



NOTICE OF SPECIAL MEETING FINANCE & ADMINISTRATION COMMITTEE/ BOARD OF DIRECTORS (FINANCE & ADMINISTRATION)

(Per paragraph 3 on page 10 under subsection *Committee Meetings* of the Board Handbook: The Board, as a practice, generally does not take final action on items during committee meetings, unless District staff determines the urgency of the item requires immediate action that cannot be delayed until a subsequent regular bi-monthly Board meeting.)

MEETING DATE: March 28, 2023

TIME: 1:30 p.m.
Closed Session to Immediately Follow

LOCATIONS: This meeting will be held in-person and virtually.

<i>Open Session</i>	<i>Closed Session</i>	<i>Virtually</i>
Marin Water Board Room 220 Nellen Avenue Corte Madera, CA 94925	Marin Water Mt. Tamalpais Conf. Room 220 Nellen Avenue Corte Madera, CA 94925	URL: https://us06web.zoom.us/j/81110533069 Webinar ID: 811 1053 3069 Phone Call: 1-669-444-9171 or 1-669-900-6833

EMAILED PUBLIC COMMENTS: You may submit your comments in advance of the meeting by emailing them to BoardComment@MarinWater.org. All emailed comments received by 11:30 a.m. on the day of the meeting will be provided to the Board of Directors prior to the meeting. All emails will be posted on our website. **(Please do not include personal information in your comment that you do not want published on our website such as phone numbers and home addresses.)**

PARTICIPATION DURING MEETINGS:

In-person Attendee: Fill out a speaker card prior to the meeting and place it in the container for a District staffer to collect. List the number of the agenda item(s), for which you would like to provide a comment.

The board secretary will call first the in-person attendees. Once your name or identifiable mark is called, go to the lectern, and you have up to three (3) minutes to provide a comment. After your comment or after the timer goes off, please go back to your seat.

Virtual Attendee: Click on the “raise hand” button on the bottom of the Zoom screen. If you are joining by phone and would like to comment, press *9 and staff will call on you by the last four digits of your phone number. Virtual attendees will be called upon after the in-person attendees.

(Note: The board president may shorten the amount of time for public comment due to large numbers of both in-person and virtual attendees.)

AGENDA ITEMS	RECOMMENDATIONS
Call to Order and Roll Call	
Adoption of Agenda	<i>Approve</i>
Public Comment - Items Not on the Agenda	
<p>Members of the public may comment on any items not listed on the agenda during this time. Comments will be limited to three (3) minutes per speaker, and time limits may be reduced by the board president to accommodate the number of speakers and ensure that the meeting is conducted in an efficient manner.</p>	
Calendar (1:40 p.m. – Time Approximate)	
1. Minutes of the Finance & Administration Committee/Board of Directors (Finance & Administration) Meeting of February 23, 2023 <i>(Approximate Time 1 Minute)</i>	<i>Approve</i>
2. Consider Position on State Senate Bill 23 for Streamlining Permitting of Water Supply Projects <i>(Approximate Time 15 Minutes)</i>	<i>Review and Refer to Board for Approval</i>
3. Consider Position on State Assembly Bill (AB) 30 <i>(Approximate Time 15 Minutes)</i>	<i>Review and Refer to Board for Approval</i>
4. Policy and Practices Updates <i>(Approximate Time 20 Minutes)</i>	<i>Review and Refer to Board for Approval</i>
5. Monthly Financial Update – February 2023 <i>(Approximate Time 20 Minutes)</i>	<i>Information</i>

Closed Session (2:51 p.m. – Time Approximate)

Public Comment – Only on Items on the Closed Session

Comments will be limited to three (3) minutes per speaker, and time limits may be reduced by the board president to accommodate the number of speakers and ensure that the meeting is conducted in an efficient manner.

***MARIN WATER BOARD OF DIRECTORS ORDER OF ROLL CALL:** RANJIV KHUSH, LARRY RUSSELL, MATT SAMSON, MONTY SCHMITT, AND JED SMITH

AGENDA ITEMS

RECOMMENDATIONS

Convene to Closed Session (*Mt. Tam Conference Room*)
(Only the Board of Directors and staff will participate)

6. Conference with Legal Counsel –Existing Litigation
(California Government Code Section § 54956.9)

Coalition of Sensible Taxpayers vs. Marin Municipal Water District
Case No.: CIV 1903160

Convene to Open Session at or after 3:15 p.m. (*Marin Water Board Room*)

Closed Session Report Out

Adjournment (*3:20 p.m. – Time Approximate*)

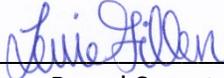
ADA NOTICE AND HEARING IMPAIRED PROVISIONS:

In accordance with the Americans with Disabilities Act (ADA) and California Law, it is Marin Water’s policy to offer its public programs, services, and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are an individual with a disability and require a copy of a public hearing notice, an agenda, and/or agenda packet in an appropriate alternative format, or if you require other accommodations, please contact Board Secretary Terrie Gillen at 415.945.1448, at least two days in advance of the meeting. Advance notification will enable Marin Water to make reasonable arrangements to ensure accessibility.

INFORMATION AGENDAS ARE AVAILABLE FOR REVIEW AT THE CIVIC CENTER LIBRARY, CORTE MADERA LIBRARY, FAIRFAX LIBRARY, MILL VALLEY LIBRARY, MARIN WATER OFFICE, AND ON THE MARIN WATER WEBSITE (MARINWATER.ORG)

FUTURE BOARD MEETINGS (Both In-Person and Virtually):

Dates	Meetings
Tuesday, April 4, 2023 6:30 p.m.	<ul style="list-style-type: none"> Board of Directors’ Regular Bi-Monthly Meeting (<i>Closed Session tentatively scheduled for 5:30 p.m.</i>)
Tuesday, April 18, 2023 6:30 p.m.	<ul style="list-style-type: none"> Board of Directors’ Regular Bi-Monthly Meeting


Board Secretary

*MARIN WATER BOARD OF DIRECTORS ORDER OF ROLL CALL: RANJIV KHUSH, LARRY RUSSELL, MATT SAMSON, MONTY SCHMITT, AND JED SMITH



Item Number: 01
Meeting Date: 03-28-2023
Meeting: Finance & Administration Committee/
Board of Directors (Finance & Administration)

Approval Item

TITLE

Minutes of the Finance & Administration Committee/Board of Directors (Finance & Administration) Meeting of February 23, 2023

RECOMMENDATION

Approve the minutes of the Finance & Administration Committee/Board of Directors (Finance & Administration) Meeting of February 23, 2023

SUMMARY

The Finance & Administration Committee/Board of Directors (Finance & Administration) held its regularly scheduled monthly meeting on February 23, 2023. The minutes of that meeting are attached.

DISCUSSION

None

FISCAL IMPACT

None

ATTACHMENT(S)

1. Minutes of the February 23, 2023, Meeting of the Finance & Administration Committee/Board of Directors (Finance & Administration)

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Communications & Public Affairs Department	 Terrie Gillen Board Secretary	 Ben Horenstein General Manager

**MARIN MUNICIPAL WATER DISTRICT
FINANCE & ADMINISTRATION COMMITTEE /BOARD OF DIRECTORS (FINANCE &
ADMINISTRATION) MEETING**

MINUTES

Thursday, February 23, 2023

Via teleconference

(In accordance with Assembly Bill 361)

CALL TO ORDER AND ROLL CALL:

Chair Jed Smith called the meeting to order at 9:30 a.m.

Directors Present: Ranjiv Khush, Matt Samson, Larry Russell, Monty Schmitt, and Jed Smith (*Director Russell arrived prior to Agenda Item 2.*)

Directors Absent: None

ADOPT AGENDA:

On motion made by Vice Chair Schmitt and seconded by Director Samson, the board approved the adoption of the agenda. The following roll call vote was made.

Ayes: Directors Khush, Samson, Schmitt, and Smith
Noes: None
Absent: Director Russell

There were no public comments.

PUBLIC COMMENT:

There were no public comments.

CALENDAR ITEMS:

Item 1 Minutes of the Finance & Administration Committee/Board of Directors (Finance & Administration) Meeting of January 26, 2023

On motion made by Director Khush and seconded by Vice Chair Schmitt, the board approved the minutes. The following roll call vote was made.

Ayes: Directors Khush, Samson, Schmitt, and Smith
Noes: None
Absent: Director Russell

There were no public comments.

Director Russell joined the meeting.

Item 2 Update on Staffing

Human Resources Manager Vikkie Garay provided a presentation on current staffing information. The board provided comments to staff.

There were two (2) public comments that followed.

This was an information item. The board did not take any formal action.

Item 3 Monthly Financial Update – January 2023

Finance Director Bret Uppendahl provided the monthly financial update. Discussion ensued

There were no public comments.

This was an informational item. The committee did not take any formal action.

Item 4 Quarterly Investment Report – December 2022

Finance Director Uppendahl also presented this item.

There were no board nor public comments.

This was an informational item. The committee did not take any formal action.

Item 5 Rate Setting Process Update

Finance Director Uppendahl provided an update on the Rate Setting Process, including revenue requirement scenarios for the board to consider. Much discussion between the board and staff occurred throughout the presentation.

There were three (3) public comments.

This was an informational item. The committee did not take any formal action, but provided direction to staff.

ADJOURNMENT

There being no further business, the Finance & Administration Committee/Board of Directors (Finance & Administration) meeting adjourned at 11:51 a.m.

Board Secretary



Item Number: 02
Meeting Date: 03-28-2023
Meeting: Finance &
Administration Committee/
Board of Directors (Finance &
Administration)

Review and Refer for Board Approval

TO: Finance & Administration Committee/Board of Directors (Finance & Administration)

FROM: Paul Sellier, Water Resources Director

THROUGH: Ben Horenstein, General Manager

DIVISION NAME: Water Resources

ITEM: Consider Position on State Senate 23 for Streamlining Permitting of Water Supply Projects

SUMMARY

As part of the effort of Marin Water staff to regularly track state and federal legislation, which may affect District interests, staff is requesting the Finance & Administration Committee to review and refer Senate Bill (SB) 23 to a regular bi-monthly meeting of the Board of Directors to consider adopting a position of support of this bill. SB 23 would streamline the regulatory permitting of water supply projects.

Marin Water staff regularly track state and federal legislation, which relate to the water industry, and periodically bring bills, which may benefit or otherwise affect District interests to the Board for consideration. Legislation brought to the Board may be reviewed and considered for positions of support or opposition, as detailed in Attachment 2, "Legislative Positions."

DISCUSSION

Legislative Recommended Positions

State Legislation: SB 23 (Caballero) Water supply and flood risk reduction projects:
Expedited permitting

ACWA Position: Support and Co-Sponsor

Recommended District Position: Support

Status: Introduced

This bill from Senator Anna Caballero would streamline the regulatory permitting process for water supply and flood risk reduction projects. This bill, if successful, would be an important piece of legislation to help reduce costs and impediments for water supply solutions for the District. The Association of California Water Agencies (ACWA) is sponsoring Senate Bill 23. According to ACWA's bill analysis (Attachment 1), SB 23 would streamline the regulatory permitting of water supply projects in four ways:

- Reform the process by which an application for a Section 401 Water Quality Certification is deemed complete;
- Require the review and approval of Section 401 Water Quality Certifications and Lake and Streambed Alteration Agreements to be completed within 180 days of submittal of a complete permit application;
- Avoid duplicative planning efforts by allowing certain watershed management plans that are already developed and implemented to be used for mitigation required through Section 401 Water Quality Certifications; and
- Allow project applicants to voluntarily contribute resources to state permitting agencies in order to provide agencies with additional resources to meet the permitting.

Given the District's current interest in pursuing new water supply projects, staff recommends that the Finance & Administration Committee review and refer to a regular bi-monthly meeting of the Board of Directors to consider adopting a position of support for SB 23. If adopted by the full Board, a position of support will then be communicated to legislators by ACWA to promote passage and adoption of this legislation.

FISCAL IMPACT

There is no fiscal impact at this time.

ATTACHMENT(S)

1. ACWA analysis of Senate Bill 23 (Caballero)
2. Legislative Positions
3. SB 23 Bill Text

Attachment 1

SB 23: Water supply and flood risk reduction projects: expedited permitting.

Author: Caballero (D-Merced)

Introduced: 12-05-2022

Amended: N/A

Sponsors:
Association of California
Water Agencies

Current Position:
Sponsor

Recommended Position:
Sponsor

Assigned to: Kristopher Anderson/Richard Filgas

Existing Law

Lake and Streambed Alteration Agreements

Existing law prohibits an entity from diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or banks of, a river, stream, or lake, or depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake, unless the California Department of Fish and Wildlife (CDFW) receives written notification regarding the activity and the CDFW either determines that the activity will not substantially adversely affect an existing fish and wildlife resource or, if the CDFW determines that the activity may substantially adversely affect an existing fish and wildlife resource, the CDFW issues a final agreement to the entity that includes reasonable measures necessary to protect the affected resource.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes administrative procedures for the review and certification of the EIR for a project and judicial review procedures for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.

Section 401 Water Quality Certifications

Existing law designates the State Water Resources Control Board (State Water Board) as that state water pollution control agency for purposes of the Federal Water Pollution Control Act and authorizes the State Water Board to issue a certificate or statement under the federal act that there is reasonable assurance that an activity of a person subject to the jurisdiction of the State Water Board will not reduce water quality below applicable standards.

Existing law requires specified persons to file with the appropriate Regional Water Quality Control Board a report of waste discharge relative to any material change or propose change in the character, location, or volume of discharge into the waters of the state. Existing law requires the Regional Water Quality Control Board to prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, as specified.

Bill Summary

As introduced on December 5, 2022, SB 23 is a spot bill that states the following:

It is the intent of the Legislature to enact subsequent legislation to expedite the regulatory permitting process for water supply and flood risk reduction projects, consistent with “California’s Water Supply Strategy, Adapting to a Hotter, Drier Future,” released by Governor Newsom’s administration in August 2022.

Below is a summary of the substantive language that will be amended into SB 23. This language has been submitted to the Office of Legislative Counsel and is expected to be in print in the coming weeks. For the purposes of this bill, “water board” means either the State Water Board or the Regional Board, as applicable, that issues a project certification.

Definitions

Provisions of SB 23 would apply to the following projects:

- “Flood risk reduction projects,” which include a project or plan that is proposed by a public agency or a public utility, to construct, alter, retrofit, maintain, manage, or improve a facility, channel, levee, or flood control modification, in which flood risk reduction or sea level rise protection is an objective of the project.
- “Water Supply Project,” which includes a project or plan proposed by a public agency or a public utility, to construct, alter, retrofit, maintain, manage, or improve a groundwater recharge, desalination, recycled water, water conveyance, surface water storage, stormwater capture, or water treatment facility.

Section 1 – Lake and Streambed Alteration Agreement

SB 23 would require CDFW to issue a final Lake and Streambed Alteration Agreement (LSAA) within 180 days of receipt of a notification from a project proponent for water supply and flood risk reduction projects, provided that:

- 1) CDFW determines that the project will substantially adversely affect an existing fish and wildlife resource;
- 2) The project proponent submits a complete notification for the project; and
- 3) The project proponent completes and submits completed environmental documentation to CDFW for the project.

The final LSAA would include any reasonable measures mutually agreed to by the project proponent and CDFW in accordance with existing law. If CDFW and the project proponent are not able to reach a final agreement on all measures, then the project proponent may proceed in accordance with a final agreement issued by an arbitration panel, including reasonable measures necessary to protect the existing fish and wildlife resources substantially adversely affected by the project.

The bill would allow CDFW and the project proponent to mutually agree to an extension for issuance of a final agreement, in which case, the 180-day time period would not apply.

SB 23 would specify that this section only applies to water supply projects and flood risk reduction projects subject to CDFW jurisdiction under Fish and Game Code Division 2, Chapter 6 (section 1600-1616).

Section 2 – Section 401 Water Quality Certification

If a proponent for a flood risk reduction or water supply project is required to obtain a Section 401 Water Quality Certification, this bill would create an *optional* permitting process, allowing the proponent to decide whether to utilize this process. If the project proponent opts to utilize this process, the following requirements apply:

The bill would require the water board to issue project certification within 180 days after a project proponent does all the following:

- 1) Requests pre-application consultation;
- 2) Files a complete application for project certification;
- 3) If required for the project, files a complete application or petition under Water Code Chapter 2 (section 1250 to 1276) for all water rights approvals or amendments necessary to implement the project; and
- 4) Completes and submits completed environmental documentation to the water board for the project certification required under CEQA.

Pre-application Consultation Process

The bill would require a project applicant to request a pre-application consultation with the appropriate water board at least 60 days before filing its application for project certification. The bill would require consultation meetings between the applicant and water board to occur no less frequently than once every 60 days thereafter until the project is fully certified.

Application Completion Process

SB 23 would create the following procedures and requirements to govern the water board's determination of whether an application is complete:

1) Water Board Response to Submitted Application

After the project proponent has submitted an application or petition for project certification, the water board would be required to notify the proponent within 30 days, in writing, whether the application is complete. If the application is determined to be incomplete, the water board would be required to provide the project proponent with a written notification that includes a full list of specific items that were complete and that were incomplete and indicates the manner in which incomplete items can be made complete. The water board would also be required to provide the applicant a list and thorough description of the specific information needed to complete the application or petition. After the water board issues the list, the bill would prohibit the water board from requesting or requiring the project proponent to provide any new or additional information that was not specifically identified in the initial list of items found to be incomplete.

If the water board does not provide the applicant with a written notification that includes the required information 30 days after receipt of the application or petition, the bill would require the application or petition to be deemed complete.

2) Applicant Response to Water Board Notification

If the water board provides the written notification required by paragraph (1) determining that the application or petition is incomplete, the project proponent would be required to submit supplemental materials needed to complete the application or appeal the determination within 45 days after receipt of the notification.

3) Water Board Response to Supplemental Materials

Within 30 days after receipt of supplemental materials from the project proponent, the bill would require the water board to determine the completeness of the application or petition as supplemented and whether to issue the notification of complete application required by this section.

If the supplemental application or petition is again determined not to be complete, the water board would be required to provide the project proponent with a written notification specifying those parts of the supplemented application or petition that are still incomplete and indicate the manner in which they can be made complete, including a full list and thorough description of the specific information needed to complete the application or petition.

If the water board does not, within 30 days of receipt of application materials from applicant, provide the project proponent with a written notification specifying those parts of the supplemented application or petition that are still incomplete and indicating the manner in which they can be made complete, the bill would require the application or petition, as supplemented, to be deemed complete.

4) Applicant Response to Subsequent Water Board Notification

If the water board determines that the application or petition as supplemented is still incomplete and provides the written notification of incompleteness, the bill would require the applicant, within 30 days, to submit additional supplemental materials in order to complete the application or petition, or to appeal the notification of incompleteness.

If the project proponent elects to supplement a previously supplemented application or petition, the deadlines and obligations set forth in this paragraph shall also apply to any supplemented application or petition.

5) Seeking Further Information

The bill would authorize the water board to, in the course of processing the application, request the project proponent to clarify, correct, or otherwise supplement the information required for the application, so long as such information is reasonably related to, and a logical outgrowth of, the information and materials designated by the water board as necessary to complete an application for project certification. A request for further information would not affect the deadlines in this section.

Appealing Water Board Application Determination

The bill would authorize the project proponent to petition the State Water Board to reconsider its own determination of application completeness, or to appeal to the State Water Board any regional board's determination of application completeness. The bill would require the appropriate water board to act on the petition for reconsideration or appeal not later than 60 calendar days after receipt of the appeal in accordance with subdivision (c) of Section 65943 of the Government Code. Within 30 days of the timely issuance by the State Water Board of its final written determination of completeness, the bill would authorize the project proponent to challenge the determination of completeness in court.

Section 3

Mitigation Measures for Water Quality Certifications

Section 3 of SB 23 would define “Watershed Plan” as follows: a document or set of documents, developed in consultation with relevant stakeholders, a specific goal of which is aquatic resource restoration, establishment, enhancement or preservation within a watershed, which addresses aquatic resource conditions in the watershed, addresses multiple stakeholder interests and land uses, includes information about identification of priority sites for aquatic resource restoration and protection, includes implementation measures to attain aquatic resource protection goals for the watershed, and is used by a water board in determining appropriate terms and conditions, including avoidance, minimization and compensatory mitigation conditions, to be included a project certifications.

Unless the water board issuing a Section 401 Water Quality Certification determines in writing that an approved plan doesn’t substantially meet the definition of a Watershed Plan, the bill would require the water board to use the following approved plans as Watershed Plans for purposes of implementing the Procedures in issuing project certifications:

- 1) Habitat Conservation Plans that include biological goals for aquatic resources;
- 2) Natural Communities Conservation Plans that include biological goals for aquatic resources; and,
- 3) Habitat Management Plans that include biological goals for aquatic resources.

Unless the water board issuing a project certification determines in writing that a plan does not substantially meet the definition of a Watershed Plan, the bill would require the water board to accept, as terms of the project certification, avoidance, minimization, and compensatory mitigation for impacts to waters of the state provided through compliance with any approved Habitat Conservation Plan, Natural Community Conservation Plan, or Habitat Management Plan, so long as the public entity administering the plan identifies, tracks, and publicly reports the impacts to waters of the state and the manner in which they are addressed by such avoidance, minimization, and compensatory mitigation.

The bill would prohibit the water board from imposing any project certification terms and conditions mandating avoidance, minimization, or compensatory mitigation for impacts to waters of the state in addition to those in an approved plan.

For the water boards to make a determination that an approved Habitat Conservation Plan, Natural Communities Conservation Plan, or Habitat Management Plan does not meet the definition of a Watershed Plan for purposes of issuing a project certification, the bill would require the water board to:

- 1) Make that proposed written determination, supported by specific written findings of insufficiency, available for public review and comment for at least 30 days prior to the adoption of the determination of insufficiency; and,
- 2) Provide written responses to public comments received on the determination of insufficiency prior to making a decision on the determination.

Adopting General Water Quality Certifications

By January 1, 2025, the bill would require the State Water Board to review and adopt general water quality certifications for all general nationwide permits issued by the U.S. Army Corps of Engineers (USACE) for discharge of dredge and fill material in connection with water supply projects and flood risk reduction projects. In adopting general water quality certifications for USACE nationwide general Section 404 permits, the State Water Board would be required, to the full extent authorized by section 21083.7 of the Public Resources Code, rely upon environmental review completed by USACE under the federal National Environmental Policy Act for compliance with its duties under the requirements of CEQA.

Reporting Requirements

Beginning on January 1, 2025, and annually thereafter, the water boards would be required to prepare, provide public notice of, and make available for public review, a report regarding at a minimum:

- 1) The water supply projects and flood risk reduction projects for which project certifications have been issued;
- 2) The water supply projects and flood risk reduction projects for which project certifications have been issued in reliance upon avoidance, minimization and compensatory mitigation created and provided through an approved Habitat Conservation Plan, Natural Communities Conservation Plan, or Habitat Mitigation Plan;
- 3) Any approved Habitat Conservation Plan, Natural Communities Conservation Plan, or watershed or Habitat Mitigation Plan found by the water board to be insufficient as a Watershed Management Plan and the reasons for such determination of insufficiency; and,
- 4) The general water quality certifications adopted by the State Water Board for general nationwide permits issued by USACE to authorize discharges of dredge and fill material in connection with water supply projects and flood risk reduction projects.

Section 4 – Supplemental Consultation

The bill would authorize a state agency with the authority to authorize a water supply or flood risk reduction project to do any of the following:

- 1) Enter into an agreement with a project proponent to recover costs for actions authorized by this section to expedite the review of environmental documents and

review processing and issuances of project certifications, and other authorizations, permits, and approvals for water supply projects and flood risk reduction projects with the goal of completing permit review and approval in an expeditious manner.

- 2) Hire or compensate staff or contract for services needed to achieve these goals.
- 3) Work collaboratively with project proponents and other agencies with jurisdiction over the water supply project or flood risk reduction project to implement integrated regulatory approach in authorizing such projects, similar to efforts implemented by the state permitting agencies for projects funded by the San Francisco Bay Area Measure AA, the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Program.

Staff Comments:

Permitting Authority

In order to build water supply and flood risk reduction infrastructure, local agencies must obtain a wide variety of permits from varying state and federal agencies. Actions ranging from clearing concrete or dirt, and planting, excavating or removing vegetation, to building access roads to channels require the proper permit. Depending on the proposed project activity, the following state and federal agencies may have permitting authority over the project activities:

California State Agencies	Federal Agencies
Department of Conservation	National Ocean and Atmospheric Administration (NOAA) Fisheries
Department of Fish and Wildlife	U.S. Army Corps of Engineers
Department of Forestry and Fire Protection	U.S. Fish and Wildlife Service
Department of Water Resources	U.S. Forest Service
Regional Water Quality Control Boards	
State Lands Commission	
State Water Resources Control Board	

Lake and Streambed Alteration Program

CDFW requires any person, state or local governmental agency, or public utility to notify them prior to beginning any activity that may do one or more of the following:

- 1) Divert or obstruct the natural flow of any river, stream, or lake;
- 2) Change the bed, channel, or bank of any river, stream, or lake;
- 3) Use material from any river, stream, or lake; or,
- 4) Deposit or dispose of material into any river, stream, or lake.

A LSAA is a type of permit that includes measures necessary to protect existing fish and wildlife resources. CDFW requires an LSAA when it determines that an activity, as described in a complete LSAA notification, may substantially adversely affect existing fish or wildlife resources.

If a threatened or endangered species is present at the site, a separate California Endangered Species Act (CESA) permit may be required. An LSAA doesn't provide CESA take authorization. Further, if a species is protected under the federal Endangered Species Act, the U.S. Fish and Wildlife Service should be contacted.

Procedures for Discharges of Dredged or Fill Material to Waters of the State

In accordance with the Porter-Cologne Water Quality Control Act, the State Water Board and the Regional Water Quality Control Boards are authorized to regulate discharges of waste, which includes discharges of dredged or fill material, that may affect the quality of waters of the state. These procedures ensure that the regulation of dredge or fill activities be done in a manner to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values.

In 2019, the State Water Board adopted a State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. The Procedures include a wetland definition, a framework for determining if a wetland feature is a water of the state, wetland delineation procedures, and procedures for the submittal, review, and approval of applications for Water Quality Certifications and Waste Discharge Requirements for dredge or fill activities.

401 Water Quality Certification

The 401 Water Quality Certification and Wetlands Program is responsible for regulating discharges of dredged or fill material to waters of the state. If a project may result in a discharge of dredged or fill material, as defined in the Procedures, an application must be submitted to the State Water Board or Regional Water Quality Control Board. Examples of work that can result in discharges includes development of projects that fill in water, dredging to maintain channel capacity, navigational dredging, flood control channelization, levee construction, channel clearing, and fill of wetlands for development of bridges, piers, docks, etc.

If a project is located fully within a Regional Water Quality Control Board boundary, the application should be submitted to that Regional Water Quality Control Board office. If the project involves a Federal Energy Regulatory Commission (FERC) license, an appropriation of water, or a diversion of water for domestic, irrigation, power, municipal, industrial or other beneficial use, the application must be sent to the State Water Board Division of Water Rights' 401 Certification Program. If a project crosses Regional Water Quality Control Board boundaries and does not involve a water right or FERC license, the application should be submitted to the State Water Board Division of Water Quality's 401 Certification Program. Finally, if the project qualifies for coverage under the State Water Board's General Order for Nationwide Permits 12, 57, or 58, a notice of intent and fee should be submitted to the State Water Board.

Even though a discharger may have obtained a federal permit or license that authorizes impacts to waters of the U.S. (waters that are within federal jurisdiction), the discharger must also obtain certification from the State Water Board or the Regional Water Quality Control Board to

ensure that the discharge does not violate state water quality standards or any other appropriate requirement of state law.

Habitat Conservation Plans

Habitat Conservation Plans are planning documents that authorize the limited and unintentional take of listed species when it occurs incidental to otherwise lawful activities. These plans describe an assessment of impacts that will likely result from the proposed taking of one or more federally listed species, measures that the permit applicant will undertake to monitor, minimize, and mitigate for such impacts, identify any alternatives that could avoid the incidental take and the reasons why those alternatives are not being chosen, how the conservation measures will be funded, and any additional measures that the U.S. Fish and Wildlife Service may require. After a permit applicant receives an incidental take permit, they may move forward with their project without concern they will be in violation of the federal Endangered Species Act.

Natural Community Conservation Planning (NCCP)

The NCCP program run by CDFW, represents a cooperative effort to protect habitats and species while also providing for appropriate economic activity. The NCCP program differs from the California Endangered Species Act and the federal Endangered Species Act in the sense that it takes a broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity, as opposed to identifying and protecting individual species that have already declined in number significantly. CDFW and the U.S. Fish and Wildlife Service provide support, direction and guidance to those involved in an NCCP, while local agencies oversee its development. Seventeen NCCPs have been approved so far and more than nine are in various stages of planning.

How Would SB 23 Streamline the Regulatory Permitting Process

While the need for water supply and flood protection infrastructure is evident, getting these critical, timely projects approved and built can be a significant challenge. Even after the California Environmental Quality Act (CEQA) process is complete, the permitting process can be mired in delays caused by overlapping jurisdictions of state and federal agencies, confusion over what's required for a completed application, and state agency and project applicant staffing issues. As delays occur, costs increase, and depending on the size of the project, delays can ultimately cost water rate payers and taxpayers tens of millions of dollars. This regulatory gridlock can also lead to worse environmental outcomes and delay projects that will benefit the environment.

The state must identify opportunities to improve and streamline the regulatory permitting process so these critical infrastructure projects are built at the pace and scale needed to prepare for climate change.

SB 23 would help address these inefficiencies by creating an expedited process whereby state agencies and project applicants collaborate to expedite and advance projects needed to protect communities and bolster water supplies while preserving established environmental review processes that play a critical role in protecting and enhancing the environment.

Specifically, SB 23 would streamline the regulatory permitting of water supply and flood risk reduction projects in four ways:

- 1) Reform the process by which an application for a Section 401 Water Quality Certification is deemed complete;
- 2) Require the review and approval of Section 401 Water Quality Certifications and Lake and Streambed Alteration Agreements to be completed within 180 days of submittal of a complete permit application;
- 3) Avoid duplicative planning efforts by allowing certain watershed management plans that are already developed and implemented to be used for mitigation required through Section 401 Water Quality Certifications; and
- 4) Allow project applicants to voluntarily contribute resources to state permitting agencies in order to provide agencies with additional resources to help agencies meet the permitting deadlines established in the bill.

Section 3 – Explaining the Importance of Watershed Plans

Under Section 404(b)(1) Guidelines found in federal regulations, a discharge of dredged or fill materials into a water of the United States may not be permitted if there is a practicable alternative to the proposed project that would be less environmentally damaging to the aquatic environment. Under California’s Procedures for Discharge of Dredged or Fill Material, an applicant is required to submit an alternative analysis that is more rigorous, and more specific in nature, than the analysis required by the United States Army Corps of Engineers (Corps) under Section 404. The Procedures contain very limited exemptions to the alternative analysis. However, an exemption is provided to projects carried out in accordance with a “Watershed Plan” that has been approved for use by the water board and analyzed in an environmental document (i.e., CEQA or NEPA document) that includes an alternative analysis, monitoring provisions, and guidance on compensatory mitigation opportunities. The definition of a Watershed Plan ensures that most HCPs and NCCPs can qualify for the alternative analysis exemption, as well as the Procedures’ mitigation standards for Watershed Plans.

Unfortunately, the water boards have not followed through with approval to use such plans for mitigation as required by their own regulations. SB 23 would codify this portion of the regulations and require the water board to use such watershed management plans under the Procedures unless the water board determines that the approved HCP, NCCP, or other habitat management plans does not substantially meet the definition of a Watershed Plan for aquatic resources. This would create more flexibility in the Water Quality Certification process and avoid duplicative planning efforts, thereby expediting water supply and flood risk reduction projects to better address climate change impacts while still protecting the environment.

Section 3 – General Orders

General orders are designed to regulate activities that are similar in nature and have minimal impacts to aquatic resources. General orders serve to streamline application procedures for the applicant and to reduce staff workload for the water boards. For dredge or fill projects, the water boards have issued certifications for a number of Corps general permits.

In order to utilize this existing permit streamlining process, SB 23 would require the State Water Board, by January 1, 2025, to review and adopt water quality certifications for all general nationwide permits issued by the Corps under Section 404 for discharge of dredge or fill material in connection with water supply projects and flood risk reduction projects. Additionally, in adopting these general water quality certifications, SB 23 would require the State Water Board, to the extent authorized by CEQA, to rely upon NEPA documentation for the projects to comply with CEQA.

In the event a project requires both an EIR prepared pursuant to CEQA and an environmental impact statement (EIS) prepared pursuant to NEPA, existing law authorizes the lead agency to use the EIS as the EIR. This is a permit streamlining tool established in existing that allows a project proponent and lead agency to utilize existing environmental documentation and avoid duplicative planning efforts. Requiring the State Water Board to use existing NEPA documentation in issuing general orders to water supply and flood risk reduction projects will further expedite the permitting process.

Newsom Administration Efforts to Streamline Permitting

Water Resilience Portfolio

The Water Resilience Portfolio, released in July 2020, describes a set of actions to meet California's water needs throughout the 21st century. Within the portfolio, the Newsom Administration identified a handful of action items pertaining to environmental review processes and permit streamlining. Below is a description of some of those action items and their progress, identified in the 2021 California Water Resilience Portfolio Progress Report:

Action item 13.6 in the Portfolio directed CDFW to pilot a project to evaluate the effectiveness of simplified environmental permitting processes and monitor whether such processes are achieving desired environmental outcomes. The progress report indicates they are in Phase Two, meaning the administration is securing funding, logistics, support materials, and is in the process of groundbreaking and beginning project work. Through this one-year pilot, CDFW made significant progress in streamlining its own permitting processes within the regulatory framework of both CESA and the Fish and Game Code. This effort resulted in a new template for consolidating and streamlining the process for CESA and LSAA permits, called the Restoration Management Permit template. This template consolidates two or more different

“take” authorizations that a restoration project may need into a single streamlined permit. This template was piloted in five restoration projects.

Action item 25.2 directs DWR and the Flood Board to review state, federal, and local permitting processes for flood risk reduction projects and operations and maintenance and recommend ways to improve permitting processes. According to the progress report, this action item is currently in Phase Two, and that DWR and Flood Board staff continue working to identify the regulations and permits on which to focus improvement efforts and the regulatory agencies that should be included in these efforts.

Governor’s Water Supply Strategy

In August 2022, Governor Newsom unveiled a set of actions for increasing and diversifying California's water supply. The "Water Supply Strategy: Adapting to a Hotter, Drier Future" calls for a modernization of the state’s water system through major investments in infrastructure to create new sources of water supply. The plan also sets specific goals for increasing the amount of water that is stored above and below ground, recycled and reused, and making new water available for use by capturing stormwater and desalinating ocean water and salty water in groundwater basins.

The “Water Supply Strategy” identifies permitting delay as a problem that must be addressed and calls on the Legislature to streamline processes so projects can be planned, permitted, and built more quickly, while still protecting the environment.

SB 23 answers this call to action by proposing specific ideas for how California can streamline the regulatory permitting process for water supply and flood risk reduction projects without compromising environmental protection. This bill would set deadlines for processing applications for a multitude of projects, reduce duplicative planning efforts, and provide permitting agencies with additional resources to meet the requirements of this bill. The comprehensive approach proposed in SB 23 would modernize the regulatory permitting process to timely deliver the projects necessary to meet this unprecedented climate challenge.

Recommended Position: Sponsor

At the October Planning Meeting, the State Legislative Committee voted to sponsor a permit streamlining proposal submitted by Valley Water. Senator Anna Caballero agreed to author this proposal. On December 5, 2022, Senator Caballero introduced SB 23, which is currently a spot bill and will be the vehicle for ACWA’s permit streamlining proposal. The bill will be amended with substantive language in the coming weeks.

A working group of ACWA members spent weeks working on the language provided by Valley Water to address comments from SLC members at the Planning Meeting. Of note, the bill now specifies that the Lake and Streambed Alteration Agreement provisions in Section 1 would only apply to projects already required to obtain an LSAA from CDFW. Additionally, the work group

amended Section 2 to provide that the proposed Water Quality Certification process is an optional process for the project proponent to utilize.

SB 23 presents an opportunity to seize growing momentum for legislation that would streamline the permitting process for water supply and flood risk reduction projects. The Water Resilience Portfolio prioritized the need to accelerate permitting for new water storage projects. The Governor's Water Supply Strategy highlighted the urgency for California to increase and modernize its water supply and expedite projects in order to adapt to more extreme weather patterns caused by climate change. Governor Newsom, during his January 10 budget release press conference, again emphasized the need for California to address issues creating regulatory roadblocks that delay critical infrastructure projects, stating:

The time to getting these projects done is critical. The process we've created is creating paralysis and creating problems as a consequence. And we have a responsibility to fix that. Progress was made last year. I assure you more progress will be made in the ensuing years.

SB 23 answers this call to action by proposing specific ideas for how California can streamline the regulatory permitting process for water supply and flood risk reduction projects without compromising environmental protection. From 2020 to 2022, California experienced the driest three-year period on record. In 2023, this prolonged drought was met with a series of atmospheric rivers and a bomb cyclone that brought significant amounts of rain and snow, leading to widespread flooding, property damage, and tens of thousands forced to evacuate their homes. This weather whiplash will only become more pronounced in the years to come. SB 23 would help ensure ACWA members can modernize their infrastructure at the pace and scale necessary to meet this challenge.

Support:
Association of California Water Agencies

Opposition: N/A

Attachment 2

Legislative Positions

Support— Measure has substantial significance; District actively supports the proposed legislation.

Support and Seek Amendments— Measure has substantial significance; District will actively support the proposed legislation while continuing to seek specific amendments.

Support if Amended— Measure has substantial significance; District will actively support the proposed legislation if it is amended to address specific shortcomings identified by the District.

Favor— Legislation is generally beneficial to District; it will join other organizations in support but will not engage actively in advocacy for the measure.

Favor if Amended— Legislation is generally beneficial to District; it will join with other organizations in support if legislation is amended to address specific shortcomings identified by the District but will not engage actively in advocacy for the measure.

Watch— Measures or general issues of potential significance to District but have not been sufficiently defined for a formal position.

Not Favor— Legislation is generally detrimental to District; it will join with other organizations in opposition but will not engage actively in advocacy against the measure.

Oppose Unless Amended— Measure has substantial significance; District will actively oppose the proposed legislation unless amended to address specific shortcomings.

Oppose— Measure has substantial significance; District actively opposes the proposed legislation.

Attachment 3

AMENDED IN SENATE FEBRUARY 9, 2023

SENATE BILL

No. 23

Introduced by Senator Caballero

December 5, 2022

An act to add Section 1618 to the Fish and Game Code, and to add the heading of Article 1 (commencing with Section 13370) to Chapter 5.5 of Division 7 of, and to add Article 2 (commencing with Section 13389.1) to Chapter 5.5 of Division 7 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 23, as amended, Caballero. Water supply and flood risk reduction projects: expedited permitting.

(1) Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using 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, except under specified conditions, including requiring the entity to send written notification to the Department of Fish and Wildlife regarding the activity in the manner prescribed by the department.

This bill would require a project proponent, if already required to submit a notification to the department, to complete and submit environmental documentation to the department for the activity in the notification. The bill would require the department, under prescribed circumstances, to take specified actions within 180 days, or a mutually agreed-to extension of time, of receiving notification from a project proponent.

(2) *Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (state board) and the California regional water quality control boards (regional boards) are the principal state agencies with primary authority over water quality matters. Existing law authorizes the state board to issue permits and promulgate procedures consistent with federal law.*

This bill would require, if an applicant requests a preapplication consultation, the state board or regional boards to adhere to specified procedures in reviewing the application before issuing project certification. The bill would authorize a project proponent to petition the state board to reconsider a determination of application completeness, or to appeal to the state board any regional board's determination of application completeness.

This bill would require the state board or regional boards to use specified approved conservation and habitat management plans as watershed plans for purposes of implementing the procedures in issuing a project certification, unless the state board or regional boards issuing a project certification determine in writing that an approved plan does not substantially meet the definition of a watershed plan, as defined. The bill would place requirements on the state board and regional boards regarding its determination on what is considered a watershed plan, including making a proposed written determination, and providing for public comment and a written response on that proposed determination. The bill would require, by January 1, 2025, the state board to review and adopt general water quality certifications for general nationwide permits issued by the United States Army Corps of Engineers under specified federal law within the state for discharge of dredge and fill material in connection with water supply projects and flood risk reduction projects. The bill would require, on January 1, 2025, and annually thereafter, the state board and regional boards to prepare, provide public notice of, make available for public review on their internet website, and submit to the relevant legislative committees, as specified, a report regarding specified information related to water supply projects and flood risk reduction projects.

This bill would authorize a state agency, defined to mean any agency, board, or commission, including the state board or the regional boards, with the power to issue a permit that would authorize a water supply project or authorize a flood risk reduction project, to take specified actions in order to complete permit review and approval in an expeditious manner. The bill would make findings and declarations

related to the need to expedite water supply projects and flood risk reduction projects to better address climate change impacts while protecting the environment.

~~The California Safe Drinking Water Act provides for the operation of public water systems and imposes on the State Water Resources Control Board various duties and responsibilities for the regulation and control of drinking water in the state, including, among other things, overseeing the issuance and enforcement of public water system permits, as provided:~~

~~Existing law authorizes specified works of improvement for the control, conservation, and utilization of destructive flood waters and the reclamation and protection of lands that are susceptible to overflow by flood waters:~~

~~This bill would express the intent of the Legislature to enact subsequent legislation to expedite the regulatory permitting process for water supply and flood risk reduction projects, as provided:~~

~~Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1618 is added to the Fish and Game Code,*
2 *to read:*

3 1618. (a) *For purpose of this section, the following definitions*
4 *apply:*

5 (1) *“Flood risk reduction project” means a project or plan*
6 *subject to department jurisdiction under this chapter that is*
7 *proposed by a public agency or a public utility to construct, alter,*
8 *retrofit, maintain, manage, or improve a facility, channel, levee,*
9 *or flood control modification where flood risk reduction or sea*
10 *level rise protection is an objective of the project.*

11 (2) *“Notification” means the documents described in*
12 *subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision*
13 *(a) of Section 1602.*

14 (3) *“Project proponent” means a public agency or public utility*
15 *that proposes a water supply project or flood risk reduction project.*

16 (4) *“Water supply project” means a project or plan subject to*
17 *department jurisdiction under this chapter that is proposed by a*
18 *public agency or a public utility to construct, alter, retrofit,*
19 *maintain, manage, or improve a groundwater recharge,*

1 *desalination, recycled water, water conveyance, surface water*
2 *storage, stormwater capture, or water treatment facility.*

3 *(b) A project proponent shall do both of the following:*

4 *(1) Submit a complete notification for the project to the*
5 *department when required under this chapter.*

6 *(2) Complete and submit environmental documentation to the*
7 *department for the activity in the notification, required under*
8 *Division 13 (commencing with Section 21000) of the Public*
9 *Resources Code.*

10 *(c) Notwithstanding any other law, if the department determines*
11 *that a water supply project or flood risk reduction project will*
12 *substantially adversely affect an existing fish and wildlife resource*
13 *and the project proponent completes the actions described in*
14 *subdivision (b), the department shall, within 180 days of receipt*
15 *of a notification from the project proponent, issue the final*
16 *agreement that includes any reasonable measures mutually agreed*
17 *to by the project proponent and the department pursuant to*
18 *subdivision (a) of Section 1603 unless subparagraph (D) of*
19 *paragraph (4) of subdivision (a) of Section 1602 applies because*
20 *the department did not issue a draft agreement to the project*
21 *proponent within 60 days of the date the notification is complete.*
22 *If the department and the project proponent are not able to reach*
23 *a final agreement on all measures, the project proponent may*
24 *proceed in accordance with a final agreement issued by an*
25 *arbitration panel pursuant to subdivision (b) of Section 1603,*
26 *including reasonable measures necessary to protect the existing*
27 *fish and wildlife resources substantially adversely affected by the*
28 *water supply project or flood risk reduction project.*

29 *(d) If the department and the project proponent mutually agree*
30 *to an extension of the date for which the department shall provide*
31 *a final agreement, the date mutually agreed upon shall apply*
32 *instead of the 180-day time period.*

33 *SEC. 2. The heading of Article 1 (commencing with Section*
34 *13370) is added to Chapter 5.5 of Division 7 of the Water Code,*
35 *to read:*

36

37 *Article 1. Implementation of the Federal Water Pollution*
38 *Control Act*

39

1 SEC. 3. Article 2 (commencing with Section 13389.1) is added
2 to Chapter 5.5 of Division 7 of the Water Code, to read:

3
4 Article 2. Water Supply and Flood Risk Reduction Permits

5
6 13389.1. For the purpose of this article, the following
7 definitions apply:

8 (a) “Flood risk reduction project” means a project or plan that
9 is proposed by a public agency or a public utility to construct,
10 alter, retrofit, maintain, manage, or improve a facility, channel,
11 levee, or flood control modification where flood risk reduction or
12 sea level rise protection is an objective of the project.

13 (b) “Habitat conservation plan” means any plan approved by
14 the United States Fish and Wildlife Service pursuant to the federal
15 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

16 (c) “Habitat management plan” means any habitat conservation
17 plan, natural communities conservation plan, habitat management
18 plan, or other plan agreement or permit approved by or entered
19 into by the Department of Fish and Wildlife in connection with the
20 authorization of taking of an endangered, threatened, or candidate
21 species pursuant to the California Endangered Species Act
22 (Chapter 1.5 (commencing with Section 2050) of Division 3 of the
23 Fish and Game Code).

24 (d) “Natural communities conservation plan” means any plan
25 approved by the Department of Fish and Wildlife pursuant to
26 Chapter 10 (commencing with Section 2800) of Division 3 of the
27 Fish and Game Code.

28 (e) “Procedures” means the “State Wetland Definition and
29 Procedures for Discharge of Dredged or Fill Material to Waters
30 of the State” (as adopted by the State Water Resources Control
31 Board on April 2, 2019) as they may be amended from time to
32 time.

33 (f) “Project certification” means water quality certification
34 required by, and issued under, Sections 13160, 13260, and 13376.

35 (g) “Project proponent” means a public agency or public utility
36 that proposes a water supply project or flood risk reduction project.

37 (h) “State agency” means any agency, board, or commission,
38 including the state board or the regional boards, with the power
39 to issue a permit that would authorize a water supply project or
40 authorize a flood risk reduction project.

1 (i) “Water supply project” means a project or plan that is
2 proposed by a public agency or a public utility to construct, alter,
3 retrofit, maintain, manage, or improve a groundwater recharge,
4 desalination, recycled water, water conveyance, surface water
5 storage, stormwater capture, or water treatment facility.

6 (j) “Watershed plan” means a document or set of documents,
7 developed in consultation with relevant stakeholders, that has a
8 specific goal of aquatic resource restoration, establishment,
9 enhancement or preservation within a watershed, that addresses
10 aquatic resource conditions in the watershed, addresses multiple
11 stakeholder interests and land uses, includes information about
12 identification of priority sites for aquatic resource restoration and
13 protection, includes implementation measures to attain aquatic
14 resource protection goals for the watershed, and is used by the
15 state board or regional boards in determining appropriate terms
16 and conditions, including avoidance, minimization, and
17 compensatory mitigation conditions, to be included in project
18 certifications.

19 13389.2. (a) (1) This section shall apply if, before filing an
20 application for project certification for a water supply project or
21 flood risk reduction project, the project proponent requests a
22 preapplication consultation with the state board or regional
23 boards, as appropriate.

24 (2) The project proponent shall initiate the preapplication
25 consultation at least 60 days before the filing of the application
26 for project certification. Any meeting pursuant to the consultation
27 shall occur no less frequently than once every 60 days thereafter
28 until the project is fully certified.

29 (3) The 60-day preapplication period may run concurrently
30 with any other preapplication or postapplication consultation
31 period that a project proponent enters into as required by law with
32 any other regulatory agency with jurisdiction.

33 (4) Nothing in this section shall require an applicant to request
34 or engage in a preapplication consultation not otherwise required
35 by law for any project certification.

36 (b) Notwithstanding any other law, the state board or regional
37 boards shall issue project certification within 180 days if a project
38 proponent does all of the following:

39 (1) Requests a preapplication consultation.

40 (2) Files a complete application for project certification.

1 (3) If required for the project, files a complete application or
2 petition under Chapter 2 (commencing with Section 1250) of Part
3 2 of Division 2 for all water rights approvals or amendments
4 necessary to implement the project.

5 (4) Completes and submits completed environmental
6 documentation to the state board or regional boards for the project
7 certification required under Division 13 (commencing with Section
8 21000) of the Public Resources Code.

9 (c) The state board or regional board shall notify the project
10 proponent in writing whether the submittal is complete no later
11 than 30 days after the submittal of an application or petition. If
12 the submittal is determined to be incomplete, the state board or
13 regional boards shall provide the project proponent with a written
14 notification that includes a full list of specific items that were
15 complete and incomplete, and indicate the manner by which
16 incomplete items can be made complete, including a list and
17 thorough description of the specific information needed to complete
18 the application or petition. The list shall be limited to those items
19 actually required by the state board or regional board under
20 applicable law. After the state board or regional board issues the
21 list, it shall not request or require the project proponent to provide
22 any new or additional information that was not identified in the
23 initial list of items found to be incomplete. No list shall include an
24 extension or waiver of any of the time periods prescribed by this
25 section.

26 (d) If the state board or regional board does not provide the
27 project proponent with a written notification that includes a list
28 of specific items that are complete and incomplete within 30 days
29 after receipt of the initial application or petition, the application
30 or petition shall be deemed complete.

31 (e) (1) If the state board or regional board provides the written
32 notification determining that the application or petition is
33 incomplete, the project proponent shall act within 45 days after
34 receipt of the notification to submit supplemental materials in
35 order to complete the application or petition, or to appeal the
36 determination, in whole or in part.

37 (2) Upon receipt of any supplemental materials from the project
38 proponent, the state board or regional board shall, within 30 days
39 after receipt of the notification, determine the completeness of the
40 application or petition with the supplemental material and whether

1 to issue the notification of a complete application. In making this
2 determination, the state board or regional board shall be limited
3 to whether the application or petition as supplemented includes
4 the information specified in the prior notification of
5 incompleteness.

6 (f) (1) If the supplemented application or petition is again
7 determined to be incomplete, the state board or regional board
8 shall provide the project proponent with a written notification
9 specifying the parts of the supplemented application or petition
10 that are still incomplete and indicate the manner by which they
11 can be made complete, including a full list and thorough
12 description of the information needed to complete the application
13 or petition.

14 (2) The project proponent shall act within 30 days of receipt of
15 that notification to submit additional supplemental materials in
16 order to complete the application or petition, or to appeal the
17 notification of incompleteness, in whole or in part.

18 (3) If the state board or regional board does not, within 30 days
19 of receipt of application materials from applicant, provide the
20 project proponent with a written notification specifying those parts
21 of the supplemented application or petition that are still incomplete
22 and indicating the manner by which they can be made complete,
23 the application or petition as supplemented shall be deemed
24 complete for purposes of this section.

25 (4) If the project proponent elects to supplement a previously
26 supplemented application or petition, the deadlines and obligations
27 set forth in this subdivision shall also apply to any supplemented
28 application or petition.

29 (g) The state board or regional board may, in the course of
30 processing the application, request the project proponent to clarify,
31 correct, or otherwise supplement the information required for the
32 application under subdivision (c). This shall not affect any specified
33 deadlines under this section.

34 (h) The project proponent may petition the state board to
35 reconsider a determination of application completeness, or may
36 appeal to the state board any regional board's determination of
37 application completeness. The project proponent may petition for
38 reconsideration or appeal a determination of completeness, either
39 in whole or in part, and the appropriate board shall act on the
40 petition for reconsideration or appeal no later than 60 days after

1 receipt of the appeal in accordance with subdivision (c) of Section
2 65943 of the Government Code. Within 30 days of the timely
3 issuance by the state board of its final written determination of
4 completeness, the project proponent may challenge the
5 determination of completeness in court.

6 (i) This section does not supersede or otherwise amend any
7 deadlines set forth by or in the federal Water Pollution Control
8 Act (33 U.S.C. Sec. 1251 et seq.).

9 (j) Except as provided in subdivision (h), this section does not
10 amend the procedures or any deadlines for administrative or
11 judicial appeal of a project certification as set forth under state
12 or federal law.

13 13389.3. (a) The Legislature finds and declares all of the
14 following:

15 (1) On April 2, 2019, the state board adopted the “State Wetland
16 Definition and Procedures for Discharges of Dredged or Fill
17 Material to Waters of the State” (procedures) that requires that
18 any habitat conservation plan approved by the United States Fish
19 and Wildlife Service pursuant to the federal Endangered Species
20 Act (16 U.S.C. Sec. 1531 et seq.) before December 31, 2020, and
21 any natural communities conservation plan approved by the
22 Department of Fish and Wildlife pursuant to the Natural
23 Communities Conservation Planning Act before December 31,
24 2020, shall be used by the state board and regional boards in
25 issuing project certifications, so long as the plan includes
26 biological goals for aquatic resources.

27 (2) The procedures further require that the state board or
28 regional boards shall use the approved plans as watershed
29 management plans under the procedures unless the state board
30 or regional boards determine that the approved habitat
31 conservation plan or the natural communities conservation plan
32 does not substantially meet the definition of a watershed plan, as
33 set forth in the procedures, for aquatic resources.

34 (3) To expedite water supply projects and flood risk reduction
35 projects to better address climate change impacts while protecting
36 the environment, the Legislature finds that for purposes of issuing
37 project certifications in compliance with the procedures, as they
38 may be amended from time to time, the state board or regional
39 boards shall expand their reliance on approved habitat
40 conservation plans, natural community conservation plans, and

1 *other habitat management plans for provision of avoidance,*
2 *minimization, and compensatory mitigation for project*
3 *certifications, so long as those plans are approved by other state*
4 *and federal agencies with jurisdiction and address biological goals*
5 *for aquatic resources.*

6 *(b) Unless the state board or regional boards issuing a project*
7 *certification determine in writing that an approved plan does not*
8 *substantially meet the definition of a watershed plan, the state*
9 *board or regional boards shall use the following approved plans*
10 *as watershed plans for purposes of implementing the procedures*
11 *in issuing a project certification:*

12 *(1) Habitat conservation plans that include biological goals for*
13 *aquatic resources.*

14 *(2) Natural communities conservation plans that include*
15 *biological goals for aquatic resources.*

16 *(3) Habitat management plans that include biological goals for*
17 *aquatic resources.*

18 *(c) (1) Unless the state board or regional boards issuing a*
19 *project certification determine in writing that an approved plan*
20 *does not substantially meet the definition of a watershed plan, the*
21 *state board or regional boards shall accept, as terms of the project*
22 *certification, any avoidance, minimization, and compensatory*
23 *mitigation for impacts to waters of the state provided through*
24 *compliance with any approved habitat conservation plan, natural*
25 *community conservation plan, or habitat management plan, so*
26 *long as the public entity administering the habitat conservation*
27 *plan, natural community conservation plan, or habitat management*
28 *plan identifies, tracks, and publicly reports the impacts to waters*
29 *of the state and the manner that they are addressed by the*
30 *avoidance, minimization, and compensatory mitigation.*

31 *(2) The state board or regional boards shall not impose on any*
32 *project certification terms and conditions mandating avoidance,*
33 *minimization, or compensatory mitigation for impacts to waters*
34 *of the state in addition to those already provided pursuant to*
35 *approved plans administered as set forth in paragraph (1).*

36 *(3) For the state board or regional boards to make a*
37 *determination that an approved habitat conservation plan, natural*
38 *communities conservation plan, or habitat management plan that*
39 *includes biological goals for aquatic resources does not*
40 *substantially meet the definition of a watershed plan for purposes*

1 *of issuing a project certification, the state board or regional boards*
2 *shall do both of the following:*

3 *(A) Make a proposed written determination, supported by*
4 *specific written findings of insufficiency, available for public review*
5 *and comment for at least 30 days prior to the adoption of the*
6 *determination of insufficiency.*

7 *(B) Provide written responses to public comments received on*
8 *the determination of insufficiency prior to making a decision on*
9 *the determination.*

10 *(d) By January 1, 2025, the state board shall review and adopt*
11 *general water quality certifications for general nationwide permits*
12 *issued by the United States Army Corps of Engineers under Section*
13 *404 of the federal Water Pollution Control Act (33 U.S.C. Sec.*
14 *1344) within the state for discharge of dredge and fill material in*
15 *connection with water supply projects and flood risk reduction*
16 *projects. In adopting the general water quality certifications, the*
17 *state board shall rely upon an environmental review completed*
18 *by the United States Army Corps of Engineers under the federal*
19 *National Environmental Policy Act (42 U.S.C. Sec. 4321, et seq.)*
20 *for compliance with its duties under the requirements of Division*
21 *13 (commencing with Section 21000) of the Public Resources*
22 *Code.*

23 *(e) Notwithstanding Section 10231.5 of the Government Code,*
24 *beginning on January 1, 2025, and annually thereafter, the state*
25 *board and regional boards shall prepare, provide public notice*
26 *of, and make available for public review on their internet website,*
27 *and submit to the relevant legislative policy committees and*
28 *relevant legislative budget committees, a report regarding, at a*
29 *minimum, all of the following:*

30 *(1) The water supply projects and flood risk reduction projects*
31 *for which project certifications have been issued.*

32 *(2) The water supply projects and flood risk reduction projects*
33 *for which project certifications have been issued in reliance upon*
34 *avoidance, minimization, and compensatory mitigation created*
35 *and provided through an approved habitat conservation plan,*
36 *natural communities conservation plan, or habitat mitigation plan.*

37 *(3) Any approved habitat conservation plan, natural*
38 *communities conservation plan, or habitat mitigation plan found*
39 *by the state board and regional boards to be insufficient as a*

1 watershed management plan and the reasons for the determination
2 of insufficiency.

3 (4) The general water quality certifications adopted by the state
4 board for general nationwide permits issued by the United States
5 Army Corps of Engineers under Section 404 of the federal Water
6 Pollution Control Act (33 U.S.C. Sec. 1344) to authorize discharges
7 of dredge and fill material in connection with water supply projects
8 and flood risk reduction projects.

9 13389.4. (a) A state agency may do any of the following:

10 (1) Enter into an agreement with a project proponent to recover
11 costs for actions authorized by this section to expedite the review
12 of environmental documents prepared pursuant to Division 13
13 (commencing with Section 21000) of the Public Resources Code,
14 and review the processing and issuance of project certifications,
15 and other authorizations, permits, and approvals for water supply
16 projects and flood risk reduction projects, with the goal of
17 completing permit review and approval in an expeditious manner.

18 (2) Hire or compensate staff or contract for services needed to
19 achieve the goal of completing permit review and approval in an
20 expeditious manner.

21 (3) Work collaboratively with project proponents and other
22 agencies with jurisdiction over the water supply project or flood
23 risk reduction project to implement an integrated regulatory
24 approach in authorizing the projects, similar to efforts implemented
25 by the state permitting agencies for projects funded by the local
26 parcel tax measure, San Francisco Bay Restoration Authority
27 Measure AA, the San Francisco Bay Clean Water, Pollution
28 Prevention and Habitat Restoration Measure.

29 (b) This section does not limit or expand the authority or
30 discretion of a state agency with regard to conducting review of
31 environmental documents under Division 13 (commencing with
32 Section 21000) of the Public Resources Code, processing or issuing
33 a project certification or other permit, approval, or authorization,
34 or imposing conditions in conjunction with the issuance of a project
35 certification or other permit, approval, or authorization.

36 (c) This section does not affect the project proponent's ability
37 to phase the permitting or construction of a water supply project
38 or flood risk reduction project.

39 (d) The Federal Energy Regulatory Commission, the United
40 States Army Corps of Engineers, the United States Fish and

1 *Wildlife Service, the National Marine Fisheries Service, and the*
2 *United States Environmental Protection Agency may, and are*
3 *encouraged to, participate in implementing the integrated*
4 *regulatory approach authorized by this section.*

5 ~~SECTION 1. It is the intent of the Legislature to enact~~
6 ~~subsequent legislation to expedite the regulatory permitting process~~
7 ~~for water supply and flood risk reduction projects, consistent with~~
8 ~~“California’s Water Supply Strategy, Adapting to a Hotter, Drier~~
9 ~~Future,” released by Governor Newsom’s administration in August~~
10 ~~2022.~~



Item Number: 03
Meeting Date: 03-28-2023
Meeting: Finance &
Administration Committee/
Board of Directors (Finance &
Administration)

Review and Refer for Board Approval

TO: Finance & Administration Committee/Board of Directors (Finance & Administration)

FROM: Matt Sagues, Grant Program Coordinator *MS*
Shaun Horne, Watershed Resources Manager *SH*

THROUGH: Ben Horenstein, General Manager *BH*

DIVISION NAME: Watershed

ITEM: Consider Position on State Assembly Bill 30

SUMMARY

As part of the effort of Marin Water staff to regularly track state and federal legislation which may affect District interests, staff is requesting the Finance & Administration Committee to review and refer Assembly Bill (AB) 30 to a regular bi-monthly meeting of the Board of Directors to consider adopting a position of this bill. AB 30 would expand the Department of Water Resources Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program (AR Program) to include forecast-informed reservoir operations (FIRO) and integrate FIRO into Department of Water Resources (DWR) water supply operations and flood and hazard risk mitigation efforts.

Marin Water staff regularly track state and federal legislation, which relate to the water industry, and periodically bring bills, which may benefit or otherwise affect District interests to the Board for consideration. Legislation brought to the Board may be reviewed and considered for positions of support or opposition, as detailed in Attachment 2, "Legislative Positions."

DISCUSSION

Legislative Recommended Positions

State Legislation: AB 30 (Ward) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program

ACWA Position: Support

Recommended District Position: Support

Status: Introduced

This bill from Assemblymember Ward (D-San Diego) would expand the Department of Water Resources Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program (AR Program) to include forecast-informed reservoir operations (FIRO) and integrate FIRO into Department of Water Resources (DWR) water supply operations and flood and hazard risk mitigation efforts. The bill would also advance DWR's atmospheric river forecast capabilities and include refined climate projections for various environmental conditions.

This bill has the strong support from Sonoma Water, and is formally supported by ACWA. The District receives approximately 25% of its water from Sonoma Water, and would benefit from improved reservoir operations that are informed by FIRO.

As a contractor to Sonoma Water, the District would stand to benefit from FIRO-based operations proposed by AB 30, and for this reason, staff recommends that the Finance Committee review and refer to a Regular Bi-Monthly Meeting of the Board of Directors Committee a position of support on this bill, as defined in Attachment 2.

FISCAL IMPACT

There is no fiscal impact at this time.

ATTACHMENT(S)

1. ACWA analysis of Assembly Bill 30 (Ward)
2. Legislative Positions

ATTACHMENT 1

AB 30: Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program

Author: Ward (D-San Diego)

Introduced: 12-05-2022

Amended: N/A

Sponsors:

San Diego County Water Agency
Sonoma Water Agency

Current Position:

NYC

Recommended Position:

Support

Assigned to: Cindy Tuck/Richard Filgas

Existing Law

Existing law establishes the Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program (Program) in the Department of Water Resources (DWR). Existing law requires DWR, upon an appropriation of special fund moneys, to conduct research relating to climate forecasting and the causes and impacts that climate change has on atmospheric rivers. Existing law also requires DWR to take actions within its existing authority to operate reservoirs in a manner that improves flood protection and to reoperate flood control and water storage facilities to capture water generated by atmospheric rivers.

Bill Summary

AB 30 would rename the Program the Atmospheric Rivers Research and Forecast Improvement Program: Enabling Climate Adaptation Through Forecast-Informed Reservoir Operations and Hazard Resiliency (AR/FIRO) Program (Program). The bill would require DWR to research, develop, and implement new observations, prediction models, novel forecasting methods, and tailored decision support systems to improve predictions of atmospheric rivers and their impacts on water supply, flooding, post-wildfire debris flows, and environmental conditions.

The bill would require DWR to take all actions within its existing authority to operate reservoirs in a manner that improves flood protection in the State and to reoperate flood control and water storage facilities to capture water generated by atmospheric rivers, thereby increasing water supply, hydropower availability, and the reliability of water resources in the State, and to consider refined climate projections of extreme weather and water events and changes in Sierra snow.

Amendment History

N/A

Staff Comments: "Atmospheric rivers" are long narrow bands of atmospheric water vapor pushed along by strong winds. They are prevalent over the Pacific Ocean and can deliver to the Western United States much of its precipitation during just a small number of individual winter

storms. Atmospheric rivers are the source of most of the West Coast's heaviest rains and floods and are a main contributor to water supply.

SB 758 (Chapter 682, Statutes of 2015) established the Program at DWR as summarized in the existing law section of this analysis. ACWA did not take a position on SB 758. Since the enactment of SB 758, ACWA and many of its member agencies have recognized how atmospheric river research and the improved forecasting enabled by that research can improve reservoir operation and flood protection.

As a result of the coordination of climate science and monitoring efforts by the Center for Western Weather and Water Extremes (CW3E) at Scripps Institution of Oceanography at the University of California San Diego and federal, state, and local agencies, the development of Forecast-Informed Reservoir Operations (FIRO) has emerged as an important climate resilience strategy. Early projects implemented by ACWA member agencies (e.g., Sonoma Water Agency, Orange County Water District and Turlock Irrigation District) have shown water management benefits from atmospheric river forecasting.

The ACWA Board of Directors included in ACWA's Five-Year Strategic Plan (for 2020-2024) the following advocacy objective:

21st Century Forecasting and Climate Adaptation: Promote federal, state and local agency use of the latest technology to model the impacts of climate change and Atmospheric Rivers on precipitation, timing and type of runoff, needed water storage and optimization of conveyance to meet future water needs. Seek ongoing federal and state funding for Atmospheric River research and Forecast-Informed Reservoir Operations to improve state and local water management (...).

This bill is a reintroduction of AB 2078 (Flora, 2022), which ACWA supported. As introduced, AB 2078 included language for a \$10 million appropriation from the General Fund for the purposes of funding the Program. This appropriation, however, was removed from the bill because the focus shifted to pursuing funds in the State Budget (see below). AB 2078 ultimately died on the Assembly Appropriations suspense file.

ACWA is part of an atmospheric river research coalition that includes ACWA member agencies and that advocates for funding for the DWR program. As a result of the coalition's advocacy and support, AB 179 "Budget Act of 2022" (Chapter 249, Statutes of 2022) includes \$16.75 million in ongoing funding for FIRO. DWR's May Revise Budget Change Proposal indicates that of this amount, \$10 million is allocated for FIRO and \$7 million is allocated for snow data collection. ACWA's understanding is that the \$10 million for FIRO for 2022 is already under contract with CW3E. While the coalition's strategy for 2023 includes AB 30, the coalition will likely also advocate for additional funding for the Program in the Fiscal Year 2023-'24 Budget process.

Recommended Position: Support

AB 30 would appropriately update the name and description of this important program and delete the reference to funds coming from “special funds.” (Special funds do not include the General Fund.) In addition, this bill aligns with the above-quoted ACWA advocacy objective. For these reasons, ACWA staff recommend adoption of a “support” position.

Support: N/A

Opposition: N/A

Attachment 2

Legislative Positions

Support— Measure has substantial significance; District actively supports the proposed legislation.

Support and Seek Amendments— Measure has substantial significance; District will actively support the proposed legislation while continuing to seek specific amendments.

Support if Amended— Measure has substantial significance; District will actively support the proposed legislation if it is amended to address specific shortcomings identified by the District.

Favor— Legislation is generally beneficial to District; it will join other organizations in support but will not engage actively in advocacy for the measure.

Favor if Amended— Legislation is generally beneficial to District; it will join with other organizations in support if legislation is amended to address specific shortcomings identified by the District but will not engage actively in advocacy for the measure.

Watch— Measures or general issues of potential significance to District but have not been sufficiently defined for a formal position.

Not Favor— Legislation is generally detrimental to District; it will join with other organizations in opposition but will not engage actively in advocacy against the measure.

Oppose Unless Amended— Measure has substantial significance; District will actively oppose the proposed legislation unless amended to address specific shortcomings.

Oppose— Measure has substantial significance; District actively opposes the proposed legislation.



Item Number: 04
Meeting Date: 03-28-2023
Meeting: Finance &
Administration Committee/
Board of Directors (Finance &
Administration)

Review and Refer for Board Approval

TO: Finance & Administration Committee/Board of Directors (Finance & Administration)

FROM: Molly MacLean, General Counsel
Jerrad Mills, Staff Attorney

THROUGH: Ben Horenstein, General Manager

DIVISION NAME: General Counsel

ITEM: Policy and Practices Updates

SUMMARY

In order to continually improve the function and effectiveness of the District, it is important to periodically evaluate certain Board and District policies and practices and where appropriate effect updates, which can help to streamline processes and better align the District with changes in legal requirements and best practices. In the past six months, a number of items have been identified for review and improvement, including the timing of Board officer elections and calendar setting, reviewing the authority of the General Manager to approve the settlement of certain claims and pending litigation, considering certain Board practices, such as the practice of dually noticing Board Committee meetings to allow full participation by all members of the Board, and Board Policies regarding District reserves and resolving grievances under the Americans with Disabilities Act. Staff will review a number of these items, request referral of some to a regular Board meeting for action and seek direction as to others.

DISCUSSION

A number of District and Board practices and policies have been identified in the past six months as ripe for review and possible update.

1. **The Timing of Board Officer Elections and Setting of the Board Calendar.** District Code section 2.20.010 and the Board Handbook, adopted as Board Policy No. 1, currently provide that Board officer elections will take place at the first meeting in January. The timing of the election of Board officers is incongruous with the impact of California Water Code section 71253, which provides that newly elected Board

members should take office the first Friday in December following their election.¹ Further complicating the timing of this law is the fact that the County elections officials are to certify the elections thirty (30) days following the election, meaning that the first Friday in December may predate certification of the election results. While there is little that can be done regarding state law, short of a legislative amendment to Municipal Water District Code, the Board can make changes to its code and policy to assure that there is an orderly process for transition following Board elections.

In order to address the disconnect between the Water Code and the certification of District Board elections, Staff suggests that the Board incorporate provisions into the Board Handbook providing that newly elected Directors will take office the first Friday in December following the election pursuant to Water Code section 71253, but not sooner than the certification of Board elections by the Registrar of Voters for Marin County. If the election certification is after the first Friday of December, then the new Directors should take office as soon thereafter as possible, but not later than the next meeting of the Board. Further, in order to not leave the Board without elected officers during a period of transition, the Board may amend the District Code, section 2.20.010 (and Board Handbook), which calls for election of a Board President and Vice President the first meeting in January each year. This provision can be amended in line with the Water Code requirement to instead call for the election of officers at the first meeting of the Board following the newly elected Directors taking office, which may be at the same meeting as newly elected directors take office. Due to the holidays in December, there may be only one regular Board meeting. During non-election years, the board officer elections can continue at the first meeting in January.

Further, pursuant to the Board Handbook, the Board calendar is not required to be adopted until January 31 of each year, leaving one month of potential uncertainty for the Board, staff and the public as to the date and time of future Board and committee meetings. Amending the Board Handbook to call for adoption of the Board calendar by the end of December, but following any newly elected directors taking office, if applicable, will prompt staff to prepare a proposed calendar for Board consideration and allow the Board to have a calendar in place prior to the start of the new year.

RECOMMENDATION: Review and refer to the next regular Board meeting proposed changes to the District Code and the Board Handbook to clarify the date newly elected directors take office, set election of Board Officers for the first meeting following seating of newly elected directors in election years, and set adoption of Board Calendar to occur prior to the beginning of the new year, but following any newly elected directors taking office.

¹ This statute was revised in 2013 to move the taking office date from the first Monday in January, to the noon on the First Friday in December, after the adoption of District Code section 2.20.010.

2. **Update District General Manager Authority for Settlement of Claims and Pending Litigation.** The District General Manager currently has authority to approve the settlement of liability claims in an amount up to \$20,000, with smaller claims of up to \$2,500 being evaluated by a Risk Management Committee comprised of executive staff, in consultation with the General Manager. This authority does not presently expressly apply to pending litigation matters. Worker's compensation matters with a final fixed settlement amount of up to \$20,000 are also within the delegated authority of the General Manager. Updating the General Manager's authority to settle liability claims, workers compensation claims and pending litigation will help to streamline the settlement of smaller claims and cases, increasing organizational efficiency and potentially avoiding litigation costs and attorney's fees. Further, these settlement limits have been in place for several years; since 2003 for settlement of claims and 2005 for worker's compensation claims. Staff is proposing that the Board consider updating the General Manager's authority to settle liability claims, workers' compensation claims and pending litigation in an amount up to \$25,000, with claims of \$5,000 or less going to the Risk Management Committee for settlement. The General Counsel's Office would continue to evaluate all such claims and make recommendations for possible settlement to the General Manager and Risk Management Committee, as appropriate. Any claims or pending litigation in amounts exceeding these limits would continue to be brought before the Board.

RECOMMENDATION: Review and refer to the next regular Board meeting a proposed update to the General Manager's authority to settle liability claims, worker's compensation claims and pending litigation in an amount up to \$25,000, with lesser authority for liability claims to the Risk Management Committee in an amount up to \$5,000.

3. **Dual Notice for Committees as Special Meetings of the Board.** Standing Committees are created by the Board and consist solely of less than a quorum. Each committee consists of two board members annually appointed by the Board President, with the advice and consent of the other Board members. The purpose of a standing committee is to cover a "continuing subject matter jurisdiction" and to provide a venue for routine and regular consideration and recommendations on items within that specific subject matter. Standing Committees of the Board are subject to the requirements of the Brown Act. In accordance with the Board Handbook, the Board typically does not take action at a dually noticed committee/special Board meeting, unless there is an urgent need to act.

Pursuant to direction provided by the Board of Directors in January 2020, the District dually notices each committee meeting as both a committee and a special board meeting, which allows all Directors to attend and participate. The Board has discussed revisiting the practice of dually noticing committee meetings and may choose to direct

noticing of committee meetings only, which would still allow non-committee Directors to attend the committee meetings, but not to sit at the dais, speak or participate in the meeting.

RECOMMENDATION: Consider whether there is an interest in revising the District's current practice of dually noticing the committee meetings as special board meetings and provide direction to staff.

- 4. Update Board Reserve and ADA Grievance Policies, and Consider Adoption of a Legislative Advocacy Policy.** The District has a number of Board adopted policies, some of which have become outdated. Board Policy No. 46 is the Board Reserve Policy last updated in December of 2013. Recent draw down of reserves during the recent Water Shortage Emergency and the following months since, have demonstrated the wisdom in maintaining a sound reserve policy, which makes reserves available in the event of unforeseen events or emergencies. As part of the District's recent work in developing a cost of service analysis as part of the District's current rate setting process, the Board requested that an additional reserve fund be established to best position the District to implement new water supply projects as further research helps to crystalize key District projects for future development. The proposed updates to the Board's Reserve Policy would include the new water supply reserve fund and make language changes to further clarify the funding, maintenance and purpose of the District's reserves.

Federal law requires a public entity that employs fifty (50) or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II of the Americans with Disabilities Act (ADA), which is applicable to the District. The name, office address and telephone number of the employee(s) designated are required to be made publicly available, and the District is also required to adopt and publish grievance procedures for resolving complaints alleging violations under the ADA. This requirement helps ensure that an individual with disabilities knows who to contact regarding potential accommodations and modifications to the District's services, activities and programs, as well as provides a process for resolving potential issues. The District has complied with these requirements with the Board's adoption of Board Policy 31, last updated in May of 1994, which identifies a staff member as the District's ADA Coordinator, includes all required contact information, and sets forth a grievance process for resolution of ADA complaints. The proposed updates to this policy would include revising the designated employee(s), as the current designee has left District employment, and providing current contact information for the newly designated employee(s). The contact information of the designated employee(s) would also be made publically available on the District website and through other means to ensure members of the public know who to contact regarding these issues.

On occasion, the Board is asked to consider taking a position on pending legislation that could have an impact on the District. As a member of the Association of California Water Agencies (ACWA), staff participate in the Legislative Affairs Committee, which monitors and proposes positions on a number of pending bills. ACWA is also sometimes a sponsor of key water legislation. As part of this process, the District receives legislative alerts and sometimes requests to support or oppose certain pending legislation. The District's practice has been to bring these requests to the Board for consideration. The Board does not, however, have a formal policy providing guidance on the process, which could be helpful to the Board and staff in addressing such requests, and other similar considerations.

In addition to the three Board policies addressed above, staff believes that there are other existing Board policies that would benefit from review, possible updates or even elimination. Staff will continue this review process and bring additional items to the Finance and Administration Committee for review and referral to the Board, as appropriate.

RECOMMENDATION: Review and refer updates to the Board Reserve and ADA Grievance policies to the next regular Board meeting, and provide direction to staff regarding consideration of a legislative advocacy policy.

FISCAL IMPACT

The report itself has no fiscal impact.

ATTACHMENT(S)

None



Item Number: 05
Meeting Date: 03-28-2023
Meeting: Finance &
Administration Committee/
Board of Directors (Finance &
Administration)

Informational Item

TO: Finance & Administration Committee/Board of Directors (Finance & Administration)

FROM: Bret Uppendahl, Finance Director

THROUGH: Ben Horenstein, General Manager

DIVISION NAME: Administrative Services Division

ITEM: Monthly Financial Update – February 2023

SUMMARY

The Monthly Financial Update provides an overview of the fiscal year-to-date financials. As of February 2023, District revenue is \$73.0 million, which is 63.1% of budgeted revenue, and total expenditures including encumbrances are \$74.4 million, or 62.7% of budget. It is notable that water sales, excluding fixed charges, are down by approximately 17% compared to the original budget.

DISCUSSION

Budget to Actual Comparison – All Funds

Attached is the budget to actual comparison for fiscal year 2022/23 as of February 28, 2023. The budget to actual comparison is prepared by fund and includes revenues, expenditures and reserve balances. For reference, if revenues and expenses tracked linearly, they would be expected to be at 66.7% of the fiscal year budget at the end of February. Water sales, which are relatively higher in the summer months, would be expected to be 71.4% of the fiscal year budget at this time of year.

For the Operating Fund, total revenues as of February 28, 2023 are \$58.4 million, or 63.3% of budget. Total operating expenditures, not including depreciation and amortization or encumbrances, are \$56.9 million, or 61.2% of budget.

For the Capital and Fire Flow Funds, total revenues are \$14.6 million, which is 62.4% of budget. These revenues are comprised primarily of Capital Maintenance Fee (CMF) revenues of \$11.4 million, which are at 63.1% of the budget. Spending on capital and fire flow projects is \$10.2 million, or 39.9% of budget, as CIP projects typically do not follow linear trends in expenditures.

As noted in Attachment 4, an additional \$7.3 million is encumbered, bringing total expenditures with encumbrances to \$17.5 million, or 68.2% of budget.

Water Sales and Consumption

The fiscal year to date billed water sales through February 28, 2023 were \$36.1 million, which is 59.3% of the annual water sales forecast, but only 83% of the expected revenue through the first seven months of the year. Billed water consumption through February 28, 2023 was 13,909 AF, which is 6.90% higher than this time last year, but still 13.49% below the budgeted consumption for this time of year.

Year-to-date total water sales and fixed charges (service charges and watershed fees) through February 28, 2023 were \$54.7 million, which is 61.1% of total annual revenue forecast of \$89.5 million. Compared to the same period for the previous fiscal year water sales and fixed charges increased by \$5.6 million, or 11%.

Forecasts

Staff continues to refine the fiscal impacts of reduced water sales for FY 23. The recent rains have reduced the planned use of unrestricted reserves for emergency water supply and savings resulting from vacant positions has increased. However, paving costs associated with pipeline maintenance and repair continue to trend in excess of the budget. This is due, in large part, to increased paving requirements imposed by cities, towns and unincorporated areas of Marin. Assuming that water consumption remains consistent with recent trends, the District is projected to experience operating losses of \$6 to \$9 million.

FISCAL IMPACT

None

ATTACHMENT(S)

1. Total Water Sales and Fixed Charges & Fees 2021/22 – 2022/23
2. Billed Water Consumption in AF FY 2010/11 – FY 2022/23
3. Budget to Actual Comparison for FY 23
4. CIP Budget to Actual Comparison for FY 23

**Billed Water Consumption In AF
Fiscal Year 2012/13 - 2022/23**

Month	12/13 Actual	13/14 Actual	14/15 Actual	15/16 Actual	16/17 Actual	17/18 Actual	18/19 Actual	19/20 Actual	2021 Actual	21/22 Actual	22/23 Budget	22/23 Actual	Monthly Budget Variance	Actual to Actual % Change
July	2,160	2,205	1,969	1,628	1,876	1,931	1,975	1,834	2,022	1,642	1,868	1,562	-16.42%	-4.92%
August	3,564	3,407	3,186	2,620	3,012	3,206	3,245	3,112	3,215	2,500	3,018	2,476	-17.95%	-0.95%
September	2,333	2,244	1,973	1,775	1,939	2,027	2,145	2,112	2,205	1,604	2,016	1,881	-6.71%	17.27%
October	3,163	3,215	2,778	2,583	2,767	3,140	2,951	3,058	3,124	2,293	2,856	2,498	-12.56%	8.91%
November	1,586	1,931	1,454	1,490	1,340	1,705	1,664	1,837	1,882	1,153	1,634	1,329	-18.64%	15.32%
December	1,911	2,433	1,984	1,935	1,646	1,914	2,169	2,295	2,418	1,439	2,080	1,795	-13.72%	24.74%
January	1,005	1,342	1,065	991	910	942	993	1,186	1,157	735	1,018	984	-3.35%	33.87%
February	1,680	1,996	1,651	1,450	1,392	1,754	1,525	1,556	1,625	1,646	1,588	1,385	-12.78%	-15.84%
March	1,054	1,042	1,048	832	846	992	879	1,105	970	948	975	-		
April	2,016	1,627	1,910	1,467	1,375	1,612	1,427	1,883	1,775	1,717	1,700	-		
May	1,655	1,308	1,379	1,067	1,092	1,240	1,224	1,378	1,459	1,209	1,318	-		
June	3,161	2,642	2,344	2,478	2,416	2,516	2,349	2,711	2,559	2,217	2,459	-		
TOTAL	25,290	25,390	22,742	20,316	20,611	22,978	22,546	24,065	24,410	19,104	22,531	13,909		
													Monthly Budget-to-Actual Basis	-13.49%
													Actual-to-Actual Basis	6.90%
													% of Total Budget	61.73%

**Billed Water Consumption In AF
Fiscal Year 2012/13 - 2022/23**

Month	12/13 Actual	13/14 Actual	14/15 Actual	15/16 Actual	16/17 Actual	17/18 Actual	18/19 Actual	19/20 Actual	2021 Actual	21/22 Actual	22/23 Budget	22/23 Actual	Monthly Budget Variance	Actual to Actual %
July	2,160	2,205	1,969	1,628	1,876	1,931	1,975	1,834	2,022	1,642	1,868	1,562	-16.42%	-4.92%
August	3,564	3,407	3,186	2,620	3,012	3,206	3,245	3,112	3,215	2,500	3,018	2,476	-17.95%	-0.95%
September	2,333	2,244	1,973	1,775	1,939	2,027	2,145	2,112	2,205	1,604	2,016	1,881	-6.71%	17.27%
October	3,163	3,215	2,778	2,583	2,767	3,140	2,951	3,058	3,124	2,293	2,856	2,498	-12.56%	8.91%
November	1,586	1,931	1,454	1,490	1,340	1,705	1,664	1,837	1,882	1,153	1,634	1,329	-18.64%	15.32%
December	1,911	2,433	1,984	1,935	1,646	1,914	2,169	2,295	2,418	1,439	2,080	1,795	-13.72%	24.74%
January	1,005	1,342	1,065	991	910	942	993	1,186	1,157	735	1,018	984	-3.35%	33.87%
February	1,680	1,996	1,651	1,450	1,392	1,754	1,525	1,556	1,625	1,646	1,588	1,385	-12.78%	-15.84%
March	1,054	1,042	1,048	832	846	992	879	1,105	970	948	975	-		
April	2,016	1,627	1,910	1,467	1,375	1,612	1,427	1,883	1,775	1,717	1,700	-		
May	1,655	1,308	1,379	1,067	1,092	1,240	1,224	1,378	1,459	1,209	1,318	-		
June	3,161	2,642	2,344	2,478	2,416	2,516	2,349	2,711	2,559	2,217	2,459	-		
TOTAL	25,290	25,390	22,742	20,316	20,611	22,978	22,546	24,065	24,410	19,104	22,531	13,909		
													Budget-to-Actual Basis	-13.49%
													Actual-to-Actual Basis	6.90%
													% of Total Budget	61.73%

Marin Municipal Water District
Budget to Actual Comparison for 2022/23 - All Funds
Actual as of February 28, 2023
Preliminary Unaudited

Operating Fund

Revenues and Expenditures	FY 2023 Adjusted Budget	Actual as of February 28, 2023	% of Budget
Revenues:			
<i>Water Sales and Service Charge:</i>			
Water Sales	\$ 60,881,258	\$ 36,115,385	59.3%
Service Charge	23,381,979	15,150,747	64.8%
Watershed Management Fee	5,207,474	3,396,671	65.2%
Total Water Sales and Service Charge	89,470,711	54,662,802	61.1%
<i>Other Revenues:</i>			
Rents	666,903	521,969	78.3%
Grants	-	1,587,957	-
Watershed Rents	939,166	638,447	68.0%
Watershed Payments	365,116	228,342	62.5%
Late Payment and Special Read Charges	120,133	170,151	141.6%
Interest	286,804	400,680	139.7%
Miscellaneous	350,647	161,608	46.1%
Total Other Revenues	2,728,769	3,709,155	135.9%
 Total Operating Revenues	 92,199,480	 58,371,957	 63.3%
Expenditures:			
Personnel services	55,682,518	31,918,879	57.3%
Materials and supplies	3,342,564	1,936,025	57.9%
Operations	8,888,455	6,009,448	67.6%
Water conservation rebate program	569,855	244,560	42.9%
Electrical power	5,480,047	3,144,177	57.4%
Water purchased	8,424,000	5,197,493	61.7%
Insurance, including claims	1,463,000	1,584,407	108.3%
General and administrative	4,216,939	3,104,257	73.6%
Debt service - interest and principal	9,706,507	6,471,005	66.7%
Overhead cost allocated to capital	(4,700,000)	(2,686,954)	57.2%
Total Operating Expenditures	93,073,885	56,923,296	61.2%
 Net Operating Fund Increase/(Decrease)	 \$ (874,405)	 \$ 1,448,661	
Operating Fund Balance			
Opening Fund Balance (Unrestricted)	\$ 27,365,295	\$ 27,365,295	
Net Operating Fund Increase(Decrease)	(874,405)	1,448,661	
Accrual adjustments		(3,263,200)	
Ending Fund Balance	\$ 26,490,890	\$ 25,550,756	

**Marin Municipal Water District
Budget to Actual Comparison for 2022/23 - All Funds
Actual as of February 28, 2023
Preliminary Unaudited**

Capital and Fire Flow Funds

Revenues and Expenditures	FY 2023 Adjusted Budget	Actual as of February 28, 2023	% of Budget
Revenues:			
Customer Reimbursement Project	\$ 710,182	\$ 369,987	52.1%
Interest Income	10,000	76,011	760.1%
Contributed Capital:			
Fire Flow	4,500,000	2,503,576	55.6%
Capital Maintenance Fee	18,065,625	11,399,433	63.1%
Capital Connection Fee	100,000	69,697	69.7%
Capital Grants & Contribution	-	166,052	
Total Revenues and Contributed Capital	23,385,807	14,584,756	62.4%
Capital Expenditures:			
Capital Projects - District	20,400,604	9,393,562	46.0%
Capital Projects - Fire Flow	4,635,686	501,928	10.8%
Capital equipment purchases	574,738	315,160	54.8%
Total Capital and Fire Flow Expenditures	25,611,028	10,210,650	39.9%
Net Capital and Fire Flow Fund Increase/(Decrease)	\$ (2,225,221)	\$ 4,374,107	-196.6%
Capital Fund Balance			
Capital Fund			
Opening Fund Balance	\$ 10,779,360	\$ 10,779,360	
Net Capital Fund Increase(Decrease)	(1,514,797)	2,521,566	
Capital equipment purchases	(574,738)	(315,160)	
Interest Adjustment		43,788	
Accrual adjustments		(2,171,277)	
Ending Fund Balance	\$ 8,689,825	\$ 10,858,278	
Fire Flow Fund			
Opening Fund Balance	\$ 3,461,244	\$ 3,461,244	
Net Fire Flow Fund Increase(Decrease)	(135,686)	2,001,649	
Interest Adjustment	-	32,223	
Ending Fund Balance	\$ 3,325,558	\$ 5,495,115	

CIP Projects	FY2022/23 Adjusted Budget	Capital Projects YTD Actual Expenditures	Encumbered for Contracts	Total Capital & Fire Flow
		As of 2/28/23	As of 2/28/23	As of 2/28/23
District Pipeline Replacement / Improvement	\$ 8,195,725	\$ 4,425,820	\$ 1,223,882	\$ 5,649,702
Replacements - Tank Maintenance & Replacement	\$ 1,570,349	\$ 974,778	\$ 584,803	\$ 1,559,581
Replacements - Treatment Plant Facilities	\$ 1,720,768	\$ 728,202	\$ 689,603	\$ 1,417,805
Replacements - Dam/Pump/Control System/Meters	\$ 917,677	\$ 388,212	\$ 195,930	\$ 584,143
Fire Chief's Fund	\$ 150,000	\$ 27,303	2,414	\$ 29,717
Program Management- Asset Mangement	\$ 1,301,812	\$ 53,042	198,770	\$ 251,812
System Improvements	\$ 195,644	\$ 163,651	\$ 12,338	\$ 175,989
Watershed - Minor Structures I/R/R	-	-	-	\$ -
Watershed - Ranger Residence & Minor Structure Im	-	-	-	\$ -
Watershed - Trail Repair and Improvement	50,000	-	50,000	\$ 50,000
Watershed - Road Repair & Improvement	975,535	442,190	49,099	\$ 491,290
Watershed - Natural Resource Project	1,504,191	851,237	652,127	\$ 1,503,364
Reimbursable Grant Projects	2,223,421	251,589	704,240	\$ 955,829
Reimbursable Customer Projects	\$ 1,444,011	\$ 950,789	\$ 5,680	\$ 956,469
Information Technology - Capital Equipments/Projec	\$ 151,471	\$ 136,749	\$ 14,721	\$ 151,471
Fire Flow Replacement	\$ 4,635,686	\$ 501,928	\$ 2,769,713	\$ 3,271,641
Capital Equipment Purchases	\$ 574,738	\$ 315,160	\$ 142,203	\$ 420,701
Total Capital Projects	\$ 25,611,028	\$ 10,210,650	\$ 7,295,524	\$ 17,469,512