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Marin Water approves Class1 E-bike Pilot with conditions, defers Trail Sharing Pilot

Marin Conservation League is gratified that Marin Water (MMWD, or District) and MCL, California Native Plant Society and Marin Audubon Society have reached agreement after six months of settlement talks in the case of “California Native Plant Society, et al vs. Marin Municipal Water District.” On the grounds that two pilot programs, although limited in time, could increase the potential for impacts to sensitive plant and wildlife species without further environmental review, the three organizations challenged the District’s September 3, 2024, approval of Trail Share and Class1 E-bike Pilot Programs on Mt. Tam roads and trails as categorically exempt from California Environmental Quality Act (CEQA) review.

According to the settlement agreement, Class 1 E-bikes will have access to all fire roads but not to trails (“Revised E-Bike Pilot Program”), on a 2-year trial basis. Terms also call for continuing multi-modal trail counters at specified locations (8), continued monitoring of invasive plant species along fire roads, monitoring of bat species known to be sensitive to high frequency noise from E-bikes, monitoring of Northern spotted owl at specified locations, and quarterly reporting to stakeholders, as outlined in the settlement agreement. The agreement also stipulates that the District will rescind the Trail Share Pilot Program and not reinstate the program without conducting further review under CEQA, to include public engagement.

Why did it take a legal challenge to arrive at this point?

When news of the law suit against the District’s pilot programs circulated in late September last year, the immediate reaction from those eager to get on the trails was to call it a “late hit.” They raised the question: why had we (the plaintiffs) participated actively in Marin Water’s recreation planning process for three years, if only at the end to sue the District over the pilot programs? The simple answer is that the District Board had not approved any formal action to prompt CEQA (changes to the physical environment) until the September 3 meeting. After

promising “CEQA compliance,” their decision to exempt the programs from environmental review, in our opinion, violated both the spirit and letter of the CEQA law.

Throughout the Watershed Recreation Management Plan public process, MCL submitted extensive comments and discussed issues with District staff, board, and other stakeholders. We made clear that ecological resources, water quality, and visitor safety should take priority over any demands for intensified recreation. MCL also advocated for a long-term approach to recreation planning. The District needed, first, to update the 2005 Road and Trail Management Plan and its accompanying Program Environmental Impact Report.

By 2023, the Watershed Recreation Management Plan had devolved into a “Feasibility Study.” Numerous strategic opportunities had emerged from public discussions – e.g., better education about sensitive biological resources, approaches to reduce conflict and inappropriate trail behaviors, improved enforcement, a trail “Ambassador” program, etc. None of them involved physical changes to the environment. The Feasibility Study, however, did recommend opening some trails to a 2-year trail sharing pilot to test strategies for shared use by bikers, including E-bikers, with hikers and/or equestrians. For the first time, maps and specific existing trails entered the dialogue. A list of “candidate trails” for a pilot multi-use trail sharing program was presented by staff for preliminary evaluation and subsequently narrowed to nine trails.

With limited time to study the suitability of the candidate trails for multi-use or threat to sensitive resources, MCL and others presented detailed concerns about the degraded condition, steep gradient, narrow width, etc. of the candidate trails, as well as their proximity to sensitive habitats, such as serpentine areas. A consulting botanist identified sensitive plants and communities along each trail route. MCL also objected to the prospect of sharing, even “just for two years,” unsafe trail segments, such as narrow, steep, or deeply rutted conditions, far below prevailing standards for safe shared use trails (Compare with standards for recent multi-use trail improvements on Marin County Open Space Preserves, and as discussed in California State Parks Change-in-Use Programmatic EIR).

On September 3, the Board approved the two-year Pilot Programs described above. (The staff report stated that Class 1E-bikes would be included with conventional bikes in the Trail Share Pilot Program, a strategic error by the District, who claimed that the two pilot programs were entirely separate.) Further, the Board approved them as being exempt under four Categorical Exemptions from further CEQA review.

CEQA Guidelines (Sec. 15062(d)) state that “... *filing a Notice of Exemption starts a 35-day statute of limitations period on legal challenges to the agency’s decision that the project is exempt from CEQA.*” In the absence of any provision for public comment, the three organizations had only one recourse to voice their objections, i.e., within 35 days, to file a legal

challenge to the Marin Water Board's approval. Their complaint proved to be a strong case, if the Judge's granting of a Temporary Injunction on November 1 is an indication. Settlement talks between the parties, a requirement of CEQA lawsuits, were initiated shortly thereafter and proved to be amicable and constructive.

Looking forward. . .

The environmental groups are grateful to the District for agreeing to increase environmental safeguards in allowing electric bikes on fire roads, and for recognizing the need for further review under CEQA before opening closed narrow trails to bikes, even on a limited pilot basis. Mike Swezy, incoming President, stated that MCL “. . . looks forward to working with all stakeholders to develop a sustainable plan for carefully increasing bicycle use on the watershed lands in a way that fully protects the mountain's special natural resources.”

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