

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS
BY AND BETWEEN
MARIN MUNICIPAL WATER DISTRICT AND
COALITION OF SENSIBLE TAXPAYERS,
DOUG KELLY, GLORIA RASHTI AND MARI ROBINSON**

This Settlement Agreement And Release Of Claims (hereafter "Agreement") is made as of the Effective Date as defined herein, by and between the Marin Municipal Water District (hereafter "MMWD" or the "District" or "Defendant"), a municipal water district organized under the Municipal Water District Law of 1911, Ca. Water Code §71000 et seq., and collectively (hereafter "Plaintiffs") the Coalition Of Sensible Taxpayers (a California non-profit corporation located in and advocating for water rate payers in Marin County, hereafter "CO\$T"), Doug Kelly (individual Plaintiff and MMWD water rate payer), Gloria Rashti (individual Plaintiff and MMWD water rate payer), and Mari Robinson (individual Plaintiff and MMWD water rate payer). All of the foregoing entities and individuals taken together are collectively referred to herein as "the Parties".

RECITALS

WHEREAS, on May 28, 2019 the District approved Ordinance No. 442, effective July 1, 2019, establishing for the first time a "Capital Maintenance Fee" (hereafter "CMF"), while also increasing the "Watershed Management Fee" (hereafter "WMF"), and increasing the "Base" Service Charge (hereafter "Base Service Charge") (CMF, WMF and Base Service Charge hereinafter collectively, "Fixed Meter-Based Charges"), setting Tiered Water Rates and other charges by the District that go into its overall water rates collected from its customers (hereinafter, "Rates").

WHEREAS, on August 20, 2019, Plaintiffs filed an action in the Marin County Superior Court - COALITION OF SENSIBLE TAXPAYERS ET AL. V. MARIN MUNICIPAL WATER DISTRICT, Case No. 1903160 ("Initial Action"), seeking writs of mandate and declaratory and injunctive relief, to invalidate the Fixed Meter-Based Charges enacted by the District. The primary gravamen of the allegations made by Plaintiffs was that: rather than using volumetric charges based on water consumption, the District had created and increased fixed meter-based charges that increase charges geometrically by following the AWWA scale of hydraulic capacity as meters increase in diameter, which Plaintiffs allege are not proportional to the cost of service to rate

payers, and which Plaintiffs allege overcharge rate payers with low or "average" water usage who only happen to have large meters or have increased their meter size to accommodate fire sprinklers - an alleged violation of Proposition 218.

WHEREAS, on September 19, 2019 the District filed its Answer denying the allegations of the petition and complaint.

WHEREAS, on July 9, 2020 Plaintiffs submitted a Class Action Government Claim to the District, seeking damages on behalf of those water rate payers alleged to be overcharged by the District's Fixed Meter-Based Charges.

WHEREAS, on September 15, 2020 the District rejected the Class Action Government Claim and provided notice to Plaintiffs.

WHEREAS, to facilitate adjudication of the matter, the Parties agreed that a First Amended Petition For Writ Of Mandate And Complaint For Declaratory Relief And Damages ("FAP") would be filed with the court as a class action, and deemed denied by the District on the same grounds as previously asserted, and that the merits of the FAP would be determined first before any adjudication of class action issues; a Stipulation to this effect was offered to the Court by the Parties, resulting in the Court's confirming Order of September 30, 2020.

WHEREAS, on October 6, 2020 Plaintiffs filed their First Amended Petition For Writ Of Mandate And Complaint For Declaratory Relief And Damages ("FAP", the FAP and Initial Action hereinafter collectively referred to as the "Action").

WHEREAS, following extensive litigation related to discovery issues and other procedural matters the matter has not yet been heard on the merits and is now set for trial on December 4, 2023.

WHEREAS, the Parties have analyzed the legal issues and have each considered the uncertainties of further litigation and the benefits to be obtained under a proposed settlement, the costs, risks, and delays associated with continued litigation, the prospect of appeals, and therefore desire to resolve the outstanding dispute and settle their differences.

NOW THEREFORE, and in consideration for the promises contained herein, and other good and valuable consideration, receipt of which is acknowledged by the execution of this Agreement, it is agreed by and between the Parties as follows:

AGREEMENT AND RELEASE

1. **Recitals Incorporated.** The true and correct recitals above are incorporated herein as part of this Agreement.

2. **Joint Request for Stay; Joint News Release.** The Parties agree that, within thirty (30) days after the Effective Date, the Parties shall jointly submit a request to the Marin Superior Court to stay the Action pending the District's public rate hearing and decision by the District Board of Directors on the upcoming Rates, as described below. At the same time, the Parties will request a vacation of trial and other dates in the case except as otherwise provided herein. In addition, Plaintiffs shall file a request for approval of dismissals of class allegations, including the necessary declaration(s) pursuant to California Rules of Court section 3.770, and this Action, which dismissals would be conditioned as explained further in section 5.A below, to occur after the contemplated public rate hearing. The Parties intend to utilize the May 10, 2023 case management conference presently on the Court's calendar to make the foregoing requests. The Parties agree that before the Court issues the requested stay, they will discontinue litigating this case, including but not limited to conducting discovery, except that they will take all necessary steps to perfect the settlement contemplated in this Agreement. Within five (5) days of the Effective Date, or anytime thereafter, either or both of the Parties may issue the joint news statement attached hereto as Exhibit A.

3. **Agreement Subject to District's 2023 Rates Hearing and Adoption.** The Parties understand and agree that the District has engaged in a rate setting process to reevaluate the District's Rates, including a cost of service analysis, and that the proposed new Rates will be brought before the District's Board of Directors at a public hearing in accordance with procedural requirements of Proposition 218, Cal Const. Art. 13D, Section 6(a) for consideration and possible adoption sometime in May 2023 (the "2023 Adopted Rates"). As part of that Rate setting process, the District will be considering certain changes to its current Rate structure, and Plaintiffs have an interest in seeing the adoption of certain changes to the District's Rate structure, which Plaintiffs believe would address the concerns raised in the Action, including the following

changes described in paragraphs A. and B. below ("Changes"):

A. Modification Of Fixed Charges Based On Meter Size. As part of the new four year rate structure to become effective July 1, 2023 through June 30, 2027, the current WMF would be replaced with a volumetric water charge, and with respect to the CMF and Base Service Charge, modification would be made to the Meter Equivalent Unit ("MEU") factors for the Single Family Residential and Duplex classes within each meter size by utilizing the District's average of the maximum bi-monthly billing period water usage for the past three fiscal years. The replacement of the WMF by a volumetric water charge will apply to all to District rate payers who pay for consumption of water. The above described modifications to the MEU factors for the CMF and the Base Service Charge will apply to rate payers for single family dwellings and duplexes.

B. Limitation Of Increases In Fixed Charges. The fixed fees for the CMF and the Base Service Charge in the 2023 Adopted Rates would be increased by no more than 5% per fiscal year, starting with FY 24-25 through FY 26-27.

4. District Discretion. All Parties acknowledge that nothing in this Agreement obligates the District to exercise its discretion regarding the 2023 Adopted Rates in any particular manner; that the District may not commit to Rate related decisions by contract; and that the District makes no representation regarding its ability or willingness to approve the aforementioned Rate actions as part of the 2023 Adopted Rates. All District customers and property owners are entitled to notice and hearing before the District can make Rates or commit to a particular outcome of a ratemaking. However, if the District does exercise its discretion in such manner as to approve all of the above described Changes to the 2023 Adopted Rates, Plaintiffs agree that all of the covenants and agreements of the Plaintiffs as set forth below shall apply.

5. Covenants of Plaintiff upon Adoption of the 2023 Adopted Rates Containing the above Changes. If the District's 2023 Adopted Rates include all of the above described Changes, then Plaintiffs covenant and agree to the following:

A. Termination of Litigation. No later than 10 business days following the adoption of the District's 2023 Adopted Rates including all of the above described Changes, Plaintiffs will - in accordance with requirements for an action initiated though

not actually litigated as a class action - submit a request to the court for final dismissal of the putative class allegations without prejudice based upon the prior request for court approval as set forth in paragraph 2 above, ensuring that the Action may be treated and terminated as a non-class action matter. That request will be accompanied and immediately followed by a request for dismissal of the entire Action with prejudice. District will join in Plaintiffs' requests for dismissal to assist in effectuating settlement.

B. **Covenant not to file Suit.** Plaintiffs will not file any challenge to the District's 2023 Adopted Rates, whether such Rates contain modifications to tiered water commodity rates or not. Plaintiffs further agree that they shall not file any challenge to the District's current Rates.

6. **Absence of Changes in the 2023 Adopted Rates or failure to adopt new Rates.** If the District does not succeed in adopting new 2023 Rates containing all of the above described Changes or the court fails to approve the dismissals as set forth in paragraph 5 above, then (i) this Agreement shall be deemed rescinded and of no effect, including but not limited to the request for conditional dismissal and any requirement for payment of attorneys' fees, (ii) the Stay shall be lifted upon application to the Court by either party, and (iii) the Parties further agree that they will fully cooperate in re-setting case management, motion, pre-trial, and trial dates that have previously been set to preserve the Parties' rights to conduct discovery and prepare this case for trial with no diminution in the time to exercise those rights occasioned by the negotiation and approval of this settlement, which has extended from at least February 1, 2023 to the date of final adoption of the 2023 Rates as described herein. The Parties further specifically agree to enlarge the five year period to bring this case to trial under section 583.310 of the California Code of Civil Procedure, to the extent that enlargement is reasonably necessary to effect the provisions in this Agreement. Without limiting the generality of the foregoing, the District expressly waives its right to seek dismissal under section 583.310 of the California Code of Civil Procedure to the extent the re-setting of trial and other dates extends beyond the five year anniversary of the filing of the Action.

7. **Effective Date Of This Agreement.** This Agreement will be effective immediately upon full execution by all the Parties ("Effective Date").

8. **Packaging Of Changes In Fixed Charges With Procedures For District's Changes In Water Commodity Rates as Part of the 2023 Adopted Rates.** The

Parties hereby recognize the following:

- The expense and effort required by the District and District staff to follow all legal procedures to implement the terms of this Agreement to modify Rates;
- The agreement of District to undertake the proper legal procedures to implement this Agreement and incur the costs thereof;
- The possibility that the District may also modify water commodity rates as part of the 2023 Adopted Rates in parallel with the procedures to implement this Agreement;
- The efficiency and economy of implementing this Agreement in conjunction with a possible modification of the District's water commodity rates;
- The overall considerations of the District in designing its rate structure that go beyond this Agreement, though Plaintiffs have not challenged nor does this Agreement address water commodity rates (other than the District's covenant to convert the WMF to a volumetric water charge);

Accordingly, and based upon acknowledgement of the foregoing, Plaintiffs agree that the District may implement this Agreement in conjunction with the same Proposition 218 procedures the District uses to modify water commodity rates as part of the 2023 Adopted Rates.

9. **Attorneys' Fees and Costs.** Provided that (i) this Agreement is fully performed up to the point of final dismissal and no contingency has occurred to result in rescission of this Agreement, and (ii) the Changes in the District rate structure negotiated by the Parties and described in paragraph 5.A. & B. have been approved and incorporated into the District rates (a condition to be fulfilled to prevent rescission of this Agreement), then the Parties concur that the action undertaken by Plaintiffs in this matter has resulted in the enforcement of an important right affecting the public interest, and in all respects the requirements of Code of Civil Procedure section 1021.5 have been satisfied for an award of attorneys' fees and costs to Plaintiffs' counsel, and upon final dismissal of the Action as set forth herein, the District will pay Plaintiffs' counsel attorneys' fees in the sum of \$1,500,000.00, inclusive of costs, within 30 days of the dismissal of the lawsuit with prejudice. Plaintiffs' counsel will submit written instructions to the District for payment of fees and a completed W-9 form, prior to issuance of payment.

10. **Release.** Upon dismissal of the Action hereunder, and except for the

obligations and rights created by this Agreement, Plaintiffs hereby, for themselves, their legal or other representatives, attorneys, administrators, employees, heirs, lessees, agents, successors-in- title, and assigns, irrevocably and unconditionally release, acquit, and forever discharge the District, its employees, officers, affiliates, parent entities, estates, attorneys, insurers, risk-sharing pools, predecessors and successors, agents, heirs, and/or assigns and each of them, from any and all lawsuits, claims, actions, demands or other legal responsibilities of any kind or nature which Plaintiffs have or may have against the District related to the Action and the claims alleged therein concerning District practices through the Effective Date of this Agreement. Notwithstanding the foregoing, the claims released herein do not include any claims based upon or arising out of the rights and obligations created by this Agreement.

11. **Waiver of Unknown Claims.** The Parties agree and acknowledge that their signatures below indicate their express waiver, relinquishment, and release of any and all rights and benefits under Section 1542 of the California Civil Code or any analogous local, state, or federal law, statute, rule, order, or regulation, with the understanding and knowledge of the significance of such specific waiver. In this regard, California Civil Code Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Thus, notwithstanding California Civil Code Section 1542, the Parties expressly acknowledge and agree that the releases in this Agreement are also intended to include claims which the Parties do not know or suspect to exist at the time of the execution of this Agreement that arise from the facts alleged in the Action.

12. **No Admission Of Liability.** This Agreement is made for the mutual convenience of the Parties. Nothing in this Agreement shall be construed in any manner to be an admission of liability or responsibility by any of the Parties hereto, nor as an

admission by District of the existence of any remedies held by the Plaintiffs as of any date.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral. This Agreement cannot be altered or modified, except by further written agreement executed by the Parties hereto.

14. **Full Authority.** The signatories to this Agreement warrant that they have full and actual authority to bind the Party for whom they execute this Agreement. This Agreement shall have full force upon execution by all Parties.

15. **Construction of Agreement.** The language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly for or against any Party hereto.

16. **Covenant to Effectuate Agreement.** Each Party hereto agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Parties to this Agreement.

17. **Enforcement.** This Agreement shall be subject to, and interpreted by and in accordance with, the laws of the State of California. To the extent that any Party brings an action to enforce the terms of this Agreement, such action shall be filed and prosecuted in the Marin County Superior Court of California. The Parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which either of the Parties allege a breach of this Agreement or seek to enforce its terms, conditions, provisions, or obligations.

18. **Notice.** All notices to the Parties required under this Settlement Agreement shall be given in writing concurrently by overnight mail or personal delivery addressed as stated below. The date after overnight mail is sent shall be deemed to be the date of service, and the notice addresses may be changed by providing notice to all Parties.

Notices directed to the District shall be sent to:

District General Counsel
Molly L. MacLean, Esq.
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, California 94925

Notices directed to Plaintiffs shall be sent to:

MCNEILL LAW OFFICES
Walter P. McNeill
P.O. Box 2274
Nevada City, CA 95959

LAW OFFICES OF S. CHANDLER VISHER
S. Chandler Visher
268 Bush St., #4500
San Francisco, California 94104

WITTEMAN LAW OFFICES
Matthew Witteman
130 Petaluma Avenue, Suite 2H
Sebastopol, CA 95472

19. **Waiver.** No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

20. **Time is of the Essence.** Time is of the essence in performance under this Agreement.

21. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, administrators, executors, and conservators.

22. No Party Deemed Drafter. The Parties acknowledge this Agreement has been negotiated at arm's length, and each Party has had an opportunity to review this Agreement and has been extended an opportunity to have legal counsel review and negotiate this Agreement. In the event of a dispute between any of the Parties hereto over the meaning of this Agreement, no party shall be deemed to have been the drafter hereof, and the principle of law that contracts are construed against the drafter shall not apply.

23. Execution In Counterparts; Electronic Signatures. This Agreement may be executed in counterparts which, taken together, shall constitute one and the same agreement. This Agreement may be executed by electronic signature or facsimile signature, and such electronic or facsimile signature may be transmitted by email or facsimile and shall have the same force and effect as an original.

24. Continuing Jurisdiction. The Parties stipulate and agree under California Code of Civil Procedure § 664.6 that the Court will retain jurisdiction over the Parties to enforce this Agreement.

IN WITNESS WHEREOF, the undersigned agree and stipulate to the terms and conditions stated above.

COALITION OF SENSIBLE TAXPAYERS

By: Mimi Willard
Mimi Willard

Dated: April 28, 2023

Its: President

DOUG KELLY

By: _____
Doug Kelly

Dated: _____, 2023

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IN WITNESS WHEREOF, the undersigned agree and stipulate to the terms and conditions stated above.

COALITION OF SENSIBLE TAXPAYERS

By: _____ Dated: _____, 2023
Mimi Willard

Its: _____

DOUG KELLY

By: Doug Kelly Dated: 4/27/, 2023
Doug Kelly

GLORIA RASHTI

By: *Gloria Rashti*
Gloria Rashti

Dated: *April 27*, 2023

Mari Robinson

By: _____
Mari Robinson

Dated: _____, 2023

GLORIA RASHTI

By: _____
Gloria Rashti

Dated: _____, 2023

Mari Robinson

By: Mari Robinson
Mari Robinson

Dated: April 27, 2023

[Handwritten signature]

[Handwritten signature]

APPROVED AS TO FORM:

For PLAINTIFFS:

MCNEILL LAW OFFICES
LAW OFFICES OF S. CHANDLER VISHER
WITTEMAN LAW OFFICES



by: Walter P. McNeill
MCNEILL LAW OFFICES

Dated: 4/26, 2023

MARIN MUNICIPAL WATER DISTRICT

By: 

Ben Horenstein, District General Manager

Dated: May 2, 2023

APPROVED AS TO FORM:

Marin Municipal Water District



Molly MacLean, District General Counsel

Dated: May 2, 2023

EXHIBIT A

Joint Statement by Marin Water and the Coalition of Sensible Taxpayers (CO\$T)

Marin Municipal Water District and the Coalition of Sensible Taxpayers (CO\$T) and other individually named plaintiffs have reached a settlement in the 2019 case of the *Coalition of Sensible Taxpayers, et al v. Marin Municipal Water District*. The agreement settles a lawsuit over water rates that Marin Water adopted in 2019. Both sides agree it is prudent to move forward for the benefit of all Marin Water customers.

The dispute centered on certain fixed fees in customers' water bills that vary according to the size of their water meters. CO\$T alleged that the Watershed Management Fee and the Capital Maintenance Fee in the 2019-2023 fixed fee schedule were not compliant with the law's requirement that water charges be proportional to the cost of service. Marin Water disputed that claim and maintains that these charges were legally adopted and comply with Proposition 218.

The settlement will only become effective if the Marin Water Board of Directors adopts certain modifications to its Watershed Management Fee and its Capital Maintenance Fee, which are being considered as part of its current rate setting process. Marin Water staff and its rate consultant are proposing changes to the fixed fees to better reflect customer demand and to help reduce the burden of fixed fees on low water users, which presents an opportunity to improve the District's rate structure and address issues of concern to CO\$T.

Marin Water is in the process of completing its proposal for the next four-year rate cycle effective July 1, 2023, for which it will be mailing notices and holding a public hearing in May 2023, as required under Proposition 218. As part of this rate proposal, Marin Water would cease to charge fixed fees to single family and duplex residential customers using the disputed meter-size factors. If the new rates are adopted as proposed, Marin Water would assess its Capital Maintenance Fee and Base Service Charge Fee (both fixed fees) using new factors for single family residential and duplexes that are more clearly tied to water usage. The fixed fees would comprise a declining percentage of aggregate customer bills over the 4-year rate period. Marin Water is also proposing to eliminate the meter-size-based fixed charge Watershed Management Fee and instead more closely tie this charge to each customer's water usage.

Both sides agree this approach is fair, promotes conservation, and better ties individual customer bills to water usage, thereby addressing the central complaint of CO\$T's lawsuit. Settling the lawsuit in advance of the December 2023 trial date reduces the risk to both sides of an adverse legal decision and ongoing higher litigation costs.

CO\$T and Marin Water recognize the need for the district to focus on increasing its investment in infrastructure, a more secure water supply, and wildfire mitigation work on the Mt. Tam Watershed – as well as rebuilding financial reserves. Resolving this lawsuit better positions Marin Water to pursue these important priorities and makes ratepayers more confident that their water bills will be fair and equitable.

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