



NOTICE OF THE REGULAR BI-MONTHLY MEETING OF THE BOARD OF DIRECTORS

MEETING DATE: 04-04-2023

TIME: 6:00 p.m. – Meeting Begins (Public)
6:01 p.m. or Thereafter - Closed Session (Only Board and Staff)
6:30 p.m. – Open Session (Public)

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. Tam Conference Rm. 220 Nellen Avenue Corte Madera, CA 94925	URL: https://us06web.zoom.us/j/88134852296 Webinar ID: 881 3485 2296 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 3:00 p.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), 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
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Call to Order and Roll Call*	
Adoption of Agenda	<i>Approve</i>

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.

Convene to Closed Session at after 6:01 p.m.
 (Only the Board of Directors and staff will participate)

Closed Session Items

1. Conference with Real Property Negotiators
 (Government Code §54956.8)

Agency Negotiator: Bennett Horenstein, General Manager
 Negotiating Party: PG&E
 Property: APN 197-120-10 (Lease 15)
 Under negotiation: Price and Terms

Convene to Open Session at or after 6:30 p.m.

Closed Session Report Out

Public Comment - Items Not on the Agenda

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.

Directors’ and General Manager’s Announcements <i>(6:40 p.m. – Time Approximate)</i>	
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Consent Calendar (6:45 p.m. – Time Approximate)

All matters listed on the consent calendar are considered to be routine and will be enacted by a single action of the Board, unless specific items are removed from the consent calendar by the Board during adoption of the agenda for separate discussion and action.

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

AGENDA ITEMS	RECOMMENDATIONS
2. Minutes of the Board of Directors’ Special Meeting of March 14, 2023, and Regular Meeting of March 21, 2023	<i>Approve</i>
3. Resolution Awarding Contract No. 1992 to Advanced Geotechniques Inc. for the Azalea Hill Trail Retaining Wall Project	<i>Approve</i>
4. Adopt Positions on State Senate Bill 23 (Caballero) & Assembly Bill 30 (Ward)	<i>Approve</i>
5. Update Board Reserve and ADA Grievance Policies	<i>Approve</i>
6. Resolution Granting Settlement Authority to the District General Manager and Risk Management Committee for Certain Claims and Pending Litigation	<i>Approve</i>
7. Consent to Assignment of Lease Agreement No. Lease 61 with Sprint Spectrum Realty Company, LLC to VB Run, LLC	<i>Approve</i>
8. Request to Fill Two (2) Summer Helpers and 14 Watershed Aide Positions	<i>Approve</i>
Regular Calendar (6:50 p.m. – Time Approximate)	
9. Adopt a Resolution Awarding Contract No. 1994 for Furnishing and Delivery of Welded Steel Pipe to West Coast Pipe Linings Inc. <i>(Approximate time 15 minutes)</i>	<i>Approve</i>
10. Redwood Blvd and Loma Alta Landslide Update <i>(Approximate time 20 minutes)</i>	<i>Information</i>
11. Resolution for Grant Funding through the Federal WaterSMART Program <i>(Approximate time 20 minutes)</i>	<i>Approve</i>
12. Future Meeting Schedule and Agenda Items <i>(Approximate time 5 minutes)</i>	<i>Information</i>
Adjournment (7:50 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 VIRTUAL):

Dates	Meetings
Tuesday, April 18, 2023 6:30 p.m.	<ul style="list-style-type: none">• Regular Bi-Monthly Meeting of the Board of Directors - Closed Session to immediately follow Open Session.
Friday, April 21, 2023 9:30 a.m.	<ul style="list-style-type: none">• Operations Committee/Board of Directors (Operations) Meeting
Thursday, April 27, 2023 9:30 a.m.	<ul style="list-style-type: none">• Finance & Administration Committee/ Board of Directors (Finance & Administration) Meeting



Board Secretary



Approval Item

TITLE

Minutes of the Board of Directors' Special Meeting of March 14, 2023 and Regular Bi-Monthly Meeting of March 21, 2023

RECOMMENDATION

Approve the adoption of the minutes

SUMMARY

On March 14th, the Board of Directors held a special meeting for a closed session. Then, the following week, the Board held its regular meeting on March 21st. The minutes of those meetings are attached.

DISCUSSION

None

FISCAL IMPACT

None

ATTACHMENT(S)

1. Minutes of the Board of Directors' Special Meeting of March 14, 2023 – *Closed Session*
2. Minutes of the Board of Directors' Regular Bi-Monthly Meeting of March 21, 2023

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

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

CLOSED SESSION MINUTES

Tuesday, March 14, 2023

Via In-Person and Virtually

Open Session Locations:	Closed Session Location:
Marin Water - Board Room 220 Nellen Avenue Corte Madera, California 94925 And 200 Martinique Avenue Tiburon, California 94920	Marin Water – Mt. Tam Conference Room 220 Nellen Avenue Corte Madera, California 94925

CALL TO ORDER AND ROLL CALL

President Monty Schmitt called the meeting to order at 7:07 p.m.

Directors Present: Larry Russell, Jed Smith, and Monty Schmitt

Directors Absent: Ranjiv Khush and Matt Samson

(Note: Directors Ranjiv Khush and Matt Samson were not present. They had recused themselves from participating in the Closed Session.)

ADOPTION OF AGENDA

On motion made by Director Smith and seconded by President Schmitt, the board adopted the agenda.

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

There were no public comments on the adoption of the agenda.

PUBLIC COMMENT – ONLY ON ITEM ON THE CLOSED SESSION

There were no public comments.

CONVENE TO CLOSED SESSION

The directors convened to Closed Session at 7:08 p.m.

CLOSED SESSION ITEM

1. 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

The board convened to Open Session at 8:00 p.m.

CLOSED SESSION REPORT OUT

President Schmitt reported that there was no reportable action.

ADJOURNMENT

Without any further comments from the board or the public, the special meeting adjourned at 8:00 p.m.

Board Secretary

**MARIN MUNICIPAL WATER DISTRICT
BOARD OF DIRECTORS**

MEETING MINUTES

Tuesday, March 21, 2023

Via In-Person and Virtually

Marin Water (Open Session)
Board Room
220 Nellen Avenue
Corte Madera, California 94925

and Marin Water (Closed Session)
Mt. Tam Conference Room
220 Nellen Avenue
Corte Madera, California 94925

CALL TO ORDER AND ROLL CALL

President Monty Schmitt called the meeting to order at 6:30 p.m. in the Board Room.

Directors Present: Larry Russell, Matt Samson, Jed Smith, Ranjiv Khush, and Monty Schmitt

Directors Absent: None

ADOPTION OF AGENDA

On motion made by Director Smith and seconded by Vice President Khush, the board adopted the agenda.

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

There were no public comments.

PUBLIC COMMENT – ITEMS NOT ON THE AGENDA

During the meeting, this item was inadvertently skipped, but then President Schmitt went back to it during the board announcements and committee reports.

There were four (4) comments from the public.

DIRECTORS' AND GENERAL MANAGER'S ANNOUNCEMENTS & COMMITTEE REPORTS

- Director Russell provided a committee report from the Operations Committee Meeting of March 10.

- Vice President Khush provided examples of recently announced federal Water Infrastructure Finance and Innovation Act (WIFIA) loans and state Department of Water Resources (DWR) grant funding of water infrastructure projects in the Bay Area.
- Director Samson provided a committee report from the Watershed Committee Meeting of March 16. He also mentioned that he attended the Lagunitas Creek TAC meeting on March 17.
- General Manager Ben Horenstein reported on the worsening of a slide (Old White Hill Grade) that contained a welded steel transmission line, which was the main water transport from the San Geronimo Treatment Plant to Fairfax line. The District is monitoring the site to ensure that the transmission line remains protected.

CONSENT CALENDAR (ITEMS 1-8)

- Item 1 Minutes of the Board of Directors’ Special Meeting of February 28, 2023 and Regular Board Meeting of March 7, 2023**
- Item 2 General Manager’s Report February 2023**
- Item 3 Award of Contract No. 1993, 2023 San Rafael Concrete Culvert Repair Project, to Pacific Underground Services, to Repair a Section of a Concrete Storm Drain Box Culvert on Bayview Street (Resolution No. 8738)**
- Item 4 Amendment No. 2 to Professional Services Agreement MA-5963, with Woodard & Curran, Inc., for Grant Funding Assistance and Engineering Services During Construction of the Pine Mountain Tunnel Tanks Replacement Project**
- Item 5 Professional Services Agreement with National Response Team for Water Remediation and Restoration Services**
- Item 6 New Lease Agreement for West Point Inn with the West Point Inn Association**
- Item 7 Amendment to Extend the Term of the At-Will Employment Agreement of Molly L. MacLean as the General Counsel of the Marin Municipal Water District**
- Item 8 Request to Fill Financial Management Analyst Position in the Administrative Services Division**

On motion made by Director Smith and seconded by Vice President Khush, the board approved the Consent Calendar.

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

There were no public comments for the Consent Calendar items.

REGULAR CALENDAR (ITEMS 9 - 12)

Item 9 Resolution for Grant Funding for the Federal WaterSMART Program (Resolution No. 8739)

Grant and Legislative Coordinator Matt Sagues presented this item. Discussion ensued.

There were three (3) public comments.

On motion made by Vice President Khush and seconded by President Schmitt, the board approved the resolution.

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

Item 10 Water Supply and Roadmap Update

Water Resources Director Paul Sellier presented this item showing the current water supply conditions and water supply forecast. Then, he spoke about the goals of the roadmap, the main elements of the integrated study, and early actions to implement the roadmap.

Much discussion between the board and staff occurred throughout the presentation.

There were six public comments.

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

Item 11 Post Retreat Follow Up

General Manager Horenstein provided a presentation of each department's annual goals and would give updates on these goals to the committees and then to the board.

Discussion ensued.

There were no public comments.

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

Item 12 Future Meeting Schedule and Agenda Items

The board secretary reported on upcoming internal and external meetings.

There was no public comment.

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

Afterwards, the board moved to Closed Session.

CLOSED SESSION

PUBLIC COMMENT – ONLY ON ITEMS ON THE CLOSED SESSION

There were two (2) public comments.

CONVENE TO CLOSED SESSION

The directors convened to Closed Session at approximately 9:04 p.m. and went to the Mt. Tam Conference Room.

CLOSED SESSION ITEM

13. Conference with Labor Negotiator
(Government Code §54957.6)

Agency Designated Representative: Ben Horenstein, General Manager
Employee Organizations: Service Employees International Union, Local 1021;
Unrepresented Employees

CONVENE TO OPEN SESSION

The board came back from the Mt. Tam Conference Room to the Board Room and reconvened to Open Session at 10:25 p.m.

CLOSED SESSION REPORT OUT

President Schmitt announced that the Closed Session adjourned at 10:24 p.m. and there were no reportable actions taken.

ADJOURNMENT

There being no further business, the Board of Directors' Regular Meeting of March 21, 2023, adjourned at 10:25 p.m.

Board Secretary



Approval Item

TITLE

Award of Contract No. 1992, for the Azalea Hill Trail Retaining Wall Project (Project), to Advanced Geotechniques Inc., for Furnishing All Labor, Equipment and Materials for the Site Clearing, Excavation and Installation of a Retaining Wall in support of the Azalea Hill Trail Restoration Plan, on the Marin Water Watershed.

RECOMMENDATION

Approve a resolution awarding Contract No. 1992, for the Azalea Hill Trail Retaining Wall Project to Advanced Geotechniques Inc. in an amount equal to \$297,550 and authorizing the General Manager to execute any necessary amendments to Contract No. 1992, which do not exceed \$74,000

SUMMARY

The Operations Committee reviewed this item on February 17, 2023, and referred it to a future Regular Bi-Monthly Meeting of the Board of Directors to proceed with the Project construction.

On March 28, 2023, the District received and opened four (4) bids for the Project to furnish all labor, equipment and materials for the site clearing and excavation of approximately 150 cubic yards of hillside, site grading, drainage improvement and installation of a soldier pile retaining wall with concrete lagging, guardrail and implementation of erosion control in support of the Azalea Hill Trail Restoration Plan. Advanced Geotechniques Inc. submitted the lowest responsive and responsible bid in the amount of \$297,550. Therefore, staff recommends that the Board of Directors approve a resolution awarding Contract No. 1992 to Advanced Geotechniques Inc. in the amount of \$297,550 and authorizing the General Manager to execute any necessary amendments to Contract No. 1992, which do not exceed \$74,000.

DISCUSSION

This contract includes all labor, equipment and materials for the site clearing and excavation of approximately 150 cubic yards of soil from the hillside, site grading, drainage improvement and installation of a soldier pile retaining wall with concrete lagging, guardrail and implementation of erosion control in support of the Azalea Hill Trail Restoration Plan.

On March 28, 2023, the District received and opened four (4) bids for the Project. Bid results are provided in the Bid Results table shown below.

Bid Results
Azalea Hill Retaining Wall Replacement Project

Bid Rank	Contractor Name	Bid Amount
1.	Advanced Geotechniques Inc.	\$297,550
2.	Farallon Company Engineering	\$382,010
3.	W R Forde Associates	\$418,332
4.	Westward Builders	Non-Responsive

Contract No: 1992

Project No: R17008

Engineer's Estimate: \$490,000

Advanced Geotechniques Inc. submitted the lowest responsive and responsible bid. They hold a Class A C57 – General Engineering License, License No. 956847, which is current and active and expires on 01/31/2025. As required by State Law, Advanced Geotechniques Inc. is registered with the California Department of Industrial Relations under PWCR Number 1000020403. Following contract award, District staff will register the Project with the California Department of Industrial Relations.

Summaries of the estimated Project costs and schedule are provided below.

Budget:

Contract Award:	\$297,550
25% Contingency:	\$74,000
Materials and Professional Fees:	\$60,000
District Labor/Inspection:	\$60,000
Total Budget:	\$491,550
Budgetary Category:	A1F06

Project Implementation:

Project Advertisement:	March 9, 2023
Bid Opening:	March 28, 2023
Project Award:	April 4, 2023
Estimated Completion Date:	July 14, 2022
Duration:	100 days

ENVIRONMENTAL REVIEW

The Project is subject to the requirements of the California Environmental Quality Act (CEQA). On May 14, 2019 the District Board approved Resolution No. 8533 which adopted a Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Amendment of the Mt. Tamalpais Watershed Road and Trail Management Plan, which included

the Restoration of Azalea Hill and approved Resolution No. 8534 which approved the Project and amended the Mt. Tamalpais Watershed Road and Trail Management – Restoration of Azalea Hill. This Project is all within the scope of the Mitigated Negative Declaration and the mitigation identified therein will be implemented in conjunction with the Project.

PUBLIC OUTREACH EFFORTS

The District’s multi-step process for notifying customers about this Project began on October 8, 2018, when the Marin Municipal Water District initiated an agency and public review period for the subsequent Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Amendment of the Mt. Tamalpais Watershed Road and Trail Management Plan for the Restoration of Azalea Hill. Public outreach steps to be taken for this Project are described in the table below.

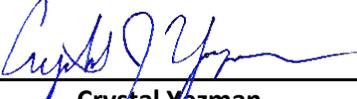
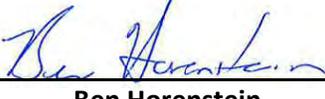
Department	Action
Public Information	Issue news release to local media (print and online outlets).
Public Information	Post on MMWD website.
Public Information	Post on MMWD Nextdoor page for affected neighborhoods.
Public Information	Send notice to County of Marin for posting on their website.
Engineering	Provide signage at Project site throughout construction period.

FISCAL IMPACT

The total cost to complete the Azalea Hill Retaining Wall Project is estimated at \$491,500. The District has been awarded a grant from State Parks Recreational Trails Program for \$952,656 to support Phase III of the Azalea Hill Trail Restoration Project. The Board approved Resolution No. 8583 in July of 2020, confirming the District’s commitment to the Azalea Hill Trail Project, approving the filing of the application, and appointed the General Manager as the agent to negotiate and execute grant and related agreements for this funding. The original grant awarded \$700,000, but in response to recent construction costs increases staff submitted a supplemental request funds to support construction of this Project. The new total grant amount is \$952,656 with a required District match of \$130,514 (13.7%). The District has sufficient funds budgeted in FY 2021 Capital Project R-17008 - Fund center A1F06- Fund 20 to match the grant request.

ATTACHMENT(S)

1. Proposed resolution
2. Site Map

DIVISION OR DEPARTMENT	DIVISION MANAGER	APPROVED
Engineering		
	<p>Crystal Yezman Director of Engineering</p>	<p>Ben Horenstein General Manager</p>

MARIN MUNICIPAL WATER DISTRICT

RESOLUTION NO.

**A RESOLUTION OF THE BOARD OF THE MARIN MUNICIPAL WATER DISTRICT
APPROVING AWARD OF CONSTRUCTION CONTRACT NO. 1992 TO ADVANCED
GEOTECHNIQUES INC. FOR THE AZALEA HILL TRAIL RETAINING WALL PROJECT**

WHEREAS, on March 9, 2023, the District advertised Contract No. 1992, for the Azalea Hill Trail Retaining Wall Project (R17008), which will include furnishing all labor, equipment and materials for the site clearing and excavation of approximately 150 cubic yards from the hillside, site grading, drainage improvement and installation of a soldier pile retaining wall with concrete lagging, guardrail and implementation of erosion control in support of the Azalea Hill Trail Restoration Plan; and

WHEREAS, the District received and publicly opened four (4) bids on March 28, 2023, of which Advanced Geotechniques Inc. bid of \$297,550 was the lowest responsive and responsible bid.

NOW, THEREFORE, THE BOARD OF DIRECTORS RESOLVES that:

1. The bid of \$297,550 submitted by Advanced Geotechniques Inc., for the Azalea Hill Trail Retaining Wall Project under Contract No. 1992 ("Contract") was the lowest responsive and responsible bid submitted therefor, and said bid is hereby accepted.
2. A Contract for the Project be awarded to said low bidder, and the General Manager is authorized and directed to execute said Contract on behalf of the District upon receipt of a performance bond, payment bond, proof of insurance, and the executed contract for the work from said bidder.
3. The General Manager is authorized to execute any and all future amendments to the Contract, which he deems necessary, without further Board approval, so long as those amendments to the Contract amount does not exceed \$74,000.

4. Upon complete execution of said Contract, the bonds and/or checks of the other bidders are to be returned to said other bidders, and all bids other than that of Advanced Geotechniques Inc., are to be rejected.

PASSED AND ADOPTED this 4th day of April, 2023, by the following vote of the Board of Directors.

AYES:

NOES:

ABSENT:

Monty Schmitt
President, Board of Directors

ATTEST:

Terrie Gillen
Board Secretary

AZALEA HILL TRAIL RESTORATION PROJECT



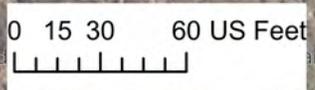
Fairfax Bolinas Rd

Pine Mountain Rd

AZALEA HILL RETAINING WALL LOCATION



MARIN WATER
www.marinwater.org
(415) 945-1455
contactus@marinwater.org





Approval Item

TITLE

Adopt Positions on State Senate Bill 23 (Caballero) and State Assembly Bill 30 (Ward)

RECOMMENDATION

1. Adopt a position of “Watch” for Senate Bill 23 (Caballero), which would streamline regulatory processes for new water supply and flood control projects.
2. Adopt a position of “Support” for Assembly Bill 30 (Ward), which would expand the Department of Water Resources Atmospheric Rivers 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.

SUMMARY

As part of the effort of Marin Water staff to regularly track state and federal legislation, which may affect District interests, staff requested the Finance & Administration Committee to review and refer the proposed adoption of Board positions on Senate Bill (SB) 23 and Assembly Bill (AB) 30 to a regular bi-monthly meeting of the Board of Directors.

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 Position: Watch

Status: Introduced

This bill 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 2), 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.

After bringing this legislation to the Finance Committee on March 28th, the Committee requested the item be referred to a regular Board Meeting with a proposed “watch” position, and continue to track SB 23 as it makes its way through the legislative session.

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

ACWA Position: Support

Recommended 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.

After bringing this legislation to the Finance Committee on March 28th, the Committee referred this item to a regular Board meeting for adoption of a “support” position on this legislation. If adopted by the full Board, the position of support will be communicated to the bill’s author as well as to District state legislative representatives.

FISCAL IMPACT

There is no fiscal impact for these actions to our FY23/24 budget.

ATTACHMENT(S)

- 1. ACWA analysis for Assembly Bill 30 (Ward)
- 2. ACWA analysis of Senate Bill 23 (Caballero)
- 3. Legislative Positions

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Watershed Division	 Shaun Horne Watershed Resources Manager	 Ben Horenstein General Manager

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

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

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.



Approval Item

TITLE

Update Board Reserve and ADA Grievance Policies

RECOMMENDATION

Approve updates to the Board Reserve and ADA Grievance policies

SUMMARY

The District has a number of Board adopted policies, some of which have become outdated. Specifically, staff is seeking updates to the Board Reserve Policy to identify the Water Supply Reserve Fund and the ADA Grievance Policy to bring it current with legal requirements, including identifying the District's ADA Coordinator(s).

DISCUSSION

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 and maintenance of the District's existing reserves. A more comprehensive review and update of the Board Reserve Policy is planned for later this year.

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 No. 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.

FISCAL IMPACT

There is no anticipated financial impact associated with these actions.

ATTACHMENT(S)

- 1. Redline of Board Policy No. 46, showing proposed changes
- 2. Proposed updated Board Policy No. 46 – Reserve
- 3. Proposed updated Board Policy No. 31 – ADA Grievance Process

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
General Counsel’s Office	 Molly MacLean General Counsel	 Ben Horenstein General Manager



**MARIN MUNICIPAL
WATER DISTRICT**

BOARD POLICY

No.: 46

DATE: 12/17/13

LAST REVISED: 04/04/23

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SUBJECT: RESERVE POLICY

Introduction

The purpose of this document is to establish a consistent policy for establishing the minimum reserve levels to be maintained by the District.

Scope

It is intended that this policy cover all reserve funds currently or to be established and held by the District. This policy shall not pertain to reserves held for the benefit of the District by others or reserves established as the result of the borrowing money or the issuance of debt by the District.

General

The Board recognizes the need and benefit of maintaining reserves for various purposes. It is the goal of this policy to establish those reserve funds and the minimum amount to be maintained by each.

Policy

The Board of Directors of the Marin Municipal Water District shall review the level of reserves held in each fund annually and at the time of adopting the two-year preliminary or proposed operating and/or capital budget. Only those reserve funds held by the District are subject to this policy.

The Board authorizes and directs that the following reserve funds be established and further directs that the minimum amount of each reserve fund shall be, or shall be calculated to be, as follows:

- 1) Insurance Reserve Fund: This fund is established to pay exceptionally large self-insured claims. The fund shall maintain a minimum balance equivalent to six times the District's self-insured retention.
- 2) Workers Compensation Reserve Fund: This fund is established to accumulate reserves sufficient to pay current and future workers compensation claims and operating expenses. The minimum balance shall be that set by the actuary. An actuarial study shall be conducted as required by state law but no less frequently than bi-annually.

BOARD POLICY NO. 46

~~11/21/13~~ 04/04/23

Page 2

- 3) Capital Reserve Fund: This fund is established to accumulate reserves that may be used for current and future capital construction and equipment purchases. The fund shall accumulate funds from annual transfers from operating revenues, funds received from one time "windfall" revenues and revenues from the sale of capital assets. The minimum balance shall be equivalent to the annual budget for capital expenditures.
- 4) Unrestricted/Undesignated Reserve Fund: This fund is established to accumulate reserves which may be used for any purpose of the District. A minimum balance equivalent to six months of the annual operating budget shall be maintained. At the time this reserve fund is reviewed, the Board shall adopt a level of reserve desired ten years from the date of review. This level shall then be used in the rate model when setting rates, fees, and charges.
- 5) Rate Stabilization Fund: This fund is established to accumulate reserves which may be used for transfer to gross revenues to be used in the calculation of the District's debt coverage ratio or for any other lawful purpose of the District. The Rate Stabilization Fund is increased by deposits of gross revenues made 180 days following the end of a fiscal year by Board approval.

~~5)6)~~ Water Supply Project Fund: This fund is established to accumulate reserves to support water supply enhancement and resiliency projects. Beginning FY 2023-24, \$2.5 million will be transferred to the Water Supply Project Fund annually.

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MARIN MUNICIPAL WATER DISTRICT

BOARD POLICY

No.: 46

DATE: 12/17/13

LAST REVISED: 04/04/23

SUBJECT: RESERVES

Introduction

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- 3) Capital Reserve Fund: This fund is established to accumulate reserves that may be used for current and future capital construction and equipment purchases. The fund shall accumulate funds from annual transfers from operating revenues, funds received from one time “windfall” revenues and revenues from the sale of capital assets. The minimum balance shall be equivalent to the annual budget for capital expenditures.
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- 6) Water Supply Project Fund: This fund is established to accumulate reserves to support water supply enhancement and resiliency projects. Beginning FY 2023-24, \$2.5 million will be transferred to the Water Supply Project Fund annually.



Grievance Procedures for Resolution of Complaints under Title II of the Americans with Disabilities Act

Purpose

The Marin Municipal Water District (the “District”) has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act (herein referenced as ADA or Title II). Title II states, in part, that “...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” This policy will establish clear procedures for the prompt and equitable resolution of complaints alleging any violation of Title II of the ADA.

Scope

This policy shall be applicable to all complaints alleging violations of Title II of the ADA.

Procedure for Resolution of Complaints

Any individual with a disability who feels discriminated against under Title II has the right to file a complaint with the District. Complaints should be addressed to the applicable ADA Coordinator(s).

1. A complaint shall be filed in writing using the District’s Complaint Form Regarding Title II of the Americans with Disabilities Act, which is attached hereto and may be requested from the applicable ADA Coordinator(s).
2. A complaint should be filed within ten (10) calendar days after the complainant becomes aware of the alleged violation.

3. An investigation, if deemed appropriate by the applicable District ADA Coordinator(s), shall follow the filing of a complaint. The investigation shall be conducted by the ADA Coordinator(s) or designee. As a part of an investigation, all interested persons and their representatives, if any, shall be given an opportunity to submit evidence relevant to the complaint.
4. A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the applicable District ADA Coordinator(s) or designee and a copy forwarded to the complainant.
5. A complainant may request a reconsideration of the written determination issued by the District ADA Coordinator(s) or designee in instances where there is dissatisfaction with the determination. The request for reconsideration should be made in writing to the District's General Manager or designee within ten (10) calendar days after receipt of the written determination. The General Manager or designee will review the request. The decision of the General Manager or designee shall be final.
6. The applicable ADA Coordinator(s) or designee shall maintain the files and records of the District relating to complaints filed in their respective areas.
7. The right of the person to a prompt and equitable resolution of the complaint filed shall not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible federal and state departments or agencies. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.
8. These rules shall be construed to protect the rights of the individual with disabilities and to assure that the District complies with all applicable laws, rules and regulations, including Title II. This procedure is not applicable to complaints emanating from Title I of the ADA applicable to District employees and pertaining to equal employment opportunity for individuals with disabilities. Employees shall direct all complaints under Title I of the ADA to the District's Human Resources Department.

ADA Coordinator(s)

The District General Manager shall identify and regularly update the name(s) of District personnel who will be identified as the District's ADA Coordinator(s). The name(s), phone

number(s) and email address(es) of the identified ADA Coordinator(s) will be included on the District's website and other outreach materials.

Complainants may contact the respective ADA coordinator(s) by phone, email or by mailing the attached "Form for Resolution of Complaints under Title II of the Americans with Disabilities Act" addressed to: ADA Coordinator, 220 Nellen Avenue, Corte Madera, CA 94925.

Attachment:

1. Form for Resolution of Complaints under Title II of the Americans with Disabilities Act

Legal Authorities: 42 U.S.C.A. Section 12132; 28 C.F.R. Section 35.107

Form for Resolution of Complaints under Title II of the Americans with Disabilities Act

NAME: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

DATE OF OCCURRENCE: _____

DESCRIPTION OF COMPLAINT (Attach additional pages if needed):

REMEDY SOUGHT:

SIGNED: _____ DATED: _____

PLEASE MAIL A COPY OF THE COMPLETED FORM TO:

**(Postions to be identified and updated as needed by the District General Manager)
Attention: ADA Coordinator, 220 Nellen Avenue, Corte Madera, CA 94925.**

Approval Item

TITLE

Approve a Resolution Granting Settlement Authority to the District General Manager and Risk Management Committee for Certain Claims and Pending Litigation

RECOMMENDATION

Approve a resolution Granting the District General Manager authority to settle liability claims, worker's compensation claims and pending litigation in an amount up to \$30,000, with lesser authority for liability claims to the Risk Management Committee in an amount up to \$5,000

SUMMARY

Staff is proposing that the Board update the General Manager's authority to settle liability claims, workers' compensation claims and pending litigation in an amount up to \$30,000, with liability 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.

DISCUSSION

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. It is common practice for a public agency to delegate some authority to the chief executive officer to settle smaller liability claims. The practice helps move these smaller matters through the organization in an expeditious manner, saving staff time and agency resources. It also ensures that impacted claimants, who are generally customers of the District, receive timely compensation for undisputed damages.

Updating the District 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 outside 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, and have not been updated for inflation. 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 \$30,000, with liability claims of \$5,000 or less going to the Risk Management Committee for settlement. Further, the proposed resolution would clarify

the management positions within the District who will comprise the Risk Management Committee, as the position titles have transitioned in past years due to internal restructuring. The resolution proposes that the Risk Management Committee be comprised of three members of the District’s Senior Leadership Team, to include the Chief Financial Officer and two other members as appointed by the General Manager from time to time. This will assure that even with future changes to position titles, the policy will be current and will allow the General Manager to rotate the assignment as necessary. The General Counsel’s Office will 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.

FISCAL IMPACT

Due to the variability of claims, it is difficult to predict actual amounts that may be incurred by the District. There is funding included in the current budget, however, to address these types of liability claims and pending litigation, and it is expected that this funding will be carried forward in future budget years, as is the practice of the District.

ATTACHMENT(S)

1. Proposed Resolution Granting Settlement Authority to the District General Manager and Risk Management Committee for Certain Claims and Pending Litigation

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
General Counsel’s Office		
	Molly MacLean General Counsel	Ben Horenstein General Manager

MARIN MUNICIPAL WATER DISTRICT

RESOLUTION NO.

**A RESOLUTION OF THE BOARD OF THE MARIN MUNICIPAL WATER DISTRICT
GRANTING SETTLEMENT AUTHORITY TO THE DISTRICT GENERAL MANAGER AND
RISK MANAGEMENT COMMITTEE FOR CERTAIN CLAIMS AND PENDING LITIGATION**

WHEREAS, the District has an established a program to manage the receipt, evaluation and disposition of claims for liability filed under the Government Claims Act, California Government Code section 810, et seq., which includes referral of most claims to third party claims administrator and review internally by the General Counsel's Office; and

WHEREAS, pursuant to prior Board approval on November 5, 2003, authority to settle such claims was granted to the District General Manager up to \$20,000 and the District's Risk Management Committee up to \$2,500, and it is the interest of the District to re-authorize and increase the settlement authority amounts to keep pace with general increases in costs and to maintain operational efficiencies; and

WHEREAS, it is also in the interest of the District to clarify that the General Manager's settlement authority should extend to litigation matters pending against the District; and

WHEREAS, over the years the composition of the Risk Management Committee has changed as District position titles have transitioned due to internal restructuring, and therefore clarification of the composition of the Risk Management Committee is necessary; and

WHEREAS; the District also operates a Worker's Compensation program with the assistance of a third party administrator, and pursuant to Board approval on December 14, 2005, the General Manager was granted settlement authority up to \$20,000, for both adjudicated and non-adjudicated claims, it is also in the interest of the District to update and increase this authority to maintain operational efficiencies.

NOW, THEREFORE, THE BOARD OF DIRECTORS HEREBY RESOLVES that:

1. The General Manager is hereby granted the authority to settle liability claims filed against the District, litigation actions filed against the District, and workers' compensation claims, whether adjudicated or non-adjudicated, up to the amount of \$30,000, in consultation with the District's General Counsel's Office and its legal evaluation of any such

claims or pending litigation matters; and

2. The Risk Management Committee, which is an internal staff committee operated by the District to review minor liability claims, shall be comprised of not less than three members of the District's Senior Leadership Team, including the Chief Financial Officer and two other members as appointed from time to time by the District General Manager,
3. The Risk Management Committee is hereby granted the authority to settle liability claims filed against the District in an amount up to \$5,000, in consultation with the District's General Counsel's Office and its legal evaluation of any such claims.

PASSED AND ADOPTED this 4th day of April 2023 by the following vote of the Board.

AYES:

NOES:

ABSENT:

Monty Schmitt
President, Board of Directors

ATTEST:

Terrie Gillen
Board Secretary



Approval Item

TITLE

Sprint Spectrum Realty Company, LLC Lease No. 61 Assignment to VB Run, LLC

RECOMMENDATION

Authorize General Manager to Execute a Consent to Assignment of Lease No. 61 with Sprint Spectrum Realty Company, LLC to VB Run, LLC.

SUMMARY

Pursuant to Lease 61, the District leases a portion of its Lucas Valley Tank Site located off Lucas Valley Road in San Rafael to Sprint Spectrum Realty Company LLC (tenant) for the operation of a communications facility. The current lease terms extends into 2027. In April of 2021, the District was notified by the tenant of their intent to enter into an agreement with Vertical Bridge NTCF, LLC and certain of its affiliates to manage, operate and ultimately purchase the facility. In order to initiate the transaction, the tenant has requested the District agree to consent to the assignment of lease 61 to VB Run, LLC, an affiliate of Vertical Bridge NTCF, LLC.

Pursuant to Section 15 of Lease 61, the District’s written consent is required prior to Sprint Spectrum Realty Company, LLC assigning the lease agreement to VB Run, LLC, which consent shall not be unreasonably withheld. District staff reviewed the request for assignment of Lease 61, information regarding VB Run, LLC and their holding company Vertical Bridge REIT, LLC including a financial report and have determined that VB Run, LLC appears capable of performing the terms of Lease 61. This assignment will not change any of the lease terms.

FISCAL IMPACT

None

ATTACHMENT(S)

1. Request for Consent to Assignment
2. Draft Consent to Assignment

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Engineering	 Crystal Yezman Engineering Division Manager	 Ben Horenstein General Manager

MD7**RECEIVED**
APR 21 2021

April 20, 2021

MMWD

Marin Municipal Water District
Attn: Real Property Agent
220 Nellen Avenue
Corte Madera, CA 94925

Re: Site Address: 999 Old Lucas Valley Road, San Rafael, CA 94903
Site ID: FS04XC242 and Site Name: LUCAS VALLEY TANK (the "Site")
Marin Municipal Water District Lease No. 61 dated June 13, 2014 (including any amendments, the "Agreement")
Tenant/Licensee: Sprint Spectrum Realty Company LLC (the "Tenant")
Notice of Proposed Assignment and Request for Consent

Ladies and Gentlemen:

T-Mobile USA, Inc. and certain of its affiliates ("T-Mobile"), and Vertical Bridge NTCF, LLC and certain of its affiliates ("Buyer") are entering into a transaction involving a portion of T-Mobile's tower portfolio (the "Portfolio"), which Buyer will manage and operate on behalf of T-Mobile. T-Mobile acquired the Portfolio through its merger with Sprint, and the Portfolio includes the Agreement identified above. Buyer's management responsibilities will include, among other things, the payment of T-Mobile's monetary obligations under the Agreement and the performance of T-Mobile's maintenance and other non-monetary obligations under the Agreement.

The transaction also entails Buyer's purchase of the Portfolio but before the purchase can occur, your consent to the assignment of the Agreement and/or subleasing of the Site back to Tenant may be required under the Agreement. Until such time as your consent is received, the Site will be managed by Buyer. Once your consent is received and the purchase is complete, the Site will become owned by Buyer, or its affiliate, VB RUN, LLC. T-Mobile hereby requests your consent to those matters.

Please indicate your consent by signing below and return this original document back to me in the enclosed self-addressed, stamped envelope or a scanned copy via email. The second original should be retained for your records. If you require additional information, please feel free to contact us via phone at (858) 964-7436 or via email at bjohnson@md7.com.

Promptly after the closing of the transaction occurs, the Buyer will notify you of the date of the closing. From and after the closing, the address to use for all notices under the Agreement is as follows:

MD7

VB RUN, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
Attention: Asset Management

With a copy to:

VB RUN, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
Attention: SVP & General Counsel
Email: dmarinberg@verticalbridge.com

An informational brochure regarding Vertical Bridge is enclosed for your reference. It provides background information regarding the company and may answer some questions you may have regarding the transaction described above.

If you consent to the matters described above, the only noticeable changes you will experience will be dealing with Buyer instead of T-Mobile on all matters relating to the Agreement and the Site, and effective as of July 1, 2021, you will receive rent checks from Buyer instead of T-Mobile.

Thank you for your cooperation and prompt attention to this matter.

Sincerely,

T-MOBILE USA, INC.

By: MD7, its authorized representative
Name: Brittany Johnson
Phone: (858) 964-7436

Accepted and agreed:

**Marin Municipal Water District,
a public entity**

By: _____
Name: _____
Title: _____
Dated as of: _____

Enclosures



VERTICAL BRIDGE TOWERS III, LLC

750 Park of Commerce Drive
Suite 200
Boca Raton, FL 33487
www.VerticalBridge.com

Dear Landlord,

As you are aware, T-Mobile and Vertical Bridge have asked for your consent to transfer the lease or license agreement between T-Mobile and yourself to Vertical Bridge.

Understandably, this request has led you to ask – who is Vertical Bridge and does Vertical Bridge have the ability to undertake the obligations under the lease or license agreement?

This is a fair question to ask, so we have enclosed some reading materials about our company, management team, investors, customers, growth since being founded in 2014 and, most importantly, our community work. Over the last six years, we have grown to become the largest private communications tower company, and the overall fourth largest communications tower company, in the nation. However, we take most pride in having donated over \$4,600,000 to causes our company and 200 team members are passionate about and invest their time in.

We hope this information will assist you in learning about who we are and the values we represent. Should you have any questions, please do not hesitate to give us a call at 561.406.4007. A Vertical Bridge team member will be available to answer any questions you may have.

We thank you for taking the time to learn about our company and look forward to having a mutually successful and long-standing relationship.

Kindest Regards,

The Vertical Bridge Team



BRINGING COMMUNICATION TO NEW HEIGHTS



Vertical Bridge has over 269,000 sites available for co-location, including towers, billboards, rooftops, utility attachment, and other site location assets. We specialize in built-to-suit tower services, and we can take on a project at any stage of development.

Founded in 2014, Vertical Bridge has quickly emerged as the largest private owner and manager of communications infrastructure in the United States, dedicated to providing our customers with superior service in a dynamic communications market.

WE OFFER THE BEST SOLUTIONS IN THE INDUSTRY

- Largest private asset portfolio for wireless co-location
- Geographically dispersed sites, including urban, suburban, traffic corridor and rural locations
- Sites frequently located in areas with no other competing or available structures
- Built for capacity, which allows for additional communications tenants in the future
- Large ground space, which allows carriers room to place on-the-ground equipment, including C-RAN hubs
- Constructed to meet or exceed applicable standards

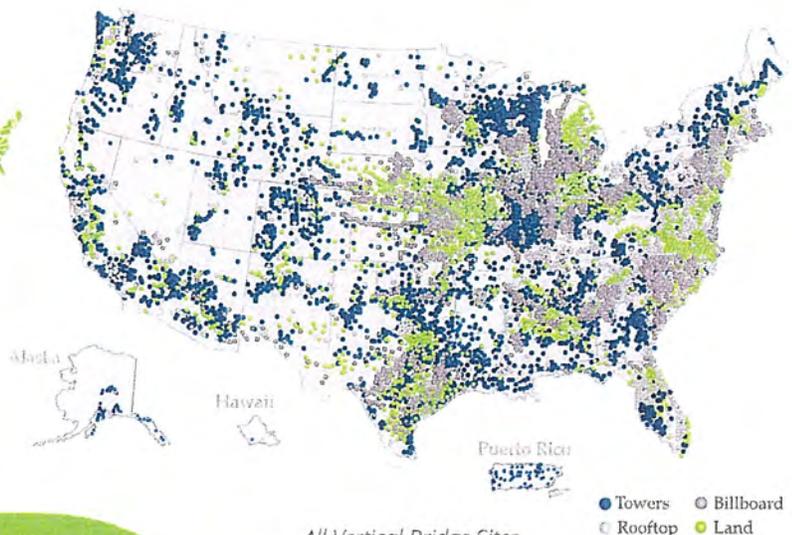
#1 Private Owner & Manager of Communications Infrastructure in US 

269,000 Sites Nationwide 

16,000 Master Lease Towers 

11,000 Master Lease Rooftop & Land Assets 

41,000 Billboards 



All Vertical Bridge Sites

WWW.VERTICALBRIDGE.COM



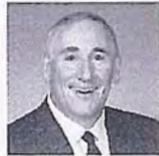
Senior Leadership

Over 200 years of combined experience in communications infrastructure

MANAGEMENT TEAM



Marc Ganzi
Executive Chairman
Founder and former CEO of
Global Tower Partners
20 years telecom experience



Alex Gellman
Chief Executive Officer
and Co-founder
25 years of telecom experience



Bernard Borghei
Executive Vice President Operations
and Co-founder
25 years of telecom experience



Mike Belski
Executive Vice President Leasing
& Marketing and Co-founder
20 years of telecom experience



Michael Romaniw
Chief Financial Officer
2 years of telecom experience



Robert Paige
Senior Vice President of M&A
30 years of telecom experience



Dan Marinberg
Senior Vice President and
General Counsel
4 years telecom experience



Johnny Crawford
Senior Vice President of
Development
25 years telecom experience



Jim McCulloch
Vice President of Real Estate
8 years telecom experience



Buddy Norman
Vice President of Real Estate
Development
3 years of telecom experience



Vidette Pires
Vice President of IT
15 years of Information
Technology experience

Our Investors

Digital Bridge Holdings LLC, The Jordan Company, The Edgewater Funds, Goldman Sachs Infrastructure Partners, Stonepeak Infrastructure Partners, the California State Teachers' Retirement System and Dock Square Capital LLC. The Vertical Bridge management team also holds a significant stake in the company.

verticalbridge

digital **bridge**

Formed in 2013 through a partnership between Ben Jenkins of Dering Capital (formerly of The Blackstone Group) and Marc Ganzl (former founder and CEO of GTP), Digital Bridge Holdings.



Goldman Sachs Infrastructure Partners pursues a long-term investment strategy focusing on core infrastructure assets and partnering with best-in-class operators/management teams.

THE JORDAN COMPANY

The Jordan Company was founded in 1982 and is a leading middle-market private equity firm with more than \$8 billion of committed capital assets under management and a 30-year track record of investing in, and contributing to the growth of, businesses across a wide range of industries. The Jordan Company is headquartered in New York with offices in Chicago and Shanghai.



The California State Teachers' Retirement System is the largest educator-only pension fund in the world. CALSTRS is committed to its mission to secure the financial future of California's educators, providing retirement, disability and survivor benefits for 862,000 educators and their families.

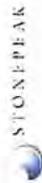
the edgewater funds

The Edgewater Funds is a Chicago-based private equity firm with \$1.4 billion in committed capital. Edgewater focuses on funding high quality middle-market companies where they can add substantial value through capital investment, experience and their broad network.



DOCK SQUARE
CAPITAL LLC

Dock Square Capital LLC is a merchant bank founded on the core principles of transparency, creativity, trust, and alignment of interest with our partners and investors. Dock Square Capital LLC operates at the nexus of a global network of entrepreneurs and families and possess the structural flexibility to add value as principal investors, strategic advisors, and joint venture partners.



Stonepeak Infrastructure Partners is a North America-focused private equity firm with a conservative yet opportunistic approach to infrastructure investing. Stonepeak invests in businesses comprised of hard assets with leading market positions primarily in the following sectors: Energy, Power & Renewables, Transportation, Utilities, and Water & Communications.



Caisse de dépôt et placement du Québec (CDPQ) is a long-term institutional investor that manages funds primarily for public and parapublic pension and insurance plans. As at December 31, 2018, it held CA\$309.5 billion in net assets. As one of Canada's leading institutional fund managers, CDPQ invests globally in major financial markets, private equity, infrastructure, real estate and private debt.

Vertical Bridge Growth 2016-2020

Growth through execution and disciplined capital allocation

verticalbridge

Total Portfolio



Over 269,000 sites - and counting

Business and Customer Portfolio

verticalbridge

Our key customers and partners are leaders in their industry, recognized telecommunications carriers, broadcasters, internet-of-things, and back-haul providers

Key Customers & Tenants



Vertical Bridge Celebrates 2019 With \$1.5 Million in Charitable Giving

Share Article



Firm Surpasses \$4.6 Million in Donations to Noteworthy Causes Since its Founding. Marks Another Year of Continued Growth for Firm in Giving.

BOCA RATON, FLA. (PRWEB) DECEMBER 17, 2019

Vertical Bridge REIT, LLC ("Vertical Bridge"), the largest private owner and operator of communications infrastructure in the United States, today announced that, with its matched employee donations, it has donated more than \$1.5 million to charitable organizations in 2019. This is the firm's largest annual contribution since its founding in 2014 and a nearly 20% increase over last year.

Since Vertical Bridge's founding five years ago, the firm has contributed more than \$4.6 million to 501 (c)(3) organizations through its philanthropic arm, the Vertical Bridge Charitable Network, an employee-run initiative which has set a new bar for itself each year through Vertical Bridge employees' active participation, monetary contributions and overall dedication to charitable causes.

The firm's notable efforts in 2019 included:

- Over \$113,000 donated to Hurricane Dorian relief efforts including supporting short-term needs such as food, water, shelter and medical supplies, as well as long-term recovery assistance such as the rebuilding of homes and towns.

- More than 170 Vertical Bridge employees participating in the construction, painting and filling of 75 standalone libraries to benefit Little Free Library's literacy efforts at the firm's annual meeting. In total, this event represented a \$45,000 contribution from Vertical Bridge to Little Free Library.

- \$40,000 given to DonorsChoose.org, as a result of donations made on employees' behalves. The firm's contributions resulted in more than 300 classroom projects around the country receiving new funding, directly impacting over 38,000 students.

"Bernard Borghei, Mike Belski and I set out to build a firm where our commitment to philanthropy was integrated into our core as much as our passion for communications towers. By creating a program where every employee is able to become involved with the causes they most care about, philanthropy has truly become a part of who we are as a company," said Alex Gellman, CEO and Co-Founder. "Each year, we see more involvement, dedication and enthusiasm for our charitable activities from our employees. I couldn't be more proud of what we have done and what we are building."

Vertical Bridge Celebrates 2019 With \$1.5 Million in Charitable Giving

Vertical Bridge also continued a number of multi-year initiatives that have become especially meaningful to the firm, including Habitat for Humanity of South Palm Beach County's (HFHSPBC) VETERANS BUILD and Music Movement. 2019 marked Vertical Bridge's fourth consecutive year as the presenting sponsor for HFHSPBC's VETERANS BUILD, which improves the homes of local military veterans. This past November, team members from Vertical Bridge helped transform ten Boca Raton homes and presented a \$60,000 check to HFHSPBC. 2019 was also Vertical Bridge's fifth year partnering with Music Movement, which creates music-centric programs for individuals on the autism spectrum or those with differences in learning abilities. This year, Vertical Bridge contributed more than \$134,000 to the organization, including hosting a benefit concert headlined by country singer Joe Nichols at this year's WIA Connect (X) Show. Since beginning its partnership with HFHSPBC's VETERANS BUILD and Music Movement, Vertical Bridge has donated \$140,000 and \$335,000 to these organizations, respectively.

This year's efforts were spread across 155 charitable causes, and Vertical Bridge employees contributed more than 1,100 hours volunteering with the organizations of their choice. Organizations which received contributions in time or money were nominated by the firm's employees and clients and were selected by a committee of Vertical Bridge employees responsible for organizing, budgeting and creating firm-wide philanthropic initiatives. This was not only a record-setting year for the firm's fiscal donations, but also for its employee gift match program, which saw contributions more than double compared with 2018.

About Vertical Bridge:

Vertical Bridge REIT, LLC is the largest private owner and operator of communications infrastructure and locations in the United States. The company owns, operates and master leases over 268,000 tower, rooftop, billboard, utility attachment and other site locations in support of wireless network deployments. Based in Boca Raton, Florida, Vertical Bridge was founded in 2014 by key executives from Digital Bridge Holdings, LLC and former senior officers of Global Tower Partners. The senior management team at Vertical Bridge has over 200 years of collective experience in tower infrastructure and related sectors. For more information, please visit <http://www.VerticalBridge.com>.

Contact:

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**CONSENT TO ASSIGNMENT
COMMUNICATIONS LEASE NO. 61
LUCAS VALLEY TANK SITE
APN 165-010-03**

THIS CONSENT TO ASSIGNMENT (“Consent”), is made and given as of _____ (the “Effective Date”), by the MARIN MUNICIPAL WATER DISTRICT (“District”), to SPRINT SPECTRUM REALTY COMPANY, LLC, a Delaware limited liability company (the “Assignor”), and VB RUN, LLC, a Delaware limited liability company (the “Assignee”) (referred to herein as “Party” or collectively as “Parties) and subsidiary of VERTICAL BRIDGE REIT, LLC.

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals: This Consent is made with regard to the following facts:

- 1.1 District and Sprint Spectrum, L.P., as the predecessor in interest to Assignor, entered into that certain Communications Lease Agreement dated June 4, 2014, which commenced on March 23, 2012 for three (3) five-year terms ending March 22, 2027, and as amended January 13, 2020 by the First Amendment (Communications Lease No. 61) (collectively referred to herein as the “Lease”), attached hereto and incorporated by reference as **Attachment A**, for the purpose of constructing and operating a communications facility at the Lucas Valley Tank Site located at or near 999 Old Lucas Valley Road in San Rafael (“Premises”).
- 1.2 The Assignor now desires to assign all its right and interests in and under the Lease to Assignee and Assignee desires to assume all of the rights, interests and obligations under the Lease first accruing from and after the effective date of the Assignment, including but not limited to compliance with all Lease terms and payment of rent for the express benefit of the District and pursuant to Section 15 of the Lease, Assignor and has requested the prior written consent of the District to said assignment (hereinafter the “Assignment”).
- 1.3 District staff have determined, after reviewing certain documentation from Assignee that Assignee has the necessary skills, expertise, and financial fitness to perform under the terms of the Lease according to the existing terms and conditions set forth therein and the District has therefor agreed to consent to the assignment upon the terms and conditions set forth herein.

Section 2. Consent of MMWD: The District acknowledges and agrees that Assignor is not in default of any of its obligations under or in breach of the Lease as of the Effective Date. The District hereby consents to the Assignment, provided that Assignee agrees as part of the assignment agreement between Assignor and Assignee, to assume all of the obligations under

the Lease for the express benefit of the District and to further comply with the terms and conditions of the Lease, in the form attached hereto as Attachment A. Assignee shall provide a fully executed copy of the Lease Assignment between Assignor and Assignee within five (5) business days from the effective date of the assignment, as well as contact and address information for Assignee. District further consents to Assignee subleasing Assignor's existing Premises to Assignor.

Section 3. Use: Pursuant to Section 2 of the Lease, Assignee shall promptly ensure that all necessary certificates, permits, licenses, and other approvals, including environmental clearances, which may be required from any governmental authorities or third parties are up to date, in compliance with all applicable ordinances, laws, rules, and regulations, and duly authorize Assignee to operate and maintain the communications facility on the Premises, and provide written confirmation of same in a form satisfactory to District within 90 days of the effective date of the Assignment.

Section 4. Representations and Warranties: Each Party hereby represents and warrants to the other Parties that:

It has the full right, corporate power and authority to enter into this Consent and to perform its obligations hereunder.

The execution of this Consent by the individual whose signature is set forth at the end of this Consent on behalf of such Party, and the delivery of this Consent by such Party, have been duly authorized by all necessary corporate action on the part of such Party.

This Consent has been executed and delivered by such Party and (assuming due authorization, execution and delivery by the other Party hereto) constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

Section 5. Miscellaneous: This Consent is governed by, and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State. The Parties agree that this Consent is the product of negotiation and preparation by and between the Parties and their respective attorneys. Neither this Consent nor any provision thereof shall be deemed prepared or drafted by one party or another, or its attorneys, and shall not be construed more strongly against any party.

This Consent shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns.

The headings in this Consent are for reference only and do not affect the interpretation of this Consent.

This Consent may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Consent electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Consent.

The Lease and this Consent together constitute the sole and entire agreement of the Parties with respect to the District's consent to the assignment of the Lease to Assignee, and to the assumption by Assignee of any and all rights, liabilities and obligations of Assignor under the Lease, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. If any provision or any part of any provision of this Consent is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute, and/or ordinance, then the remainder of this Consent shall not be affected thereby and shall remain valid and fully enforceable.

Each Party shall pay its own costs and expenses in connection with this Consent (including the fees and expenses of its advisors, accountants and legal counsel).

MARIN MUNICIPAL WATER DISTRICT

Bennett Horenstein, General Manager

SPRINT SPECTRUM REALTY COMPANY, LLC

Name:
Title:

VB RUN, LLC

Name:
Title:

Attachments: Attachment A – copy of the Lease and the First Amendment

**MARIN MUNICIPAL WATER DISTRICT
LEASE NO. 61
LUCAS VALLEY TANK SITE
APN 165-010-03**

This Lease ("Lease") is entered into this 4TH day of June, 2014, between the Marin Municipal Water District, hereinafter "District", and Sprint Spectrum L.P., a Delaware limited partnership, hereinafter "Lessee". The District and Lessee are at times collectively the "Parties".

On the terms, provisions, and conditions hereinafter set forth and in consideration of mutual covenants and obligations of the Parties hereunder, the Parties hereto agree as follows:

WHEREAS, District and Lessee, or its predecessor-in-interest, entered into that certain Communications Lease Lucas Valley Tank Site, dated March 24, 1997 ("Original Lease") for the placement of a communications facility;

WHEREAS, the Lease expired on March 23, 2012 and the parties desire to execute a new the lease on the terms and conditions herein.

NOW, THEREFORE, on the terms, provisions, and conditions hereinafter set forth and in consideration of mutual covenants and obligations of the Parties hereunder, the Parties hereto agree as follows:

Section 1. Property Leased.

District is the owner of that certain real property located in the unincorporated area of Marin County, State of California, commonly known as Lucas Valley Tank Site ("Property"), and more particularly described in Exhibit A to this Lease. The District hereby leases to Lessee and Lessee hereby leases from the District a portion of the Property, which is approximately 500 square feet, more specifically described as a 10' by 10' and a 27' 6" by 6' parcel of land situated substantially as shown on Exhibit B to this Lease ("Premises").

Section 2. Use.

The District grants Lessee permission to occupy the Premises, to install, construct, remove, replace, maintain, and operate a communications facility pursuant to the operating conditions specified in Exhibit B to this Lease ("Communications Facility"). The Communications Facility shall conform to the plans, specifications and Lessee's Equipment Schedule attached hereto as Exhibit C. Exhibit C shall also include the Lessee's frequency allocation granted by the Federal Communications Commission ("FCC"). The Lessee's frequency allocation shall only include bands that



are in existence as of March 23, 2012. Should the Lessee desire to add additional bands, the parties agree to meet and attempt to negotiate the terms of an amendment to this Lease that would accommodate the additional bands. Existing antennas and equipment cabinets located on the Premises may be replaced with ones that are of substantially similar nature, size, and configuration without District's prior approval.

Under the provisions of this Lease, neither backhaul microwave dish, nor backhaul microwave point to point telecommunications equipment is allowed. If the Lessee desires to include backhaul microwave dish, or backhaul microwave point to point telecommunications equipment, then the parties agree to meet and attempt to negotiate the terms of an amendment to this Lease that would accommodate backhaul.

The Parties agree that Lessee's ability to use the Premises is dependent upon obtaining and maintaining all necessary certificates, permits, licenses, and other approvals including environmental clearances that may be required from any governmental authorities or third parties.

Section 3. Term and Option to Extend.

- A. The initial term of this Lease is five (5) years beginning on March 23, 2012 ("Commencement Date") and ending at midnight on March 24, 2017, unless sooner terminated as provided herein.
- B. The initial five (5) year term of the Lease shall automatically be extended for a second 5 year term, unless District or Lessee elects not to extend the Lease term for the second 5 year term by delivering written notice to the other party at least sixty days prior to the expiration of the initial term or the expiration of the applicable term, as the case may be.
- C. This Lease may be extended for a final five-year term pursuant to all the provisions of this Lease period. The rental payments for any such extension may be modified at the sole discretion of the District after the District completes an evaluation of rental values for comparable mobile wireless leases in the Bay Area. *One hundred and eighty (180) days* before the end of the fifth and tenth years of the Lease term, Lessee shall notify the District in writing whether it desires extension of the Lease for a second or final term. If the District elects to modify rental payments for the second or final five-year term, it shall notify Lessee in writing of its intention and the new rental payment terms at least *one-hundred and twenty (120) days* prior to the expiration of the fifth and tenth year of the Lease term. Lessee shall notify the District in writing within *sixty (60) days* prior to expiration of the fifth or tenth years of the lease term, if it elects not to extend this Lease for an additional five-year period under the new rental payment terms.

Section 4 . Rental Payments.

A. Lessee agrees to pay District at 220 Nellen Avenue, Corte Madera, California, or such other place as District shall from time to time in writing designate, as rent for the Premises, the annual sum of Forty-Eight Thousand One Hundred and 00/100 Dollars (\$48,100.00).

B. The amount of rent payable hereunder shall be increased annually, commencing with the first annual anniversary date (12 months after the Commencement Date of the initial term) and thereafter on each anniversary date of the Commencement Date during the initial term or any extension thereof as provided in Section 3 above. Said adjusted rent shall be payable annually within thirty (30) days of the anniversary date of this Lease.

Rental increases shall be as follows:

i. Rent shall be adjusted annually on each anniversary date of the Commencement Date to the extent of any percentage change which occurred in the Consumer Price Index - All Urban Consumers (all items, base 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-San Jose metropolitan area (hereinafter "CPI-U"). The rental adjustment shall be calculated by multiplying the rent then in effect by a fraction, the denominator of which is the CPI-U in effect as of the calendar month 14 full months prior to the anniversary date, and the numerator of which is the CPI-U in effect two full months prior to the anniversary date. The rent shall be increased annually by the CPI-U, as calculated above, or 3%, whichever is greater. Rent for any period during the term of this Lease, which is less than one year, shall be prorated.

C. Prior to the expiration of the fifth and tenth years of the Lease term, any further extensions shall be subject to rental payment modification at the sole discretion of the District after the District completes an evaluation of rental values for comparable mobile wireless leases in the Bay Area. If District elects to modify rental payments for the second and/or final extensions it shall attempt to notify Lessee in writing of its intention and the new rental payment terms at least one- hundred and twenty (120) days prior to the expiration of the second and/or final Lease term. Lessee shall notify District within sixty days prior to expiration of the second and/or final year of the Lease term, if it elects not to extend this Lease under the new rental payment terms. If the District fails to notify the Lessee of a modification to the rental payments within the 120 day time frame, then any District notification prior to the end of a 5 year Lease term (of changes to the rental payments) shall allow the Lessee 60 days to consider the increase, even if the rental increase is provided by the District less than 60 days before the beginning of the second and/or final Lease term. Lessee may hold over under the Lease until the parties agree on an increase to the rent. Upon agreement on the increased rental

amount, that amount shall be retroactive to the beginning of the second and/or final Lease term.

Section 5. Access and Utility Easements.

A. Lessee is hereby given a right-of-way for ingress and egress to the Premises over, upon, and across adjoining lands and rights-of-way owned by the District as may be required for (i) the purpose of erection, installation, maintenance, replacement and removal of Lessee's Communications Facility, related equipment and other necessary appurtenances and (ii) for telephone lines and power lines used in connection with Lessee's Communications Facility, the "Access Easement." All access privileges accorded Lessee by this Lease over and across the District rights-of-way refer to rights-of-way held by the District only. It shall be Lessee's responsibility to secure any additional access rights to the Premises from the owner of the appropriate underlying fee. Lessee shall have the right, subject to receiving prior written approval from the District, which approval shall not be unreasonably withheld, to improve any Access Easement either by grading, graveling, or paving.

B. Lessee shall have the right to enter the Premises for the purpose of making necessary inspections and engineering surveys, including soil tests where applicable, and other tests reasonably necessary to determine the suitability of the Premises for Lessee's Communication Facility and for purposes of preparing for the construction of the Communications Facility. Lessee shall repair any damage to the Premises caused by any tests performed and shall return the Premises to the condition which existed prior to any tests.

C. Lessee shall provide the District with 24-hours notice of its need for Premises access for construction, routine maintenance and repair or other non-emergency visits. In the event of an emergency, Lessee shall make a good faith attempt via telephone at 415-927-9951 to provide the District with notice of its need for access to its facility. Lessee shall be entitled to access to the Premises. In the event Lessee is unable to provide telephone notice to the District prior to the emergency entry, Lessee shall notify the District via facsimile at the number listed in Section 8 immediately after any emergency access.

D. If an emergency necessitates that the District conduct emergency repair work within the near field affect zone (the exact distance will be verified by field measurements and posted at the Premises) of Lessee's antennas, the District shall have the right, after providing telephone notice to Lessee as provided herein, to require Lessee to immediately cease operation of the Communication Facility. The District shall have the sole discretion to determine when emergency repair work is necessary.

In the event of an emergency shutdown of Lessee's Communications Facility by the District, Lessee shall have the right, at no additional cost to Lessee, to

bring, operate and maintain on the Property in a location approved by the District, a portable communications facility (mobile operating unit) and necessary utility connections until Lessee's Communications Facility is returned to full commercial operation.

Section 6. Utilities at Lessee's Cost.

Lessee shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by Lessee on the Premises. Lessee shall have an electrical current meter installed at the Premises and the cost of the meter and of the installation, maintenance and repair shall be paid for by Lessee.

Section 7. Holding Over.

Should Lessee, with the District's consent, hold possession of the Premises or any portion thereof after the date upon which the Premises are surrendered, Lessee shall become a tenant on a month-to-month basis subject to all the terms and conditions of this Lease.

If Lessee holds over after the expiration or earlier termination of the Lease term without the express written consent of the District, Lessee shall become a tenant at sufferance only, at the rental rate in effect upon the date of Lease expiration, and upon the terms, covenants, conditions herein specified, so far as applicable. Acceptance by the District of rent after Lease expiration or earlier termination shall not constitute a hold over or result in a renewal. The foregoing provisions of this section are in addition to and do not affect the District's right of reentry or other rights of the District hereunder, or as otherwise provided by law.

Section 8. Notice.

All notices or demands are deemed to be given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid United States mail, and addressed to the respective parties as follows:

DISTRICT: Marin Municipal Water District 220 Nellen Avenue Corte Madera, CA 94925 ATTN: Real Property Agent	Phone: (415) 945-1584 Fax: (415) 945-1599 Emergencies: (415) 927-9951
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LESSEE: Sprint Spectrum, L.P. Sprint/Nextel Property Services Site ID: FS04XC242 Mailstop KSOPT0101-Z2650	Phone: (800) 357-7641 Fax: (913) 523-9735 landlordsolutions@sprint.com Emergencies:
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6391 Sprint Parkway
Overland Park, Kansas 66251-2650

Copy to: Sprint/Nextel Law Department
Attn: Real Estate Attorney
Site ID: FS04XC242
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, KS 66251-2020

The address to which any notice or demand may be given to either party may be changed by written notice.

Section 9. Indemnification.

Lessee shall indemnify, hold harmless, release and defend the District, its officers, directors, agents, and employees from and against any and all claims, actions, damages, expenses, including attorney's fees, investigative fees, expert fees and witness fees, and liability for personal injury, including death and property damages arising out of (1) the Lease, (2) the conduct of Lessee, its agents, employees and contractors in connection with the Lease, whether or not there is concurrent passive or active negligence on the part of the District, (3) its use under this Lease of the Premises, Property, and/or Access Easement and (4) Lessee's Communication Facility. The foregoing does not extend to willful or negligent acts committed solely by the District, its officers, agents or employees.

Section 10. Taxes.

Lessee recognizes and understands this Lease may (a) create a possessory interest subject to property taxation and (b) be subject to the payment of property taxes levied on the interest. Lessee shall pay all taxes and assessments levied upon or by reason of Lessee's interest in the Premises herein leased. All payments of taxes or assessments or both shall be prorated for the initial year and for the year in which the Lease terminates.

Section 11. Default; Remedies; Termination.

A. Default; Remedies.

Failure or unreasonable delay by any Party to perform any obligations under this Lease for a period of thirty (30) days after written notice thereof from the other party, shall constitute a default under this Lease, subject to extensions of time by mutual consent in writing. The notice shall specify the nature of the alleged default and

the manner in which the default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within that time period and the diligent prosecution to completion of the cure shall be deemed a cure within that period.

Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, the other party to this Lease may avail itself of all available remedies and/or give notice of intent to terminate the Lease .

The waiver by any party of any default under this Lease shall not operate as a waiver of any subsequent breach of the same or any other provision of this Lease.

B. Legal Actions; Remedies.

After pursuing those remedies articulated in Section 23 of this Lease, any party may institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto.

C. Effect of Termination.

Termination of this Lease shall not affect Lessee's obligation to comply with those covenants contained in this Lease that continue after termination. Those provisions of this Lease, that shall survive and remain in effect following termination or cancellation of this Lease for so long as necessary to give them full force and effect included but not limited to; Section 9, Indemnification; Section 11, Default; Remedies; Termination; and Section 23, Mediation and Arbitration.

D. The District's Right to Terminate/Non-Emergency.

The District may terminate this Lease at any time without cause, by providing Lessee twelve months written notice of the termination. That notice shall be sent in accordance with Section 8 of this Lease.

E. Districts Right to Terminate/Emergency.

Notwithstanding the provisions of Section 11(A), in the event of an emergency, as determined in the Districts' sole discretion, the District may immediately terminate this Lease.

F. Lessee's Right to Terminate.

Lessee shall have the right to terminate this Lease at any time upon the occurrence of any of the following events:

- i. Upon providing the District twelve (12) months advance written notice;
- ii. Upon revocation, expiration or termination of necessary approvals of any agency, board, court or other governmental authority or third party for the construction and/or operation of the Communications Facility or access thereto or if Lessee reasonably determines the cost of obtaining the approval is commercially infeasible; or
- iii. If Lessee reasonably determines that the Premises are not appropriate under Lessee's design or engineering specifications for its Communications Facility or the communication system to which the Communications Facility belongs.

Lessee shall give the District sixty (60) days written notice of its intention to terminate this Lease under provisions of subsections F (ii) and (iii) above.

Section 12. Reasonable Assurances.

Each party to the Lease undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise, with respect to performance of either party, the other may, in writing, demand adequate assurance of due performance. Until the requesting party receives the assurance it may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of the party with respect to performance under this Lease but also conduct with respect to other agreements with parties to this Lease or others. After receipt of a justified demand, failure to provide adequate assurance of due performance within a reasonable time, (not to exceed 30 days), is a repudiation of this Lease. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Section 13. Insurance.

Lessee's policy shall be endorsed with "Attachment D" Additional Insurance Endorsement form:

The Lessee shall have and maintain at all times during the life of this Lease, up to the date of acceptance, the following policies of insurance:

A. Comprehensive general liability insurance for personal injury and property damage with limits not less than one million dollars (\$1,000,000) per injury and two million dollars (\$2,000,000) per occurrence and a policy of fire insurance sufficient to cover actual replacement cost of the Communications Facility without deduction for depreciation. Each such policy shall include or be endorsed with the following language:

- i. The Marin Municipal Water District, its officers, directors, agents, employees and volunteers are additional insureds and Lessee's insurance is primary to any insurance carried by MMWD.
- ii. Should the policy be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the additional insured (MMWD).
- iii. Inclusion of more than one insured shall not operate to impair the right of one insured against another insured, and the coverage afforded in the policy shall apply as though separate policies have been issued to each insured.

B. Workers' Compensation Insurance: Workers' Compensation Insurance to cover its employees, as required by the State of California, and shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the subcontractors' employees. All Workers' Compensation policies shall be endorsed with the following specific language:

- i. This policy shall not be canceled without first giving thirty (30) days prior notice to the MMWD by certified mail.
- ii. The Workers' Compensation Insurance self-insured deductibles and retentions for both the Consultant and its subcontractors shall not exceed \$1,000 (One Thousand Dollars).

Section 14. Fixtures.

The District specifically agrees that the Communications Facility erected or placed by Lessee on the Premises shall be and remain the property of Lessee. At the expiration or termination of this Lease, Lessee shall remove from the Premises any and all fixtures and improvements of every kind constructed and erected thereon except for underground conduit and foundations. After the removal Lessee, at its sole cost, shall restore the Premises and the Property to its original condition existing as of the Commencement Date save and except normal wear and tear and damage not caused by Lessee. In the District's sole discretions, that the Board of Directors may decide to return the site to original condition.

Section 15. Assignment / Transfer / Sublease.

Lessee has represented to the District that it possesses the experience, qualifications and financial resources to perform under the terms of this Lease. Based upon Lessee's qualifications, and representation, the District is entering into this Lease. Accordingly, certain restrictions on the right of Lessee to assign or transfer its interest under this Lease are necessary to assure performance of this Lease. No part of this Lease may be assigned, transferred and/or sublet by Lessee, except as hereafter

provided, without the District's prior written consent which may not be unreasonably withheld. Lessee shall notify the District's General Manager, in writing, of its request to sublease and/or assign any portion of this Lease. Lessee shall demonstrate to the District's satisfaction that the potential sub lessees/assignees are capable of performing the terms of this Lease. Lessee agrees to provide the District with all information reasonably required by the District's General Manager to make that determination. In making that determination, the District may consider the following criteria which include by are not limited to:

- (1) The financial standing of the proposed assignee;
- (2) The proposed assignee's experience in performing under similar Leases;
- (3) At least three references from similar lessors;
- (4) The aesthetics of the assignee's facilities; and
- (5) References from assignee's/sub lessee's lessor.

In reviewing the assignment request / request to sublease, the Board of Directors shall consider the criteria set forth in this section in addition to any other information requested or made available to them.

The District shall advise Lessee of its approval or disapproval of Lessee's request for assignment within sixty (60) days following the receipt of all necessary information. Upon assignment, Lessee shall be relieved of all future liability and obligations hereunder if and when assignee is authorized to assume Lessee's responsibilities under this Lease.

Section 16. Fences.

After obtaining the District's written consent, Lessee may fence in that portion of the Premises reasonably needed for its improvements and for the proper and efficient operation and protection of its Communication Facility. In no event shall any fencing erected by Lessee impair the District's access to its facilities located on the Property or Premises.

Section 17. Hazardous Materials.

After obtaining the District's written consent, Lessee understands that the District has undertaken no internal investigation of its files, examination of its employees or testing of the Premises with respect to whether the Premises have been used for the generation, storage, treatment or disposal of hazardous wastes. With that qualification

the District represents that it has no present knowledge that the Premises have been so used for hazardous waste.

Lessee shall not bring any hazardous materials onto the Property, the Premises or the Access Easement except for those contained in its back-up power batteries (lead-acid batteries), generators, and cleaning solvents necessary to the use of its Communications Facility. Lessee will treat all hazardous materials brought onto the Property, Premises or Access Easement by it in accordance with all federal, state and local laws and regulations. In the event of leakage or spillage from any of Lessee's equipment or any vehicle in the control or custody of Lessee or any contractor or agent for Lessee, Lessee shall at its own expense promptly clean the District's Property, Premises and Access Easement to the reasonable satisfaction of the District, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state or local environmental regulations incurred by the District or Lessee as a direct consequence of Lessee's use of the Property, the Premises or the Access Easement shall be borne by Lessee, including any fines and judgments levied against the District.

At all times Lessee shall comply with all federal, state and local laws, statutes, ordinances and regulations of any kind relating to the use, storage, control, transportation and disposal of hazardous materials, shall obtain all necessary governmental approvals and permits with respect to the activities and shall fully and completely prepare and shall file all required reports, studies, manifests and environmental impact statements with respect to the same and shall follow all required inspections with respect to the same and shall supply the District evidence of compliance with this section upon the District's request therefor.

As used in this section, hazardous materials shall mean:

A. "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA 42 USC Sections 9601(14) and (33) and regulations issued pursuant thereto;

B. "Extremely hazardous substances, hazardous chemicals", and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC Sections 11002(a), 11021(e), and 11023(c), and regulations issued pursuant thereto;

C. "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR Section 1910.1200;

D. Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in A - C above; and

E. Any materials not covered by, or exempted from, the sources listed in Sections A - D above, that may nevertheless pose a threat to the District's function as a public water district or to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, and radon.

Section 18. Interference.

In the event Lessee's continued occupancy of the Premises conflicts with the District's operations, the District's operations as a public water agency shall take priority and precedence over Lessee's operations.

Lessee shall operate its Communication Facility in a manner which will not cause interference, in the judgment of the District, with any facilities (including transmitting and receiving radio signals) the District may have or may install in the future on the Property or the Premises. Lessee recognizes and acknowledges that the District may install radio facilities on the Property. The District makes no promises that those facilities will not cause interference with Lessee's Communications Facility or operations. In an effort to avoid interference the District shall notify Lessee of any planned maintenance and any proposed changes to its operations or facilities on the Property and confer with Lessee regarding possible interference.

Lessee will not interfere with any existing or future District facilities, operations or equipment. If such interference occurs, Lessee, upon receiving notice from the District of the interference, shall take all steps necessary to eliminate the interference.

Notwithstanding the provisions of Sections 11 (A) and (D), if Lessee is unable to eliminate the interference within five days of receiving notice from the District, the District may terminate this Lease 30 days after giving written notice of its intention to do so.

During the term of this Lease, the District will not grant a similar lease for the Premises to any non-public agency if the lease would in any way affect or interfere with the operation of Lessee's Communications Facility. If Lessee's telecommunication signals are partially or totally blocked by buildings or other structures in the path of its telecommunication signals, Lessee agrees to make a good faith effort to alter the antennas to correct the problem. Lessee understands that it must obtain District approval before altering the antennas. If no commercially feasible alternative exists, Lessee shall have the right to terminate this Lease pursuant to Section 11 above.

Section 19. Damage or Destruction.

If during the term of the Lease, the Premises, Property, or the Access Easement or any part thereof, or any improvement constructed or being constructed by Lessee or Lessor on the Premises is damaged or destroyed by or from any cause whatsoever, other than the District's willful misconduct, Lessee shall, at its sole cost and expense,

repair, restore or rebuild the same in the same condition it existed before the damage or destruction. Lessee's repair, restoration, or rebuild shall be in accordance with any plans and specifications approved in writing by the District after receiving all necessary third party approvals. If Lessee determines it is commercially infeasible to repair the Communications Facility, it may elect to terminate this Lease upon providing the District thirty (30) days advance written notice of its intention to do so.

If Lessee elects to repair the damage or destruction, work shall commence within 30 days after all permits and approvals are obtained and shall be completed with due diligence. All insurance proceeds collected for the damage or destruction shall be applied to the costs of such repairs. If the insurance proceeds are insufficient to cover those costs the Lessee shall pay the difference out of its funds. Failure or refusal to make the repairs or provide notice of its intention to terminate this Lease as provided for herein shall constitute a default under the covenants and conditions of this Lease and the District may, at its option, terminate this Lease. If damage or destruction results from any cause other than the District's wilful misconduct, Lessee shall not be entitled to compensation, damages or rebate in rent for loss of use of the Communications Facility.

Section 20. Merger.

This Lease contains all the agreements of the Parties hereto and no prior agreements or understandings shall be effective or binding for any purpose.

Section 21. Amendment or Modification.

This Lease may be amended or modified only by the mutual written consent of both parties.

Section 22. Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

Section 23. Mediation and Arbitration.

Any dispute or claim in law or equity between the District and Lessee arising out of this agreement, if not resolved by informal negotiation between the Parties, shall be mediated by referring it to the nearest office of Judicial Arbitration and Mediation Services, Inc. (JAMS) for mediation. Mediation shall consist of an informal, non-binding conference or conferences between the Parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the Parties to a resolution of the case. If the Parties cannot agree to a mutually-acceptable member from the JAMS panel of retired judges, a list and resumes of available mediators numbering one more



than there are parties will be sent to the Parties, each of whom will strike one name leaving the remaining name as the mediator. If more than one name remains, JAMS arbitrations administrator will choose a mediator from the remaining names. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution.

At the sole election of the District, any dispute or claim in law or equity between the District and Lessee arising out of this agreement which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services, Inc. (JAMS). The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

Section 24. Removal of Improvements Upon Expiration of Term or Termination of Lease.

Upon the expiration of the term of this Lease or its termination by either party as provided for herein, Lessee shall remove all improvements constructed, erected or placed by Lessee on the Premises at its sole cost and restore the Premises and the Property to its original condition existing as of the Commencement Date save and except normal wear and tear.

Section 25. Condemnation.

If a condemning authority other than the District takes all of the District's property or a portion sufficient to render the Premises unsuitable for Lessee's use, the Lease shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding Lessee shall be entitled to make a claim against the condemning authority for just compensation including the value of Lessee's Communications Facility if not removed, moving expenses, prepaid rent, business dislocation expenses, bonus value of this Lease and any other amounts recoverable under condemnation law. Sale of all or a portion of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

Section 26. Construction.

No construction shall commence on the site until the District approves the construction plans and specifications, which approval will not be unreasonably withheld, conditioned or delayed. Construction shall be defined as any work that visibly changes the communication facility which includes but is not limited to; increasing the size and/or number of antennas, increasing the size and/or number of cabinets, adding and/or increasing the size of the coaxial cables, adding a microwave dish or on-tower power

boosters to the antenna. In addition, the Lessee will be charged a \$100/day penalty for work that should have been approved by the District, but the Lessee failed to do so.

The construction process shall be as follows:

- The Lessee shall submit five (5) sets of plans and specs to the District.
- The District will review and provide revision "markups" when required within ten (10) business days of submittal of the plans
- The Lessee shall resubmit five (5) sets of the revised plans and specs to the District. The District will mark two sets as approved and returned them to the Lessee within ten (10) business days of resubmittal.
- The Lessee shall notify the District three (3) business days prior to commencing any construction on the site.
- All construction will be subject to inspection by the District.

Section 27. Applicable Law.

This Lease shall be construed and enforced in accordance with the laws of the State of California.

Section 28. No Presumption Re: Drafter.

The District and Lessee acknowledge and agree that the terms and provisions of this Lease have been negotiated and discussed between the Parties and their attorneys, and this Lease reflects their mutual agreement regarding the same. Because of the nature of the negotiations, and discussions it would be inappropriate to deem any party to be the drafter of this Lease. Therefore, no presumption for or against validity, or as to any interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this Lease.

Section 29. Assistance of Counsel.

Each party to this Lease warrants as follows:

- A. That each party had the assistance of counsel in the negotiation for, and the execution of, this Lease and all related documents; and
- B. That each party has lawfully authorized the execution of this Lease.

Section 30. Severability.

If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Lease shall continue in full force and effect.

Section 31. Entire Agreement.

This written Lease, including the Exhibits hereto, contains all the representation and the entire agreement between the parties with respect to the subject matter of this Lease. Except as otherwise specified in this Lease, any prior correspondence, drafts, memoranda, agreements, warranties or representations are superseded in total by this Lease and the attached Exhibits.

Section 32. Section Headings.

The section headings contained in this Lease are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

Section 33. Counterparts.

This Lease may be executed in multiple counterparts each of which shall be deemed an original Lease and all of which shall constitute one and the same Lease.

Section 34. Binding Effect on Successors.

This Agreement shall be binding upon the partners hereto, and upon all of their lawful successors and assignees.

LESSEE: Sprint Spectrum, L.P.

BY:  DATE: 6/4/14
George Ghantous
Director, West Region

DISTRICT: MARIN MUNICIPAL WATER DISTRICT

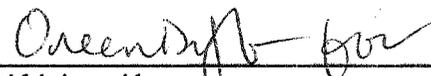
BY:  DATE: 6/13/14
Krishna Kumak
General Manager



EXHIBIT A

LEGAL DESCRIPTION OF THE DISTRICT PROPERTY

PARCEL A - Tank Lot:

The fee simple title in and to the tank lot described as follows:

BEGINNING at a point which point bears North 35° 40' 00" West 3299.67 feet from the Southeast corner of the parcel of land conveyed by Rose Freitas Rose et al to M. T. Pimentel by deed recorded April 21, 1936 in Liber 315 of Official Records, at page 123, Marin County Records; running thence from said point of beginning North a° 41' East 240.00 feet. North 81° 19' West 180.00 feet South 8° 41' West 240.00 feet and South 81° 19' East 180.00 feet to the point of beginning.

PARCEL B - Pipeline Right-of-way:

A non-exclusive right-of-way for pipeline or pipelines fifteen (15) feet in width lying seven and one-half (7-1/2) feet on each side of the following described center line:

BEGINNING at a point which point bears North 35° 40' 00" West 3,299.67 feet. North 8° 41' East 240.00 feet, North 81° 19' West 128.83 feet from the Southeast corner of the parcel of land conveyed by Rose Freitas Rose, et al, to M. T. Pimentel by deed recorded April 21, 1936 in Liber 315 of Official Records, at page 123, Marin County Records, running thence from said point of beginning North 7° 10' East 121.42 feet. North 31° 43' East 107.63 feet. North 86° 24' East 212.95 feet. North 63° 03' East 181.75 feet. North 52° 22' 15" East 142.86 feet, and North 53° 05' 30" East 106 feet more or less to a point on the Southerly line of the Lucas Valley Road right-of-way. Together with a temporary and non-exclusive easement 20 feet in width lying 10 feet on each side of the 15 foot right-of-way above described.

PARCEL C - Access Road Right-of-way:

A non-exclusive right-of-way for an access road forty (40) feet in width lying parallel with, adjacent to, and Southerly and Westerly of the following described line:

BEGINNING at a point which bears North 35° 40' 00" West 3,299.67 feet. North 81° 19' West 180.00 feet North 8° 41' East 55.50 feet from the Southeast corner of the parcel of land conveyed by Rose Freitas Rose, et al, to M. T. Pimentel by deed recorded April 21, 1936 in Liber 315 of Official Records, at page 123 Marin County Records, running thence from said point of beginning South 41° 49' 40" West 63.88 feet. South 73° 25' 35" West 46.73 feet. North 86° 07' 40" West 51.82 feet. North 50° 47' 50" West 262.57 feet. South 58° 35' 40" West 198.37 feet. North 40° 37' 00" West 24.52 feet, North 12° 39' 50" East 93.09 feet, North 9° 26' 30" West 9.467 feet. North 15° 40' 00" East 194.75 feet. North 20° 49' 10" West 133.00 feet, and North 6° 39' 10" West 83 feet more or less, to a point on the Southerly line of the Lucas Valley road right-of-way.

Said fee title and rights-of-way are granted and shall be held for and subject to the following terms and conditions. Over Parcel C, the District shall have and is hereby granted, ingress and egress, rights for its personnel and equipment, for the purpose of constructing and maintaining the tank and other facilities in Parcel A.

EXHIBIT B

OPERATING CONDITIONS FOR COMMUNICATIONS FACILITY AND FCC LICENSES

Lessee's equipment used in connection with the providing of mobile/wireless communication services, including radio communication signals, shall be located as shown on Exhibit D. Microwave receiving and transmitting equipment shall not be utilized at the site. No Lessee equipment shall be placed on the District's tank.

Lessee agrees to cooperate in good faith, at no cost to Lessee, with other telecommunications providers who subsequently enter into agreements with District to place equipment anywhere on the Property as long as the operation of Lessee's Communications Facility is not impaired or Lessee's radio signal transmission or reception is not diminished.

As safety is of primary concern and because District personnel often perform work on and around District's tank and facilities, the total wattage output and electromagnetic field emanations shall not at any time exceed the standards developed by the Institute of Electrical and Electronic Engineers, Inc., known as IEE C95.1-1991 (Revision of ANSI C95.1-1982) Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3rHz to 300 Ghz. Transmission and reception of radio communications signals shall be within 800-2000 Mhz at between 100-400 watts.

In such cases where it is possible that the output of the equipment may exceed the IEEE Standard safety levels, the Lessee shall be responsible for having the equipment tested and certified under peak operating conditions to determine the actual exposure levels for persons on and about the District property. This information shall be shared with the District.

Lessee shall operate its equipment in such a way that it does not create an attractive nuisance and/or encourage improper access thereto. Exposed wiring should be in a rigid conduit.

FIRST AMENDMENT TO
MARIN MUNICIPAL WATER DISTRICT
LEASE NO. 61
LUCAS VALLEY TANK SITE
APN 165-010-03

This Lease Amendment ("First Amendment") is entered into by and between Marin Municipal Water District ("District"), and Sprint Spectrum Realty Company, LLC, a limited liability company ("Lessee").

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Recitals:

- A. District and Lessee entered into a lease dated June 4, 2014 ("Lease") whereby Lessee leased certain real property located in Marin County, California from District ("Premises"), together with access and utility easements ("Access Easement"), all located within certain real property owned by District ("Property") as described in the Lease.
- B. Sprint Spectrum Realty Company, LLC is currently the Lessee under the Lease as successor to Sprint Spectrum, L.P.
- C. Lessee desires to add additional equipment and frequencies ("Additional Equipment") to their Communications Facility on the Premises as described in Exhibit C-1 attached hereto and incorporated herein by this reference.
- D. Pursuant to Section 2 of the Lease, Lessee's desire to add Additional Equipment to the existing Communications Facility requires a lease amendment. Under Section 26 of the Lease, installation of the Additional Equipment constitutes a construction project, which requires District construction oversight and inspection.
- E. District and Lessee desire to execute this First Amendment to the Lease to incorporate the Additional Equipment in the existing Communications Facility on the Premises.

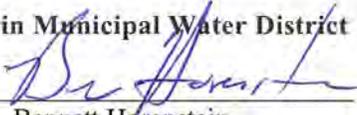
Section 2. Terms:

- A. This First Amendment modifies the Lease. Except for the modifications contained herein, all of the terms of the Lease shall apply.
- B. Section 4 (A) of the Lease entitled "Rental Payments" is amended to read as follows:
 - A. Lessee agrees to pay District at 220 Nellen Avenue, Corte Madera, California, or such other place as District shall from time to time in writing designate, as rent for the Premises, the annual sum of SIXTY THOUSAND FOUR HUNDRED THIRTY-TWO DOLLARS AND NINETEEN CENTS (\$60,432.19).
 - i. As additional consideration for the installation of the Additional Equipment, commencing on the date Lessee commences construction of the Additional Equipment, the annual rent shall increase by SIX THOUSAND DOLLARS (\$6,000) per year, partial year to be prorated, from the Commencement Date of the Lease, based a 365 day year. Lessee shall make such rent increase payment one (1) week prior to commencing construction on the Additional Equipment described in Exhibit C-1.
 - ii. The SIX THOUSAND DOLLAR (\$6,000) rent increase described in Section 4(A)(i)

above will be added to the then existing annual rent and the new total rent amount will be subject to the annual rent adjustment provision set forth in Lease Section (4)(B) which occurs annually on each anniversary of the Commencement Date.

- iii. Lessee agrees to pay one-time administration/construction oversight fees to District in the amount of NINE THOUSAND ONE HUNDRED DOLLARS (\$9, 100.00), within thirty (30) days following the full execution of this First Amendment.
- iv. The Lease is amended to add Exhibit C-1, which is attached hereto and incorporated herein by this reference, to the Lease. Exhibit C-1 contains the Additional Equipment described in the project plans entitled "Sprint PROJECT: DO MACRO UPGRADE/FD-MIMO MARKET: SAN FRANCISCO BAY AREA FS04XC242 - LUCAS VALLEY TANK" dated June 20, 2018, prepared by Streamline Engineering and Design, Inc. Exhibit C-1 is a stand-alone exhibit separate and distinct from Exhibit C to the Lease and shall not be deemed to supersede or otherwise modify Exhibit C or any part thereof except to the extent specifically set forth in Exhibit C-1. **Upon receipt of permit approval by the appropriate local government-planning jurisdiction and payment to the District of the amounts set forth in this First Amendment, Lessee may perform the Premises modifications set forth in Exhibit C- 1.**

Marin Municipal Water District

By: 
Bennett Horenstein
General Manager

Date: 1/13/2020

Sprint Spectrum Realty Company, LLC

By: 
Greg Altomare
Market Manager SF Bay and So Bay

Date: 12/5/19



Approval Item

TITLE

Approval to Fill Summer Helper and Watershed Aide Positions

RECOMMENDATION

Authorize the General Manager to recruit and fill 2 Summer Helper and 14 Watershed Aide positions

SUMMARY

During the summer months, the District typically hires Watershed Aides and Summer Helpers and to support critical needs throughout the District.

For this summer, staff requests authorization for the General Manager to recruit and fill the following critical seasonal positions:

- 2 Summer Helpers (2 Meter Operations); and
- 14 Watershed Aides (4 Vegetation Management support, 4 Maintenance support, 2 Volunteer Program support, 3 Ranger support, and 1 Fisheries support)

FISCAL IMPACT

The cost to hire the seasonal employees is estimated at \$386,194 for FY 23/24. Funding for summer helpers and watershed aides was included in the FY 23/24 budget.

ATTACHMENT(S)

None

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Human Resources		
	<p>Vikkie Garay Human Resources Manager</p>	<p>Ben Horenstein General Manager</p>



Approval Item

TITLE

Award of Contract No. 1994 for Furnishing and Delivery of Welded Steel Pipe to West Coast Pipe Linings Incorporated

RECOMMENDATION

Approve a Resolution authorizing the General Manager to execute Contract 1994 with West Coast Pipe Linings Incorporated in the amount of \$895,325.60

SUMMARY

On March 8, 2023, the District issued a Notice of Inviting Bids under Contract 1994 for the fabrication and delivery of 17,920 feet of 4, 6, 8, and 12-inch welded steel pipe for the anticipated Marin City and Canal District Capital Improvement pipeline replacement projects.

On March 28, 2023, the District opened two bids for the subject contract. The lowest responsive and responsible bid was submitted by West Coast Pipe Linings Incorporated in the amount of \$895,325.60. Staff is requesting that the Board authorize the General Manager to execute Contract No. 1994 with West Coast Pipe Linings Incorporated at the contract bid amount of \$895,325.60. West Coast Pipe Linings Incorporated has provided welded steel pipe for the District on prior contracts. Fabrication of the pipe is anticipated to take about 157 working days with the pipe being delivered by November 17, 2023.

DISCUSSION

The welded steel pipe ordered under this contract is identified for the proposed pipeline replacement projects in the Marin City and Canal District communities of Marin County. The District anticipates award of Department on Water Resources (DWR) Grant funding for these two communities and this pipe materials contract was developed for cost sharing and budget tracking purposes so that the District will be able to use grant funds if they become available. It was determined that the District would need approximately 17,920 feet of 4, 6, 8, and 12-inch welded steel pipe to meet the needs for the proposed Marin City and Canal District pipeline replacement projects. If for any reason the projects do not proceed as anticipated, the District will be able to use the pipe for other purposes. See attached map for planned pipeline infrastructure replacement in the two communities.

Budget:

Budgeted Amount: \$895,325.60
Budget Category: N/A

Project Implementation:

Project Advertisement: March 8, 2023
Bid Opening: March 28, 2023
Project Award: April 4, 2023
Estimated Completion Date: November 17, 2023
Duration: 157 days

FISCAL IMPACT

Funds for these materials will be paid for by the District, but if a grant for the for the Marin City and Canal District pipeline projects is received, the funds would be part of the \$1,300,000 dollar match requirement for the anticipated grant award. As pipe is withdrawn from inventory, the cost of the pipe is capitalized to the specific project for which the pipe is installed.

ATTACHMENT(S)

1. Resolution
2. Marin City and Canal District Pipeline Replacement Maps

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Engineering	 Crystal Yezman Director of Engineering	 Ben Horenstein General Manager

MARIN MUNICIPAL WATER DISTRICT

RESOLUTION NO.

**A RESOLUTION OF THE BOARD OF THE MARIN MUNICIPAL WATER DISTRICT
AWARDING CONTRACT NUMBER 1994 FOR THE FURNISHING AND DELIVERY OF
WELDED STEEL PIPE TO WEST COAST PIPE LININGS INCORPORATED**

WHEREAS, The District advertised Contract No. 1994 on March 8, 2023 for the fabrication and delivery of 17,920 feet of 4, 6, 8, and 12-inch welded steel pipe; and

WHEREAS, the bid of \$895,325.60 from West Coast Pipe Linings Incorporated was the lowest responsive bid received by the District; and

WHEREAS, the purchased welded steel pipe will be used by the District on the upcoming Marin City and Canal District Capital Improvement Program (CIP) pipeline replacement projects.

NOW, THEREFORE, THE BOARD OF DIRECTORS RESOLVES that:

1. The bid from West Coast Pipe Linings Incorporated is the lowest responsive bid in the amount \$895,325.60.
2. The General Manager is authorized and directed to execute said contract on behalf of the District upon receipt of a performance bond, payment bond, proof of insurance, and the executed contract for the work from said bidder.
3. Upon complete execution of said contract, the bonds and/or checks of the other bidders are to be returned to said other bidders, and all bids other than that of West Coast Pipe Linings Incorporated are to be rejected.

PASSED AND ADOPTED this 4th day of April 2023 by the following vote of the Board.

AYES:

NOES:

ABSENT:

Monty Schmitt
President, Board of Directors

ATTEST:

Terrie Gillen
Board Secretary

Marin City Infrastructure



Item Number; 09
Attachment: 02

MARIN CITY TANK
TK-213

Marin City Pump Station PS-079

- ▭ Marin City Boundary
- Pipelines

0 100 200 400 Feet



Marin City/San Rafael Water Supply Resilience Project



Canal District San Rafael

- ▬ Canal Boundary
- Pipelines

Data Source: DWR DAC Mapper, US Census Bureau, County of Marin





Informational Item

TO: Board of Directors

FROM: Crystal Yezman, Director of Engineering

THROUGH: Ben Horenstein, General Manager

DIVISION NAME: Engineering

ITEM: Redwood Boulevard and Loma Alta Landslide Update

SUMMARY

Staff will provide an update on two recent landslides impacting water district operations, the Redwood Boulevard landslide and the Loma Alta landslide.

DISCUSSION

REDWOOD BOULEVARD LANDSLIDE

On March 21, 2023, there was a slide reported on Redwood Boulevard, Novato, threatening two PG&E high pressure gas pipelines feeding Marin County and the North Marin Aqueduct which typically supplies water to North Marin Water District (NMWD) and Marin Municipal Water District (District) from the Sonoma County Water Agency.

As a precaution, PG&E installed a bypass pipeline around the slide and the North Marin Aqueduct has been taken out of service. PG&E has completed construction of a bypass line around the slide area. CalTrans will be taking the lead on the slide repair once PG&E's gas bypass line is tested and operational. Current estimates from Caltrans are that the slide repair will take months to complete.

There are currently no impacts to water supply as North Marin Water District has switched water supply to Stafford Lake and Marin Municipal Water District has switched to its local reservoirs. NMWD is monitoring the pipeline within the slide area and reports no pressure changes in the isolated section of aqueduct and no apparent deflection of the pipeline. NMWD performed a flow test on March 27, 2023, flowing water at a rate of 2 cfs or 4,000 gpm for a total of 1.2 MG. NMWD will be formulating a 30 day and 6 month operations plan this week and will determine if they will include the use of the aqueduct after their Engineering staff reviews the current conditions and their inspections are completed.

Marin Municipal Water District staff have been assisting NMWD with material specifications in the event that a bypass is needed and has been coordinating with NMWD staff to confirm intertie sites in the event that a water transfer is requested by NMWD from the MMWD.

LOMA ALTA LANDSLIDE

On January 17, 2023, Marin County Open Space District (MCOSD) notified the District of a landslide on a fire road within the Loma Alta preserve, near Fairfax. The exact location is on the Old White Hill Grade at the intersection of Old Railroad Grade fire road and Sun Rise Fire Road (formally known as Gunsight fire road). The District has a 27" concrete cylinder transmission line at this location, which is the main transmission line leaving San Geronimo Water Treatment Plant before connecting with the Fairfax transmission line. Subsequent land surveying indicated no risk to the District's pipeline, which was well inboard of the slide area.

California Office of Emergency Services and the Federal Emergency Management Association (FEMA) made an emergency proclamation for storms from December 31, 2022 to January 31, 2023 (FEMA-4683-DR-CA) and, MCOSD, as the lead agency submitted this slide for possible reimbursement. While MCOSD will be the owner of the project, the District has requested to collaborate on the geotechnical evaluation and design of the retaining wall to ensure that the design will be adequate to protect the District's transmission line and to ensure that the work proposed will not impact the transmission line during construction.

On Monday March 21, 2023, MCOSD notified the District that the slide has worsened and is now fracturing further inboard of the fire road, getting closer to the District's transmission line. The District is expediting a design contract with Miller Pacific and will continue to monitor the condition of the slide.

On Friday, March 24, 2023, District staff installed monuments to monitor for any additional slide movement that may occur and submitted a request for public assistance with CalOES/FEMA in the case of a pipeline failure. Staff also plans on excavating a portion of the transmission main away from the slide to confirm pipeline diameters, monitoring periodically with audio leak detection devices, ordering reducer couplings in the event that a bypass is needed, and designing a project to install isolation valves at the intersection of this 27" transmission line with the Fairfax transmission line.

FISCAL IMPACT

To be determined. Staff have set up accounts to track ongoing expenditures for possible reimbursement.

ATTACHMENT(S)

None

Approval Item

TITLE

Approve Resolution for Grant Funding Through the Federal WaterSMART Program

RECOMMENDATION

Approve a resolution authorizing and directing the General Manager to sign and file, for and on behalf of the Marin Municipal Water District, a Grant Application for a grant from the United States Bureau of Reclamation under the “WaterSMART: Environmental Water Resources Projects for Fiscal Year 2023” program in the amount of \$662,000, for the *Marin Water Storage and Stream Enhancement Project*, and to execute a cooperative agreement with the United States Bureau of Reclamation

SUMMARY

As part of the District’s ongoing efforts to secure grants to advance projects identified in the Strategic Water Supply Assessment Road Map, the District has submitted a proposal for studies to investigate expansion of local storage water supply with the United States Bureau of Reclamation’s (USBR) WaterSMART Program. A Board resolution supporting the grant is required as part of the application process.

DISCUSSION

On March 28th, 2023, the District submitted a grant application to the US Bureau of Reclamation’s “WaterSMART: Environmental Water Resources Projects for Fiscal Year 2023” solicitation. In this most recent solicitation, the USBR has looked to fund projects which can both augment current water supplies and also demonstrate environmental merit or benefit. The project, as submitted to USBR, proposes to conduct pre-design work to understand the efficacy of expanding the capacity of one of three selected District’s reservoirs. If awarded, funds will be used to understand benefits and effects of increasing Kent, Nicasio, or Soulajule Reservoir through performing field investigations to (1) collect additional datasets to help validate models, (2) update hydraulic models of the dams and stream flows to simulate both increased impoundments and potential changes to stream flows, and (3) perform geotechnical investigations and engineering pre-design work to understand constructability of any reservoir modifications. The application also is requesting funding to expand the District’s current network of Passive Integrated Transponder (PIT) antenna stations, which continuously track fish throughout the watershed and provide critical insights on population bottlenecks and habitat use.

Under the terms of this solicitation, the District has requested \$662,000, and is offering a match of \$729,125 in staff time and capital budget, for a total anticipated project cost of \$1,391,125.00. At this time, however, there is no fiscal impact as this proposal is only requesting an award. If the award is subsequently offered by USBR, staff will bring it to the Board for full consideration of acceptance and any related fiscal impacts.

The WaterSMART program requires an authorizing Board resolution for grant application. Attachment 1 of the staff report is the Grant Resolution that was submitted in draft form as part of the grant application and is being presented for approval by the Board at this meeting. Upon approval, the Board approved Grant Resolution will be submitted to the US Bureau of Reclamation to help complete the grant application package.

FISCAL IMPACT

There is no fiscal impact for these actions to our FY23/24 budget.

ATTACHMENT(S)

1. Proposed Resolution for US Bureau of Reclamation

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Watershed Division	 Shaun Horne Watershed Resources Manager	 Ben Horenstein General Manager

MARIN MUNICIPAL WATER DISTRICT

RESOLUTION NO.

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER DISTRICT
AUTHORIZING AN APPLICATION FOR GRANT FUNDING FROM THE UNITED STATES BUREAU OF
RECLAMATION WATERSMART PROGRAM AND ENTERING INTO AN AGREEMENT WITH THE
UNITED STATES BUREAU OF RECLAMATION FOR THE MARIN WATER STORAGE AND STREAM
ENHANCEMENT PROJECT**

WHEREAS, the District will submit a Grant Application to the United States Bureau of Reclamation under the “WaterSMART: Environmental Water Resources Projects for Fiscal Year 2023” program, seeking grant funding to implement the *Marin Water Storage and Stream Enhancement Project*; and

WHEREAS, the Board of Directors approves and supports this grant application; and

WHEREAS, the District is able to provide matching funds and in-kind contributions in the amount and at the times necessary to complete the proposed Project and as specified in the funding plan.

NOW, THEREFORE, BE IT RESOLVED that the Marin Municipal Water District Board of Directors hereby authorizes and directs the General Manager to sign and file, for and on behalf of the Marin Municipal Water District, a Grant Application for a grant from the United States Bureau of Reclamation under the “WaterSMART: Environmental Water Resources Projects for Fiscal Year 2023” program in the amount of \$662,000, for implementation of the *Marin Water Storage and Stream Enhancement Project*, and

BE IT RESOLVED that the General Manager of the Marin Municipal Water District or his/her designee is hereby authorized to conduct all negotiations and work with the United States Bureau of Reclamation to meet established deadlines for entering into a cooperative agreement.

PASSED AND ADOPTED this 4th day of April, 2023, by the following vote of the Board of Directors.

AYES:

NOES:

ABSENT:

Monty Schmitt
President, Board of Directors

ATTEST:

Terrie Gillen,
Board Secretary



Informational Item

TO: Board of Directors

FROM: Terrie Gillen, Board Secretary

THROUGH: Ben Horenstein, General Manager

DIVISION NAME: Communications & Public Affairs Department

ITEM: Future Meeting Schedule and Agenda Items

SUMMARY

Review of the upcoming Board of Directors and Committee meetings

DISCUSSION

Meeting Schedule

Below are the upcoming meetings of the Board of Directors and/or Committees:

Internal Meetings

- Tuesday, April 18, 2023
Board of Directors' Regular Bi-Monthly Meeting
6:30 p.m.
- Friday, April 21, 2023
Operations Committee/
Board of Directors (Operations) Meeting
9:30 a.m.
- Thursday, April 27, 2023
Finance & Administration Committee/
Board of Directors (Finance & Administration) Meeting
9:30 a.m.

External Meeting

- Friday, April 7, 2023
North Bay Watershed Association
9:30 a.m.
(Located at the Novato Sanitary District, 500 Davidson St., Novato and via Zoom)

FISCAL IMPACT

None

ATTACHMENT(S)

None