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3 **NORTH MARIN WATER DISTRICT**  
4 **MINUTES OF ADJOURNED MEETING**  
5 **OF THE BOARD OF DIRECTORS**  
6 August 2, 2005

7 **CALL TO ORDER**

8 President Baker called the adjourned meeting of the Board of Directors of North Marin  
9 Water District to order at 7:00 p.m. at the District headquarters and the agenda was accepted as  
10 presented. Present were Directors Jack Baker, Rick Fraites, Steve Petterle, Dennis Rodoni and  
11 John Schoonover. Also, present were General Manager Chris DeGabriele, Acting Secretary Renee  
12 Roberts, and Auditor-Controller David L. Bentley. Chief Engineer Drew McIntyre was absent.

13 District Employee Joyce Arnold, District Secretary and District Legal Counsel Robert  
14 Maddow were in the audience.

15 **OPEN TIME**

16 President Baker asked if anyone in the audience or staff wished to bring up an item not on  
17 the agenda and there was no response.

18 **ACTION**

19 **APPROVE BLACK POINT PARTNERSHIP RECYCLED WATER SERVICE AGREEMENT**

20 President Baker asked General Manager Chris DeGabriele to review the item on tonight's  
21 agenda. Mr. DeGabriele stated that tonight's meeting is an adjourned meeting of the Board of  
22 Directors meeting held on Tuesday, August 2, 2005 for the purpose of consideration of the Black  
23 Point Partnership Recycled Water Service Agreement. He stated that rather than recommending  
24 the Board to approve the Draft Agreement, that staff is requesting approval of a letter to Black Point  
25 Partnership that would establish the path forward to conclude the Recycled Water Service  
26 Agreement with an alternative financial guarantee.

27 Mr. DeGabriele stated that after reviewing the Draft Agreement at the August 2 meeting, the  
28 Board directed attention to three items: 1) the Draft Agreement should detail that the recycled  
29 water service would be discontinued should non-payment occur; 2) clarify that no potable water  
30 would be available if recycled water is discontinued due to non-payment; and 3) consider alternative  
31 financial guarantees other than the performance bond to insure repayment of the proposed project  
32 financing arrangement.

33 He stated that the Board has before them tonight the draft letter, the redraft of the Recycled  
34 Water Service Agreement and a letter from Black Point Partnership dated August 3, 2005. He  
stated Black Point Partnership's letter outlines their proposal that the property itself be used as the

1 performance guarantee for repayment of the loan on the Recycled Water Facility. Black Point  
2 Partnership does not have an appraisal of the property, but advised that they have expended  
3 approximately \$25M on the golf course and clubhouse and the only encumbrance on the property is  
4 a \$7.7M construction loan.

5 Mr. DeGabriele stated that he, Chief Engineer Drew McIntyre and District Legal Counsel  
6 Robert Maddow had met to discuss an alternative financial guarantee and to find ways to confirm  
7 that there is value in the property. He stated a grant deed could be generated that would run with  
8 the property to insure repayment if there was a default on the payment plan. He stated that the  
9 District would need to conduct a title search, an appraisal on the property and to examine Black  
10 Point Partnership's financial books. Mr. Maddow's office has staff who are familiar with these  
11 matters and have estimated that it would cost \$17,500 to perform that analysis and that it would  
12 take approximately one month to complete. Mr. DeGabriele said that this is the subject of the draft  
13 letter.

14 Director Schoonover commented that the cost and time frame assumes full cooperation on  
15 the part of Black Point Partnership.

16 Mr. DeGabriele stated that there is a timeline in the letter for the above analysis. Black  
17 Point Partnership would pay the District \$17,500 by August 15, 2005 and the analysis would be  
18 completed by September 6, 2005. If the analysis proves that there is security in the property, the  
19 Recycled Water Service Agreement would be agendized for consideration at a special meeting on  
20 September 13, 2005. He stated that the agreement would have to be executed by September 20,  
21 2005 or the District would terminate the temporary water service.

22 Director Baker asked Mr. Maddow for his observations.

23 Mr. Maddow replied that the District staff has worked very diligently over a long period of  
24 time to assist Black Point Partnership to the point where they could arrange some kind of financial  
25 instrument to provide security for the loan. He stated that although he was not familiar with Black  
26 Point Partnership he has learned from staff that conventional forms of loan guarantees have not  
27 proved out for them. Mr. Maddow said that it was his opinion that the approach as stated in the  
28 District's letter can work and that after the analysis he will make a recommendation to the Board  
29 and management as to whether it will be prudent for the District to proceed with the repayment plan.  
30 He stated that the letter and Draft Agreement will protect the District against risk. Mr. Maddow also  
31 advised that if the analysis results are unsatisfactory, then the Applicant must find a financial  
32 institution that will provide a performance bond or irrevocable letter of credit.

1 Director Rodoni stated that he thinks the letter is well written and feels comfortable with the  
2 property as collateral provided research prove that there is over \$3M value remaining on the  
3 property in lieu of a performance bond. He stated he is also comfortable with the termination  
4 statement and that it is quite clear that the District wants Black Point Partnership to respond quickly.  
5 He requested that the language on pages 1-5 and 1-6 of the Draft Agreement concerning the  
6 performance bond be cleared up and he also requested that language in regards to termination of  
7 water service be simplified.

8 Mr. DeGabriele explained that once the alternative performance guarantee is established  
9 that any reference to performance bond in the Draft Agreement will be deleted.

10 Director Petterle stated that he felt that the Agreement did not address loss of plants as a  
11 result of using recycled water would not be the District's problem. Mr. DeGabriele responded that  
12 the District assured the applicant that the quality of water would be the same as other golf courses.  
13 Director Petterle also suggested that in Section 9 of the Draft Agreement the first sentence should  
14 read "Except as provided elsewhere in agreement..." He inquired where the District would stand for  
15 payment in the event of a default and what would happen in the event that Black Point Partnership  
16 files for bankruptcy. In regards to bankruptcy, Mr. Maddow stated that he would utilize the expertise  
17 of a very competent bankruptcy attorney associated with his firm.

18 Mr. Maddow noted that in a bankruptcy tthe District would most likely be in the second  
19 position behind the construction lender to collect the funds. He stated that his firm would be looking  
20 at other debts that Black Point Partnership may have.

21 Director Schoonover asked if all the information necessary to make an informed decision  
22 would be discoverable. Mr. Maddow replied that the title search would provide the information  
23 needed and the District should get a complete financial picture from Black Point Partnership.

24 Mr. DeGabriele advised the Board that he inquired of Black Point Partnership why they  
25 needed financing if they had \$25M value in the project and Black Point Partnership's response was  
26 that there is \$25M expended on the project, but \$7.7M in debt. He stated that he felt there was  
27 private money linked to the property.

28 Director Rodoni inquired whether the District intended on requesting authorization for award  
29 of the construction contract as scheduled at the next Board meeting. Mr. DeGabriele replied that  
30 the District has requested Maggiora & Ghilotti to hold their bid until October. He said staff will not  
31 request the Board to approve the construction contract at the next regular meeting.

1 Director Baker asked if October would be too late to begin construction of the project. Mr.  
2 DeGabriele said that it is the District's goal that pipe be laid in the Novato Sanitary District's  
3 irrigation field before the wet season commences.

4 Director Rodoni requested that in the last sentence of the letter the word "terminated" be  
5 replaced with "discontinued."

6 Mr. DeGabriele asked the Board to clarify that if the District's legal counsel advises against  
7 this alternate financing arrangement, the Board will accept a performance bond or letter of credit as  
8 a performance guarantee.

9 Director Rodoni stated that the District would have to accept a performance bond because it  
10 is normal practice.

11 Director Baker inquired if the District can specify a letter of credit as security rather than a  
12 performance bond. Mr. Maddow replied that yes, the District can specify a letter of credit as the  
13 acceptable form of security.

14 On motion of Director Schoonover, seconded by Director Petterle and unanimously passed,  
15 the Board approved the letter to Black Point Partnership establishing the path forward for  
16 concluding the Recycled Water Service Agreement

17 **ADJOURNMENT**

18 President Baker adjourned the meeting at 7:55 p.m.

19 Submitted by

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Renee Roberts  
Acting District Secretary