentrations of leaks. Approximately 4,490 feet of 8, 6 and 4-inch welded steel and PVC distribution main will replace existing, undersized and badly deteriorated galvanized and cast iron mains in various streets in San Rafael.

The following table is an overview of the work (also see Figure 1):

Street and Limits	Original Pipe			New Pipe		
	Size	Type	Date	Size	Type	Length (ft)
Sussex Court from Golden Hind Blvd to the end	4"	CIP	1960	4"	PVC	310
Nye Street from Laurel Place to Curtis Avenue	4"	CIP	1923	6"	WSP	340
Mission Avenue from Nye Street to Court Street	6"	CIP	1944	6"	PVC	340
Knoll Road from 59 Knoll Road to the end	2"	GTP	1949	4"	WSP	210
Clark Street from Clorinda Avenue to Ross Avenue	3"	GTP	1890	6"	PVC	760
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Total						4,490

NOTE: CIP - cast iron pipe, WSP - welded steel pipe, PVC - Polyvinyl Chloride, GTP - Galvanized Threaded Pipe.

Public Agency Approving Project: Marin Municipal Water District

Name of Person or Agency Carrying Out Project: Marin Municipal Water District

CEQA Exemption Status: Categorical Exemption Section 15302(c); Replacement or Reconstruction

Reason for Exemption: The project qualifies for exemption pursuant to Section 15302(c) of the CEQA Guidelines inasmuch as the project is the replacement of an existing water pipeline located wholly within existing paved roadway rights-of-ways and involves negligible expansion of capacity.

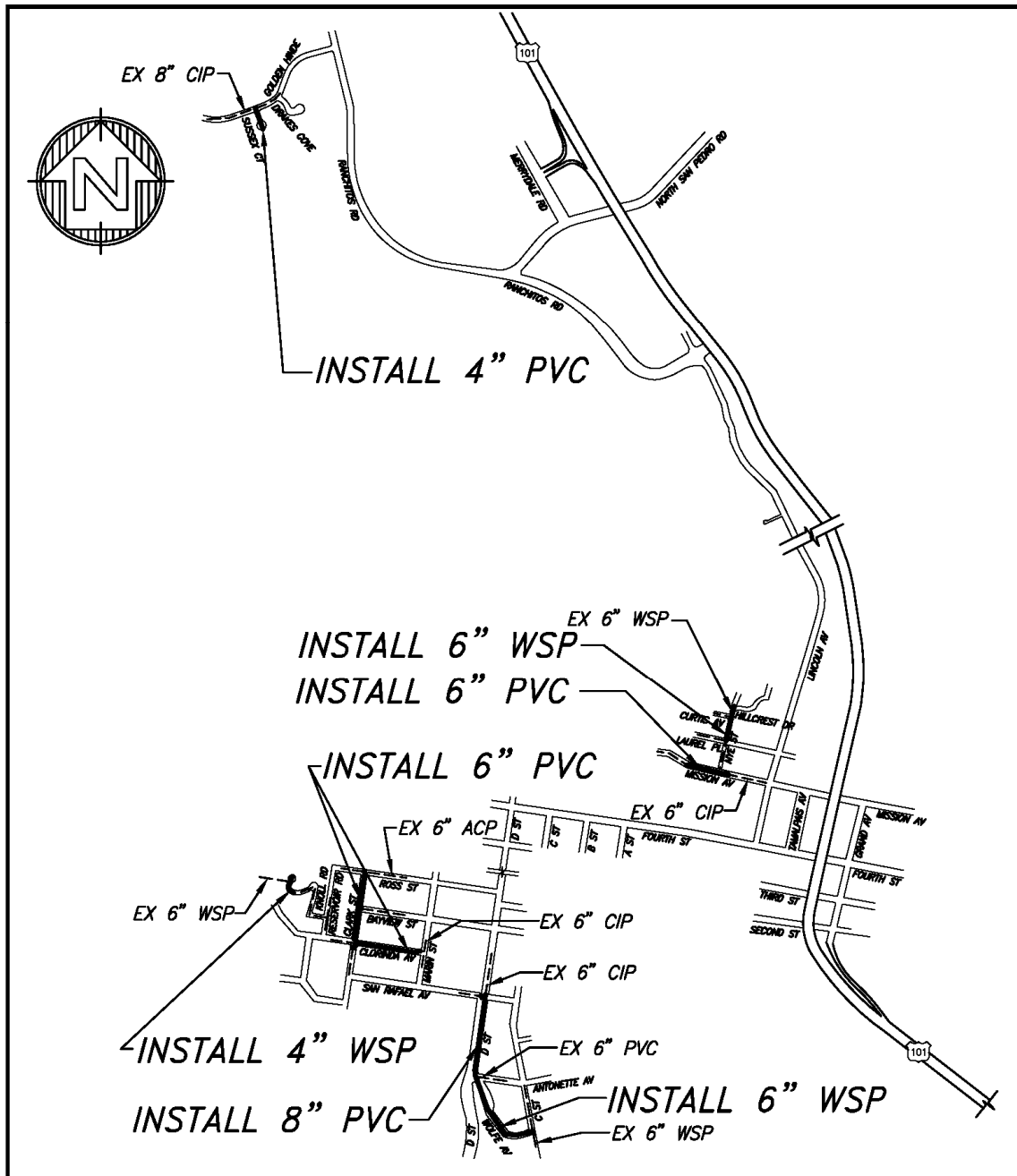
Project Approval: The Marin Municipal Water District Board of Directors approved the award of a contract for project construction, which represents project approval as defined by Section 15352 of the Guidelines for Implementation of the California Environmental Quality Act, at their regularly scheduled meeting on June 16, 2010.

Lead Agency Contact Person: Dain Anderson, Marin Municipal Water District **Telephone:** (415) 945-1586

Dain Anderson
 Environmental Services Coordinator

Date

Figure 1: San Rafael Pipeline Rehabilitation Project



MARIN MUNICIPAL WATER DISTRICT
 220 NELLEN AVE., CORTE MADERA, CA 94925 (415) 924-4600

**LOCATION MAP
 SAN RAFAEL
 PIPELINE REPLACEMENT PROJECT**

DATE: JUNE 2010 JOB NO: D10046 SHEET: FIG 1
 PREPARED BY: EH DESIGN BY: CC

D10046AMAP.dwg 7/20/10 11:45 AM



**Marin Municipal Water District
Board of Directors**

ITEM No.: 3

MEETING DATE:
July 26, 2010

SUBJECT: Consideration of desalination initiative and its impacts

SUBMITTED BY: Paul Helliker
General Manager

RECOMMENDED ACTION:

A. Approve desalination ballot measure for submittal to the Registrar's Office for placement on the November 2, 2010 ballot.

B. Direct staff to submit proposed initiative to the Registrar's Office for placement on the November 2, 2010 ballot.

Summary

The "INITIATIVE TO REQUIRE VOTER APPROVAL BEFORE THE MARIN MUNICIPAL WATER DISTRICT AUTHORIZES, EXPENDS OR APPROPRIATES ANY REVENUE, OR PLANS, ENGINEERS OR CONSTRUCTS A DESALINATION FACILITY TO AUGMENT WATER SUPPLIES FOR DISTRICT CUSTOMERS," circulated by William Rothman, Loren Moore and Katherine da Silva Jain, was presented to the MMWD Board of Directors on July 7, 2010, as the County Registrar of Voters had certified the sufficiency of the petition on June 18, 2010, and this was the next regular meeting of the MMWD Board of Directors. This report is in response to the request by the Board at that meeting for a report on the initiative, in advance of a decision to either adopt the initiative as an ordinance or to request that the County Registrar place it on the November 2, 2010 ballot, which must be made at the July 26, 2010 special meeting.

Alternative Desalination Ballot Measure

An alternative ballot measure is proposed (see Attachment 1) as Ordinance 418, which would require the approval of a majority of the MMWD electorate voting in an election called for that purpose before MMWD could construct or secure financing for the construction of a desalination facility. This measure would be a simple requirement for voter approval before construction of a desalination facility, but would allow MMWD to take other steps to evaluate, plan and seek permits for a desalination facility.

Ordinance 418 ("Measure") is not a project subject to CEQA. (Pub. Resources Code, § 21065; CEQA Guidelines, § 15378, subd. (b).) "CEQA compliance is required when a project is proposed and placed on the ballot by a public agency." (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 171; see also CEQA Guidelines, § 15378, subd. (b)(3).) A ballot measure is not subject to CEQA merely because an agency places it on the ballot; rather, a ballot measure is subject to CEQA where the underlying action that the voters are being asked to approve is a project pursuant to CEQA. (See *Sustainable*

Transportation Advocates of Santa Barbara v. Santa Barbara County Assn. of Governments (2009) 179 Cal.App.4th 113, 122 [distinguishing *Friends of Sierra Madre* by holding that where the underlying question included in an agency sponsored ballot measure was not a project the measure itself was not a project subject to CEQA].)

Here, the Measure proposes the creation of an additional procedural step before MMWD can approve construction of a desalination plant. Creation of this additional procedural step does not have the potential to “cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. . .” (Pub. Resources Code, § 21065.) For this reason, the Measure is not a project. (See *City of Santee v. County of San Diego* (2010) 2010 Cal.App.LEXIS 994 [siting agreement between County of San Diego and California Department of Corrections not a “project” under CEQA because agreement would not cause environmental effects].)

Moreover, “[t]he term ‘project’ does not mean each separate government approval.” (CEQA Guidelines, § 15378, subd. (c).) The underlying “project” at issue here is the desalination plant. MMWD already certified an EIR for the desalination project. The Measure, which constitutes a proposed procedural change in the process of constructing a desalination plant, has no effect on the environmental impacts associated with constructing such a plant. As a result, approval of the Measure does not require MMWD to prepare an environmental analysis, and because the desalination plant is not changed by the Measure, no supplemental review is required. (See Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163.)

Even if the Measure was found to meet the definition of project pursuant to CEQA and was not found to be covered by the prior EIR, at least two categorical CEQA exemptions would apply to the project. First, for all the reasons discussed above, the common sense exemption would apply. (CEQA Guidelines, § 15061, subd. (b)(3).) Second, the CEQA Guidelines exempts proposed actions by regulatory agencies designed to protect the environment. (CEQA Guidelines, § 15308 [Class 8 Exemption].) The Measure is designed to protect the environment by providing that the voters must approve construction. Therefore, for all the foregoing reasons, MMWD is not required to conduct CEQA review prior to requesting the County place the Measure on the November 2, 2010, ballot.

Staff recommends that, if the Board votes to place the Measure on the ballot, staff post a notice of exemption reflecting the analysis set forth above.

Initiative

On January 7, 2010, Mary Casey, MMWD General Counsel, provided to the proponents the title and summary of the initiative, which is:

AN INITIATIVE TO REQUIRE VOTER APPROVAL BEFORE THE MARIN MUNICIPAL WATER DISTRICT AUTHORIZES, EXPENDS OR APPROPRIATES ANY REVENUE, OR PLANS, ENGINEERS OR CONSTRUCTS A DESALINATION FACILITY TO AUGMENT WATER SUPPLIES FOR DISTRICT CUSTOMERS

The proposed measure is an initiative that, if approved by the voters, would require voter approval before the Marin Municipal Water District (District) initiates any action to plan,

engineer, or construct a desalination facility as a supplemental potable water supply, or authorizes or appropriates any revenue for those purposes.

In 1989, the District Board adopted its Water Supply Master Plan which recommends continuing the District's long-term commitment to water conservation, increasing the District's water recycling activities, and developing supplemental potable water supplies to eliminate water supply deficiencies and diversify the District's sources of supply. For several years, the District has been investigating a number of options to provide an adequate and reliable water supply for customers during droughts and in the future. On February 11, 2009, the Board selected several water supply options other than desalination, including operational improvements to the reservoir system, an expansion of the District's recycled water distribution system, investigation into ways to improve the reliability of the District's Russian River water supply and further investment in the District's aggressive water conservation program. On August 19, 2009, the District Board of Directors approved a desalination plant located at the Marin Rod and Gun Club pier in San Rafael. As approved, the plant's capacity will be five million gallons per day (mgd), expandable to 15 mgd. The Board directed District staff to move forward with the permitting process for the desalination plant. Certain further actions to implement the desalination project, such as contracts for design and construction of the plant, would be subject to future Board review and approval.

If approved, the initiative would require voter approval of further actions to implement or fund the District Board's August 19, 2009, decision, or other decisions to plan, engineer or construct a desalination plant. The initiative provides that approval of a majority of the District electorate is required prior to District approval of the following actions relating to the planning, engineering or construction of any desalination facility:

- To approve, authorize, or undertake construction;
- To authorize or appropriate funds for planning, engineering or construction;
- To approve the sale of bonds or other funding mechanisms; and
- To approve any contract relating to planning, engineering or construction.

The proposed measure adopts certain findings. If enacted, the measure would apply retroactively, to the date the measure qualifies for the ballot. The measure includes a "severability" clause; if portions of the measure are found invalid, the balance of the measure would remain in effect.

In the letter that accompanied the title and summary (see Attachment 2), Ms. Casey noted concerns regarding the legality of the Initiative, due to the fact that it may not constitute a proper exercise of initiative power. The initiative power does not apply to administrative actions that carry out legislative policy. The Initiative limits actions by MMWD to issue contracts for the planning or construction of a desalination facility, to issue financing for the planning or construction of such a facility and to the approval, authorization or undertaking of the construction of such a facility. (See Attachment 3 for the text of the initiative.) Staff believes these actions are administrative actions which carry out the legislative policy adopted by the MMWD Board of Directors on August 19, 2009 that approved the 5 million gallon per day desalination project.

Impact of the Initiative

The Initiative would constrain the ability of MMWD to evaluate desalination and to analyze various aspects of this water supply alternative. It would also constrain MMWD's ability to plan this alternative, including doing the studies and preparing the documents necessary to secure permits for a desalination facility. Staff estimates that these activities would take between 1-2 years to complete. MMWD must complete these tasks before MMWD can construct and operate a desalination facility. The design and construction of a desalination facility would require an additional three years of time, before operations could begin and water supplies would be available from such a facility. Because MMWD's water supply is limited - consisting of an amount adequate to meet approximately two and one-half year's worth of current water demand, whenever MMWD's reservoirs are full - it is reasonable and prudent for MMWD to take such actions as are necessary to prepare to implement the desalination project (including evaluation, planning, permitting, etc.), so that it could be approved, constructed and brought into operation in time to prevent MMWD from running out of water supply during a drought. This initiative would prevent MMWD from taking these necessary antecedent actions, without going through the process of securing voter approval in an election for that purpose.

Permits and Studies Prohibited by the Initiative without a Vote

The following table lists the permits that would be required before a desalination facility could be constructed and operated:

Permit	Agency	Purpose
National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit	San Francisco Bay Regional Water Quality Control Board	Permit to discharge brine concentrate into San Francisco Bay
Clean Water Act Section 401 Water Quality Certification	San Francisco Bay Regional Water Quality Control Board	Permit to fill waters of the state, such as wetlands, creeks, or streams (typically subject to concurrent CWA Section 404 Permit) (may be required for work in and around Corte Madera Creek)
Clean Water Act Section 404 Permit ¹	Army Corps of Engineers	Permit to fill waters of the US, such as wetlands, creeks, or streams (may be required for work in and around Corte Madera Creek)
Section 10 of the Rivers and Harbors Act of 1899	Army Corps of Engineers	Permit to alter navigable waters of the United States (may be required for work associated with reconstruction of the Marin Rod & Gun club Pier or any other intake structure)
Major Permit	San Francisco Bay Conservation and Development Commission	For most work in the Bay or within 100 feet of the shoreline (will be required for reconstruction of the Marin Rod & Gun Club pier and may be required for other work within 100 feet of the shoreline)

Permit	Agency	Purpose
Section 2081 of the California Fish and Game Code	California Department of Fish and Game	Incidental take permit for a state listed threatened and endangered species (will be required for the incidental take of protected species entrapped or entrained in the intake and could be required for other land-based works that could impact wetlands or protected species)
Section 1602 of the California Fish and Game Code (Lake and Streambed Alteration Agreement Notification)	California Department of Fish and Game	Notification is required by any person, business, state or local government agency, or public utility that proposes an activity that will (most probably required for installation of pipeline underneath Corte Madera Creek): <ul style="list-style-type: none"> • Substantially divert or obstruct the natural flow of any river, stream or lake; • Substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or • Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake
Incidental Harassment Authorization (IHA) under the Marine Mammal Protection Act for	National Oceanic and Atmospheric National Marine Fisheries Service	Incidental take of marine mammals during construction and post-construction (may be required for harassment of marine mammals during noise producing construction activities – reconstruction of the Marin Rod & Gun Club pier – or post construction)
Encroachment Permits	Caltrans	Permit to construct utility system improvements within state highway/roadway rights-of-ways (pipelines and other in-system improvements that cross state rights-of-ways)
Encroachment Permits	Marin County and local cities and towns	Permit to construct utility system improvements within roadway rights-of-ways (pipelines and other in-system improvements that cross local rights-of-ways)
Planning Approvals and Building Permits	City of San Rafael	Approvals/building permits for project elements not defined as essential to the production and delivery of water (parking lots,

Permit	Agency	Purpose
		parking lot lighting, etc.)

¹ Section 404 review will include Section 7 of the Endangered Species Act consultation to involve the US Fish and Wildlife Service

In order to obtain these permits, MMWD would have to submit permit applications containing technical information. This information would include:

Magnusson Fisheries Act analysis

This study would be required to provide additional information on the essential fish habitat that would be potentially impacted by desalination facility operations, and to develop conditions to be incorporated into permits.

Ambient Fisheries Assessment

This study has already been requested by the National Marine Fisheries Service and the Department of Fish and Game, and would likely be included in the set of analyses that would be required by the Regional Water Quality Control Board and the U.S. Army Corps of Engineers.

In addition, an assessment of the energy requirements of desalination, and an update of the renewable energy analysis that is contained in the Environmental Impact Report on the desalination facility, would likely be necessary for the Board of Directors to make an informed decision on whether or not to proceed with financing and construction of a desalination facility. Further analysis and simulation of the aesthetic impacts of the distribution system elements (storage tanks) of the desalination projects may also be desirable, as the MMWD Board deliberates further on the desalination project.

The Initiative would prevent MMWD from securing the services of expert consultants, whose expertise would be necessary to adequately conduct these studies, without conducting an election. Similarly, with successful passage of the Initiative, MMWD could take no steps to make use of consultants to assist it in securing the permits necessary to design, construct and operate a desalination facility.

MMWD Water Supply Planning Activities Prohibited by the Initiative without a Vote

This section addresses MMWD's water supply planning activities that would be prohibited by the Initiative without the approval of the electorate. The second amended version of the MMWD Urban Water Management Plan 2005, adopted in November 2007, stated that by the year 2025 water demand in the District would exceed reliable supply by 6,700 Acre-feet per year (AFA) if MMWD's ongoing conservation programs were unsuccessful, or by 3,300 AFA if those programs meet all of their goals. Both of these figures assumed that past precipitation and run-off in our water source areas would continue into the future and that ongoing climate change would not have an appreciable impact on surface water supplies, the only supplies available to the District.

On February 11, 2009, the MMWD Board of Directors directed MMWD staff to pursue the following actions to balance demand and supply now and into the future:

- Implement Water Conservation Program 3 and seek funding for more rapid Implementation
- Work with the North Marin Water District to collaborate on pipeline improvements for any pipeline disturbed by Caltrans Sonoma Narrows project
- Implement projects to improve reservoir operations by eliminating constraints on the reservoirs/water transmission system:
 - Alpine-Bon Tempe Lake transfer pump system
 - Nicasio to Kent pipeline
 - Federal Works pump station
- Recycled water system expansion to Peacock Gap
- Selection of a 5 MGD desalination project and issuance of the CEQA Notice of Determination

Included in Attachment 4 is a description of the current status of each of these projects.

Over the last 18 months, water use has dropped by over 15%. This drop is likely due to multiple causes: the impact of a significant increase in MMWD's conservation program activities, starting in 2008; the impacts of the worst economic downturn in 70 years; and two consecutive wet springs, following three years of a widely publicized state wide drought.

Whatever the specific reason, this reduction in demand has provided the District more time to analyze and implement its future water supply options. Because water demand by MMWD customers is currently running below the level that can be supplied from current sources in another drought similar to that of 1976-77, including a requirement for 25% water rationing in the second year of such a drought, the MMWD Board decided on April 21, 2010 to pause further work on the desalination project. The reduction in demand has also affected MMWD's revenue, necessitating significant cuts in MMWD's operating expenses. However, it remains incumbent upon the MMWD Board, and any other public agency, to objectively analyze all courses of action available and set appropriate policy that is commensurate with the District's needs.

Concerning climate change, up until 2007, the consensus among climatologists was that ongoing climate change would increase surface temperatures and climate variability in California but that average temperatures and precipitation would remain about the same. However, recent studies have predicted that winter rainfall and streamflow in Northern California may decrease by 9-35% under the pressure of climate change.

In response to these new assessments, two neighboring water agencies, San Francisco and East Bay Municipal, have changed the way they assess the reliability of their water supplies. In 2009 District staff applied the assessment methodologies used by those two water agencies to the District situation. The results of that analysis indicated that, under these new assumptions, the sustainable yield of the District water sources would decline by almost 15%. This in turn, would increase the District's potential water supply deficit range in

2025 to 5,700 AFA to 9,100 AFA, depending, once again, on the success of the District's ongoing conservation efforts.

Should water demand in MMWD's service territory rise again above the level of supply that can be provided in a drought similar to 1976-77, MMWD would need to reinitiate the desalination project. Given that MMWD typically has approximately two years of water supply at the end of any rainy season, it would be reasonable, prudent and appropriate to proceed with the planning and permitting of the desalination facility, to reduce the time it would take to bring the facility online, in advance of the reoccurrence of a serious drought. As noted above, successful passage of the Initiative would prevent MMWD from taking the steps necessary to plan, permit, finance or construct a desalination facility without first securing approval of a majority of voters in its service territory.

Conclusion

Given the broad language of the Initiative and its potential for halting all desalination related activities, including planning, permitting and studying (whether undertaken by staff or outside consultants) without a vote of the electorate, staff believes the impact to the District's water supply planning activities would be acute, immediate and all encompassing. If the Initiative is adopted by the Board or passed by the electorate, no desalination related activities could be pursued or monies expended without voter approval of those activities. Consequently, staff does not recommend that the Board adopt the Initiative as an ordinance; staff recommends the Board submit the Initiative to the electorate to allow the voters within the District to decide whether to approve an initiative that limits MMWD's ability to plan for, and evaluate, all potential water supply options, or whether to establish constraints that apply solely to desalination as one potential source of supply.

Staff also recommends that the Board approve Ordinance 418

Attachments

1. Desalination Ballot Measure - Ordinance 418
2. Letter from Mary Casey concerning initiative title and summary
3. Initiative text
4. Status of water supply projects

MMWD Ordinance 418
Desalination Ballot Measure

The people of the Marin Municipal Water District (MMWD) do ordain as follows:

Section 1. Purpose

This ordinance requires that MMWD may construct a desalination facility to produce potable (drinking) water only if the voters approve that decision.

Section 2. Policy

MMWD shall not approve construction, or financing for construction, of a desalination facility unless such construction is approved by a majority of voters of MMWD voting in an election held within MMWD's service area for that purpose.

Section 3. Severability

If any provision or provisions of this ordinance are found to be in conflict with California law or with the California Constitution, or with federal law, or with the United States Constitution, that provision shall be implemented to the maximum extent allowable by the limiting statute or constitutional provision. The people of MMWD hereby warrant and declare that they intended to vote for each and every provision of this measure independent of each other provision of this measure, and that any provision held invalid shall be severable from the remaining portions of this ordinance.

Section 4. Competing Ballot Measure

In the event that another measure ("competing measure") appears on the same election ballot for MMWD and addresses a subject matter that overlaps with the subject matter of this measure, the measures shall be deemed to be in conflict. If this measure receives a greater number of affirmative votes than the competing measure, the provisions of this measure shall prevail in their entirety, and the competing measure shall be null and void. The "Initiative to Require Voter Approval Before the Marin Municipal Water District Authorizes, Expends or Appropriates Any Revenue, or Plans, Permits, Engineers or Constructs a Desalination Facility to Augment Water Supplies for District Customers" is a competing measure.

Section 5. Retroactive Application

In the event that this measure is adopted by voters, its provisions shall apply retroactively to June 18, 2010.



MARIN MUNICIPAL WATER DISTRICT

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January 7, 2010

William Rothman, M.D.
14 Cliff Road
Belvedere, CA 94920

Katherine Christina Jain
5 Mt. Tioga Court
San Rafael, CA 94903

Loren Lewis Moore
168 Woodbine Drive
Mill Valley, CA 94941

Re: Initiative Petition & Ballot Title and Summary

Dear Dr. Rothman, Ms. Jain and Mr. Moore:


On December 23, 2009, the Marin Municipal Water District (District) received a Notice of the Intention to Circulate Initiative Petition from the initiative proponents. Pursuant to Election Code section 9203, I have prepared an official ballot title and summary for the proposed measure. A copy of the ballot title and summary is attached.

The District has concerns regarding the legality of the initiative because the initiative may not constitute a proper exercise of the initiative power. The initiative power does not apply to administrative actions that carry out legislative policy. (See *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311; *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384; *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504; *Southwest Diversified v. City of Brisbane* (1991) 229 Cal.App.3d 1548; *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687; *Merriman v. Board of Supervisors* (1983) 138 Cal.App.3d 889; *Fishman v. City of Palo Alto* (1978) 86 Cal.App.3d 506; *Valentine v. Town of Ross* (1974) 39 Cal.App.3d 954; *Hughes v. City of Lincoln* (1965) 232 Cal.App.2d 741; *Hopping v. City of Richmond* (1915) 170 Cal. 605.)

In this case, the District Board, on August 19, 2009, took the legislative action to approve a desalination facility. Because the initiative imposes restrictions on the District's administrative actions to implement that policy, we believe that it may be unlawful.

We recommend the proponents consider revising the initiative to address this flaw. Neither I, nor the District can provide the proponents with legal advice regarding this matter. Therefore, we recommend that you seek legal counsel to review the initiative and advise you regarding its legality prior to beginning the process of collecting signatures on the initiative.

Sincerely,



Mary R. Casey
General Counsel

Enclosure

Cc: General Manager
Board Secretary

AN INITIATIVE TO REQUIRE VOTER APPROVAL BEFORE THE
MARIN MUNICIPAL WATER DISTRICT AUTHORIZES, EXPENDS OR APPROPRIATES
ANY REVENUE, OR PLANS, ENGINEERS OR CONSTRUCTS A DESALINATION
FACILITY TO AUGMENT WATER SUPPLIES FOR DISTRICT CUSTOMERS

The proposed measure is an initiative that, if approved by the voters, would require voter approval before the Marin Municipal Water District (District) initiates any action to plan, engineer, or construct a desalination facility as a supplemental potable water supply, or authorizes or appropriates any revenue for those purposes.

In 1989, the District Board adopted its Water Supply Master Plan which recommends continuing the District's long-term commitment to water conservation, increasing the District's water recycling activities, and developing supplemental potable water supplies to eliminate water supply deficiencies and diversify the District's sources of supply. For several years, the District has been investigating a number of options to provide an adequate and reliable water supply for customers during droughts and in the future. On February 11, 2009, the Board selected several water supply options other than desalination, including operational improvements to the reservoir system, an expansion of the District's recycled water distribution system, investigation into ways to improve the reliability of the District's Russian River water supply and further investment in the District's aggressive water conservation program. On August 19, 2009, the District Board of Directors approved a desalination plant located at the Marin Rod and Gun Club pier in San Rafael. As approved, the plant's capacity will be five million gallons per day (mgd), expandable to 15 mgd. The Board directed District staff to move forward with the permitting process for the desalination plant. Certain further actions to implement the desalination project, such as contracts for design and construction of the plant, would be subject to future Board review and approval.

If approved, the initiative would require voter approval of further actions to implement or fund the District Board's August 19, 2009, decision, or other decisions to plan, engineer or construct a desalination plant. The initiative provides that approval of a majority of the District electorate is required prior to District approval of the following actions relating to the planning, engineering or construction of any desalination facility:

- To approve, authorize, or undertake construction;
- To authorize or appropriate funds for planning, engineering or construction;
- To approve the sale of bonds or other funding mechanisms; and
- To approve any contract relating to planning, engineering or construction.

The proposed measure adopts certain findings. If enacted, the measure would apply retroactively, to the date the measure qualifies for the ballot. The measure includes a "severability" clause; if portions of the measure are found invalid, the balance of the measure would remain in effect.

MMWD Ordinance 419
Desalination Initiative

Text of the Initiative

The people of the Marin Municipal Water District (MMWD) do ordain as follows:

Section 1: Purpose

This ordinance is intended to require that only if there is an affirmative vote for such actions, by the voters of MMWD, may MMWD issue any bonds to construct a desalination facility or spend any other funds or make any contracts to plan for, engineer or construct a desalination facility.

Section 2: Findings

The people of the Marin Municipal Water District hereby find that construction of a desalination plant by or for the Marin Municipal Water District: a) would result in the expenditure of hundreds of millions of dollars of ratepayer money, both for the construction and the operation of such a plant, b) would likely cause significant environmental harm and likely pose significant health hazards and c) is not necessary to meet MMWD's actual need for water.

The people of the Marin Municipal Water District further find that, because of the severe consequences of such decisions, decisions that might authorize or commit MMWD to the construction and/or operation of a desalination plant are too important to be made solely by the Board of Directors of MMWD, and such decisions should instead be made by a vote of the people.

Section 3: Marin Responsible Water Policy

It shall be the policy of the Marin Municipal Water District (MMWD) not to approve, authorize, or undertake the construction of any facility for the desalination of water from the San Francisco Bay, or other body of water, nor to appropriate, authorize expenditures for, issue revenue, lease revenue or any other type of bonds or approve other funding mechanisms intended to pay for such construction, or take any steps towards approving any contract relating to the planning or construction of any such facility without prior approval of any such actions by a majority of the electorate of the Marin Municipal Water District, voting at an election scheduled by the Marin Municipal Water District to decide whether to give such prior approval for any such actions.

Section 4: Severability

If any provision or provisions of this ordinance are found to be in conflict with California state law or federal law, or the United States Constitution, or the Constitution of the State of California, that provision shall be implemented to the

maximum extent that federal and California state law, and the United States Constitution, and the Constitution of the State of California permit. The people of the Marin Municipal Water District hereby warrant and declare that they intended to vote for each and every provision of this measure independent of each other provision of this measure, and that any provision held invalid shall be severable from the remaining portions of this ordinance.

Section 5: Competing Ballot Measure

In the event another measure (“competing measure”) appears on the same election ballot for MMWD and addresses a subject matter that overlaps with the subject matter of this measure, the measures shall be deemed to be in conflict. If this measure receives a greater number of affirmative votes than the competing measure, the provisions of this measure shall prevail in their entirety, and the competing measure shall be null and void.

Section 6: Retroactive Application

In the event this measure is adopted by the voters, its provisions shall apply retroactively as of the date the measure was found to have qualified for placement on the ballot.

Attachment 4 Status of Water Supply Improvement Projects

Improve Reservoir Operations

The following three projects are intended to remove existing operational constraints on the reservoir water collection system and thereby increase the sustainable yield of the reservoir system by about 1,000 Acre-feet.

Replacement of the Alpine – Bon Tempe Lake Transfer Pump System

The project consists of replacing the current single submersible pump located at the upper end of Alpine Lake with two barge mounted vertical turbine pumps.

Project Benefits:

- Allows increased utilization of water stored in Alpine Lake at BTTP
- Replaces an inefficient and increasingly unreliable submersible pump

Timeline for Project Completion:

- Advertise Contract – July 2010
- Open Bids – August 2010
- Project Completion – early 2011

CEQA: Project is Categorical Exempt

Projected Expenditures:

- FY 2010 - \$1,000,000
- FY 2011 - \$1,500,000

Installation of Pipeline from Nicasio Transmission Line to Kent Lake

The project consists of an approximately one mile long pipeline to allow Nicasio Lake water to be transferred directly to Kent Lake without impacting fishery release water quality.

Project Benefits:

- Allows increased utilization of water stored in Nicasio Lake (reduces Nicasio spills)
- Allows Tocaloma Boosters to be operated more efficiently

Current Status:

- Staff is working on the Project Design
- Retaining a consultant to model discharge into Kent Lake and potentially provide a recommendation a floating discharge diffuser

Timeline for Project Completion:

- Complete hydraulic analysis – Summer 2010
- Complete Design Report – Fall 2010
- CEQA Compliance/Permitting- Fall 2010
- Award Installation Contract – Summer 2011
- Project Completion – late 2011

CEQA: Unknown pending completion of Design Report.

Projected Expenditures:

- FY 2010 - \$200,000
- FY 2011 - \$800,000
- FY 2012 - \$1,000,000

Replacement of the Federal Works Pump Station – Corte Madera

The project consists of the replacement of the existing Federal Works pump station with a new pump house and pumps in approximately the same location.

Project Benefits:

- Allows decreased use of BTTP (upper Lag Cr reservoirs) to supply southern Marin.
- Allows increased delivery of Lower Lag Cr reservoirs and Russian River water to southern Marin.
- Allows replacement of existing old and inefficient pumping facilities

Current Status:

- Staff has completed the hydraulic analysis and preliminary design of the replacement station
- Project requires the acquisition of additional property to construct replacement facility. The preferred location is on land owner by the County of Marin along the abandoned railroad ROW leading to the Alto Tunnel. Staff has contacted the County regarding potential purchase or land exchange for pump lot.

Timeline for Project Completion:

- Precise timeline unknown due to need for property acquisition
- Estimated time to complete approx. 2 years after agreement in principal regarding property

CEQA: Unknown pending completion of Design Report.

Projected Expenditures:

- FY 2010 - \$100,000
- Total Project Cost - \$1,000,000

Peacock Gap Recycled Water Project

General: The Peacock Gap Recycled Water Project will extend the District's existing recycled water distribution network from North San Pedro at Schmidt Lane (Santa Venetia) to the Peacock Gap Golf Course and surrounding users. It will convert approximately 320 acre feet of existing potable water entitlement to recycled water use. The project involves installing approximately 8.4 miles of piping at an estimated cost of \$10 million and transferring approximately 35 users to the new piping. Project design has commenced with funding from the District's 2009-2010 Capital Budget, however, the District has applied to the State's Revolving Loan Fund for \$10 million to construct the project.

State Revolving Loan: Staff has submitted an application for the loan with the State. Staff is proceeding with the elements necessary (design and CEQA) for the State to deem the application "complete." Further detail regarding SRF funding is included below.

CEQA: Staff is preparing a Mitigated Negative Declaration for the Project. Consultants have been retained to conduct archeological and biological investigations. CEQA documentation is scheduled for circulation in May 2010.

Easements: Three easements are necessary for the project in areas where the pipe alignment will leave the roadway. The project crosses the China Camp State Park at the park ranger headquarters. Staff has completed a field survey and is currently preparing an application to the State Parks for an easement. It is estimated that this will be complete by September 2010. The other easements are necessary through lands of the Peacock Estates Homeowners Association, and staff has been in communication with the Association.

Construction Contracts: Staff has begun preparation of the construction plans for the contracts for this project. This project is the main focus of the District's Design Drafting Department and will be through summer 2010.

Project Schedule: The project schedule will be determined by funding. Complicating the project schedule is the County of Marin's plans to overlay North San Pedro Road through China Camp State Park. The County is seeking federal stimulus funding for roadway pavement overlays. This puts the burden on the District's project to either finish before the County project or make a decision regarding the consequence of not completing before the County's start date. Typically, if a road is repaved it is declared a "moratorium street", meaning that for a period of typically 5 years any new trench after the paving work would necessitate a complete overlay of the road by the party constructing the new trench. Therefore, the consequence of not completing the recycled water line before the County paves is that the District must either wait to construct its project for 5 years or incur the cost of overlaying the County road. The paving

cost may be as much as \$1.0 million.

Without consideration of the County's road project the recycled water project would be completed in summer of 2011.

SRF Funding

The District is pursuing funding for the Peacock Gap Recycled Water Extension Project under the Clean Water State Revolving Fund (CWSRF) Water Recycling Program, which is administered by the State Water Resources Control Board (SWRCB).

Last February, the District submitted an online pre-application so that the project would be considered for federal stimulus funds that were to be distributed under the CWSRF program in the form of grants and zero interest loans.

The SWRCB published the CWSRF 2009/2010 Project Priority List in September, 2009, and the Peacock Gap project was included as project number 5531-110.

In October of 2009, staff followed up the pre-application with a full Financial Assistance Application package seeking \$9,988,000 in funding.

In December, District staff met with SWRCB environmental review and administrative staff for a "project kickoff meeting" to discuss next steps and process. Before the SWRCB will issue a funding commitment letter for our consideration, we must complete CEQA and all SRF application materials must be approved (including a credit review package, project design specifications, market assurances, etc.). The time line we have established would, optimistically, mean that these requirements will be met and CEQA documents would be ready to submit for SWRCB SRF staff review by this summer.

The CWSRF program is designed to offer low interest loans, typically at half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that a Preliminary Funding Commitment is approved. The federal stimulus funds that were available under the SRF program were an exception in that some grants and zero interest loans were offered. As of the December kickoff meeting, SWRCB told District staff that all SRF stimulus funds had been allocated to projects that were "shovel ready." If the CWSRF were to receive additional federal stimulus dollars through a reallocation process for unobligated stimulus funds, it is possible that the project would be eligible for a grant or zero interest loan if all application requirements and environmental review have been completed at that time. Otherwise, we will be eligible for a low interest loan as described above. Projects on the Statewide List will receive financing agreements on an "as ready to proceed with construction" basis.

Desalination Project

General: On Wednesday August 19, 2009 the Board approved a desalination project, sized at 5 million gallons per day (MGD), expandable to 15 MGD. The desalination project, if successfully permitted, funded and constructed by MMWD, will draw water from San Rafael Bay, utilize pre-treatment to remove solids and reverse osmosis to remove salt and other constituents from the water, and produce both finished water for domestic applications as well as concentrated brine. The project plan is to reconstruct the Marin Rod and Gun Club pier with an intake structure at the end and discharge the concentrated brine in the CMSA outfall.

Activities to Date: Staff has met with six permitting agencies to introduce the project. These agencies include San Francisco Bay Regional Water Quality Control Board (SFRWQCB), US Army Corps of Engineers (ACOE), San Francisco Bay Conservation and Development Commission (BCDC), California Department of Fish and Game (CDFG), and NOAA National Marine Fisheries Service (NMFS). Additionally, staff has met with Central Marin Sanitary Agency (CMSA) and Marin Rod and Gun Club. Staff has not yet met with CALTRANS, the County or San Rafael regarding the project. A list of permits describing the purpose of each permit is attached.

These initial meetings were primarily to establish our staff contacts with each agency, explain the pilot project and EIR contents, the Board's action to approve the EIR and the project and, to discuss the agencies' EIR comments. The General Manager of CMSA requested our Board President send the CMSA Commissioners a letter requesting they authorize staff to work with MMWD to develop an agreement for use of the outfall. Marin Rod and Gun Club have established a Desalination Subcommittee. Formal discussion regarding the reconstruction of the pier with an intake should begin some time soon.

Staffing: The District will need to secure resources with extensive experience working with the permit agencies to facilitate acquisition of permits and to ensure requirements imposed by the regulatory agencies are implementable. Resources needed include:

- Assistant Project Manager – the purpose of this contract will be to write RFPs, screen consultants, discuss negotiations and general project approach. Specifically, this consultant will assist bringing on design engineers for the pier/intake and the tie-in to the outfall and in negotiations with CMSA, Marin Rod and Gun Club.
- NPDES Permit Consultant – a party with experience obtaining NPDES permits with specific experience with discharges into the SF Bay. This consultant will also assist with negotiations with CMSA.

- Fisheries Consultant – CDFG and NMFS have stated that the source water study conducted during the pilot program is insufficient. Their desire is that the District conduct a year long study. This consultant will help decipher the regulations, data that is currently available on species in the Bay and craft a reasonable testing protocol if further source water testing is ultimately required.