

## Response to Grand Jury Report Form

Report Title: *Water, Water Anywhere? A Review of Marin's Water Resources*

Report Date: April 27, 2005

Response by: Marin Municipal Water District

### FINDINGS

- I (we) agree with the findings numbered: F1, F3, F4, F7
- I (we) disagree wholly or partially with the findings numbered: F2, F5, F6

### RECOMMENDATIONS

- Recommendations numbered \_\_\_\_\_ have been implemented.
- Recommendations numbered R1, R2 and R4 have not yet been implemented, but will be implemented in the future.
- Recommendation numbered R3 requires further analysis.

Date: June 27, 2005

Signed: Paul Helliker

Number of pages attached:

**Background, p.1:** "All water agencies have the responsibility to provide clean, inexpensive water to meet the needs of their constituents."

**Response:** Under State and Federal statutes and regulations, public water supply systems operated by water districts such as MMWD must meet various health standards that pertain to the quality of water supplied to their customers. MMWD consistently provides water that is as good as or better than these standards. Water districts are also obligated to provide water that is reasonable in cost. MMWD also meets this goal, by providing a resource that is necessary for the health and livelihoods of its customers, at a cost that is far less per unit than other necessities, such as fuel, electricity, waste disposal, communications, etc.

**Finding F2:** "Routine conservation programs have been effective in drought-free years, but an additional 10% reduction in normal usage is necessary to prepare for the occurrence of a possible drought."

**Response:** One of the fundamental tenets of MMWD's philosophy is to make the best and most cost-effective use of the water supplies that is already has available. As a result, MMWD has been a pioneer in developing and implementing conservation programs. These programs run the gamut from ultra low-flow toilet rebate and required replacement programs to artificial turf installation incentives. MMWD is a charter member of the California Urban Water Conservation Council and is one of the few water districts in the state that has implemented all 14 Best Management Practices for water conservation. Additionally, MMWD's conservation rate structure is one of the most aggressive in the U.S. and was adopted to provide further economic incentives to its customers to conserve water.

MMWD's programs have been effective in drought-free years, but have been even more effective in drought years. During the 1976-77 drought, MMWD customers were asked to reduce their water consumption by 57%, and the program was so successful that water consumption decreased by 63% during the second year of the drought. MMWD's water supply plan includes mechanisms to seek a voluntary reduction in demand of 10% during the first year of a severe drought and a mandatory reduction of 25% in the second year of a severe drought.

MMWD is obligated to provide water supply to its customers and to pursue additional water supply options when demand exceeds supply. MMWD is currently pursuing aggressively all options available to it to meet the water supply deficit, including conservation measures above and beyond those the District is currently implementing. A 10% reduction in normal water usage would substantially assist MMWD in meeting its water supply requirements, but such additional ongoing reductions may not be feasible without mandatory changes in consumer behavior, particularly including changes in landscaping and irrigation technologies.

**Finding F5:** "A decision to pursue either option can apparently be acted on without being put to a popular vote. An action plan from MMWD, with full public disclosure, is overdue."

**Response:** MMWD is fully committed to full disclosure and robust debate of all of its efforts to address water supply needs in its service territory. MMWD has regular public meetings on this topic, the most recent of which took place on May 26, 2005. MMWD also has a number of publications that it updates on this topic and distributes regularly to its customers via its bimonthly bills, special mailings and its website.

MMWD has prepared and adopted an Urban Water Management Plan, pursuant to statutory requirements. This Plan, which will be updated by January, 2006, includes an analysis of water supply and demand, and options to meet any deficits. This Plan has been adopted by the MMWD Board after public review and comment.

MMWD has also reviewed in detail its water supply options, in 2000 and again in May of 2005. In 2000, a special Board meeting was conducted on water supply and demand, and the Board determined at that time that there was an imbalance. The Board reconfirmed that assessment in May of 2005, and considered an updated analysis of water supply and demand. As the results of the desalination pilot plant become available and an EIR evaluating all of the options available to meet water demand in MMWD's service territory is prepared and circulated for review and comment, the MMWD Board will decide on the best approach to meet supply requirements. This decision will be reached after extensive public review and comment. The MMWD Board will consider various mechanisms for obtaining public review and comment, and will implement the optimal approach to do so.

Water Code Section 72760 specifies that, prior to incurring bonded indebtedness in any year greater than the amount of revenue that MMWD receives in that year, MMWD must secure approval by a majority of the voters of the District voting in an election for that purpose. Should MMWD decide to incur bonded indebtedness to fund any water supply option, it will comply with the requirements of Section 72760.

**Finding F6:** "Legally required dam releases to sustained endangered fish have first priority on reservoir water even in droughts."

**Response:** MMWD has a number of water rights for storage and diversion of water from Lagunitas Creek, which specify that MMWD will make beneficial use of the water. Under state statute, the highest and best use of water under these water rights is for municipal water supply. These water rights relate directly to the water MMWD stores in reservoirs on the main stem and tributaries to Lagunitas Creek.

MMWD's water rights have been conditioned by State Water Resources Control Board (SWRCB) Order 95-17, which specifies instream flow requirements that MMWD must meet downstream of Peters Dam in various types of hydrologic years. In Section 5 of the Order, MMWD may define and seek SWRCB approval for modifications to these instream flow requirements, should special circumstances warrant (including drought).

**Recommendation R1:** “The Marin Municipal Water District (MMWD) should take a stronger position on conservation ensuring a minimum reduction of 10% in normal base-level usage. Conservation measures should include educating the public in what it means to live in a dry summer climate.”

**Response:** As noted in the response to Finding F2, MMWD has implemented a comprehensive and aggressive conservation program. MMWD will continue to refine and expand its conservation programs, to improve the incentives for its customers to reduce their demand for water, particularly in the summer. These programs will include expanded outreach and education efforts, to provide information to MMWD customers about the climate and hydrology of MMWD’s service area, and techniques that they can use to reduce their water consumption and the resultant rates that they pay to MMWD for that water.

**Recommendation R2:** “MMWD should inform the public of its plans for supplying water during a drought before committing to a solution. MMWD should publicize the directions chosen in terms of timing, costs, impacts on water rates and the degree of dependency on other agencies for the various options.”

**Response:** As noted in the response to Finding F5, MMWD is fully committed to full disclosure of all of its efforts to analyze and plan for supplying water to meet its customers’ demand under various hydrologic conditions. To this end, MMWD has prepared a number of iterations of its Urban Water Management Plan, which have been adopted after public review and comment. MMWD will be updating this Plan in January, 2006, and will provide the opportunity for extensive public review and comment prior to doing so. MMWD will also continue its efforts, begun with the special meeting in 2000 and continued most recently in May, 2005, to analyze specifically the options of desalination and additional supply from the Russian River – including their costs, timing, impact on water rates and degree of dependency on other agencies. Once the desalination pilot plant project is completed in March, 2006, MMWD will refine its analysis of these two options and will then consider the best water supply alternatives available to meet the current and future supply shortfall.

**Recommendation R3:** “MMWD should put to a public vote any project of the magnitude of desalination and pipeline expansion.”

**Response:** As noted in the response to Finding F5, should MMWD decide to incur bonded indebtedness in any year that exceeds its annual revenues, Water Code Section 72760 requires MMWD to seek approval of the voters. MMWD continues to work diligently to make sure that it takes advantage of the most effective means of securing public review and comment on its plans and actions.

**Recommendation R4:** “MMWD should attempt to renegotiate required dam releases with the relevant Federal and State agencies to reduce legally-required stream flow requirements during drought.”

**Response:** As noted in the response to Finding F6, MMWD currently holds water rights for the storage and diversion of water from Lagunitas Creek and its tributaries. These rights were reviewed by the State Water Resources Control Board in 1982 via Decision 1582. MMWD petitioned the Marin County Superior Court that year to set aside Decision 1582, and the Court remanded the decision to the SWRCB in 1983, nullifying the interim instream flow requirements established in Decision 1582. Staff of MMWD and the Department of Fish and Game (DFG) attempted to negotiate instream flow requirements following completion of the various studies required by Decision 1582. These negotiations were unsuccessful and MMWD and DFG petitioned the SWRCB for a water right hearing to resolve the remaining issues. This hearing culminated in Order WR 95-17, dated October 26, 1995. This order contains the instream flow requirements that pertain to MMWD's operations on Lagunitas Creek today.

During the negotiations between DFG and MMWD subsequent to Decision 1582, DFG proposed significant instream flow requirements that would have dramatically reduced MMWD's water supply from the reservoirs on Lagunitas Creek. DFG proposed instream flow requirements of 18,300 acre-feet per year (AFA) in wet and normal years, while the District proposed flows of 8,300 AFA. In dry years, MMWD proposed flows of 4,700 AFA, while DFG's proposed flows were based on reservoir storage, runoff and other factors, but would have been significantly higher than MMWD's proposal.

The SWRCB's final decision included flows of 11,050 AFA and 9,000 AFA in wet/normal years and dry years, respectively. However, these flows can be reduced by MMWD, should special circumstances (such as droughts) prevent MMWD from being able to meet the requirements of WR 95-17. Under these special circumstances, MMWD is required to consult with DFG, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, to prepare a plan of operation. If the parties can reach agreement, MMWD will implement the plan. If they cannot reach agreement, MMWD will submit the plan to the SWRCB for approval, and will include reasons for the necessary modifications in flows, a description of measures to deal with deficiencies in water supply, and measures to be taken to mitigate impacts on fishery resources in Lagunitas Creek.

In the event of a future drought, MMWD will attempt to meet the instream flow requirements contained in WR 95-17. If such compliance is not possible, MMWD will pursue the process for modifying the instream flow requirements contained in WR 95-17, and summarized here.