

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MARIN COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
AND
THE MARIN MUNICIPAL WATER DISTRICT
REGARDING THE APPLICATION FOR GRANT FUNDS FOR THE CONVERSION OF
PHOENIX LAKE TO A DUAL-USE FACILITY FOR WATER SUPPLY AND FLOOD CONTROL

THIS MEMORANDUM, made and entered into this 8TH day of April 2011, by and between the MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "DISTRICT", and the MARIN MUNICIPAL WATER DISTRICT, hereinafter referred to as "MMWD", both in the State of California, collectively the ("Parties");

WITNESSETH:

SECTION 1: RECITALS.

- A. The Board of Supervisors of the DISTRICT and the Board of Directors of MMWD wish to enter into a Memorandum of Understanding ("MOU") and collaborate for the submittal of an application for a Proposition 1E, Round 1 Grant (Grant) which would fund the design, environmental study, permitting, plans, specifications, and construction of the Phoenix Lake Detention Basin Project ("Project"). That Project would convert Phoenix Lake from a water supply facility to a dual use facility, a facility for both water supply and flood control purposes.
- B. The Parties understand and acknowledge that such an application is necessary to evaluate the feasibility of using Phoenix Lake as a dual-use facility.
- C. The Parties acknowledge and agree that the sole purpose of this MOU is for the Parties to collaborate in such a manner so as to allow the DISTRICT to submit an application for such a Grant. The Parties also acknowledge that, currently, the MMWD Board has not committed to any action other than collaborating on such a Grant application.
- D. Phoenix Lake is owned and operated by MMWD and has, for over 100 years, provided an essential domestic water supply for the citizens of Marin County.
- E. Both Parties agree that the water supply provided by Phoenix Lake is essential to MMWD's mission of meeting the current and future water supply needs of its customers.
- F. The Parties also agree, in concept, with the proposed dual use of Phoenix Lake as both a water supply facility and a flood control facility pending the further study, environmental review, engineering research and collaboration that will be necessary before the feasibility of this Project could be determined and any final decision on the Project could be presented to the MMWD Board and the DISTRICT Board of Directors for consideration.
- G. The people of Ross Valley elected to assess the property owners in the Valley an annual fee to create an integrated watershed management plan for flood control.

- H. The DISTRICT intends to allocate the matching funds required by the Grant up to 50% of the estimated project cost.
- I. The proposed use of Phoenix Lake as a dual-use facility is an accepted project of the Bay Area Integrated Water Management Plan (BAIRWMP) and is aligned with the Goals and Objectives of the BAIRWMP.
- J. The California Department of Water Resources is soliciting proposals for projects that are accepted into the regional BAIRWMP.
- K. The DISTRICT desires to create the infrastructure to reduce flood incidents in the County's Flood Zones and is interested in making application for a Grant to determine the feasibility of the Project.
- L. The DISTRICT believes that converting Phoenix Lake to a dual use facility and ultimately operating it as a flood control detention basin during large rain events, in concert with other flood control detention basins, could significantly reduce flood incidents in the Ross Valley – known as Flood Zone 9.
- M. The Parties anticipate that should the Grant be disbursed to the DISTRICT, additional agreements would need to be executed for the DISTRICT to conduct any studies of Phoenix Lake. In addition, any agreement between the Parties to undertake the full scope of the Project will be dependent on multiple factors, including but not limited to adequate funding, the outcome and requirements of the environmental study (CEQA), ability of the engineering design to meet the needs and requirements of both agencies, and the DISTRICT'S ability to meet all requirements placed on the project by resource, regulatory and permitting agencies.
- N. The DISTRICT anticipates that the Project may also improve downstream habitat for Steelhead Trout (*Oncorhynchus mykiss*), increase the volume capacity of the reservoir, improve the existing trail system around the reservoir for recreational use, and improve the strength and seismic integrity of the dam as needed.

SECTION 2: DISTRICT'S RESPONSIBILITIES:

A. The DISTRICT Shall:

1. Bear all costs associated with making the Grant application including but not limited to paying a consultant to prepare and submit the Grant Application to the California Department of Water Resources by the deadline date of April 15, 2011.
2. Incorporate and fund all planning, permitting and regulatory requirements, approvals and improvements necessitated by the conversion of Phoenix Lake to a dual-use facility as required by both Parties in the Grant application Work Plan.
3. Work with MMWD staff to insure that its requirements and concerns are included in the Grant application.
4. Pay a consultant to compile and analyze all relevant data that is needed to complete the Grant application.

5. Indemnify, hold harmless, release and defend MMWD, its Board of Directors, and the officers, agents and employees of MMWD from any and all liability, actions, claims, damages, costs or expenses, including attorneys' fees and the costs and expenses of suit which may be asserted by any person, arising out of this MOU, the application for the Grant or the design, environmental, and permitting studies to be funded by the grant, excepting any and all liability, actions, claims, damages, costs or expenses, including attorneys' fees and the costs and expenses of suit caused by or as a result of the negligent or wrongful acts or omissions, or the willful misconduct of MMWD, its Board of Directors, officers, agents or employees.

B. MMWD Shall:

1. Make available its staff to provide the DISTRICT and its Consultant all required data and other information needed to complete the Grant application in a timely manner.
2. Review the Grant application form before submittal to CA DWR and submit edits, comments, and/or corrections in a timely manner.
3. Provide the DISTRICT with the AB1420¹ (Water Demand Management Measures law) and Water Meter Compliance information as signed original documents as required by the Grant application form.
4. Work with the DISTRICT to provide all necessary information for the evaluation of required improvements to the Phoenix Lake facility.

C. The District Engineer is hereby declared to be the authorized DISTRICT representative in administering this MOU. The MMWD General Manager is hereby declared to be the authorized MMWD representative in administering this MOU. Either Party may change its designated representative by providing written notice of the same to the other Party.

D. Miscellaneous:

1. Agreement Binding: The terms and provisions of this MOU shall extend to and be binding upon and inure to the benefit of the heirs, executors, and administrators or to any approved successor, as well as to any assignee or legal successor to any party to this MOU.
2. Merger: This writing is intended both as the final expression of the agreement between Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
3. Cooperation: PARTIES pledge cooperation in order that a mutually satisfactory Grant application is achieved.

¹ Assembly Bill AB 1420 (Stats. 2007, ch. 628) amended the Urban Water Management Planning Act, Water Code Section 10610 et seq., to require, effective January 1, 2009, that the terms of, and eligibility for, any water management grant or loan made to an urban water supplier and awarded or administered by the Department of Water Resources (DWR), State Water Resources Control Board (SWRCB), or California Bay-Delta Authority (CBDA) or its successor agency (collectively referred to as "Funding Agencies"), be conditioned on the implementation of the water Demand Management Measures (DMMs) described in Water Code Section 10631(f).

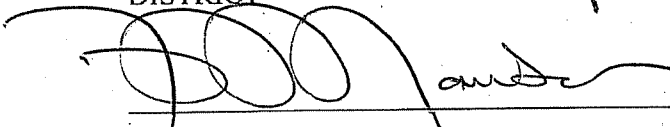
4. No Third Party Beneficiaries: Nothing contained in this agreement shall be construed to create and the parties do not intend to create any rights in third parties.
5. Invalidity of Particular Provisions: If any term, covenant or condition of this MOUM or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this MOU or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this MOU shall be valid and be enforced to the fullest extent permitted by law.
6. No Waiver: The waiver by any Party of any default under this MOU shall not operate as a waiver of any subsequent breach of the same or any other provision of this MOU.
7. Entire Agreement: This MOU contains the entire agreement between the Parties hereto and no term or provision thereof may be changed, waived, discharged or terminated unless made in writing and executed by both Parties hereto.
8. Time is of the Essence: Time is of the essence with respect to the performance of every provision of this MOU which time or performance is a factor.
9. Mediation:
 - A. Any dispute or claim in law or equity between the Parties arising out of this MOU, if not resolved by informal negotiation between the Parties, shall be mediated by the Parties. Mediation shall consist of an informal, non-binding conference or conferences between the Parties and the mediator jointly, then in separate caucuses wherein the judge will seek to guide the Parties to a resolution of the case. The Parties shall agree to a mutually acceptable mediator.
 - B. If mediation is unsuccessful, the Parties may avail themselves of any other remedies.
10. Applicable Law: This MOU shall be construed and enforced in accordance with the laws of the State of California.
11. No Presumption Regarding Drafter: The Parties acknowledge and agree that the terms and provisions of this MOU have been negotiated and discussed between the Parties and their attorneys, and this MOU 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 MOU. 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 MOU.
12. Assistance of Counsel: Each Party to this MOU warrants as follows:
 - A. That each Party had the assistance of counsel in the negotiation for, and the execution of, this MOU and all related documents; and
 - B. That each Party has lawfully authorized the execution of this MOU.

13. Severability: If any term, provision, covenant or condition of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU shall continue in full force and effect.
14. Section Headings: The section headings contained in this MOU are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.
15. Counterparts: This MOU may be executed in multiple counterparts each of which shall be deemed an original MOU and all of which shall constitute one and the same MOU.

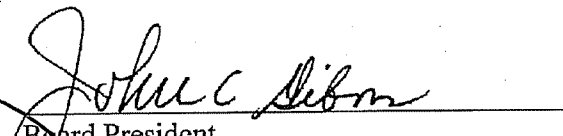
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding by their duly authorized officers as of the day and year first above written.

MARIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT

MARIN MUNICIPAL WATER DISTRICT



District Engineer



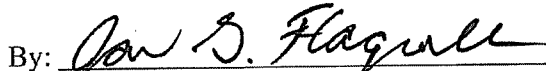
Board President

ATTEST:

By: 

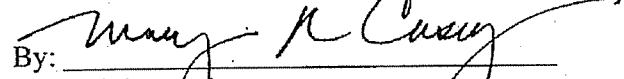
Board Secretary

APPROVED AS TO FORM:

By: 

County Counsel

APPROVED AS TO FORM:

By: 

General Counsel