

**MARIN MUNICIPAL WATER DISTRICT**

**RESOLUTION NO.**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER DISTRICT  
APPROVING THE MARIN EAST BAY EMERGENCY INTERTIE PROJECT, AUTHORIZING THE  
GENERAL MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH CONTRA COSTA WATER  
DISTRICT AND AUTHORIZING THE GENERAL MANAGER TO CARRY OUT THE PRE-PURCHASE OF  
MATERIALS FOR PROJECT CONSTRUCTION**

**WHEREAS**, the District's potable water supply is limited to water captured in its seven reservoirs and water conveyed from the Russian River, both dependent on annual rainfall, and further depends on conservation and the use of recycled water where available; and

**WHEREAS**, the District has experienced two successive dry winters in 2020 and 2021 with historically low rainfall and runoff; and

**WHEREAS**, on April,20, 2021, the Board of Directors adopted Resolution 8630 declaring a water shortage emergency and adopted an ordinance setting forth a comprehensive list of mandatory water conservation measures and water use restrictions, which have been expanded over the course of the past several months, including the addition of water use limits; and

**WHEREAS**, on May 18, 2021, the Marin County Board of Supervisors voted unanimously to declare a local emergency and acknowledge the imminent threat of disaster related to local dry conditions and water supplies, and on July 8, 2021, Governor Gavin Newsom added Marin County to a list of 50 out of 58 counties in California that are in a drought state of emergency, which Proclamation included the suspension of environmental review by state and local agencies to the extent necessary to carry out actions pertaining to the drought response and mitigation; and

**WHEREAS**, the District typically receives about 25 percent of its supply from Sonoma Water, which is in similar drought conditions and as a result of this drought, Sonoma Water has curtailed the amount of water available to its contractors throughout this drought period, and the District's supply from Sonoma Water is anticipated to continue to be curtailed; and

**WHEREAS**, as of October 14, 2021, the water supply storage level in Marin Water's reservoirs was 26,117 acre-feet, which is less than 33 percent of capacity as a result of severely low rainfall in the region, recorded rainfall for January 1, 2020 through August 1, 2021 was approximately 32 inches, the lowest total rainfall for the 20-month period in 142 years; and

**WHEREAS**, the District’s analysis based on historical hydrological data indicates that in the absence of above average rainfall and runoff, reservoir storage levels are projected to be between 22,000 to 25,000 AF on December 1, 2021; and

**WHEREAS**, projections indicate that another dry water year could result in reservoir storage levels as low as 10,000 acre feet in summer or fall of 2022, meaning that even with aggressive mandatory conservation measures, the District’s 191,000 customers are projected to run out of water as early as July 2022 if the drought continues; and

**WHEREAS**, in an effort to ensure that water is available for customers, the District is proposing to construct an emergency intertie pipeline across the Richmond San Rafael Bridge (SRS Bridge) to connect to the East Bay Municipal Utilities District (East Bay MUD) distribution system to allow water purchased on the transfer market to be wheeled by East Bay MUD to the District and for which the District has entered into a Memorandum of Understanding with East Bay MUD to facilitate this work; and

**WHEREAS**, the feasibility of the pipeline segment on the RSR Bridge has been established and engineering teams are designing the proposed Project and have undertaken detailed planning indicating that pipe, pumps and other essential components must be ordered well in advance of construction due to long lead times on such materials; and

**WHEREAS**, to ensure that transfer water is available for the District’s use staff has been collaborating with the Contra Costa Water District to secure supply and staff has prepared a draft cooperative agreement to facilitate this work; and

**WHEREAS**, staff has conducted a review and analysis of the proposed Project pursuant to the requirements of the California Environmental Quality Act (CEQA) and has found that the proposed Project qualifies for a statutory exemption under CEQA in accordance with California Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269 Emergency Projects in that the proposed Project will allow the District to import water as necessary to maintain the essential public service of water delivery to its customers and to mitigate the emergency.

**NOW, THEREFORE, BASED ON THE FINDINGS SET FORTH ABOVE WHICH ARE HEREBY ADOPTED BY THE BOARD, THE BOARD OF DIRECTORS RESOLVES AS FOLLOWS:**

1. The Board hereby approves the Marin East Bay Emergency Intertie Project as necessary to meet water supply during continued drought conditions; and
2. The Board hereby authorizes the General Manager to finalize and execute a Cooperative Agreement with the Contra Costa Water District to facilitate the Project ~~including the purchase of water in amount not to exceed \$10,000,000 depending on need and actual water transfers~~; and

3. The Board hereby authorizes the General Manager to carry out the pre-purchase of materials needed to timely construct the Project, including specifically the pre-purchase of pipe, temporary pumps and steel tanks, and to finalize and execute supply agreements for pipe, pump stations and steel storage tanks in an amount not to exceed \$23,242,064.~~7880~~ which includes a 5% contingency in the amount of \$836,233 for potential required changes to the pump stations; and
4. The Board further finds that the Project is statutorily exempt from further CEQA review in accordance with the California Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269 in that the Project will allow the District to import water as necessary to maintain the essential public service of water delivery to its customers and to mitigate the emergency.

**PASSED AND ADOPTED** this 19th day of October, 2021, by the following vote of the Board of Directors.

**AYES:**

**NOES:**

**ABSENT:**

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**Cynthia Koehler**  
**President, Board of Directors**

**ATTEST:**

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**Terrie Gillen**  
**Board Secretary**

**Cooperative Agreement for Water Transfer Project  
Between Marin Municipal Water District and Contra Costa Water District**

This is an Agreement made as of \_\_\_\_\_, 2021 between Marin Municipal Water District, hereinafter referred to as “MMWD”, and Contra Costa Water District, hereinafter referred to as “CCWD”. MMWD is a Municipal Water District organized and existing under the Municipal Water District Law of 1911 (codified at Division 20 of the California Water Code) and CCWD is a County Water District organized and existing under the California County Water District law (codified at Division 12 of the California Water Code). Throughout this Agreement MMWD and CCWD may be referred to together as the “Parties”, or individually as a “Party”.

**RECITALS**

WHEREAS, since the execution of the Bay Area Regional Reliability Project Memorandum of Agreement in 2015, Alameda County Water District, Contra Costa Water District, East Bay Municipal Utility District, Marin Municipal Water District, San Francisco Public Utilities Commission, Santa Clara Valley Water District, and Zone 7 Water Agency, have worked cooperatively to address water supply reliability concerns and drought preparedness on a mutually beneficial and regionally focused basis;

WHEREAS, ongoing and unprecedented drought conditions in 2021 have resulted in varying degrees of water supply shortages in different regions around the state and have necessitated measures to mitigate the effects of the drought;

WHEREAS, Governor Newsom’s proclamation of a drought state of emergency for 50 of the 58 counties in California, including Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Sonoma, and Solano, with a call for voluntary water conservation of 15 percent across the state and directs state agencies to assist local agencies in moving water to areas of need;

WHEREAS, on April 20, 2021, MMWD declared a water shortage emergency pursuant to Water Code sections 350, et seq. and 71640, et seq. as set forth in Board Resolution No. 8630, and adopted mandatory water use restrictions with the goal of reducing overall water use by 40 percent districtwide; and

WHEREAS, the Marin County Board of Supervisors voted unanimously to declare drought emergency on May 18, 2021; and;

WHEREAS, CCWD completed expansion of Los Vaqueros Reservoir to 160,000 acre-feet in 2012 and has determined that a portion of the water stored in the expanded Los Vaqueros Reservoir could be made available over the near term to local agencies, while remaining consistent with the principles for participation in the expansion of Los Vaqueros Reservoir adopted by CCWD’s Board of Directors (Resolution No. 03-24);

WHEREAS, in July 2021, CCWD and MMWD executed a letter of intent that indicates the Parties will work together towards a water transfer and storage agreement for up to 15,000 acre-feet of water to MMWD should drought conditions continue in 2022.

NOW, THEREFORE, CCWD and MMWD agree that the above recitals are hereby incorporated into and made a part of this Agreement, and further agree as follows:

## 1. DELIVERIES

This Agreement is between MMWD and CCWD for CCWD to use Los Vaqueros Reservoir and CCWD's existing conveyance facilities to facilitate the delivery of up to 15,000 acre-feet of transfer water to MMWD before June 30, 2024 or such later agreed date if the period for performance is extended pursuant to Section 15 of this Agreement. The water transferred shall be used solely within MMWD's service area.

CCWD and MMWD's distribution systems are not directly connected. Completion of this transfer would require a separate agreement between MMWD and East Bay Municipal Utility District, hereinafter referred to as "EBMUD", and potentially other third-party water agencies, to wheel the transfer water to MMWD. MMWD is responsible for obtaining all necessary permits and agreements and for constructing the necessary conveyance facilities between CCWD and MMWD to receive the transfer water.

## 2. WATER SOURCES

The source of the transfer water will be either:

- a. Up to 15,000 acre-feet of water from Yuba Water Agency, hereinafter referred to as "YWA", and/ or other suppliers as mutually agreed upon by MMWD and CCWD. The purchased water will be diverted in 2022, subject to appropriate carriage water losses, from one or more of the following diversion locations:
  - By CCWD at either their Rock Slough, Old River, or Middle River diversion facilities, either to storage in CCWD's Los Vaqueros Reservoir or for use in CCWD's service area in lieu of Los Vaqueros releases needed for water supply, creating a credit for MMWD.
  - By EBMUD at their Freeport diversion facility for direct treatment and delivery to MMWD, or delivery to Los Vaqueros Reservoir for storage.
- b. Up to 5,000 acre-feet of CCWD's water previously stored in Los Vaqueros Reservoir, which would be made available for MMWD's purchase in 2022 only if:
  - Despite the best efforts of all Parties, CCWD and MMWD cannot secure the necessary agreements and approvals to purchase all of the transfer water from YWA and/or other supplier and divert the transfer water to storage in LV;
  - MMWD's local water supply is projected to be at the emergency levels on or before December 31, 2022;
  - MMWD has implemented measures to achieve the 40% water conservation mandate;
  - CCWD's CVP Contract allocations in 2021 and 2022 are not less than CCWD's Public Health and Safety needs; and
  - CCWD's projected Los Vaqueros storage for December 31, 2022, is not less than 44,000 acre-feet after the transfer to MMWD.

### 3. APPROVALS

The Parties will work cooperatively to obtain the regulatory approvals necessary to implement this project, including from the State Water Resources Control Board (“State Water Board”) and the U.S. Bureau of Reclamation (“Reclamation”). (1) A temporary change petition needs to be filed with the State Water Board to add CCWD’s existing intakes as points of redirection for YWA and/or other supplier’s water rights. (2) Reclamation approval of the project will require review under the National Environmental Policy Act. (3) This transfer is exempt from the requirements of the California Environmental Quality Act; however, the Parties may choose to file Notices of Exemption.

MMWD shall be responsible for the fees incurred for this project, including those charged by the State Water Board and Reclamation associated with the approvals as described in this Section 3. Each Party shall be responsible for its own staff time and related costs that are not otherwise discussed in this Section 3. The Parties may contract for outside assistance to secure these approvals, which shall be paid for through a separate cost sharing arrangement as may be agreed to by the Parties in writing.

### 4. OPERATIONAL COORDINATION

The Parties will work cooperatively to develop schedules for diversion, conveyance, storage, and delivery of the transfer water, and will set forth the procedures, dates, times, rates of delivery and other pertinent data regarding delivery operations, in conjunction with YWA and or other suppliers, Reclamation, and EBMUD, and other third-party water agencies, for delivering the transfer water to MMWD as discussed in Section 1. If the transfer water is delivered through exchange from storage in LV, it will be subject to 8% per year evaporation losses (prorated by month if stored for less than a year).

### 5. PRICE AND PAYMENT

MMWD will reimburse CCWD for the costs to purchase, convey, and store the transfer water. The cost calculation methodology for this project is described in Exhibit A, which is attached hereto and incorporated herein by this reference as if fully set forth. CCWD shall provide an invoice, as calculated per Exhibit A, to MMWD, within 30 days of the completion of the project. MMWD agrees to pay CCWD the amount of the invoice within 60 days of receipt.

### 6. INCOMPLETE TRANSFER AND REFUND

The Parties recognize the possibility that, after the transfer water has been purchased and stored in Los Vaqueros Reservoir, a part or all of the stored transfer water might not be delivered to MMWD prior to June 30, 2024, or such later agreed date if the period for performance is extended pursuant to Section 15 of this Agreement. Situations that are beyond CCWD’s control that could prevent the transfer from being completed include, but are not limited to, MMWD no longer needing the transferred water due to changed supply conditions or inability to proceed with the construction of water conveyance facilities necessary to deliver the water to MMWD, lack of Reclamation or State Water Board of approval for the transfer, EBMUD inability to deliver the transferred water to MMWD, or Los Vaqueros Reservoir storage drawdown for construction of the Phase 2 Los Vaqueros Reservoir Expansion Project.

Under this circumstance, CCWD will use best efforts to use and/or remarket the transfer water stored in Los Vaqueros Reservoir. CCWD will refund MMWD for CCWD's associated avoided cost, which is the 2022 CVP water rate (see Exhibit A Table 2), within 60 days upon termination of this Agreement.

#### 7. REMEDIES NOT EXCLUSIVE

The use by any Party of any remedy for the enforcement of this Agreement is not exclusive and shall not deprive the Party using such remedy of, or limit the application of, any other remedy provided by law.

#### 8. WAIVER OF RIGHTS

Any waiver at any time by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

#### 9. NOTICES

Any notices required by this Agreement shall be deemed given upon receipt and shall be delivered or mailed, United States first-class postage prepaid, addressed as follows:

CCWD: General Manager  
Contra Costa Water District  
1331 Concord Avenue  
P.O. Box H2O  
Concord, CA 94524

MMWD: General Manager  
Marin Municipal Water District  
220 Nellen Ave  
Corte Madera, CA 94925

Any Party may amend its address for notice by sending notice to the other Parties.

#### 10. INTEGRATION

This Agreement constitutes the entire agreement between the Parties with respect to the matters covered by its terms. This Agreement supersedes all prior proposals, representations, negotiations, letters, or other communications between the Parties pertaining to the matters discussed herein, whether written or oral. Sections 1 through 6 of this Agreement excepted, should any provision of this Agreement be found to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall be enforced to the full extent permitted by law. Except as may be specifically provided, nothing herein is intended to waive or abridge any rights or obligations that a Party may have pursuant to any other agreements with the United States or the State of California.

#### 11. DISPUTE RESOLUTION

Should any dispute arise concerning any provisions of this Agreement, or the Parties' rights and obligations thereunder, the Parties shall meet and confer in an attempt to resolve the dispute.

Prior to commencing legal action, the Party asserting a breach or dispute shall provide to the other Party or Parties 30 days' written notice of the intent to take such action and the basis of the dispute or alleged breach. Within 20 days of delivery of the notice, the Parties shall meet and confer in an attempt to resolve the contested issues. Each Party will designate a member of the Party's executive management to conduct the negotiation in good faith.

The Parties shall make good faith efforts to resolve all disputes related to this Agreement at the lowest possible cost, subject to the approval of the Parties' respective governing bodies. Each Party shall bear its own attorneys' fees and costs in all aspects of dispute resolution. Unless the Parties agree upon an alternative forum of dispute resolution, any litigation concerning claims and disputes related to this Agreement shall be filed in and timely prosecuted to conclusion in the Superior Court in and for Contra Costa County, and each party hereby waives its right to move to change venue.

## 12. INDEMNITY

In performance of this Agreement, each Party, its agents, employees, and contractors, shall act in an independent capacity and not as officers, employees, or agents of any other Party. No Party assumes any liability for the activities of any other Party in performance of this Agreement. Each Party is responsible in proportion to its fault for all liability, including but not limited to personal injury or property damage that may arise out of this Agreement, except to the extent such injury, damage, or loss was caused by the negligence or willful misconduct of any other Party, or its officers, agents, or employees. Each Party expressly agrees to defend, indemnify, and hold harmless the other Parties and their Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from the first Party's, its associates, employees', sub-consultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in its performance under this Agreement.

Each Party shall be responsible for any adverse impacts to its own customers that may result from the operation or performance of this Agreement, except as arising out of or resulting from the negligent acts, errors or omissions, or willful misconduct of the other Parties, their associates, employees, sub-consultants, or other agents.

Each Party shall exercise reasonable care in the performance of its obligations and rights under this Agreement to ensure that each Party's facilities and operations, including water rights, entitlements and contracts, are not impaired or damaged.

The Parties agree that no Party will hold any other Party responsible for the inability to obtain regulatory agency approvals necessary for the implementation of any provisions of this Agreement, so long as each Party has acted with reasonable diligence to obtain the approvals.

## 13. MODIFICATIONS

All modifications or amendments to this Agreement shall be in writing and signed by all Parties.

## 14. ASSIGNMENT: SUCCESSORS AND ASSIGNS OBLIGATED

No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein shall be valid unless and until the assignment or transfer is approved in writing by all

Parties. Thereupon, this Agreement and all of its provisions shall apply to and bind the successors and assigns of the Parties hereto.

15. EFFECTIVE DATE AND TERMINATION

This Agreement shall become effective upon execution by all Parties as indicated by the date first written above. This Agreement may be terminated by any Party, as to the terminating Party, upon thirty (30) days written notice to the other Parties. If the project is not complete prior to June 30, 2024, the Parties may agree to amend this Agreement to extend the time period.

16. SIGNATURES

This Agreement may be executed in multiple counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree to the use of electronic (in portable document format) or digital signatures for this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives on the date first written above.

Approved as to legal form: MARIN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
Ben Horenstein, General Manager

Approved as to legal form: CONTRA COSTA WATER DISTRICT

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
Stephen J. Welch, General Manager

## EXHIBIT A – Cost Calculation Methodology for MMWD-CCWD Transfer Project

The costs for the transfer are calculated on the principle that MMWD will reimburse CCWD for the actual costs of the transfer, including the costs for water and the costs for conveyance of water and storage in Los Vaqueros Reservoir. Costs included in the tables below are example costs based on current available values.

Table 1. Cost Calculation Methodology

COMPONENT	COST	DESCRIPTION
<b><u>Water</u></b>		
YWA Transfer Water	\$383/AF	2021 YWA critical-year rate for transfer water.
Other Supplier Transfer Water	To be determined	Other Supplier rate for transfer water.
CCWD CVP Contract Water	\$68.99/AF	2021 CVP rate for CCWD contract water.
CCWD Los Vaqueros Water Right Water	\$25.06/AF	2021 CVP charge for Los Vaqueros water right water.
<b><u>Conveyance</u></b>		
Power	\$127.49/AF	Power cost for pumping non-CVP water at CCWD’s Middle River Pump Station (\$40.01/AF) and at CCWD’s Transfer Pump Station (\$87.48/AF).
Conveyance Facilities Usage Fees	\$70.84/AF	Conveyance includes capital rental and wear and tear of facilities used for pumping from Middle River Intake (\$35.81/AF) and Transfer Facility (\$35.03/AF). Conveyance usage fees are as determined for Phase 2 of the Los Vaqueros Reservoir Expansion Project.
<b>SUB-TOTAL</b>	<b>\$198.33/AF</b>	Conveyance costs to be reimbursed by MMWD to CCWD
<b><u>Storage</u></b>		
Los Vaqueros Storage Usage Fees	\$40.18/AF per year	Total current value of the original 100 TAF Los Vaqueros Dam and 60 TAF Expansion is \$642,816,881. The usage fees are calculated by assuming 100-year useful year.
Reservoir O&M Costs	\$12.70/AF per year	Fixed costs include Los Vaqueros watershed O&M and property taxes and fees, escalated from 2013 values by the San Francisco Engineering News Record Construction Cost Index.
<b>SUB-TOTAL</b>	<b>\$52.88/AF per year</b>	Storage costs to be reimbursed by MMWD to CCWD. For a period less than one year, storage costs will be prorated by month.
<b>TOTAL</b>		
Total for Yuba Transfer Water	\$581.33/AF plus \$52.88/AF per year	

Total for Other Supplier Transfer Water	Other Supplier rate for transfer water +198.33/AF plus \$52.88/AF per year	
Total for CCWD CVP Water	\$267.32/AF plus \$52.88/AF per year	
Total for CCWD LV Water Right Water	\$223.39/AF plus \$52.88/AF per year	
<b>Evaporation Loss</b>	<b>8% per year</b>	Evaporation loss for water stored in Los Vaqueros.

Table 2. Avoided Water Cost to be Reimbursed by CCWD to MMWD if Transfer not completed

COMPONENT	COST	DESCRIPTION
<b><u>Water</u></b>		
CVP Contract	\$68.99/AF	2021 CCWD CVP Water Rate (M&I), avoided water cost by CCWD and reimbursed by CCWD to MMWD.
<b>TOTAL</b>	<b>\$68.99/AF</b>	Reimbursement from CCWD to MMWD if the transfer water is not delivered