



DATE: May 2, 2025

TO: Ben Horenstein, Marin Water General Manager

FROM: Molly MacLean, Marin Water General Counsel
Paul Sellier, Marin Water - Water Resources Director

SUBJECT: Review of Proposed Changes to the Sonoma Water – Marin Municipal Water District Water Supply Agreement

EXECUTIVE SUMMARY

The purpose of this memorandum is to provide an evaluation of the proposed draft Amended and Restated Water Supply Agreement (“Draft Agreement”) between the Marin Municipal Water District (“Marin Water” or “District”) and the Sonoma County Water Agency (“Sonoma Water” or “Agency”) in comparison to the current agreement for water supply between the Marin Water and the Sonoma Water entered into in 2015. The District currently obtains wholesale water supplies from Sonoma Water pursuant to the 2015 Renewal of the Third Amended Offpeak Water Supply Agreement and the Amended Agreement for the Sale of Water between the Sonoma County Water Agency and Marin Municipal Water District (“2015 Renewal Agreement”). The 2015 Renewal Agreement took effect July 1, 2015, with a ten-year term that expires on June 30, 2025. Exhibit A to the 2015 Renewal Agreement is the Fourth Amended Offpeak Water Supply Agreement (“Offpeak Agreement”), while Exhibit B is titled Amendments to Amended Agreement for the sale of Water between Sonoma County water Agency and Marin Municipal Water District (“Water Sale Agreement”). Additional details of each of these can be found in the attached Background.

In advance of the 2015 Renewal Agreement’s expiration, District staff met with Sonoma Water staff to discuss the extension of the 2015 Renewal Agreement. Although initial discussions focused on extension (or, renewal without amendments), subsequent discussions landed on a proposed amended and restated agreement that would provide a more clear, single agreement, which would also eliminate or change certain provisions of the 2015 Renewal Agreement that do not serve either party’s interests under current conditions.

The Draft Agreement, though restated into a single, comprehensive agreement, pulls forward most of the provisions of the 2015 Renewal Agreement, with the exception of the following key provisions:

- New lump sum payment by Marin Water for regional water resiliency projects.

- Addition of a roll over provision to address Sonoma Water's inability to deliver the 5,300 acre feet of minimum take-or-pay water in any given year, which would allow the District to pay for any remaining undelivered balance and take that balance in the following fiscal year, subject to availability;
- Elimination of the ramp-up/ramp-down provision that limited Marin Water's water purchases based on prior year water purchase amounts;
- Simplification and revision to the delivery caps, eliminating seasonal acre foot limitations and revising the caps on gallons per day deliveries to Marin Water;
- Elimination of provisions regarding a new segment of aqueduct parallel to the Petaluma line, but including added mention of Marin Water's consideration of a new aqueduct from the North Marin Aqueduct to Nicasio and/or Soulajule Reservoirs¹;
- The Term of the Draft Agreement runs for fifteen (15) years, as opposed to the ten (10) year term of the 2015 Renewal Agreement; and
- Renewal provision includes Sonoma Water's statement of support for Marin Water's participation in discussions regarding the extension or renewal of the 2006 Restructured Agreement

Despite these changes, however, the 14,300 AFY water quantity remains unchanged, the 5,300 annual minimum take-or-pay amount remains unchanged, and the transmission system capacity requirements and water shortage allocation approaches remain unchanged. Meaning that the operation of the Draft Agreement will continue the prioritization of transmission system capacity in favor of the Water Contractors² under the 2006 Restructured Agreement for Water Supply between Sonoma Water and the Water Contractors ("2006 Restructured Agreement") and will continue the same allocation of water supplies among the Water Contractors and Marin Water.

EVALUATION OF PROPOSED 2025 DRAFT AGREEMENT

The remainder of this memorandum sets forth key provisions of the proposed 2025 Draft Agreement and evaluates them in comparison to the 2015 Renewal Agreement and includes a review for consistency with the 2006 Restructured Agreement between Sonoma Water and its Water Contractors.³

Proposed 2025 Draft Agreement Versus 2015 Renewal Agreement

Recitals: Compared to the 2015 Renewal Agreement, the proposed 2025 Draft Agreement includes the same or similar recitals but also includes additional recitals providing a more detailed background on Sonoma Water's role in developing and paying for the Russian River Project. The more fulsome recitals trace the evolution of Marin Water's agreements with

¹ The Atmospheric River Capture Project has not been approved and is only in early stages of design and environmental review.

² "Water Contractors" means the City of Cotati, City of Petaluma, City of Rohnert Park, City of Santa Rosa, City of Sonoma, North Marin Water District, Valley of the Moon Water District, and Town of Windsor.

³ Capitalized terms not otherwise defined herein, including in Exhibit A, have the meaning ascribed in the Draft Agreement.

Sonoma Water, including documenting the three lump-sum payments made by the District to Sonoma Water totaling \$9,331,949 for parity with the investment made by the Water Contractors in the Russian River System and to secure the District's 14,300 AFY of firm Agency water supply.

Water Amount and Delivery Rates: The Draft Agreement's 14,300 acre feet per year ("AFY") amount and 5,300 AFY minimum take-or-pay amount remain unchanged. The Draft Agreement would eliminate the 2015 Renewal Agreement's mechanisms for ratcheting each year's water availability up or down based on the amount of water delivered to Marin Water the prior year. (Compare 2025 Draft Agreement § 3 at pp. 9-10 to 2015 Water Sale Agreement § 4(a)-(b) at pp. 10-11.) In most years the availability of water and of Transmission System capacity have served as the practical limit on the District's ability to take Agency water to the extent requested by Marin Water.

The 2015 Renewal Agreement also imposes certain maximum delivery rates on the District that would be simplified and revised by the proposed Draft Agreement. Specifically, the Offpeak Agreement states deliveries to the District may not exceed 760 AF per month, and for the five-month period May 1 through September 30 may not exceed 360 AF per month without the prior consent of Sonoma Water, while the total quantity delivered during this five-month period may not exceed 1,800 AF, (Offpeak Agreement § 1 at pp. 3-4). The Water Sale Agreement augments these provisions and allows additional deliveries, which vary by season and based on prior year deliveries. The 2006 Restructured Agreement currently limits the District's delivery rate to 12.8 MGD between May 1 and October 31. (Restructured Agreement § 3.12 at p. 35.) In practice, the availability of water and of Transmission System capacity have served as the actual limit on the District's ability to take Agency water requested by the District.

The Draft Agreement instead proposes to establish new delivery caps, specifically the Draft Agreement would limit deliveries during the months of May through October to 12.8 mgd and limit deliveries to Marin Water during the months of November through March to 25 mgd. The proposed Draft Agreement would continue to consider Transmission System capacity in that it provides that: "Sonoma Water shall deliver water at the requested rate to [the District] only to the extent that the Transmission System has capacity in excess of that required by Sonoma Water to supply the Water Contractors, but not less than 5,300 acre feet per fiscal year." (Draft Agreement § 3(b).) This approach is similar to the one applied to Marin Water in the 2006 Restructured Agreement, which states Sonoma Water "may deliver water to Marin Municipal when and to the extent that the Transmission System has capacity in excess of that required by Agency to supply its Regular Customers the[ir] Entitlements" (Restructured Agreement § 3.12 at p. 35; *id.* § 3.5(b)(2) at pp. 30-31 [allocating Transmission System capacity during temporary impairment].)

The Draft Agreement also contains a new provision that would allow the District, in the event of inability to deliver water to Marin Water, to pay for the 5,300 AF minimum take or pay amount and roll any undelivered portion of that 5,300 AF into the following fiscal year, if Sonoma Water determines that water is then available. Marin Water shall be required to take or pay for 5,300 AF each fiscal year and Marin Water shall take delivery of any amount undelivered amount rolled over into storage in addition to the 5,300 AF minimum take or pay in the following fiscal year. This provision was added to address situations like the slide impacting the North Marin Aqueduct in 2023 where Marin Water was unable to receive its minimum take-or-pay allotment.

Water Shortage Allocation: The proposed Draft Agreement's Section 4 shortage provisions would first allocate health and safety water to Sonoma Water's Regular Customers, Russian

River Customers, and Marin Water, after considering other potable water sources available to each customer, and then allocate any additional supply to the same entities in proportion to their respective contract amounts. (Draft Agreement § 3(a) at p. 9.) These provisions are unchanged from those water-shortage provisions in the 2015 Renewal Agreement, (Offpeak Agreement § 4 at pp. 5-7; Water Sale Agreement § 8 at p. 17). Water allocation during a shortage is critically important to all Sonoma Water's water service customers, and this provision would continue the same allocation and curtailment process currently in place, consistent with the Restructured Agreement.

Payment: The proposed payments in the Draft Agreement are unchanged from those in the 2015 Renewal Agreement, with the sole exception of the lump sum payment for regional water resiliency projects from Marin Water to Sonoma Water. (Draft Agreement § 5.) The Draft Agreement details how revenue from the District's payments is to be allocated among specified Agency fund accounts. (*Ibid.*) The Draft Agreement would continue to impose a per-acre-foot Russian River Conservation Charge and Russian River Projects Charge (the latter not to exceed \$20 per AF) — both in lieu of property taxes levied on property in Sonoma County. (*Id.*) The Draft Agreement applies the take-or-pay approach for the 5,300 AFY. (*Ibid.*)

Transmission System Capacity: The 2015 Renewal Agreement's Offpeak and Water Sale agreements acknowledge that, as of 2015, Sonoma Water had "excess capacity" in its Transmission System to meet the District's delivery requests for its existing contract water amounts but anticipated that more capacity might be needed in the future. To that end, the Offpeak Agreement explains:

... Marin acknowledges that priorities of use of delivery capacity in Agency's facilities have been allocated to others who are not parties to this Offpeak Agreement, and that capacity to make deliveries of water to Marin at the rates in Section 1 of this Offpeak Agreement may not always be available to Agency. ... If [Agency's annual] reports indicate that delivery capacity is insufficient, or soon will be insufficient, to provide deliveries at the rates specified in Section 1 of this Offpeak Agreement, then Agency shall use its best efforts to secure an alternative means, solely at Marin's expense, to accomplish the purposes of this Offpeak Agreement.

(Offpeak Agreement § 4 at p. 7.)

The Water Sale Agreement explains:

At the present time and under normal circumstances, the Transmission System has excess capacity that may be used by Agency to supply District with water pursuant to this Water Sale Agreement. In order for the Transmission System in the future to continue to have such excess capacity under normal circumstances, Agency will need to construct elements of a new aqueduct from the Russian River to the Ely Pumping Plant, roughly paralleling portions of the existing Cotati Intertie and Petaluma Aqueduct, at an earlier date than would be necessary absent this Water Sale Agreement, and Agency will need to construct a new aqueduct from the Ely Pumping Plant to Kastania

Reservoir, roughly paralleling portions of the existing Petaluma Aqueduct, which would not be necessary absent this Water Sale Agreement.

(Water Sale Agreement Recital O at p. 5.)

Section 13 of the Water Sale Agreement provides:

If Agency initiates construction of a new aqueduct roughly paralleling the portion of the existing Petaluma Aqueduct that extends from the junction of that aqueduct and the Cotati Intertie to the Ely Pumping Plant, then District may make a written request to Agency, requesting Agency to construct at District's expense an aqueduct roughly paralleling the portion of the existing Petaluma Aqueduct that extends from the Ely Pumping Plant to Kastania Reservoir, with sufficient capacity to meet the maximum delivery limits specified in Section 2 of this Water Sale Agreement and the maximum delivery limit specified in the Offpeak Agreement, taking into account surplus capacity in that portion of the existing Petaluma Aqueduct.

(*Id.* § 13 at p. 23.)

As of 2025, the new delivery capacity described above has not been added to Sonoma Water's Transmission System as additional capacity was not required to meet Marin Water's supply needs. The Draft Agreement would omit any reference to the earlier approach of expanding delivery capacity in parallel with the Petaluma Aqueduct from the Ely Pumping Plant to Kastania Reservoir.

The Draft Agreement does acknowledge that the District is investigating the potential to build a pipeline connecting the existing Transmission System to the District's Nicasio or Soulajule reservoirs,⁴ so that the District may store Agency water there for later recovery and use to help meet Marin Water service area demand during dry years. To that end, section 6 of the 2025 Draft Agreement provides:

Sonoma Water acknowledges that [the District] is evaluating the feasibility and efficacy of constructing, at [the District's] sole cost and expense, a new aqueduct from the existing North Marin Aqueduct to [the District's] Nicasio and/or Soulajule Reservoirs to enhance water resiliency and reliability consistent with long term planning for the Russian River Project. [The District] will continue to actively communicate with Sonoma Water regarding project design and development and Sonoma Water, if requested by [the District], will provide available information and data necessary to project planning and assessment of project benefits and impacts.

(2025 Draft Agreement § 6.)

⁴ The Atmospheric River Capture Project has not been approved and is only in early stages of design and environmental review.

Despite this provision, however, the 14,300 AFY water quantity remains unchanged, the 5,300 AFY take-or-pay amount remains unchanged, and the Transmission System capacity requirements and water shortage allocation approaches remain unchanged. Meaning that, even if this project is developed at some future date, the provision of water to this project would continue to be subject to the constraints set forth in the Draft Agreement and allocation of water among the Water Contractors.

Support for SCWA Water Right Changes: The Draft Agreement's Section 7 says the District acknowledges that the 75,000-AFY limit on Sonoma Water's water rights prevents full use of the Russian River Project's water supply yield, that Sonoma Water has previously filed applications and petitions asking the State Water Resources Control Board ("State Board") to increase the limit to provide water to Sonoma Water customers and to modify instream fish-flow requirements in response to federal fish-protection mandates or hydrologic conditions. (Draft Agreement § 7.) The Draft Agreement says "[the District] recognizes and agrees that it will be in the public interest for the State Board to grant such petitions and applications." (*Ibid.*) A similar provision is include in the Water Sale Agreement (Water Sale Agreement, § 17).

Waiver and Indemnity: The Draft Agreement's Section 8 waivers and indemnity in favor of Sonoma Water are essentially the same as those in the 2015 Renewal Agreement. (*Compare* Sale of Water Agreement § 21 to Draft Agreement § 8).

Term; Renewal: The 2015 Renewal Agreement had a ten-year term with renewal rights. (Offpeak Agreement § 7 at p. 12 and Water Sale Agreement §18 at p. 26) The Draft Agreement proposes a 15 year term, to June 30, 2040, with similar rights of renewal, but also includes recognition of the concurrent expiration of the 2006 Restructure Agreement, and provides that "Sonoma Water agrees to advocate to include MMWD in any discussions related to any renewal or extension of the Restructured Agreement" . (Draft Agreement § 13)

Water Quality: The Draft Agreement's Section 10 would require Sonoma Water to deliver water to Marin Water that has the same quality as water delivered through the Transmission System to the Water Contractors *and* that complies with California drinking water standards. That would improve upon the water quality language in the Water Sale Agreement, which omits any reference to drinking water standards. (Water Sale Agreement § 22 at p. 29.)

COMPARISON TABLE

The following table sets forth a comparison of key provisions of the Draft Agreement relative to the 2015 Renewal Agreement, as well as how these provisions relate to the 2006 Restructured Agreement for Water Supply.

<u>Key Provision</u>	<u>2025 Draft Agreement</u>	<u>2015 Renewal Agreement</u>	<u>2006 Restructured Agreement</u>
Total Water Amount:	14,300 AFY	14,300 AFY	Consistent
Take-or-Pay Amount:	5,300 AFY	5,300 AFY	Consistent
Annual Ramp-up:	No	Yes	Silent/Consistent

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Water Shortage Allocation Priorities:	Yes	Yes	Consistent
Transmission System Capacity Allocation Priorities:	Yes	Yes	Consistent
Payment @ 111% of highest Petaluma/ Santa Rosa Aqueduct Charge:	Yes	Yes	Consistent
Reference to Potential New Aqueduct:	To Nicasio/Soulajule	Parallel to Petaluma Aqueduct	N/A
MMWD Support SCWA Water Right Changes:	Yes	Yes, Offpeak Agreement	Silent
MMWD Waiver, indemnity:	Yes	Yes, Water Sale Agreement	Similar to Water Agreement
Renewal:	Yes	Yes	Consistent

BACKGROUND

Since 1975, Marin Municipal Water District (“Marin Water” or “District”) has entered into a series of contracts to import wholesale water supplies from Sonoma County Water Agency (“Sonoma Water” or “Agency”). The District uses the imported Sonoma Water supplies to supplement the water supplies developed by the District’s local reservoirs to provide retail public water service within Marin Water’s sphere of influence. From 2015 through 2020, about 77 percent of MMWD’s average annual water supply originated from its local reservoirs, while about 23 percent was imported from Sonoma Water.

The District currently obtains wholesale water supplies from Sonoma Water pursuant to the 2015 Renewal of the Third Amended Offpeak Water Supply Agreement and the Amended Agreement for the Sale of Water between the Sonoma County Water Agency and Marin Municipal Water District (“**2015 Renewal Agreement**”). The 2015 Renewal Agreement took effect July 1, 2015, with a ten-year term that expires on June 30, 2025. Exhibit A to the 2015 Renewal Agreement is the Fourth Amended Offpeak Water Supply Agreement (“**Offpeak Agreement**”), while Exhibit B is titled Amendments to Amended Agreement for the sale of Water between Sonoma County water Agency and Marin Municipal Water District (“**Water Sale Agreement**”).

2015 Renewal Agreement

As stated above, the 2015 Renewal Agreement is comprised of two separate components, the Offpeak Agreement, which evolved from the initial series of agreements between the District and Sonoma Water, and the Water Sale Agreement, which augments the Offpeak Agreement. In 1996, these two agreements were incorporated into one, the Supplemental Water Supply Agreement, which was renewed and extended pursuant to the current 2015 Renewal Agreement.

1. Exhibit A - Offpeak Agreement

The 2015 Renewal Agreement’s Exhibit A - Offpeak Agreement provides that Sonoma Water shall deliver to Marin Water up to 4,300 acre-feet per year (“AFY”) of water at delivery rates not to exceed 760 AF per month. (Renewal Agreement, Exhibit A, § 1 at p. 3.) For the five-month period May 1 through September 30, the delivery rate shall not exceed 360 AF per month without the prior consent of Sonoma Water, and the total quantity delivered during this period shall not exceed 1,800 AF. (*Id.* at pp. 3-4.)

The Offpeak Agreement’s Section 3 requires the District to pay Sonoma Water for at least 4,300 AFY of water, regardless of whether the District actually requests or receives this amount (commonly called a “take-or-pay” amount). (*Id.* § 3 at p. 5.)

The Offpeak Agreement’s Section 2 requires the District to pay for water at a rate of 111 percent of the highest rate that Sonoma Water’s primary wholesale water contractors pay for Agency water they take from the Petaluma Aqueduct or Santa Rosa Aqueduct. (*Id.* § 2 at p. 4.) Section 5 requires the District to pay a Russian River Conservation Charge and a Russian River Projects Charge. (*Id.* § 5(a)-(b) at pp. 9-10.)

The Offpeak Agreement's Section 4 provides that the District shall release stored water from lakes Mendocino or Sonoma when needed to meet Sonoma Water's delivery obligations to Marin Water. (*Id.* § 4 at p. 5.) Section 4 describes how Sonoma Water will allocate available water among competing customers during a shortage caused by factors outside the Agency's control:

- First, health-and-safety deliveries to Marin Water and Sonoma Water's "regular customers"⁵ and "Russian River customers"⁶ based on quantities required for human consumption, sanitation, and fire protection in consideration of other potable water sources available to each such customer; and
- Second, additional water beyond health-and-safety deliveries is allocated to regular customers, Russian River Customers, and Marin Water in proportion to each customer's respective contract quantity, but not to exceed specified average monthly delivery rates or each customer's contract amount or reasonable need.

The Offpeak Agreement's Section 4 also allocates capacity in the Agency's Transmission System. With respect to Marin Water, Section 4 provides in part:

Agency shall make all reasonable efforts to deliver water to Marin at Kastania Reservoir or at North Marin's meter, as specified in Section 1 of this Offpeak Agreement, using all facilities available to Agency. However, Marin acknowledges that priorities of use of delivery capacity in Agency's facilities have been allocated to others who are not parties to this Offpeak Agreement, and that capacity to make deliveries of water to Marin at the rates in Section 1 of this Offpeak Agreement may not always be available to Agency.

(*Id.* at p. 7.)

If Transmission System capacity is limited for reasons beyond Sonoma Water's control, the available capacity is generally allocated as follows:

- First, capacity for health-and-safety deliveries first goes to Sonoma Water's Regular Customers;

⁵ "**Regular Customers**" collectively means "Water Contractors" and "Other Customers." "**Water Contractors**" means the City of Cotati, City of Petaluma, City of Rohnert Park, City of Santa Rosa, City of Sonoma, North Marin Water District, Valley of the Moon Water District, and Town of Windsor. "**Other Customers**" means Sonoma Water, the County of Sonoma, California American Water Company (with respect to the Larkfield Water District), Forestville Water District, Lawndale Mutual Water Company, Kenwood Village Water Company, Penngrove Water Company, the City of Sebastopol, the State of California, and Santa Rosa Junior College. (Offpeak Agreement § 4 at p. 9 [incorporating definitions from 2006 Restructured Agreement]; 2006 Restructured Agreement § 1.2(g)(5) at p. 3 [defining "Regular Customer"]; *id.* § 1.2(g)(1) at p. 2 [defining "Water Contractor"]; *id.* § 1.2(g)(2) at p. 3 [defining "Other Agency Customer"].)

⁶ "Russian River Customer" means any Sonoma Water customer within Sonoma County who has or in the future will have contracts with Sonoma Water to divert or redivert water directly from the Russian River or Dry Creek without the use of the Transmission System." (2006 Restructured Agreement § 1.2(gg) at p. 7.)

- Second, additional capacity is allocated to Regular Customers in proportion to their respective contract amounts, but not to exceed their reasonable needs;
- Third, additional capacity is allocated to Regular Customers in excess of their entitlements, but subject to certain limits;
- Fourth, additional capacity is allocated to Marin Water;
- Fifth, additional capacity is allocated to deliver surplus water to the Water Contractors;
- Sixth, additional capacity is allocated to deliver surplus water to Other Customers.

(*Id.* at p. 8.)

The Offpeak Agreement's Section 6 states that the water provided to the District here is in addition to the water provided under the Sale of Water Agreement (Exhibit B to the 2015 Renewal Agreement, which is described below).

The Offpeak Agreement's Section 7 says its term starts July 1, 2015, and remains effective until June 30, 2025, and that the District has the following right to renew:

Upon the request of Marin, Agency agrees to enter into renewal agreements for periods not to exceed the then-existing term of the Restructured Agreement for Water Supply or any renewals, amendments or replacement agreements to the Restructured Agreement for Water Supply upon the same terms and conditions contained in this Offpeak Agreement, except that the Agency may make reasonable adjustments to the charges under Section 5 ...

(*Id.* § 7 at p. 12.)

2. Exhibit B Sale of Water Agreement

The 2015 Renewal Agreement's Exhibit B Water Sale Agreement provides that Sonoma Water shall deliver to the District up to 10,000 AFY or the District's "Maximum Delivery Limit." (Water Sale Agreement § 3 at pp. 9-10.) the District's Maximum Delivery Limit started at 5,000 AFY in 1995 and could be increased in a following year by up to 1,000 AFY by Marin Water taking or paying for at least 90 percent of its then-current limit in any year. (*Id.* § 4(a), which is referred to as the "ramp-up".) The District's Maximum Delivery Limit may be decreased by the District not taking at least 90 percent of its then-current limit in any year in which sufficient Agency water supply and Transmission System capacity were available. (*Id.* § 4(b).)

The Water Sale Agreement's Section 5 allows the District to pay Sonoma Water in lieu of taking delivery of water to prevent any reduction in the District's Maximum Delivery Limit for the next year. (*Id.* § 5 at p. 11.) Section 5 essentially requires the District to take or pay for 1,000 AFY of water, under the Water Sale Agreement, (*ibid.*), which creates a total combined take-or-pay obligation of 5,300 AFY under the Offpeak Agreement and Water Sale Agreement.

Consistent with Section 2 of the Offpeak Agreement, the Water Sale Agreement's Section 10 requires Marin Water to pay for water at a rate of 111 percent of the highest rate of Sonoma Water's primary wholesale water contractors pay for Agency water they take from the Petaluma

Aqueduct or Santa Rosa Aqueduct. (*Id.* § 10(a) at p. 18.) Section 10 requires the District to pay a Russian River Conservation Charge and a Russian River Projects Charge. (*Id.* § 10(b)-(c) at pp. 19-20.) Section 10 requires additional payments when the amount of water Sonoma Water delivers to the District and the amount of water for which the District has made payments in lieu of delivery is less than the 10,000 AFY of firm water supply for which the District made lump-sum firming payments pursuant to Section 8 of the Water Sale Agreement. (*Id.* § 10(c)-(e).)

Consistent with Section 4 of the Offpeak Agreement, the Water Sale Agreement's Section 8 provides that Sonoma Water shall release stored water from lakes Mendocino or Sonoma when needed to meet Sonoma Water's delivery obligations to Marin Water. (*Id.* § 8(d)-(e) at pp. 12-14.)

The Water Sale Agreement's Section 8 uses the same priority principles as the Offpeak Agreement to allocate available Agency water among competing customers during a shortage caused by factors outside Sonoma Water's control:

- First, health-and-safety deliveries to Marin Water and Sonoma Water's "regular customers"⁷ based on quantities required for human consumption, sanitation, and fire protection in consideration of other potable water sources available to each such customer; and
- Second, additional water beyond health-and-safety deliveries is allocated to regular customers, Russian River Customers, and Marin Water in proportion to each customer's respective contract quantity, but not to exceed specified average monthly delivery rates or each customer's contract amount or reasonable need.

(*Id.* § 8 at p. 17.)

In practice, any curtailments under the 2015 Renewal Agreement rely on the water shortage methodology employed by Sonoma Water with respect to all Water Contractors and Marin Water.

The Water Sale Agreement's Section 2 states that the first 360 AF of water the District receives from Sonoma Water in any month shall be accounted for as being received pursuant to the Offpeak agreement. (*Id.* § 2 at p. 9.) Further, the District may not receive any water under the Water Sale Agreement in any month unless (1) the District already has received in that month at least 360 AF pursuant to the Offpeak Agreement, or (2) the District already has received in that year the maximum amount of water allowed by the Offpeak Agreement. (*Ibid.*)

The Water Sale Agreement's Section 9 allocates capacity in the Agency's Transmission System, stating:

... Agency shall be obligated to release water from storage or deliver water to District pursuant to this Water Sale Agreement only to the extent that the Transmission System has capacity in excess of that required by Agency to supply all of its Other

⁷ Consistent with the Offpeak Agreement, the Water Sale Agreement defines "regular customers" consistent with the 2006 Restructured Agreement. (*Id.* § 8(f) at p. 17; see, *supra*, note 1 [defining "Regular Customers"].)

Customers and Contractors, and District under the Offpeak Agreement.

(*Id.* § 9 at p. 17.) The Water Sale Agreement's Section 1 defines "Other Customers and Contractors" to mean:

... the North Marin Water District and all present and future Agency customers within Sonoma County, including all entities within Sonoma County that receive or will receive water from the Transmission System or other water conveyance facilities, and all entities within Sonoma County that divert or will divert water purchased from Agency directly from the Russian River or Dry Creek.

(*Id.* § 1(d) at p. 6.)

The Water Sale Agreement's Section 18 says its term starts July 1, 2015, and remains effective until June 30, 2025, and that Marin Water has the following right to renew:

Upon the request of District, Agency shall enter into renewal agreements for periods not to exceed the then-existing term of the Restructured Agreement for Water Supply or any renewals, amendments or replacement agreements to the Restructured Agreement for Water Supply upon the same terms and conditions contained in this Water Sale Agreement, except that the Agency may make reasonable adjustments to the charges under Section 10

(*Id.* § 18 at p. 26.)