

AGENDA

**REGULAR MEETING
OF THE BOARD OF DIRECTORS OF
THE MADERA WATER DISTRICT
VIA CONFERENCE CALL (COVID-19)**

October 14, 2020 at 9:00 a.m.

***Meeting ID
371 277 197***

Dial one of the following numbers:

+1.408.419.1715 (United States (San Jose))

+1.408.915.6290 (United States (San Jose))

Enter the meeting ID and passcode followed by #

CALL TO ORDER - REGULAR MEETING.

1. PUBLIC COMMENT – DISTRICT MATTERS. This portion of the meeting is reserved for members of the public to address the Board on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Board of the District. Speakers shall be limited to three minutes. It is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Board on items on the Agenda should notify the President of the Board when that Agenda item is called and the President will recognize public discussion at that time. It should be noted that the Board is prohibited by law from taking action on matters discussed that are not on the Agenda. Speakers are asked to provide their name and address.

2. APPROVAL OF MINUTES. The Board may review and approve the minutes for the Board's August 12, 2020 meeting.

3. FINANCIAL MATTERS. The Board may review, discuss and possibly approve a variety of matters related to the District's financial status:

A. Bills. Review and possibly approve August and September bills to be paid by the District and/or ratify prior payment of prior bills.

B. Review of Financials. Review funding required for the installation of the new pipeline system and options for rebuilding reserve fund to ensure funding is available for future District projects.

C. Delinquent Assessments. The Board may hear an update regarding the status of accounts with delinquent assessments.

4. WATER SYSTEM/WATER DELIVERY SEPARATION. The Board will hear an update regarding the District's operation of its water delivery system to separate surface and groundwater deliveries to accommodate delivery of surface water to the Madera Irrigation District ("MID") subordinate lands within the District. The Board may discuss and take action regarding whether landowners or the District will be financially responsible for various costs related to the new pipeline and meters. The Board may also take action to approve a letter to landowners regarding the installation of meters and the responsibilities of the District and landowners in connection with the installation. The Board may authorize District officers and consultants to revise the District's current rules and regulations as needed to implement any changes necessary as a result of the District's new delivery system.

5. WATER SUPPLY AGREEMENT. The Board may review, discuss and approve a water supply agreement between the District and MID.

6. MADERA LAKE PROJECT. The Board will hear a report by the District's consultants regarding the status of the Madera Lake Project. The Board may review, discuss and take action in connection with the Madera Lake Project. The Board may authorize District officers and consultants to take such further actions as necessary to move forward with the Madera Lake Project.

7. MANAGER'S REPORT. The District Manager will report on current District operations.

8. DIRECTOR COMMENTS. The Board may discuss other items as permitted by the California Government Code.

ADJOURN AS THE BOARD OF MWD AND CONVENE AS THE BOARD OF THE MWD GROUNDWATER SUSTAINABILITY AGENCY.

9. CLOSED SESSION. The Board will meet in closed session pursuant to Government Code section 54956.9 to discuss the following:

A. Conference with legal counsel regarding anticipated litigation. Number of potential cases: one.

ADJOURNMENT.

Written materials related to an agenda item to be considered in open session that are public records will be made available for public inspection upon request.

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the District provide a disability-related modification or accommodation in order to participate in any public meeting of the District. Such assistance includes appropriate alternative formats of the agenda and agenda packets used for any public meetings of the District. Requests for such assistance and for agenda and agenda packets shall be made in person, by telephone or written correspondence to the

District at 16943 Road 26, Suite 103, Madera, California at least 48 hours before a public District meeting.

MINUTES OF THE REGULAR MEETING OF
THE BOARD OF DIRECTORS OF
MADERA WATER DISTRICT

August 12, 2020

The Board of Directors of the Madera Water District (the “District”) held a regular board meeting on Wednesday, August 12, 2020 by conference call due to COVID-19.

Roll call was taken at 9:00 a.m. and a quorum was present. Directors in attendance via telephone were Phil Janzen, Gilbert Rascon and Pat Henry. Directors Kevin Herman and Carl Johnson were absent. Others in attendance were John Gies, Melanie Aldridge and Linda Arroyo. When asked if anyone else was present on the conference line, no additional persons responded.

PUBLIC COMMENT. There were no members of the public present who wished to comment on District matters.

APPROVAL OF MINUTES. The Board reviewed the minutes of the regular board meeting held on June 10, 2020. Director Janzen moved to approve the minutes as correct and Director Rascon seconded the motion. The minutes were then approved by unanimous vote of the attending directors.

FINANCIAL MATTERS - BILLS. The Manager reviewed the list of invoices to be paid for June and July including a description of the larger invoices and the work performed in connection with those invoices. Director Rascon moved to ratify the bills paid for June and Director Henry seconded the motion. The motion was approved by unanimous vote of the attending directors. Director Henry then moved to ratify the bills paid for July and Director Rascon seconded the motion. The motion was approved by unanimous vote of the attending directors.

FINANCIAL MATTERS – WATER RATE. At the board meeting held on June 10, 2020 Andrew Cresci of West of the Picos LLC requested the Board consider lowering water rates due to effects of COVID-19 or deferring due dates to the end of harvest season when landowners would have more funds available from crop proceeds. The Board discussed the request but did not make any changes to water rates or due dates.

WATER DELIVERY DIVISION. The Manager reported the District is now on a three-day delivery schedule for all water users. Madera Irrigation District (“MID”) had no more surface water available as of early August and no additional surface water will be purchased by the District. The Manager reported the District will continue delivering groundwater at approximately 6 GPM per acre with all available pumps running, but pressure issues are likely to occur.

MADERA LAKE PROJECT. Eric Abrahamsen of Provost & Pritchard is working on the Madera Lake project. The Manager reported that based on his latest discussions with Mr. Abrahamsen an incidental take permit will be required unless the District changes the project

design by moving the project pipeline into a nearby orchard. For a variety of reasons, the incidental take permit process will be pursued instead of changing the project design and CEQA documents are currently being prepared. The Manager also reported the pipeline from Madera Lake to the District facilities will be increased in size to accommodate water deliveries to the District of up to 6,000 CFS. The landowner granting the District access to Madera Lake through its property will also have the option of connecting to the pipeline to bring in any outside water acquired by the landowner. The increased size will allow for deliveries of up to 2,000 CFS to the landowner without affecting District flows.

RESOURCE CONSERVATION DISTRICT WORKING GROUP. The Board heard a presentation regarding participating in a working group with the local Resource Conservation District. The Board reviewed a letter of support for the working group to the State Conservationist. Director Henry moved to approve the letter of support and Director Janzen seconded the motion. The motion was approved by unanimous vote of attending directors.

MANAGER'S REPORT. In addition to the items discussed above, the Manager of the District reported on the following items:

A. Water Deliveries. The District began taking surface water on June 8 and 769 AF of surface water were delivered. An additional 230 AF of well water were used for a combined total of 999 AF delivered in June. District water deliveries in July included 740 AF of surface water and 454 AF of well water for a combined 1,194 AF of water delivered to growers. Surface water deliveries ended the morning of August 7.

B. District Maintenance. The District has water quality treatment sites at 13 wells and the Manager has seen an improvement in water quality. The Manager may arrange for the installation of two additional treatment sites. The installation of a tank and booster at Well 27 is almost complete and will be tested this week. If the booster is effective it should increase production by 700 GPM. The Manager also reported various District pumps will be tested throughout the week. The pipeline on the East side of the District is complete except for the tie-ins which will be done at the end of the water season.

ADJOURNMENT. The regular meeting of the Board of the District was adjourned at approximately 10:00 a.m. The next regular meeting of the Board is scheduled for Wednesday, September 9, 2020 at 9:00 a.m.

Respectfully submitted,

Pat Henry, Secretary

**SUBORDINATE WATER DELIVERY AGREEMENT
BETWEEN MADERA IRRIGATION DISTRICT
AND MADERA WATER DISTRICT**

This Water Delivery Agreement (the “*Agreement*”), dated December __, 2020 (the “*Effective Date*”), is between Madera Irrigation District (“*MID*”) and Madera Water District (“*MWD*”). MID and MWD are collectively referred to herein as the “*Parties*” and individually as “*Party*.”

RECITALS

The Parties agree that the following background facts are true and correct:

A. MID is an irrigation district organized under the California Irrigation District Law, Section 20500, *et seq.* of the California Water Code, located in Madera County, California.

B. MWD is a water district organized under the California Water District Law, Section 34000, *et seq.* of the California Water Code, located in Madera County, California, comprising of approximately 3,714 acres (the “*MWD Service Area*”).

C. Seventy-nine (79) of the parcels within MWD’s service area, comprising of approximately 2,183 acres and 60% of MWD’s service area, are presently located within MID (the “*MWD-MID Lands*”). The remainder of parcels within MWD Service Area are located outside MID’s jurisdictional boundary (the “*Non-MID Lands*”).

D. The MWD-MID Lands are categorized by MID as Subordinate Lands-Category S2.

E. The MWD-MID Lands are comprised of properties that may receive surface water from MID during years in which the MID Board of Directors, in its sole discretion: (i) declares surplus MID water is available to serve Subordinate Lands-Category S2, or (ii) determines water transferred to MID from another source is available for delivery to Subordinate Lands-Category S2 .

F. MID believes surplus MID water may be available for delivery to Subordinate Lands-Category S2 at certain times (the “*Subordinate Water*”). MWD has the ability to deliver the Subordinate Water to the MWD-MID Lands in a manner that segregates and separately meters such water from MWD’s delivery of groundwater within the MWD Service Area.

G. MID is willing to deliver Subordinate Water to MWD for ultimate delivery to only the MWD-MID Lands subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

A. Purchase and Delivery of Subordinate Water.

1. Subordinate Supply to MWD-MID Lands. Whenever MID determines in its sole and absolute discretion that Subordinate Water is available during a water season, MID agrees to allow MWD to place orders for such Subordinate Water on behalf of the owners of the MWD-MID Lands for use upon the MWD-MID Lands only.

2. **Purchase and Delivery of Additional Water.** From time to time during a water season, and at MID's sole and absolute discretion, MID may offer additional quantities of water to MWD above those contemplated in this Agreement on such terms and conditions as the Parties agree for the purchase and delivery of any such water (the "**Additional Water**"). The Additional Water shall be eligible for delivery to any lands in the MWD Service Area.

3. **Wheeling of Water Through District Facilities.** During a water season, MWD may wheel other water supplies through MID's facilities at the-applicable rate for any of the Non-MID Lands. The decision to enter into any such agreement will be at MID's sole and absolute discretion, and will be evidenced by a wheeling agreement between MWD, MID, and any other person or entity whose consent is necessary to effectuate such agreement.

B. Consideration.

1. **Payments.**

a. **Payments at Subordinate Rate.** MWD shall pay MID the MID Subordinate Rate for all Subordinate Water delivered to MWD by MID under this Agreement for the benefit of the MWD-MID Lands only. The Subordinate Water shall be metered at the Points of Delivery and billed monthly. MWD shall at all times meter the Subordinate Water separately from any other water supplies it may deliver to its landowners. MWD acknowledges that MID may, at any time, require MWD-MID Lands to be billed on a billing system consistent with MID's then current water billing practices for Subordinate Lands.

b. **Accounting.** No less than thirty (30) days after the end of MID's water season or within (5) days of a request by MID, MWD shall provide MID with the daily meter reading for each of the MWD-MID Lands that received Subordinate Water under this Agreement.

2. **Inspection of MWD System.** MWD agrees to provide representatives of MID with access to MWD's water delivery system in order for MID to inspect MWD's capacity to segregate the Subordinate Water from other water delivered by MWD within the MWD Service Area. In addition, consistent with its current practice of metering all water deliveries within the MWD Service Area, MWD shall also meter all Subordinate Water delivered to each parcel of the MWD-MID Lands, and MID will have access to these meters at all times.

3. **Approvals Necessary for Delivery of Water Supplies.**

a. In the event any approvals are required to effectuate the delivery of any water supplies to MWD, including both the delivery of MID's water supplies and water made available for delivery to MID by third-parties, MID and MWD shall work cooperatively to secure any such approvals. MWD shall fund all costs associated with or arising from any such approvals, including but not limited to staff, attorney and consultant fees, costs associated with environmental review under the California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* ("**CEQA**") and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("**NEPA**"), and the implementation of any mitigation measures or conditions of approval imposed on any such delivery. In the event MID is obligated to incur any costs associated with or arising from any such approvals, MWD shall reimburse MID within 30-days of being invoiced for such costs.

b. MWD expressly acknowledges that the water supplies available to MID each year, and the cost of those supplies, are variable, and are impacted by several factors outside the Parties' control, including hydrology, declarations by the Bureau of Reclamation, conveyance capacities, and third-party transactions. As a result, the Parties both acknowledge that this Agreement does not provide any guaranteed water supply to MWD or any other person or entity.

4. **Place and Purpose of Use.** Unless otherwise agreed in writing, the Subordinate Water may only be used for agricultural production and groundwater recharge on the MWD-MID Lands.

5. **Point of Delivery.** MID shall make the Subordinate Water available to MWD at the existing Dry Creek Turnout locations (the "**Points of Delivery**") and future locations mutually agreed upon by both MID and MWD. After delivery of the Subordinate Water from MID to MWD, MWD shall deliver the Subordinate Water to the MID-MWD Lands at the locations at which the Subordinate Water can be separately metered..

C. Term and Termination.

1. **Term.** Commencing on the Effective Date, this Agreement shall continue in full force and effect for thirty (30) years, unless sooner terminated in accordance with Section C.2 below.

2. **Termination for Cause.**

a. This Agreement may be terminated for cause under Section C.2.b of this Agreement before the expiration of the Term if, during the Term, a Party has materially breached this Agreement; or a Party assigns any interest in this Agreement to any other person or entity, including assignments by operation of law.

b. A material breach under this Section C.2.b occurs where one party (the "**Breaching Party**") breaches or defaults in the performance of any of its material obligations hereunder either with respect to a particular delivery of water or the Agreement as a whole, and such default shall have continued for sixty (60) days after written notice thereof was provided to the Breaching Party by the other party (the "**Non-breaching Party**"), such notice describing with particularity and in detail the alleged material breach. Any such termination of the Agreement under this Section C.2.b shall become effective at the end of such sixty (60) day period, unless the Breaching Party has cured any such breach or default prior to the expiration of such sixty (60) day period. The right of either Party to terminate this Agreement shall not be affected in any way by such Party's waiver or failure to take action with respect to any previous default.

D. Indemnity. MWD agrees to hold MID free and harmless of and from any loss or liability, of any nature whatsoever arising out of or in any way connected with MID's performance of this Agreement, including loss or liability caused by the MWD's active negligence, claims by any person or entity in any way connected to MWD's receipt of water hereunder, including any claim that a grower within the MWD-MID Lands did not receive sufficient water supplies, or that MWD was not acting with the legal authority necessary to order, supply, or deliver water to the MWD-MID Lands, except loss or liability caused by MID's sole willful conduct or active negligence.

E. Non-Assignment. This Agreement is personal to each of the respective Parties, and neither Party shall assign, subcontract or deliver its right or obligations under this Agreement to any other person

or entity without the prior written consent of the other Party. This provision expressly includes assignments by operation of law.

F. Covenants, Warranties and Representations

1. The Parties each covenant, warrant, and represent that they have the authority to enter into the Agreement, and perform as set forth herein. This Agreement and the Parties' respective compliance therewith have been duly authorized by all required action by the Parties' respective governing boards.

2. MWD covenants, warrants, and represents that it has the legal authority to act on behalf of each of its landowners for the purpose of this agreement including the ordering, delivering, and payment of Subordinate Water ordered and/or supplied to MWD hereunder.

3. The satisfaction, truth, accuracy and completeness of each of the covenants, warranties and representations of MID and MWD contained in this Agreement, as of the Effective Date, shall constitute a condition precedent to the obligations of the Parties hereunder. Neither Party shall take any voluntary action, and shall use best efforts to cure the results of any involuntary actions, that would affect the truth, accuracy, and completeness of any of the covenants, warranties or representations at the time of executing this Agreement.

G. Dispute Resolution.

1. In the event of any dispute, claim or controversy arising out of or relating to this Agreement, or any alleged breach, termination, enforcement, interpretation or validity hereof (a "**Dispute**"), the Party claiming any Dispute must provide Notice to the other Party of the existence of the Dispute, and the reasons therefor, within thirty (30) days after the Dispute first arises. After this Notice is transmitted to the other Party, the Parties shall immediately meet and use reasonable best efforts to resolve such Dispute through negotiation. The Parties shall diligently continue such negotiations for not less than thirty (30) days before determining that the Dispute cannot be resolved through negotiation, but may by mutual agreement continue such negotiations for a longer period of time (including without limitation through the use of a mutually agreeable facilitator or mediator, with each Party to pay one-half of the fees and costs).

2. Any Dispute, including the determination of the scope or applicability of this Agreement to arbitrate, that is not resolved through negotiations described in Section G.1 shall be determined by binding and confidential arbitration in Fresno, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures as they exist on the effective date of this Agreement. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator shall award attorneys' fees and other costs, and the costs of arbitration including the fees charged by the arbitrator and by JAMS, to the prevailing party (if any). The arbitrator is not empowered to award, and the Parties expressly waive any rights they may have to seek and obtain, any exemplary or punitive damages.

H. Miscellaneous Provisions.

1. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive

statement of the terms of the agreement of the Parties and supersede any prior written or oral agreements. All oral or written representations, agreements, arrangements or understandings relating to the subject matter of the Agreement are fully expressed herein. Any amendment to or modification of this Agreement must be in writing and signed by both Parties.

2. Successors; Assignments. Except as otherwise provided herein, the terms, covenants and conditions herein shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

3. Further Action. The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the purposes of this Agreement.

4. Time of the Essence. Time is of the essence of this Agreement.

5. Waiver. The failure by either Party to enforce any of the covenants, terms or conditions of this Agreement shall not be deemed a waiver thereof, unless such waiver shall have been made in writing.

6. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

7. Interpretation. Headings in this Agreement are used for convenience only and shall have no force or effect regarding its interpretation or construction. The Parties have each participated in the drafting of this Agreement, and none of the Parties hereto shall be deemed to be the author of this Agreement, and any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

8. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person or entity of any kind that is not a Party to this Agreement.

9. Time Periods Falling on Non-Business Day. In the event that any time period set forth in this Settlement Agreement would otherwise expire on a day that is not a Business Day or in the event this Agreement calls for payment or performance on any day that is not a Business Day, such time period and the time for any such payment or performance shall be automatically extended to the next day that is a Business Day.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and such counterparts shall together constitute but one and the same instrument.

11. Choice of Law; Venue. This Agreement shall be governed by the laws of the State of California. Venue for any action arising under this Agreement shall be in the Superior Court for Madera County.

12. Attorneys' Fees. In the event of litigation arising from or relating to the terms and

conditions of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs including, without limitation, reasonable expert witness costs.

13. Notices. All notices under this Agreement shall be effective (i) when personally delivered to the non-noticing party, or (ii) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties at the addresses shown below or such other addresses or facsimile number as the Parties may designate in writing. As a matter of convenience, notices between the Parties shall, to the extent feasible, be conducted orally by telephone or in person, with such notices to be confirmed and made effective in writing as set forth above provided no such oral notice shall be effective unless so confirmed in writing. All notices under this Agreement shall be sent to the following:

MWD: John Gies
Madera Water District
16943 Road 26
Madera, CA 93638
Phone: (559) 674-4944

with a copy to: Melanie J. Aldridge
Law Office of Melanie J. Aldridge
264 W. Fallbrook Avenue, Suite 101
Fresno, CA 93711
Phone: (559) 492-8408

MID Thomas Greci
Madera Irrigation District
12152 Road 28 ¼,
Madera, CA 93637
Phone: 559-673-3514

with a copy to: John P. Kinsey
Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, CA 93720
Phone: (559) 233-4800

14. Force Majeure. MID shall not be liable for any failure of, or delay in, the transfer or delivery of the Subordinate Water or Additional Water, if any, for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection or riots; fires, explosions or serious accidents; facility failures; floods; strikes or labor disputes; any final determination by a court of competent jurisdiction that renders the delivery of the Subordinate Water or Additional Water, if any, to MWD unlawful, unless there are other water supplies available to MID that MID may lawfully provide to MWD; or any similar and unforeseeable Acts of God beyond MID's control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

