

Napa County



Agenda - Final

Tuesday, October 4, 2022

1:30 PM

**Board of Supervisors Chambers
1195 Third Street, Third Floor**

Flood Control and Water Conservation District

Scott Sedgley, City of Napa (Chairperson)
Brad Wagenknecht, District 1 (Vice-Chairperson)
Irais Lopez-Ortega, City of Calistoga
Diane Dillon, District 3
John Dunbar, Town of Yountville
Geoff Ellsworth, City of St. Helena
Leon Garcia, City of American Canyon
Ryan Gregory, District 2
Beth Painter, City of Napa
Alfredo Pedroza, District 4
Belia Ramos, District 5

GENERAL INFORMATION

Except when otherwise specified in its adopted annual calendar, the Napa County Flood Control and Water Conservation District meets the first Tuesday of every month at 1:30 P.M. in regular session at 1195 Third Street, Suite 305, Napa, California 94559. The meeting room is wheelchair accessible. Assistive listening devices and interpreters are available through the Clerk of the Board of the Napa County Board of Supervisors. Requests for disability related modifications or accommodations, aids or services may be made to the Clerk of the Board's office no less than 72 hours prior to the meeting date by contacting (707) 253-4580.

The agenda is divided into three sections:

CONSENT ITEMS - These matters may include routine financial or administrative actions, as well as the final adoption of two-reading ordinances and are approved by a single vote.

ADMINISTRATIVE ITEMS - These items include significant policy and administrative actions and are classified by program areas. Immediately after approval of the **CONSENT CALENDAR**, if the time for hearing **SET MATTERS** has not arrived, the **ADMINISTRATIVE ITEMS** will be considered.

SET MATTERS - PUBLIC HEARINGS - These items are noticed hearings, work sessions, and items with a previously set time.

All materials relating to an agenda item for an open session of a regular meeting of the Napa County Flood Control and Water Conservation District which are provided to a majority or all of the members of the Board by Board members, staff or the public within 72 hours of but prior to the meeting will be available for public inspection, at the time of such distribution, in the office of the District Secretary, 1195 Third Street, Suite 305, Napa, California 94559, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for County holidays. Materials distributed to a majority or all of the members of the Board at the meeting will be available for public inspection at the public meeting if prepared by the members of the Board or County staff and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE BOARD ON A MATTER ON THE AGENDA please proceed to the rostrum and, after receiving recognition from the Chairperson, give your name and your comments or questions. In order that all interested parties have an opportunity to speak, please be brief and limit your comments to the specific subject under discussion. Time limitations shall be at the discretion of the Chairperson or Board.

AGENDA AVAILABLE ONLINE AT www.countyofnapa.org or www.napaflooddistrict.org

How to Watch or Listen to the Napa County Flood Control and Water Conservation District Meetings

The Napa County Flood Control and Water Conservation District will continue to meet pursuant to the adopted 2021 calendar available at the following link:

<https://www.countyofnapa.org/DocumentCenter/View/2924/Flood-Control-and-Water-Conservation-Calendar-PDF?bidId>

The District realizes that not all County residents have the same ways to stay engaged, so several alternatives are offered. Please watch or listen to the Napa County Flood Control and Water Conservation District meeting in one of the following ways:

1. Watch on your TV - Napa Valley TV Channel 28 (programming subject to local pre-emption rules and schedules).
2. Listen on your cell phone via Zoom at 1-669-900-6833 then enter Meeting ID 842-343-169 once you have joined the meeting.
3. Watch via the Internet – view the Live Stream
 - a. via Zoom at the following link: <https://www.zoom.us/join> then enter Meeting ID 842-343-169.
 - b. via Granicus by clicking on the following link: http://napa.granicus.com/ViewPublisher.php?view_id=5
4. You may submit public comment for any item that appears on the agenda, or general public comment for any item or issue that does not appear on the agenda, as follows:
Via email: send your comment to the following email address:
publiccomment@countyofnapa.org. EMAILS WILL NOT BE READ ALOUD.

Via telephone: please call the Napa County Flood Control and Water Conservation District Public Comment Line at (707)-299-1776.

Please mute all audio devices and do not use the speakerphone to prevent echoing.

Please provide your name and the agenda item on which you are commenting. Calls will be placed on hold and heard in the order received. The above-identified measures exceed all legal requirements for participation and public comment, including those imposed by the Ralph M. Brown Act and California Assembly Bill 361. If you have any questions, contact us via telephone at (707) 253-4421 or email clerkoftheboard@countyofnapa.org.

1. CALL TO ORDER; ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF MINUTES

- A. Clerk of the Board/Secretary of the District Board requests approval of minutes from the August 23, 2022 meeting. [22-1675](#)

Attachments: [August 23, 2022](#)

4. PRESENTATIONS AND COMMENDATIONS

5. CONSENT ITEMS

- A. Auditor-Controller requests adoption of a Resolution establishing the fiscal year 2022-23 appropriation limit and estimated revenues subject to the limit for the Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring and Restoration Project (CFD OVOK) as required by Article XIII B of the California Constitution. [22-1370](#)

Attachments: [Memo](#)
[Resolution](#)

- B. District Manager requests approval of and authorization for the Chairperson to sign Amendment No. 2 to Agreement No. F-103 with Somach, Simmons & Dunn for Fiscal Year 2022/2023, at an annual cost of \$30,000 for specialized services necessary to advise, assist, and represent the District in its dispute over proper interpretation of the 2013 Area of Origin Settlement Agreement with the California Department of Water Resources (DWR). [22-1732](#)

Attachments: [Agreement](#)

- C. District Counsel requests approval of the proposed amendments to the Conflict of Interest Code (Code) for the Napa County Flood Control and Water Conservation District (District). [22-1836](#)

Attachments: [Resolution](#)
[Amendment](#)

6. DISCUSSION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

7. PUBLIC COMMENT

At this time, anyone may address the Board of the Napa County Flood Control and Water Conservation District regarding any subject not on today's agenda over which the Board has jurisdiction. Individuals will be limited to a three-minute presentation. No action will be taken by the Board of the Napa County Flood Control and Water Conservation District as a result of any item presented at this time.

8. ADMINISTRATIVE ITEMS

- A. District staff to present an update on the Flood Project.

[22-1804](#)

9. SET MATTERS OR PUBLIC HEARINGS

10. DISTRICT MANAGER'S/ENGINEER'S REPORTS AND ANNOUNCEMENTS

11. BOARD OF DIRECTORS REPORTS AND ANNOUNCEMENTS

12. BOARD OF DIRECTORS FUTURE AGENDA ITEMS

13. CLOSED SESSION

14. ADJOURNMENT

**ADJOURN TO THE NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT REGULAR MEETING, TUESDAY, NOVEMBER 1, 2022 AT
1:30 P.M.**

I HEREBY CERTIFY THAT THE AGENDA FOR THE ABOVE STATED MEETING WAS POSTED AT A LOCATION FREELY ACCESSIBLE TO MEMBERS OF THE PUBLIC AT THE NAPA COUNTY ADMINISTRATIVE BUILDING, 1195 THIRD STREET, NAPA, CALIFORNIA ON FRIDAY, SEPTEMBER 30, 2022 BY 5:00 P.M. A HARDCOPY SIGNED VERSION OF THE CERTIFICATE IS ON FILE WITH THE DISTRICT SECRETARY AND AVAILABLE FOR PUBLIC INSPECTION.

Neha Hoskins (By e-signature)

NEHA HOSKINS, District Secretary



Napa County

Board Agenda Letter

Flood Control and Water Conservation District **Agenda Date:** 10/4/2022

File ID #: 22-1675

TO: Napa County Flood Control and Water Conservation District
FROM: Neha Hoskins - Admin Manager/Clerk of the Board
REPORT BY: Anthony Williams - Board Clerk II
SUBJECT: Approval of Minutes

RECOMMENDATION

Clerk of the Board/Secretary of the District Board requests approval of minutes from the August 23, 2022 meeting.

EXECUTIVE SUMMARY

Clerk of the Board/Secretary of the District Board requests approval of minutes.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Clerk of the Board/Secretary of the District Board requests approval of minutes from the August 23, 2022 meeting.



Meeting Minutes

Napa County Flood Control and Water Conservation District

Scott Sedgley, City of Napa (Chairperson)
Brad Wagenknecht, District 1 (Vice-Chairperson)
Irais Lopez-Ortega, City of Calistoga
Diane Dillon, District 3
John Dunbar, Town of Yountville
Geoff Ellsworth, City of St. Helena
Leon Garcia, City of American Canyon
Ryan Gregory, District 2
Beth Painter, City of Napa
Alfredo Pedroza, District 4
Belia Ramos, District 5

Tuesday, August 23, 2022	1:30 PM	Board of Supervisors Chambers
		1195 Third Street, Third Floor

1. CALL TO ORDER; ROLL CALL

Present: Chair Scott Sedgley, Directors Belia Ramos, Beth Painter, Irais Lopez-Ortega, John Dunbar, Geoff Ellsworth, Leon Garcia, Ryan Gregory and Vice Chair Brad Wagenknecht. The meeting was called to order by Chair Scott Sedgley. Directors Alfredo Pedroza and Diane Dillon were enroute.

2. PLEDGE OF ALLEGIANCE

Chair Scott Sedgley led the assembly in the Pledge of Allegiance.

3. APPROVAL OF MINUTES

- A. Clerk of the Board/Secretary of the District Board requests approval of minutes from the July 26, 2022 meeting.

[22-1618](#)

Motion Text: Approve Minutes.

Voting Yes: Gregory, Garcia, Dillon, Dunbar, Ellsworth, Lopez-Ortega, Painter, Ramos, Pedroza, Wagenknecht and Sedgley

Recusals: None

Result: Passed

4. PRESENTATIONS AND COMMENDATIONS

None

5. CONSENT ITEMS

- A. District Manager requests approval for the Chairperson to sign Amendment No. 1 with Somach, Simmons and Dunn which increases the legal fee budget by \$52,260 to a new maximum amount of \$93,570, for the term of October 5, 2021 through June 30, 2024 to provide legal services in support of a renewal of the existing Flood District Agreement A-38(FC) with the United States Bureau of Reclamation related to diversion and distribution of water from Lake Berryessa. Amendment No. 1 expands legal representation and consultation to include North Bay Aqueduct water service and emergency drought curtailment notices in the Delta. [22-1614](#)

Motion Text: Approve Consent Calendar.

Voting Yes: Pedroza, Dunbar, Dillon, Ellsworth, Garcia, Gregory, Lopez-Ortega, Painter, Ramos, Pedroza, Wagenknecht and Sedgley

Recusals: None

Result: Passed

Enactment No: A-220160B Amend. 1 (FC)

6. DISCUSSION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

None

7. PUBLIC COMMENT

None

8. ADMINISTRATIVE ITEMS

- A. District Manager requests the adoption of two resolutions accepting funds from the State Water Resources Control Board and Wildlife Conservation Board and authorizing the District Manager to sign grant agreements and execute any subsequent amendments pursuant to implementation of the Bale Slough - Bear Creek Restoration Project, Group A. [22-1590](#)

District Manager Richard Thomasser made presentation.

Flood Control and Water Conservation District Resource Specialist Jeremy Sarrow made presentation.

Discussion held.

Motion Text: Adopt Resolutions.

Voting Yes: Dunbar, Ellsworth, Dillon, Ellsworth, Garcia, Gregory, Lopez-Ortega, Painter, Ramos, Pedroza, Wagenknecht and Sedgley

Recusals: None

Result: Passed

Enactment No: R 2022-07 (FC); R 2022-08 (FC)

9. SET MATTERS OR PUBLIC HEARINGS

None

10. DISTRICT MANAGER'S/ENGINEER'S REPORTS AND ANNOUNCEMENTS

District Manager Richard Thomasser provided the following updates:

Lake Park Area Public Meeting - Scheduled for Thursday, August 25, 2022 at 6:00 p.m. at the Napa County Library. Attendance of Flood Board Members will be limited in order to comply with the Brown Act, but the meeting will also be broadcast via Zoom.

Project Cooperation Agreement (PCA) Amendment - Congressman Mike Thompson met with Assistant Secretary of the Army Michael Connor, who directed their counsel to engage directly with the Flood District to help move the Amendment forward.

U.S. Army Corps of Engineers Dredging Project - The Flood District awarded a contract for the transportation of dredge materials to the South Jefferson site, and the Corps awarded a contract for dredging to occur at approximately the beginning of September.

11. BOARD OF DIRECTORS REPORTS AND ANNOUNCEMENTS

None

12. BOARD OF DIRECTORS FUTURE AGENDA ITEMS

None

13. CLOSED SESSION

None

14. ADJOURNMENT

**ADJOURN TO THE NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT REGULAR MEETING, TUESDAY, SEPTEMBER
13, 2022 AT 1:30 P.M.**

Neha Hoskins (By e-signature)

NEHA HOSKINS, District Secretary



Napa County

Board Agenda Letter

Flood Control and Water Conservation District **Agenda Date:** 10/4/2022

File ID #: 22-1370

TO: Napa County Flood Control and Water Conservation District
FROM: Tracy Schulze - Auditor-Controller
REPORT BY: Benjamin Sargent - Senior Accountant-Auditor
SUBJECT: 2022-23 Appropriation Limit for Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring and Restoration Project

RECOMMENDATION

Auditor-Controller requests adoption of a Resolution establishing the fiscal year 2022-23 appropriation limit and estimated revenues subject to the limit for the Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring and Restoration Project (CFD OVOK) as required by Article XIII B of the California Constitution.

EXECUTIVE SUMMARY

Each year, Article XIII B of the California Constitution requires the Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring and Restoration Project (CFD OVOK) to establish an appropriation limit. The attached resolution establishes the appropriation limit and the revenues subject to that limit.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	The estimated appropriation limit is considered when preparing the requested budget.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	The appropriation limit is required to be approved each fiscal year.
Consequences if not approved:	Failing to establish an appropriation limit each fiscal year would put the District in violation of the State Constitution.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The annual appropriation limit is calculated in accordance with Article XIII B of the California Constitution and is the amount the District could spend that is funded by certain taxes and State subventions, while the revenues subject to that limit is the amount of revenue from those sources the District anticipates receiving in the fiscal year. In certain instances when the revenues subject to the limit exceeds the appropriation limit, tax revenues are required to be returned to local taxpayers.

On January 6, 2015, the property owners of Napa Flood Control and Water Conservation District Community District No. 2014-01 approved the formation of Napa County Flood Control and Water Conservation Community Facilities District (for the Oakville to Oak Knoll Maintenance, Monitoring and Restoration Project ("Community Facilities District")) setting the appropriation limit for the District at \$2,000,000 per fiscal year.

The Auditor-Controller is requesting approval of a resolution establishing the appropriations limit for fiscal year 2022-2023 at \$2,000,000, with estimated revenues subject to that limit of \$120,010.




A Tradition of Stewardship
A Commitment to Service

AUDITOR-CONTROLLER INTER-OFFICE MEMO

Date: October 4, 2022

To: Napa County Flood and Water Conservation District Board of Directors

From: Tracy A. Schulze
Auditor-Controller 

Subject: **2022-2023 Appropriations Limit for Community Facilities District No. 2014-01 (Oakville to Oak Knoll Maintenance, Monitoring and Restoration Project)**

Each year, Article XIII B of the California Constitution requires the Community Facilities District to establish an appropriations limit. On June 5, 1990, the voters of California passed Proposition 131 that amended Article XIII B of the State's Constitution relating to the calculation of a jurisdiction's appropriations limit.

One of the changes to Article XIII B requires the District to select one of two methodologies to determine the cost-of-living factor used in calculating the appropriations limit. The District may select one of the following:

- The percentage change in California per capita personal income from the preceding year; or
- The percentage change in the local assessment roll from the preceding year due to the addition of local non-residential new construction.

Typically the Auditor-Controller's Office calculates the appropriations limit using both factors and recommends to the Board the factor that is most beneficial to the District. However, the District previously approved an annual appropriations limit not to exceed \$2,000,000, pursuant in the Resolution of Formation.

Recommended Board Action

Adopt the attached resolution establishing the appropriations limit for the Community Facilities District using the appropriations limit approved by the District Board. The appropriations limit and revenue subject to the limit are as follows:

Community Facilities District No. 2014-01 (Oakville-Oak Knoll Maintenance, Monitoring and Restoration Project)

Appropriations Limit	Revenues Subject To Limit
\$2,000,000	\$120,010

RESOLUTION NO. _____(CFD OVOK)

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NAPA
COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT REGARDING COMMUNITY FACILITIES DISTRICT NO.
2014-01 ESTABLISHING THE APPROPRIATIONS LIMIT
FOR FISCAL YEAR 2022-2023**

(Oakville - Oak Knoll Maintenance, Monitoring, and Restoration Project)

WHEREAS, Article XIII B of the California Constitution requires each entity of local government to annually establish an appropriations limit; and

WHEREAS, on January 6, 2015, the property owners of Napa Flood Control and Water Conservation District Community District No. 2014-01 approved the formation of Napa County Flood Control and Water Conservation District Community Facilities District (for the Oakville to Oak Knoll Maintenance, Monitoring, and Restoration Project (“Community Facilities District”) setting the appropriations limit for the District at \$2,000,000 per fiscal year; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors (the “Board”) of the Napa County Flood Control and Water Conservation District (the “District”) does set the appropriations limit and estimated revenues subject to the limit for the Community Facilities District for fiscal year 2022-2023 as follows:

	<u>Appropriations Limit</u>	<u>Revenues Subject to Limit</u>
Community Facilities District No. 2014-01 (Oakville-Oak Knoll Maintenance, Monitoring and Restoration Project)	\$2,000,000	\$120,010

BE IT FURTHER RESOLVED, the Board finds that in determining the 2022-23 appropriations limit, the Resolution of Formation was used for fiscal year 2022-2023.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

THE FOREGOING RESOLUTION WAS PASSED AND ADOPTED by the Board of Directors of the Napa County Flood Control and Water Conservation District at a regular meeting thereof held on October 4, 2022, by the following vote, the number following each Director's name indicating the number of votes cast by that Director:

AYES:	SUPERVISORS	_____
NOES:	SUPERVISORS	_____
ABSENT:	SUPERVISORS	_____

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a special
district of the State of California

By: _____
SCOTT SEDGLEY, Chairperson of the Board of
Directors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Shana A. Bagley</u> County Counsel</p> <p>Date: <u>September 9, 2022</u> [PL No. 79122]</p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Secretary of the District Board</p> <p>By: _____</p>
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Napa County

Board Agenda Letter

Flood Control and Water Conservation District **Agenda Date:** 10/4/2022

File ID #: 22-1732

TO: Napa County Flood Control and Water Conservation District
FROM: Richard Thomasser - District Manager
REPORT BY: Sarah Geiss - Staff Services Analyst II
SUBJECT: Amendment No. 2 to Agreement No. F-103 Somach, Simmons & Dunn

RECOMMENDATION

District Manager requests approval of and authorization for the Chairperson to sign Amendment No. 2 to Agreement No. F-103 with Somach, Simmons & Dunn for Fiscal Year 2022/2023, at an annual cost of \$30,000 for specialized services necessary to advise, assist, and represent the District in its dispute over proper interpretation of the 2013 Area of Origin Settlement Agreement with the California Department of Water Resources (DWR).

EXECUTIVE SUMMARY

Napa County Flood Control and Water Conservation District was harmed by an action of the Department of Water Resources (DWR) revoking 1,208 acre-feet of carryover water in their 2020 Finalization Report. DWR claimed a Water Exchange Transfer Agreement with Alameda County Zone 7 Water Agency nullified the District's unused Table A allocation as carryover for future water deliveries. Outside special water counsel has represented the District in the on-going and unresolved disagreement with DWR. Amendment No. 2 to Agreement No. F-103 extends the term date and appropriates up to \$30,000 per year for legal fees. A Complaint against DWR has been filed with Sacramento County Superior Court.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Fund 8000, Organization 8001500
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Legal analysis for negotiations is needed
Is the general fund affected?	No
Future fiscal impact:	No future fiscal impact

Consequences if not approved: Staff will not have the benefit of expert legal services to support dispute with DWR

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Napa County Flood Control and Water Conservation District (Napa), Solano County Water Agency (Solano), and City of Yuba City (Yuba City) (collectively, "NOD 3 Contractors") are in dispute of the California Department of Water Resources' (DWR) Water Year 2020 accounting for the NOD 3 Contractors. Specifically, the NOD 3 Contractors disagree with DWR's interpretation of their respective 2013 Area of Origin (AOO) Settlement Agreements as implemented through the State Water Project (SWP) contract provisions that concern use and carryover of each contractor's unique Table A Allocation provided by their Settlement Agreement. For Water Year 2020, DWR's determinations are documented in its 2020 Finalization Report issued by DWR on January 15, 2021. On February 18, 2021, DWR issued a revised version of the 2020 Finalization Report to Yuba City correcting an accounting error for Yuba City's use of carryover. DWR's flawed determinations resulted in a loss of water in carryover storage for each contractor as follows: Napa: 1,208 acre-feet (AF); Solano: 2,533 AF; and Yuba City: 960 AF; for a total loss of 4,701 AF.

NOD 3 Contractors attempted to resolve the dispute with DWR in 2021. Outside special water counsel, Somach, Simmons & Dunn (SSD) presented arguments to DWR that their interpretation of the AOO Settlement Agreement was flawed and requested 1,208 AF carryover storage be returned to the District as an available water supply class. DWR rejected the District's request. A subsequent rebuttal to DWR's decision was also denied.

On January 14, 2022, SSD filed a claim against DWR with State of California Department of General Services (DGS). The claim asserts DWR acted wrongfully by stripping the District of 1,208 AF in contractual water supply entitlements resulting in \$745,251 of financial harm. DGS did not respond within its 45 day statutory limit. Once the Government Claim requirement expired and was discharged by DGS, special water counsel proceeded with submitting formal complaint, Napa County Flood Control & Water Conservation District vs State of California Department of Water Resource with Sacramento County Superior Court. A case management conference is set for Friday, March 17, 2023.

Approval of Amendment No. 2 to Agreement No. F-103 with Somach, Simmons & Dunn appropriates up to \$30,000 per year for legal assistance related to the Area of Origin dispute with DWR and unjust loss of carryover water in storage.

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AMENDMENT NO. 2 TO AGREEMENT NO. F-103 (FC)**

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 2 TO NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. F-103 (FC) (the "Agreement") is made and entered into effective as of July 1, 2022, by and between the Napa County Flood Control and Water Conservation District, a special district of the State of California ("DISTRICT"), and Somach Simmons & Dunn, a Professional Corporation, whose business address is 500 Capitol Mall, Suite 1000, Sacramento, California 95814 ("CONTRACTOR"). DISTRICT and CONTRACTOR may be referred to below individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, CONTRACTOR previously represented DISTRICT and other public agencies in litigation against the California Department of Water Resources (DWR) involving disputes over rights to water from the State Water Project, on record in Sacramento Superior Court as Case No. 34-2008-00016338-CU BC GDS; and

WHEREAS, the litigation was resolved through various settlement agreements among the parties, collectively filed with the Sacramento Superior Court on January 30, 2014; and

WHEREAS, a dispute arose between DISTRICT and DWR over the interpretation of their settlement agreement; and

WHEREAS, on November 16, 2020, the Parties entered into Agreement F-103 (FC), as authorized by Government Code section 31000, in order to advise, assist, and represent the DISTRICT in its dispute over the proper interpretation of the settlement agreement with DWR; and

WHEREAS, on June 15, 2021, the Parties entered into Amendment No. 1 of Agreement F-103 (FC) continuing the services of CONTRACTOR regarding ongoing discussions of the proper interpretation of the settlement agreement; and

WHEREAS, on December 7, 2021, DISTRICT Board of Directors authorized the DISTRICT to proceed with litigation to enforce the DISTRICT's settlement agreement and execute a Memorandum of Understanding (MOU) to allocate costs to DISTRICT and other parties; and

WHEREAS, DISTRICT wishes to continue receiving specialized services from CONTRACTOR, as authorized by Government Code section 31000, necessary to advise, assist, and represent the DISTRICT in its dispute over the proper interpretation of the settlement agreement with DWR; and

WHEREAS, CONTRACTOR is willing to continue providing such specialized services to DISTRICT under the terms and conditions set forth herein.

WHEREAS, DISTRICT and CONTRACTOR desire to extend the term of the Agreement, increase the funds available for expenditure, and memorialize the previously authorized litigation.

NOW, THEREFORE, for and in consideration of the recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, DISTRICT hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve DISTRICT in accordance with the terms and conditions set forth below.

TERMS

1. Paragraph 1 of the Agreement is hereby amended in full to read as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on November 16, 2020, and is subject to automatic renewal as set forth below, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the Parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to DISTRICT shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed four (4) additional years, unless either Party gives the other Party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. Paragraph 2 of the Agreement is hereby amended in full to read as follows:

2. **Scope of Services.** CONTRACTOR shall provide DISTRICT with legal services as more particularly set forth in Exhibit "A-2," attached hereto and hereby incorporated by reference, in addition to the legal services previously provided under prior versions of Exhibit A. Legal services shall primarily be provided by Andrew M. Hitchings, Esq. and Aaron F. Ferguson, Esq.

3. Paragraph 3 of the Agreement is hereby amended in full to read as follows:

3. **Compensation.**

(a) **Rates.** In consideration of CONTRACTOR's fulfillment of the promised work, DISTRICT shall pay CONTRACTOR on an hourly basis for the services of CONTRACTOR's

personnel at the rates set forth in Exhibit "B-2," which is attached hereto and incorporated herein by this reference. CONTRACTOR shall perform only those services requested by the DISTRICT or by DISTRICT counsel in the Office of the Napa County Counsel.

(b) Expenses. Expenses and costs for which CONTRACTOR intends to seek reimbursement shall be subject to approval in advance by DISTRICT or District Counsel before such costs or expenses are incurred.

(c) Maximum Amount. Notwithstanding subparagraphs (a) or (b), the maximum payments under this Agreement shall not exceed Thirty Thousand Dollars (\$30,000) per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

4. Paragraph 13 of the Agreement is hereby amended to replace the reference to "Phillip Miller, District Engineer" with "Richard Thomasser, District Manager."

5. This Amendment represents all the changes to the Agreement agreed to by DISTRICT and CONTRACTOR. No enforceable oral representations or other agreements have been made by the Parties except as specifically stated herein. All other provisions of the Agreement not addressed in this Amendment shall remain in full force and effect.

6. This Amendment may be executed in counterparts, which when taken together, shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Amendment No. 2 is executed by DISTRICT and by CONTRACTOR through its duly authorized officer.

SOMACH SIMMONS AND DUNN

By 
ANDREW HITCHINGS, Shareholder

"CONTRACTOR"

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a
special district of the State of California

By: _____
SCOTT SEDGLEY
Chairperson of the Board of Directors

“DISTRICT”

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley</u> District Counsel</p> <p>Date: <u>September 27, 2022</u></p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: _____ Processed By: _____ _____ Deputy Secretary of the District Board</p>	<p>ATTEST: Secretary of the District Board</p> <p>By: _____</p>
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EXHIBIT "A-2"

(Scope of Services)

If and as specifically requested by DISTRICT staff or by District Counsel (Napa County Counsel and deputies), CONTRACTOR shall provide legal advice, analysis, legal opinions, representation before regulatory bodies with jurisdiction over the matters, and issues described below:

1. Legal action required to draft and negotiate any additional settlement agreements and/or releases and to enforce said agreements and releases; and
2. Participation in and prosecution of the previously authorized pending litigation related to this dispute as filed by the DISTRICT, Solano County Water Agency and the City of Yuba City filed on July 14, 2022 (Sacramento Superior Court Case No. 34-2022-00323389).

EXHIBIT "B-2"

(Schedule of Hourly Billing Rates)

Key Personnel:

Andrew Hitchings	\$430.00
Aaron Ferguson	\$360.00

Others:

Shareholders	\$340.00 to \$540.00
Associates	\$240.00 to \$300.00
Of Counsels	\$410.00 to \$460.00
Paralegals and Law Clerks	\$150.00 to \$230.00

CONTRACTOR shall seek written permission of DISTRICT (from its District Engineer or District Counsel) as to the proposed rendition of services by anyone other than the key personnel identified above. At the time of seeking such permission, CONTRACTOR shall inform the DISTRICT of the hourly rate to be billed by such additional attorneys, paralegals, and law clerks before they begin work under this Agreement.

All out-of-pocket costs and expenses will be billed to DISTRICT at CONTRACTOR's cost.



Napa County

Board Agenda Letter

Flood Control and Water Conservation District **Agenda Date:** 10/4/2022

File ID #: 22-1836

TO: Napa County Flood Control and Water Conservation District
FROM: Shana A. Bagley, Deputy District Counsel
REPORT BY: Richard Thomasser, District Manager
SUBJECT: Request to Adopt Resolution Amending District Conflict of Interest Code

RECOMMENDATION

District Counsel requests approval of the proposed amendments to the Conflict of Interest Code (Code) for the Napa County Flood Control and Water Conservation District (District).

EXECUTIVE SUMMARY

Pursuant to the Political Reform Act of 1974, local agencies are required to review their conflict of interest codes, and if changes are needed, submit an amended code to the code reviewing body for approval. Amendment of the Code is necessary due to changes in positions that should be required to file disclosure statements.

FISCAL IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by California Code of Regulations title 14, section 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

In 1974, the voters of California approved the Political Reform Act of 1974 ("the Act," Government Code section 81000 et seq.). Among other things, the Act requires every agency to adopt and promulgate a conflict

of interest code. (Section 87300.) For this purpose, an “agency” includes any local government agency. An agency may adopt its code by incorporating by reference the model conflict of interest code set forth in California Code of Regulations, title 2, section 18730.

The Act allows codes to be amended as needed. After review, it is now necessary to further amend the Code to modify the list of Designated Employees to delete one position that has been eliminated, to add positions that are consistent with those listed currently in Napa County’s Conflict of Interest Code that exercise or directly influence the exercise of any of the powers conferred on the District; and to add the position of the District Manager as reflected in a recent amendment to the District Bylaws.

County Counsel has reviewed and considered the proposed amendments and recommends approval of the amended code.

RESOLUTION NO. 20122- ## (FC)

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NAPA
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AMENDING THE DISTRICT CONFLICT OF INTEREST CODE**

WHEREAS, on June 24, 1980, the Napa County Board of Supervisors, acting as the governing board of the Napa County Flood Control and Water Conservation District (“District”), approved Resolution No. 80-55 to adopt a Conflict of Interest Code for the District as required by the Political Reform Act of 1974 (Government Code sections 81000 et seq., hereinafter referred to as “Act”); and

WHEREAS, by District Resolution No. 98-4 (FC) adopted on April 4, 1998, by the expanded District Board of Directors, the District Conflict of Interest Code (“Code”) was amended to update the Code to reflect changes in the applicable regulations and to expand the list of Designated Employees to conform to changes in the governing statute for the District; and

WHEREAS, by District Resolution No. 99-7 (FC) adopted on June 15, 1999, District Resolution No. 02-09 (FC) adopted on December 3, 2002, District Resolution No. 04-07 (FC) adopted on December 7, 2004, District Resolution No. 06-07 (FC) adopted on November 7, 2006, District Resolution No. 08-12 (FC) adopted on November 18, 2008, District Resolution No. 2010-07 (FC) adopted on November 9, 2010, District Resolution No. 2012-08 (FC) adopted on November 13, 2012, District Resolution No. 2014-12 (FC) adopted on September 23, 2014, and by District Resolution No. 2016-09 (FC), the District Board of Directors further amended the Code to include in the Appendix A list of Designated Employees certain new District positions that may involve exercising or directly influencing the exercise of any of the powers conferred on the District, to delete certain District positions under Resolution Nos. 02-09 (FC), 04-07 (FC), 06-07 (FC), 08-12 (FC), 2012-08 (FC), 2014-12 (FC), and 2016-09(FC) and to make minor technical changes in the main text of the Code; and

WHEREAS, by District Resolution No. 08-12 (FC), and by District Resolution No. 2010-07 (FC), the District Board of Directors further amended the Code to modify the location where the original Conflict of Interest Statements will be retained upon filing; and

WHEREAS, it is now necessary to further amend the Code to modify the list of Designated Employees in Appendix A to delete one position that has been abolished, to add positions that are consistent with those listed currently in Napa County’s Conflict of Interest Code that exercise or directly influence the exercise of any of the powers conferred on the District; and to add the position of the District Manager as reflected in a recent amendment to the District Bylaws; and

WHEREAS, at a regular meeting of the Napa County Flood Control and Water Conservation District held on October 4, 2022, all written comments on the proposed amendment to the Code submitted within the comment period were received and considered by the District Board;

NOW, THEREFORE, BE IT RESOLVED by the District Board of Directors that the District Conflict of Interest Code shall be amended to read in full as follows effective on and after

confirmation of the amended Code by the Napa County Board of Supervisors acting as code reviewing body:

1. Incorporation of Standard Terms. The terms of the model code (“Model Code”) set forth in California Code of Regulations, title 2, section 18730, as such may be amended from time to time by the Fair Political Practices Commission (“FPPC”), are hereby adopted and incorporated by reference as if set forth fully herein.

2. List of Designated Employees. For purposes of the requirements of the Act and the provisions of the Model Code, the Designated Employees of the District shall be the persons holding those offices and performing the functions of those positions set forth in Appendix A (amended 2016), attached hereto and incorporated by reference herein.

3. List of Disclosure Categories. For purposes of the requirements of the Act and the provisions of the Model Code, the disclosure categories for the Designated Employees of the District shall be those categories set forth in Appendix B (amended 2016), attached hereto and incorporated by reference herein.

4. Documents Comprising Conflict of Interest Code; Effective Date. For purposes of the Act, the provisions of this Resolution, the Model Code, Appendix A (amended 2022), and Appendix B (amended 2010) shall together constitute the Conflict of Interest Code of the District effective on and after the date of confirmation by the Napa County Board of Supervisors.

5. Documents to be filed with the Board of Supervisors. The District Secretary is hereby directed to file three certified copies of the Conflict of Interest Code as amended by this Resolution with the Napa County Board of Supervisors, the code reviewing body for the District. The District Executive Officer shall prepare, and the District Secretary shall send to the Elections Division of the Office of the Napa County Assessor-Clerk-Recorder-Registrar of Voters an updated list of all consultants working for the District who have been determined by the District Executive Officer to be exempt from the Designated Employee “contract consultant” category and the reasons for such exemption whenever such exempt consultant positions are added, dropped, or a change in the nature of the contracted duties makes them subject to broad or limited disclosure as Designated Employees.

6. Time of Filing Statements of Economic Interests. Each person required by this Conflict of Interest Code to file a Statement of Economic Interests (“Statement”), also known at the time of approval of this Resolution as Form 700, shall file his or her initial Statement with the District Secretary for filing with the code reviewing body within ten days after the original effective date of the listing of his or her position in the District’s Conflict of Interest Code. When taking office after the time of such listing, such person shall file an assuming office Statement within 30 days after taking office, except if they are re-elected or re-appointed without a break in service, such person need not file an assuming office Statement at the time of such re-election or re-appointment. Each such person shall thereafter file an annual Statement by April 1 of each year, covering reportable interests for the twelve-month period ending on the preceding December 31. Each such person who leaves office shall file, within 30 days of leaving office, a Statement disclosing reportable interests held or received at any time during the period between the closing date of the last Statement required to be filed and the date of leaving office.

7. Place of Filing. Designated Employees and other public officials of the District who are required to file Statement of Economic Interests in consequence of Government Code section 87200 shall file the required Statements with the Secretary of the District who shall retain the original Statements. The address of the District Secretary is Suite 310, Napa County Administration Building, 1195 Third Street, Napa, California 94559.

8. Public Inspection of Conflict of Interest Code and Statements. Commencing on the effective date of the Conflict of Interest Code or any amendment thereof, a copy of the Conflict of Interest Code and such amendments shall be maintained in the office of the District Secretary who shall make such copies and the copies of all Statements on file with the District Secretary available for public inspection and copying during regular business hours. No conditions whatsoever shall be imposed upon persons desiring to inspect the copy of the Conflict of Interest Code and amendments thereof, nor shall any information or identification be required from such persons. Copies shall be provided in accordance with and subject to charges imposed generally by the Public Records Act (Government Code sections 6250, et seq.) and District resolutions pertaining to copying of public records of the District.

9. Annual Review Statement.

(a) No later than October 1 of each even-numbered year, the District shall submit to the Napa County Board of Supervisors, as code reviewing body for the District, a written statement signed by the District Executive Officer, either that:

(1) The District has reviewed the Conflict of Interest Code, the Conflict of Interest Code designates accurately all positions which make or participate in the making of governmental decisions for the District, the disclosure assigned those positions accurately requires the disclosure of all investments, business positions, interests in real property, and sources of income which may foreseeably be affected materially by the decisions made by those designated positions, and the Conflict of Interest Code contains the provisions required by Government Code section 87302; or

(2) The District has reviewed the Conflict of Interest Code and has determined that amendment is necessary to designate all positions which make or participate in the making of governmental decisions for the District, or to update the disclosure categories assigned to require the disclosure of all investments, business positions, interests in real property and sources of income which may be affected materially by the designated positions, or to include other provisions required by Government Code section 87302. If the statement contains this report, the District shall submit the amendment to the Napa County Board of Supervisors within 90 days of the report.

(b) Changed circumstances which require amendment of the Conflict of Interest Code shall include, but not be limited to:

(1) The creation of positions which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

(2) The reclassification, renaming, or deletion of previously-designated positions;

(3) The addition, deletion, or modification of statutorily-required provisions of this Conflict of Interest Code; or

(4) The addition, deletion, or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable unless such changes have been automatically incorporated into this Conflict of Interest Code as the result of inclusion of the changes into the model code by the Fair Political Practices Commission.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED
 by the Board of Directors of the Napa County Flood Control and Water Conservation District at a regular meeting of the Board held on October 4, 2022, by the following vote, with the number following the name of each voting Director indicating the number of votes cast by that Director:

AYES: DIRECTORS

NOES: DIRECTORS

ABSENT: DIRECTORS

SCOTT SEDGLEY
 Chairperson of the Board of Directors

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley</u> (e-sign) Deputy District Counsel</p> <p>Date: <u>September 21, 2022</u> [PL No 80055]</p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: Processed By:</p> <hr/> <p>Deputy Secretary of the District Board</p>	<p>ATTEST: NEHA HOSKINS Secretary of the District Board</p> <p>By: _____</p>
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CERTIFICATIONS

I hereby certify that I am the Secretary of the Napa County Flood Control and Water Conservation District (or Deputy Secretary acting under authorization of the Secretary) and the custodian of the records for the District and that the attached Resolution is a true and correct copy of the original approved by the Board of Directors of the District and on file in the District office.

NEHA HOSKINS,
Secretary of the District Board

By:_____

I hereby certify that the attached Conflict of Interest Code for the Napa County Flood Control and Water Conservation District as amended by the District Board on or about_____, 2022, was approved and confirmed by the Napa County Board of Supervisors, as code reviewing body for the District, by action of the Board of Supervisors on _____, 2022, and recorded in the certified minutes of the Board of Supervisors for that date.

NEHA HOSKINS,
Clerk of the Napa County Board of Supervisors

By:_____

APPENDIX A
(Amended 2022)

LIST OF DESIGNATED EMPLOYEES

Because of the nature of the powers and duties conferred on the District by the Napa County Flood Control and Water Conservation District Act, the policies adopted by the Board of Directors of the District, and the terms of support services and consultant agreements approved by the Board of Directors, the following positions within the District may involve the making or participation in the making of decisions of the District which may foreseeably have a material effect on financial interests of the holders of the positions. Most of the positions listed are of long-term duration, although some are limited-term positions, but all are listed because their scope of authority or work involves either making final decisions for the District which have financial consequences or developing and/or exercising such a level of expertise and ongoing relationship with those who make such decisions that the decision-makers can reasonably be expected to routinely trust and rely upon their advice.

For purposes of filing Statements of Economic Interests as required by this Conflict of Interest Code, the “Designated Employees” of the District shall be those persons who actually occupy or carry out the functions of the following positions, whether as elected or appointed officers, compensated employees, or contracted consultants or their employees or subcontractors:

DESIGNATED EMPLOYEE POSITIONS

Members of the Board of Directors (including persons serving as Directors in the absence of a regular Director as the result of holding the office of Mayor Pro Tem for an incorporated city or town within the District)

District Executive Officer (Napa County Executive Officer, serving ex-officio), including any Deputy District Executive Officer

District Manager (Napa County Deputy Director of Public Works, serving ex-officio, including any Deputy Director of Public Works/Deputy Flood Control Engineer when appointed to perform in this capacity for the District)

District Engineer (Napa County Deputy Director of Public Works/Flood Control Engineer, serving ex-officio, including any Deputy Director of Public Works/Deputy Flood Control Engineer when appointed to perform in this capacity for the District)

District Surveyor (Napa County Director of Public Works/County Land Surveyor, serving ex-officio, including any Deputy Director of Public Works/Deputy County Land Surveyor, when assigned to perform in this capacity for the District)

Engineering Manager

Engineering Technician I. II. III, IV

Senior Flood Project Analyst

Staff Services Analyst I, II

District Legal Counsel (Napa County Counsel, serving ex-officio, including any Deputy County Counsel when assigned to advise and/or represent the District)

District Assessor (Napa County Assessor-Clerk-Recorder-Registrar of Voters, serving ex-officio)

District Auditor-Controller (Napa County Auditor-Controller, serving ex-officio)

Watershed & Flood Control Operations Manager

Watershed Resources & Flood Control Specialist

Stormwater Program Manager

Contract Consultants for the District: All contract consultants of the District not named above shall be deemed included in the list of Designated Employees and shall disclose their material financial interests in regard to all of the adopted disclosure categories, except when exempted as follows, on a case-by-case basis:

The District Executive Officer may determine in writing that a particular contract consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to comply or fully comply with all of the disclosure requirements described in Appendix “B.” This written determination shall include a description of the contract consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. This determination is a public record and shall be retained for public inspection and be available for inspection and copying in the same location and manner as the District’s copy of the Conflict of Interest Code. This determination and the extent, if any, of the required disclosure categories may be made and noted on and as a part of the services agreement between the District and the Contract consultant as long as the agreement fully describes the duties of the consultant for the District.

PUBLIC OFFICIALS OF THE DISTRICT WHO MANAGE PUBLIC INVESTMENTS

The District Treasurer is not listed as a Designated Employee because the District Board has determined that the District Treasurer (the Napa County Treasurer-Tax Collector serving ex-officio) is a public official who manages public investments and is therefore is required by statute to file a Statement of Economic Interests pursuant to Government Code section 87200 rather than pursuant to this Conflict of Interest Code.

APPENDIX B
(Amended 2010)

DISCLOSURE CATEGORIES

Rationale. The decisions which the Designated Employees may make or participate in making for the District may involve exercising or directly influencing the exercise of any of the powers conferred on the District by the Napa County Flood Control and Water Conservation District Act pertaining to flood control and the conservation and procurement of water.

Except where otherwise determined for specified contract consultants pursuant to Appendix “A,” the decisions by the Designated Employees in the routine course of their work for the District may have the potential to impact at a level commonly recognized as “material” by the Political Reform Act of 1974, as amended, and the regulations adopted by the Fair Political Practices Commission (“FPPC”) to implement that Act, any or all of those types of financial interests listed in all of the Disclosure Schedules of the Statement of Economic Interests Form approved by the FPPC.

Disclosure Categories. For the foregoing reasons, all of the Designated Employees under this Conflict of Interest Code, other than specified contract consultants whose disclosure responsibilities or exemption therefrom shall be determined in writing by the District Executive Officer on a case-by-case basis as described in Exhibit “A,” shall comply with the broadest possible Disclosure Category applicable under the then-current Statement Form and Schedules, disclosing all sources of income, interests in real property, and investments and business positions in business entities as required by the FPPC in its instructions to the Statement of Economic Interests Form approved by the FPPC, as it may be amended from time to time.

RESOLUTION NO. 20122- ## (FC)

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NAPA
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AMENDING THE DISTRICT CONFLICT OF INTEREST CODE**

WHEREAS, on June 24, 1980, the Napa County Board of Supervisors, acting as the governing board of the Napa County Flood Control and Water Conservation District (“District”), approved Resolution No. 80-55 to adopt a Conflict of Interest Code for the District as required by the Political Reform Act of 1974 (Government Code sections 81000 et seq., hereinafter referred to as “Act”); and

WHEREAS, by District Resolution No. 98-4 (FC) adopted on April 4, 1998, by the expanded District Board of Directors, the District Conflict of Interest Code (“Code”) was amended to update the Code to reflect changes in the applicable regulations and to expand the list of Designated Employees to conform to changes in the governing statute for the District; and

WHEREAS, by District Resolution No. 99-7 (FC) adopted on June 15, 1999, District Resolution No. 02-09 (FC) adopted on December 3, 2002, District Resolution No. 04-07 (FC) adopted on December 7, 2004, District Resolution No. 06-07 (FC) adopted on November 7, 2006, District Resolution No. 08-12 (FC) adopted on November 18, 2008, District Resolution No. 2010-07 (FC) adopted on November 9, 2010, District Resolution No. 2012-08 (FC) adopted on November 13, 2012, District Resolution No. 2014-12 (FC) adopted on September 23, 2014, and by District Resolution No. 2016-09 (FC), the District Board of Directors further amended the Code to include in the Appendix A list of Designated Employees certain new District positions that may involve exercising or directly influencing the exercise of any of the powers conferred on the District, to delete certain District positions under Resolution Nos. 02-09 (FC), 04-07 (FC), 06-07 (FC), 08-12 (FC), 2012-08 (FC), 2014-12 (FC), and 2016-09(FC) and to make minor technical changes in the main text of the Code; and

WHEREAS, by District Resolution No. 08-12 (FC), and by District Resolution No. 2010-07 (FC), the District Board of Directors further amended the Code to modify the location where the original Conflict of Interest Statements will be retained upon filing; and

WHEREAS, it is now necessary to further amend the Code to modify the list of Designated Employees in Appendix A to delete one position that has been abolished, to add positions that are consistent with those listed currently in Napa County’s Conflict of Interest Code that exercise or directly influence the exercise of any of the powers conferred on the District; and to add the position of the District Manager as reflected in a recent amendment to the District Bylaws; and

~~—~~**WHEREAS**, at a regular meeting of the Napa County Flood Control and Water Conservation District held on October 4, 2022, all written comments on the proposed amendment to the Code submitted within the comment period were received and considered by the District Board;

NOW, THEREFORE, BE IT RESOLVED by the District Board of Directors that the District Conflict of Interest Code shall be amended to read in full as follows effective on and after

confirmation of the amended Code by the Napa County Board of Supervisors acting as code reviewing body:

1. Incorporation of Standard Terms. The terms of the model code (“Model Code”) set forth in California Code of Regulations, title 2, section 18730, as such may be amended from time to time by the Fair Political Practices Commission (“FPPC”), are hereby adopted and incorporated by reference as if set forth fully herein.

2. List of Designated Employees. For purposes of the requirements of the Act and the provisions of the Model Code, the Designated Employees of the District shall be the persons holding those offices and performing the functions of those positions set forth in Appendix A (amended 2016), attached hereto and incorporated by reference herein.

3. List of Disclosure Categories. For purposes of the requirements of the Act and the provisions of the Model Code, the disclosure categories for the Designated Employees of the District shall be those categories set forth in Appendix B (amended 2016), attached hereto and incorporated by reference herein.

4. Documents Comprising Conflict of Interest Code; Effective Date. For purposes of the Act, the provisions of this Resolution, the Model Code, Appendix A (amended 2022), and Appendix B (amended 2010) shall together constitute the Conflict of Interest Code of the District effective on and after the date of confirmation by the Napa County Board of Supervisors.

5. Documents to be filed with the Board of Supervisors. The District Secretary is hereby directed to file three certified copies of the Conflict of Interest Code as amended by this Resolution with the Napa County Board of Supervisors, the code reviewing body for the District. The District Executive Officer shall prepare, and the District Secretary shall send to the Elections Division of the Office of the Napa County Assessor-Clerk-Recorder-Registrar of Voters an updated list of all consultants working for the District who have been determined by the District Executive Officer to be exempt from the Designated Employee “contract consultant” category and the reasons for such exemption whenever such exempt consultant positions are added, dropped, or a change in the nature of the contracted duties makes them subject to broad or limited disclosure as Designated Employees.

6. Time of Filing Statements of Economic Interests. Each person required by this Conflict of Interest Code to file a Statement of Economic Interests (“Statement”), also known at the time of approval of this Resolution as Form 700, shall file his or her initial Statement with the District Secretary for filing with the code reviewing body within ten days after the original effective date of the listing of his or her position in the District’s Conflict of Interest Code. When taking office after the time of such listing, such person shall file an assuming office Statement within 30 days after taking office, except if they are re-elected or re-appointed without a break in service, such person need not file an assuming office Statement at the time of such re-election or re-appointment. Each such person shall thereafter file an annual Statement by April 1 of each year, covering reportable interests for the twelve-month period ending on the preceding December 31. Each such person who leaves office shall file, within 30 days of leaving office, a Statement disclosing reportable interests held or received at any time during the period between the closing date of the last Statement required to be filed and the date of leaving office.

7. Place of Filing. Designated Employees and other public officials of the District who are required to file Statement of Economic Interests in consequence of Government Code section 87200 shall file the required Statements with the Secretary of the District who shall retain the original Statements. The address of the District Secretary is Suite 310, Napa County Administration Building, 1195 Third Street, Napa, California 94559.

8. Public Inspection of Conflict of Interest Code and Statements. Commencing on the effective date of the Conflict of Interest Code or any amendment thereof, a copy of the Conflict of Interest Code and such amendments shall be maintained in the office of the District Secretary who shall make such copies and the copies of all Statements on file with the District Secretary available for public inspection and copying during regular business hours. No conditions whatsoever shall be imposed upon persons desiring to inspect the copy of the Conflict of Interest Code and amendments thereof, nor shall any information or identification be required from such persons. Copies shall be provided in accordance with and subject to charges imposed generally by the Public Records Act (Government Code sections 6250, et seq.) and District resolutions pertaining to copying of public records of the District.

9. Annual Review Statement.

(a) No later than October 1 of each even-numbered year, the District shall submit to the Napa County Board of Supervisors, as code reviewing body for the District, a written statement signed by the District Executive Officer, either that:

(1) The District has reviewed the Conflict of Interest Code, the Conflict of Interest Code designates accurately all positions which make or participate in the making of governmental decisions for the District, the disclosure assigned those positions accurately requires the disclosure of all investments, business positions, interests in real property, and sources of income which may foreseeably be affected materially by the decisions made by those designated positions, and the Conflict of Interest Code contains the provisions required by Government Code section 87302; or

(2) The District has reviewed the Conflict of Interest Code and has determined that amendment is necessary to designate all positions which make or participate in the making of governmental decisions for the District, or to update the disclosure categories assigned to require the disclosure of all investments, business positions, interests in real property and sources of income which may be affected materially by the designated positions, or to include other provisions required by Government Code section 87302. If the statement contains this report, the District shall submit the amendment to the Napa County Board of Supervisors within 90 days of the report.

(b) Changed circumstances which require amendment of the Conflict of Interest Code shall include, but not be limited to:

(1) The creation of positions which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

(2) The reclassification, renaming, or deletion of previously-designated positions;

(3) The addition, deletion, or modification of statutorily-required provisions of this Conflict of Interest Code; or

(4) The addition, deletion, or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable unless such changes have been automatically incorporated into this Conflict of Interest Code as the result of inclusion of the changes into the model code by the Fair Political Practices Commission.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED
 by the Board of Directors of the Napa County Flood Control and Water Conservation District at a regular meeting of the Board held on October 4, 2022, by the following vote, with the number following the name of each voting Director indicating the number of votes cast by that Director:

AYES: DIRECTORS

NOES: DIRECTORS

ABSENT: DIRECTORS

SCOTT SEDGLEY
 Chairperson of the Board of Directors

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley</u> (e-sign) Deputy District Counsel</p> <p>Date: <u>September 21, 2022</u> [PL No 80055]</p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: Processed By:</p> <hr/> <p>Deputy Secretary of the District Board</p>	<p>ATTEST: NEHA HOSKINS Secretary of the District Board</p> <p>By: _____</p>
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CERTIFICATIONS

I hereby certify that I am the Secretary of the Napa County Flood Control and Water Conservation District (or Deputy Secretary acting under authorization of the Secretary) and the custodian of the records for the District and that the attached Resolution is a true and correct copy of the original approved by the Board of Directors of the District and on file in the District office.

NEHA HOSKINS,
Secretary of the District Board

By:_____

I hereby certify that the attached Conflict of Interest Code for the Napa County Flood Control and Water Conservation District as amended by the District Board on or about_____, 2022, was approved and confirmed by the Napa County Board of Supervisors, as code reviewing body for the District, by action of the Board of Supervisors on _____, 2022, and recorded in the certified minutes of the Board of Supervisors for that date.

NEHA HOSKINS,
Clerk of the Napa County Board of Supervisors

By:_____

APPENDIX A
(~~A~~amended 2022)

LIST OF DESIGNATED EMPLOYEES

Because of the nature of the powers and duties conferred on the District by the Napa County Flood Control and Water Conservation District Act, the policies adopted by the Board of Directors of the District, and the terms of support services and consultant agreements approved by the Board of Directors, the following positions within the District may involve the making or participation in the making of decisions of the District which may foreseeably have a material effect on financial interests of the holders of the positions. Most of the positions listed are of long-term duration, although some are limited-term positions, but all are listed because their scope of authority or work involves either making final decisions for the District which have financial consequences or developing and/or exercising such a level of expertise and ongoing relationship with those who make such decisions that the decision-makers can reasonably be expected to routinely trust and rely upon their advice.

For purposes of filing Statements of Economic Interests as required by this Conflict of Interest Code, the “Designated Employees” of the District shall be those persons who actually occupy or carry out the functions of the following positions, whether as elected or appointed officers, compensated employees, or contracted consultants or their employees or subcontractors:

DESIGNATED EMPLOYEE POSITIONS

Members of the Board of Directors (including persons serving as Directors in the absence of a regular Director as the result of holding the office of Mayor Pro Tem for an incorporated city or town within the District)

~~**Members of the Measure A Technical Advisory Panel**~~

District Executive Officer (Napa County Executive Officer, serving ex-officio), including any Deputy District Executive Officer

~~**District Manager** (Napa County Deputy Director of Public Works, serving ex-officio, including any Deputy Director of Public Works/Deputy Flood Control Engineer when appointed to perform in this capacity for the District)~~

District Engineer (Napa County Deputy Director of Public Works/Flood Control Engineer, serving ex-officio, including any Deputy Director of Public Works/Deputy Flood Control Engineer when appointed to perform in this capacity for the District)

District Surveyor (Napa County Director of Public Works/County Land Surveyor, serving ex-officio, including any Deputy Director of Public Works/Deputy County Land Surveyor, when assigned to perform in this capacity for the District)

Engineering Managers

~~**Engineering Technician I, II, III, IV**~~

Senior Flood Project Analyst
Staff Services Analyst I, II

District Legal Counsel (Napa County Counsel, serving ex-officio, including any Deputy County Counsel when assigned to advise and/or represent the District)

District Assessor (Napa County Assessor-Clerk-Recorder-Registrar of Voters, serving ex-officio)

District Auditor-Controller (Napa County Auditor-Controller, serving ex-officio)

Watershed & Flood Control Operations Manager

Watershed Resources & Flood Control Specialist

Stormwater Program Manager

Contract Consultants for the District: All contract consultants of the District not named above shall be deemed included in the list of Designated Employees and shall disclose their material financial interests in regard to all of the adopted disclosure categories, except when exempted as follows, on a case-by-case basis:

The District Executive Officer may determine in writing that a particular contract consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to comply or fully comply with all of the disclosure requirements described in Appendix “B.” This written determination shall include a description of the contract consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. This determination is a public record and shall be retained for public inspection and be available for inspection and copying in the same location and manner as the District’s copy of the Conflict of Interest Code. This determination and the extent, if any, of the required disclosure categories may be made and noted on and as a part of the services agreement between the District and the Contract consultant as long as the agreement fully describes the duties of the consultant for the District.

PUBLIC OFFICIALS OF THE DISTRICT WHO MANAGE PUBLIC INVESTMENTS

The District Treasurer is not listed as a Designated Employee because the District Board has determined that the District Treasurer (the Napa County Treasurer-Tax Collector serving ex-officio) is a public official who manages public investments and is therefore is required by statute to file a Statement of Economic Interests pursuant to Government Code section 87200 rather than pursuant to this Conflict of Interest Code.

APPENDIX B
(~~A~~amended 2010)

DISCLOSURE CATEGORIES

Rationale. The decisions which the Designated Employees may make or participate in making for the District may involve exercising or directly influencing the exercise of any of the powers conferred on the District by the Napa County Flood Control and Water Conservation District Act pertaining to flood control and the conservation and procurement of water.

Except where otherwise determined for specified contract consultants pursuant to Appendix “A,” the decisions by the Designated Employees in the routine course of their work for the District may have the potential to impact at a level commonly recognized as “material” by the Political Reform Act of 1974, as amended, and the regulations adopted by the Fair Political Practices Commission (“FPPC”) to implement that Act, any or all of those types of financial interests listed in all of the Disclosure Schedules of the Statement of Economic Interests Form approved by the FPPC.

Disclosure Categories. For the foregoing reasons, all of the Designated Employees under this Conflict of Interest Code, other than specified contract consultants whose disclosure responsibilities or exemption therefrom shall be determined in writing by the District Executive Officer on a case-by-case basis as described in Exhibit “A,” shall comply with the broadest possible Disclosure Category applicable under the then-current Statement Form and Schedules, disclosing all sources of income, interests in real property, and investments and business positions in business entities as required by the FPPC in its instructions to the Statement of Economic Interests Form approved by the FPPC, as it may be amended from time to time.



Napa County

Board Agenda Letter

Flood Control and Water Conservation District **Agenda Date:** 10/4/2022

File ID #: 22-1804

TO: Board of Directors
FROM: Richard Thomasser - District Manager
REPORT BY: Andrew Butler - District Engineer
SUBJECT: Napa River/Napa Creek Flood Protection Project (Flood Project) Update

RECOMMENDATION

District staff to present an update on the Flood Project.

EXECUTIVE SUMMARY

The District Manager and District Engineer will present a status update on the Flood Project regarding the progress towards a process to construct the Floodwalls North of the Bypass Project (Floodwalls Project) in cooperation with the United States Army Corps of Engineers (USACE); the progress on the early design efforts for the Floodwalls Project; the recent public meetings soliciting feedback and input on the design of this project and the future construction activities, and the progress on the Real Estate Acquisition Plan.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

District staff have been working to advance certain aspects of the Flood Project in anticipation of preparing for construction of the next phase - the Floodwalls Project, which will provide flood protection north of the downtown dry bypass channel. Currently the District is working with the office of the Assistant Secretary of

the Army on a strategy to meet the federal requirements to move forward with the project. This process is expected to take place over the next few months. After this, the District is expected to continue work on the design of the Floodwalls Project through 2023. To this end, staff have selected HDR, Inc. to assist in the design. HDR has a great deal of experience with the Flood Project. The Board of Directors approved HDR's design contract at the December 7, 2021 Board Meeting.

Real Estate Acquisition - the District, as the local sponsor for the Flood Project, is responsible for acquiring the rights of way for construction, as well as maintenance and operation of the project. This next phase includes acquisitions of over 20 separate parcels, most with multiple required types of right of way, including several parcels with a high level of complexity due to current use or flood project feature alignment. The District currently has a contract with Associated Right of Way Services, Inc. (ARWS) to assist with acquisitions. ARWS has been tasked with preparation of a Real Estate Acquisition Plan and Right of Way Estimate to help guide the District's efforts towards completion of this requirement. The acquisitions must follow federal guidelines, which is a complex and strict process, in order for the rights of way to be acceptable to USACE, and also to allow reimbursement through the State Flood Control Subventions Program.

The District Manager and District Engineer will present a status update on these matters during the meeting.