

RESOLUTION NO. 2024-113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA  
AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT SETTLING SGMA AND  
REVERSE VALIDATION LITIGATION  
(MONTEREY COUNTY SUPERIOR COURT NO. 19CV005270)  
(COURT OF APPEAL, SIXTH DISTRICT NO. H049575)  
(MONTEREY COUNTY SUPERIOR COURT NO. 20CV002436)  
(MONTEREY COUNTY SUPERIOR COURT NO. 21CV000493)  
(MONTEREY COUNTY SUPERIOR COURT NO. 23CV001400)

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WHEREAS, the City of Marina has been involved in Monterey Superior Court Case No. 19CV005270 (entitled *City of Marina, et al. v. County of Monterey, et al.*) (“SGMA Action”) at the trial and appellate court levels; and following briefing and argument at the appellate court, the Court of Appeal issued a remittitur on February 15, 2024 to send the matter back to the trial court; and

WHEREAS, the City of Marina has been involved several reverse validation actions at the trial court level: an action entitled *California-American Water Company v. All Persons Interested, et al.*, in Monterey County Superior Court (Case No. 20CV002436); an action entitled *City of Marina, et al. v. All Persons Interested, et al.*, in Monterey County Superior Court (Case No. 21CV000493); and an action entitled *City of Marina, et al. v. All Persons Interested, et al.*, in Monterey County Superior Court (Case No. 23CV001400); and

WHEREAS, the parties to the above-referenced litigation have been involved in lengthy settlement negotiations, and have now reached agreement on terms and conditions pursuant to which each of the above-referenced actions will be fully resolved and closed; and

WHEREAS, this Council has reviewed and considered the settlement terms contained in the proposed settlement agreement, entitled “Settlement Agreement” (the “Agreement,” hereafter), agrees with the terms therein, and desires to settle all of the above-referenced litigation and approve the Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marina that it (1) does hereby authorize the execution of the Agreement, (2) does authorize and direct the City Manager to execute the Agreement for and on behalf of the City, and (3) does direct the City Manager to lodge a fully executed counterpart of the Agreement with the City Clerk.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15<sup>th</sup> day of October 2024 by the following vote:

AYES: COUNCIL MEMBERS: McAdams, McCarthy, Biala, Delgado, Visscher

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:

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Liesbeth Visscher, Mayor Pro Tem

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Anita Sharp, Deputy City Clerk

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), effective as of October \_\_, 2024, is entered into by and among the City of Marina (“City”), Marina Groundwater Sustainability Agency, and Marina City Council (collectively “Marina”); the County of Monterey, Monterey County Board of Supervisors, and County of Monterey Groundwater Sustainability Agency (collectively “County”); Salinas Valley Basin Groundwater Sustainability Agency and Board of Directors of Salinas Valley Basin Groundwater Sustainability Agency (collectively “SVBGSA”); and California-American Water Company (“Cal-Am”). Marina, County, SVBGSA and Cal-Am are sometimes each referred to herein as “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, the Parties are each a party to some or all of four legal actions currently pending in Monterey County Superior Court and, by entering into this Agreement, the Parties intend to enter into a global settlement of all outstanding claims in each of these actions on the terms set forth below.

WHEREAS, on December 30, 2019, the City of Marina and Marina Groundwater Sustainability Agency filed an action entitled *City of Marina, et al. v. County of Monterey, et al.*, Monterey County Superior Court, No. 19CV005270 (“SGMA Action”). The Court entered judgment in this action on September 27, 2021. Marina filed an appeal of this judgment and the County filed a cross-appeal. On November 13, 2023, the Court of Appeals for the Sixth Appellate District entered an opinion affirming the trial court judgment and on February 15, 2024, after a petition for review was denied by the California Supreme Court, the Court of Appeal issued a remittitur to Monterey County Superior Court.

WHEREAS, on September 9, 2020, Cal-Am filed a Complaint for Reverse Validation against Marina in an action entitled *California-American Water Company v. All Persons Interested, et al.*, in Monterey County Superior Court (Case No. 20CV002436) (“Cal-Am RV Action”). Marina, County and SVBGSA each filed an answer in this action, as did Marina Coast Water District. After the answers were filed, this case was stayed by the Court.

WHEREAS, on February 16, 2021, the City of Marina and Marina Groundwater Sustainability Agency filed a Complaint for Reverse Validation against the County and SVBGSA in an action entitled *City of Marina, et al. v. All Persons Interested, et al.*, in Monterey County Superior Court (Case No. 21CV000493) (“Marina RV Action #1”). The County, SVBGSA and Cal-Am each filed an answer in this action. After the answers were filed, this case was stayed by the Court.

WHEREAS, on May 3, 2023, the City of Marina and Marina Groundwater Sustainability Agency filed a Complaint for Reverse Validation against the County and SVBGSA in an action entitled *City of Marina, et al. v. All Persons Interested, et al.*, in Monterey County Superior Court (Case No. 23CV001400) (“Marina RV Action #2”). The County, SVBGSA and Cal-Am each filed an answer in this action. After the answers were filed, this case was stayed by the Court.

WHEREAS, the Parties want to settle all remaining disputes, obligations and potential claims for costs and attorneys' fees in the SGMA Action, as well as all disputes, obligations and claims in the stayed Cal-Am RV Action, Marina RV Action #1 and Marina RV Action #2 on the terms and conditions set forth below.

## **AGREEMENT**

NOW, THEREFORE, based on the Recitals above, each of which is incorporated herein by reference, and in consideration of the mutual terms and conditions set forth below, it is hereby agreed by the Parties as follows:

**1. Payments:** The Parties have discussed the claims of various Parties for costs and potentially attorneys' fees' arising from the judgment in the SGMA Action and in connection with further litigation in the Cal-Am RV Action, Marina RV Action #1, and Marina RV Action #2. The Parties agree that they want to avoid the client time, transaction costs and uncertainties associated with litigating these issues now or in the future. In connection with this settlement, the City of Marina agrees to pay the following amounts:

(A) The City will pay \$5,643.95 to Cal-Am for its incurred costs in the SGMA Action.

(B) The City will pay \$50,000.00 to Salinas Valley Basin Groundwater Sustainability Agency, consisting of \$17,244.00 for its incurred costs in the SGMA Action and \$32,756 for SGMA implementation or a scientific investigation or study relating to groundwater sustainability within the 180/400 Foot Aquifer or Monterey Subbasins, to be jointly agreed upon by SVBGSA and Marina (and the County if it chooses to participate) and then overseen by SVBGSA as discussed further in paragraph 2 herein. This payment is not a payment for attorneys' fees incurred by SVBGSA in the SGMA Action.

(C) The City will pay \$220,000 to the County of Monterey, consisting of \$50,000 in incurred costs in the SGMA Action, and the balance for Marina's avoided transaction costs anticipated in further litigation. This payment is not a payment for attorneys' fees incurred by County in the SGMA Action.

Each of these payments will be made within 45 days after the Effective Date of this Agreement by check delivered to counsel for each Party.

**2. Groundwater Sustainability Plan Meeting:** SVBGSA will convene a substantive meeting with Marina within 60 days after the Effective Date of the Agreement to discuss the City's substantive concerns with the current SVBGSA Groundwater Sustainability Plan ("GSP"). The County, at its option, may also attend with representatives. Each Party will attend with one or more identified principals and technical consultants, but no legal counsel for any Party will attend this meeting. The attending Parties agree to confer in good faith to discuss and attempt to resolve the GSP issues, but no Party commits to any follow-up action or meeting at this time. The meeting's topics, and technical information and documents exchanged, will be

considered public records. This meeting will also address the SVBGSA's use of \$32,756 as referenced above.

**3. Dismissals:** The Parties agree that (A) Cal-Am will dismiss with prejudice the Cal-Am RV Action, (B) Marina will dismiss with prejudice Marina RV Action #1 and Marina RV Action #2, and (C) no Party that filed an answer to a reverse validation action shall seek to file a further action pursuant to Code of Civil Procedure Section 867.5 after these dismissals. All Parties agree that they will each bear their own attorneys' fees and costs for and in connection with the Cal-Am RV Action, Marina RV Action #1, and Marina RV Action #2. Each Party agrees to cooperate with Cal-Am and Marina, as needed, to facilitate the dismissals of these three actions. The dismissals shall be filed within 15 days of the Effective Date.

**4. Representations and Warranties:**

- (a) Each Party represents and warrants that it: (1) has full power and authority to enter into this Agreement and bind itself to this Agreement, and has received all necessary approvals and authorizations from any governmental bodies, agencies, officials, and courts or other tribunals; and (2) has not relied upon any representations or statements, whether written or oral, except those representations and statements set forth in this Agreement. Each Party represents and warrants that its execution, delivery, and performance under this Agreement will not violate or constitute a default under any applicable law or regulation or its charter documents (if any), any agreement or other instrument binding upon it or any of its subsidiaries or assets, or any judgment, order, or decree of any governmental body, agency, official, or court having jurisdiction over it.
- (b) Each Party expressly represents and warrants that, prior to the execution of this Agreement, such Party has read this Agreement, understands all of its terms, and has reviewed (or has had the opportunity to review) it with legal counsel, accounting and tax consultants and other advisors of its choosing, and acknowledges that the other Party is expressly relying upon this representation and warranty.
- (c) Each Party expressly represents and warrants that this Agreement is executed voluntarily and with full knowledge of its significance.
- (d) Each Party represents and warrants that it has not taken or failed to take any action that would prevent such Party from performing its duties or obligations under this Agreement or deprive any other Party of the benefits of this Agreement.

**5. No Admission:** This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability or responsibility by Marina, County, SVBGSA or Cal-Am, nor shall the payment of any consideration by Marina constitute or be construed as an admission of any liability or responsibility by Marina, which expressly denies any such liability or responsibility.

**6. Breach of Agreement:** If any Party breaches its obligations under this Agreement, any other Party must send a written notice of breach to the allegedly breaching Party

which specifies the nature of the breach and which gives the Party 30 days to cure the breach. During this 30-day period, the Parties should also make good faith efforts to informally resolve any alleged breach. If a breach is not cured or resolved during this period, a Party sending the written notice may initiate a legal action to address the alleged breach.

**7. Notices:** Any notices or other communications provided pursuant to this Agreement shall be in writing and shall be given by certified United States mail, return receipt requested, addressed as set forth below, or by electronic mail addressed as set forth below:

Notice to Marina:

Paul P. Spaulding, III  
Shartsis Friese LLP  
425 Market Street, Eleventh Floor  
San Francisco, CA 94105  
Email: [sspaulding@sflaw.com](mailto:sspaulding@sflaw.com)

Notice to County:

Meredith E. Nikkel  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
Email: [mnikkel@downeybrand.com](mailto:mnikkel@downeybrand.com)

Notice to SVBGSA:

Dustin C. Cooper  
Minasian Law LLP  
1681 Bird Street  
P.O. Box 1679  
Oroville, CA 95965-1679  
Email: [dcooper@minasianlaw.com](mailto:dcooper@minasianlaw.com)

Notice to CalAm:

Winston P. Stromberg  
Latham & Watkins LLP  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071-1560  
Email: [winston.stromberg@lw.com](mailto:winston.stromberg@lw.com)

The foregoing individuals and addresses for a Party may be changed by a notice given in accordance with this section. If the date of delivery or receipt of any notice to be given hereunder falls on a weekend or legal holiday, then the date of receipt shall automatically be deemed extended to the next business day for purposes of calculating time periods.

**8. Attorneys' Fees and Costs:** Each Party shall bear its own attorneys' fees and costs in negotiating this settlement and in connection with the preparation and execution of the Agreement. Other than the payment amounts set forth in Paragraph 1 above, no Party shall seek or be entitled to receive any costs or fees from any other Party that arise out of or are related to the SGMA Action, Cal-Am RV Action, Marina RV Action #1 or Marina RV Action #2.

**9. Applicable Law:** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

**10. Counterparts/Signatures:** This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement. Facsimile and/or electronic copies of the Parties' original signatures to this Agreement transmitted by mail or electronic mail transmission shall be deemed originally executed and binding counterparts of the Agreement.

**11. Entire Agreement:** This Agreement contains the entire agreement of the Parties pertaining to the subject matter contained in it and supersedes any and all prior and/or contemporaneous negotiations, correspondence, understandings, representations, letters of intent and agreements. The Parties, and each of them, understand and agree that this Agreement is not made with reliance upon any inducement, statement, promise or representation other than those contained within this Agreement.

**12. Modification or Amendment:** This Agreement shall not be modified or amended except by an instrument in writing signed by all Parties to the Agreement.

**13. Authority:** Each of the persons signing the Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of the Agreement.

**14. Effective Date:** The Effective Date of the Agreement is the date on which the last Party signature is made.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be authorized by their duly authorized representatives.

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|-------------------------|--------------------------------------------------------------------------------------------------------------|
| Dated: October __, 2024 | City of Marina, Marina Groundwater Sustainability Agency and Marina City Council<br><br>_____<br>By:<br>Its: |
|-------------------------|--------------------------------------------------------------------------------------------------------------|

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| Dated: October ___, 2024 | County of Monterey Groundwater<br>Sustainability Agency, County of Monterey,<br>and Monterey County Board of Supervisors<br><br>_____<br>By:<br>Its:                         |
| Dated: October ___, 2024 | Salinas Valley Basin Groundwater<br>Sustainability Agency and Board of Directors<br>of Salinas Valley Basin Groundwater<br>Sustainability Agency<br><br>_____<br>By:<br>Its: |
| Dated: October ___, 2024 | California-American Water Company<br><br>_____<br>By:<br>Its:                                                                                                                |

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