NORTH MARIN WATER DISTRICT
MINUTES OF ADJOURNED MEETING
OF THE BOARD OF DIRECTORS
August 2, 2005

CALL TO ORDER

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

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

OPEN TIME

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

ACTION

APPROVE BLACK POINT PARTNERSHIP RECYCLED WATER SERVICE AGREEMENT

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

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

He stated that the Board has before them tonight the draft letter, the redraft of the Recycled 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

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

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

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

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

Director Baker asked Mr. Maddow for his observations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADJOURNMENT

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

Submitted by

Renee Roberts
Acting District Secretary