

NIPOMO COMMUNITY SERVICES DISTRICT

Celebrating 42 - Years of Service 1965 - 2007

MINUTES

NOVEMBER 14, 2007

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

MICHAEL WINN, **PRESIDENT**
LARRY VIERHEILIG, **VICE PRESIDENT**
CLIFFORD TROTTER, **DIRECTOR**
ED EBY, **DIRECTOR**
JAMES HARRISON, **DIRECTOR**

PRINCIPAL STAFF

BRUCE BUEL, **GENERAL MANAGER**
LISA BOGNUDA, **ASSIST. GENERAL MANAGER**
DONNA JOHNSON, **BOARD SECRETARY**
JON SEITZ, **GENERAL COUNSEL**
PETER SEVCIK, **DISTRICT ENGINEER**

Mission Statement: The Nipomo Community Services District's mission is to provide the community with reliable, quality and cost-effective services.

Vision Statement: The Nipomo Community Services District's vision is to manage the resources and future growth of the community.

00:00:00

A. CALL TO ORDER, FLAG SALUTE & ROLL CALL

The meeting was called to order at 8:00 a.m.
All Board members were present.
The flag salute was postponed until after the Closed Session

B-1. CLOSED SESSION ANNOUNCEMENTS

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 (One Case)

There was no audience in attendance. Jon Seitz, District Legal Counsel, announced the item to be discussed in Closed Session.

B-2. PUBLIC COMMENTS ON CLOSED SESSION ITEM

There was no public comment.

B-3. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 8:04 a.m.

B-4. CONVENE OPEN SESSION AND ANNOUNCE ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 9:00 a.m.
President Winn led the flag salute.
At Roll Call, all Board members were present.
Jon Seitz, District Legal Counsel announced that the Board heard a report from legal counsel and took no reportable action.

C. PRESENTATIONS AND PUBLIC COMMENT AT APPROXIMATELY 9 AM

C-1) COMMANDER HASCALL FROM SLO COUNTY SHERIFF'S OFFICE
Presentation of Sheriff's Activities on the Nipomo Mesa

Commander Hascall was not present.

C-2) BATTALION CHIEF BILL FISHER OF CAL FIRE
Presentation of Cal Fire Activities on the Nipomo Mesa

Battalion Chief Bill Fisher was not present.

Nipomo Community Services District
REGULAR MEETING
MINUTES

- C-3) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST
Receive Announcements from Directors Items of District & Community Interest

Director Vierheilg

He gave information to Mr. Bruce Buel concerning a tour of the Diablo Canyon desalination unit.

The Dunes Collaborative will meet with the Regional Water Quality Control Board, November 15, 2007

- C-4) PUBLIC COMMENT ON ITEMS NOT ON AGENDA

There was no public comment.

00:02:50

D. CONSENT AGENDA

- D-1) APPROVE WARRANTS
- D-2) APPROVE BOARD MEETING MINUTES
Approve Minutes of October 24, 2007 Meeting
- D-3) AUTHORIZE EXECUTION OF AGREEMENT WITH BOYLE ENGINEERING TO UPDATE WATER AND SEWER REPLACEMENT STUDY
- D-4) AMEND CAPITALIZATION POLICY PER RECOMMENDATION OF DISTRICT AUDITOR
- D-5) NOT USED
- D-6) ACCEPT PUHEK WATER AND SEWER IMPROVEMENTS ON BURTON STREET

Director Vierheilg asked to pull Item D-3 from the Consent Agenda for separate consideration. He also noted several changes necessary to the Minutes of the October 24, 2007 meeting.

Upon motion by Director Vierheilg and seconded by Director Eby, the Board unanimously approved Items D1, D2, D4, and D-6 of the Consent Agenda, as corrected. Vote 5-0.

RESOLUTION NO. 2007-1048
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT AMENDING CAPITALIZATION POLICY

RESOLUTION NO. 2007-1049
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT
ACCEPTING THE WATER AND SEWER IMPROVEMENTS FOR TRACT 2565 (BURTON STREET-PUHEK)

YES VOTES	NO VOTES	ABSENT
Directors Vierheilg, Eby, Trotter, Harrison, and Winn	None	None

- D-3 Bruce Buel, General Manager explained the proposed agreement with Boyle Engineering to update the Water and Sewer Replacement Study.
Director Vierheilg asked about the ability of the in-house personnel (the new District Engineer) to perform the work. Mr. Buel stated that Boyle Engineering could do the work in a timelier manner because the new engineer has too much on his plate right now.
Director Trotter asked Malcolm McEwen if AWWA specs would be used. Mr. McEwen answered yes.

The following members of the public spoke:

Bill Nelson, NCS D resident – stated that he recommended that the District go ahead with the study.

Walter _____, NCS D resident –stated that the people at the back of room cannot hear what is being said.

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

D. CONSENT AGENDA (CONTINUED)

Item D-3 continued

The Board took a 5 minute recess to get the outside speakers turned on and to turn up the volume for the room.

Upon motion by Director Eby and seconded by Director Trotter, the Board authorized the General Manager to execute a task order for Boyle Engineering to update the Water and Sewer Replacement Study on a time-and-materials basis with a not-to-exceed expenditure limit of \$35,000. Vote 3-2 with Directors Harrison and Vierheilig voting no.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Trotter, and Winn	Directors Vierheilig and Harrison	None

E. ADMINISTRATIVE ITEMS

00:18:11

E-1) TENTATIVELY APPROVE TOWN AND BLACKLAKE COMBINED WATER SYSTEM FINANCIAL PLAN AND RATE STRUCTURE AND AUTHORIZE PUBLICATION OF NOTICE FOR JANUARY 23, 2008 HEARING

President Winn explained the procedure to hear this item. The Board shall hear the information and comment on the information. The Board will then hear public comments.

Bruce Buel, General Manager, reviewed the history of the Blacklake Water Fund. In 2005, the Blacklake Water Booster Station was failing and needed to be replaced. The Board investigated possible replacement of the booster station and also the possibility of merging the Blacklake water fund with the Town Division's water fund to avoid the cost of replacing the booster station. He explained that the Blacklake customers could access the Board packet information about this item on the District's website at NCSD@ca.gov.

Jon Seitz, District Legal Counsel, reviewed the legal opinion included in the packet information.

The following members of the public spoke:

Pat Eby, NCSD resident – thanked the staff for information provided to her and her associates. She read a letter from the group which was a rebuttal to Mr. Seitz's legal opinion. (A copy of the letter is available for viewing in the District office.) Ms. Eby reviewed a slide presentation. She read excerpts from letters from 1992 NCSD General Manager Ryder Ray, Jaspas Associates report executive summary, and Blacklake Management Board member - Al Simon. The Board thanked her for the presentation.

John Deyulia, NCSD resident – read a portion of Mr. Seitz' letter "Through the years the Town Water has constructed a number of new water tanks, paid in part by Town Division Capacity Charges and has developed excess water capacity in its water transmission lines." He asked what part was paid by capacity charges and where did the rest of the funds come from? He stated that until recently, he believed that the surcharge (\$1,672) was to pay for the tie between Town and the Santa Maria systems and would apply equally to all NCSD residents.

Carl Drow, NCSD resident at Blacklake – stated that he agrees with Mrs. Eby's statements about being treated equitably. He stated that Blacklake is already a division of NCSD. The County transferred assets to NCSD in 1993 and NCSD was commissioned to maintain and operate the system. Blacklake does not operate any of the system.

- E-1) TENTATIVELY APPROVE TOWN AND BLACKLAKE COMBINED WATER SYSTEM FINANCIAL PLAN AND RATE STRUCTURE AND AUTHORIZE PUBLICATION OF NOTICE FOR JANUARY 23, 2008 HEARING (continued)

Robert Stanger, NCSD resident – stated that the bill from NCSD is not separate but billed directly from NCSD.

Donoho Hall, NCSD resident and member of the Blacklake Management System – Blacklake was annexed in 1993. NCSD did not maintain the system. Blacklake is being given two options, neither is desirable. He suggests that the Board redo the definition of equity.

Mike Morgan, NCSD resident at Blacklake – stated that in utility management, the larger the rate base, the lower the cost. He suggested that the Board needs to go back and analyze to a more equitable distribution of assets and accounting.

Irene Erwin, NCSD resident – stated that she believed the merger in 1993 would be mutually beneficial and that NCSD would maintain the system. She stated that she believes that NCD has not maintained the system.

Sharon Petrick, NCSD resident - read a statement to the Board saying that she is not happy with the way NCSD is dealing with this proposed merger.

Harry Eby, NCSD resident - stated that Blacklake uses approximately 400 acre feet per year and the production from the two Blacklake wells is approx. 635 AFY. He gave some calculations and asked for a fair treatment

The Board closed the meeting to public comment.

Director Trotter stated that it is not viable to rebuild the Blacklake water system.

Director Winn asked if a full report would be useful.

Director Eby recommended that Mr. Reed do a full financial study for rebuilding the booster station and not merging with the Town Division.

Director Trotter asked for an analysis of the water production in Blacklake.

Director Vierheilg stated that a financial study for an independent system is needed.

Jon Seitz, District Legal Counsel, responded to the comments of the audience.

- Capacity charges – The financial model is different for the two systems. Blacklake was built as a specific plan. In the Town Division, capacity charges pay for new projects to expand the system. That is why new tanks are seen. The money comes from capacity charges and the replacement account. Replacement is funded by Operations and Maintenance Fund (O&M) and capacity charges are charged one time to new development. The money for maintenance of the new system comes from O&M.
- Sundale Well – Blacklake paid for 29% of the construction of the well, nothing for the land and only pays 1 percent of the O&M.
- Rate setting – Rate setting is not perfect. The rate setting for Blacklake has probably been deficient. The replacement accounts have not been maintained; but the rates were set after public comment. At the rate setting hearings, there was considerable comment regarding the rates that were required to maintain the funding the replacement accounts. The Board then made adjustments to the proposed rates to accommodate the public comments. To correct the mistakes of not raising the rates at that time is to increase the rates at a future time to fund the replacement fund.

E-1) TENTATIVELY APPROVE TOWN AND BLACKLAKE COMBINED WATER SYSTEM FINANCIAL PLAN AND RATE STRUCTURE AND AUTHORIZE PUBLICATION OF NOTICE FOR JANUARY 23, 2008 HEARING (continued)

Director Winn explained that the two systems were not merged financially or physically. Everybody who develops pays capacity fees. The developers pass on the fees in the price of the house. He also stated that Blacklake could probably produce enough water for everyday use but not for peaking or fire flows.

Director Eby made a three-part motion:

1. To commission a study to upgrade the hydrogeologic capacities supply and demand of Blacklake
2. Revisit the cost to replace the pressurized system at Blacklake
3. Commission Reed to develop a detailed cost rate study for the stand-alone and fully merged Blacklake – Town systems based on previous two analyses.

Director Trotter seconded the motion. The Board discussed the matter. Director Harrison stated that he did not hear Blacklake residents desiring a stand-alone system and he wants to make sure it is fair for everyone in the Town Division also. The Board discussed whether to include Fund 700.

Vote 3-2 with Directors Harrison and Vierheilg voting no.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Trotter and Winn	Directors Vierheilg and Harrison	None

02:11:16

E-2) PROVIDE POLICY DIRECTION ON FURTHER FUTURE TIERING RATE STRUCTURE FOR COMBINED WATER SYSTEM, ADOPT WATER CONSERVATION PLAN AND AUTHORIZE IMPLEMENTATION

Bruce Buel, General Manager, reviewed the history of the Water Conservation Program being presented using a three-tiered, inclining, block, rate structure.

Jon Seitz, District Legal Counsel, explained that two meetings ago the Board was split on a two-two vote to adopt the three-tiered rate structure. The Board decided to bring it back when a full Board is present.

The Board discussed the proposed rate structure.

Celeste Whitlow, Conservation Specialist – discussed with the Board, the memorandum and the research from the City of Arroyo Grande, included in the packet

There was no public comment.

Director Eby suggested a motion. "Since we've done this twice before, I think the mechanics ought to be the same. I think we ought to keep a two-tiered rate structure. If we want to make it a conservation rate structure, then we increase the cost for the biggest users which is the people wherever that happens to be and set the break-point and the lower level rate such that it stays legal but if we want to achieve conservation by raising rates, then we raise it equitably for the higher tier."

Director Trotter says how can we vote on a motion with a variable?

Director Eby said "The variable is left up to the rate consultant. It's the same direction we gave him before and that was to do exactly as I said."

Nipomo Community Services District
REGULAR MEETING
MINUTES

- E-2) PROVIDE POLICY DIRECTION ON FURTHER FUTURE TIERING RATE STRUCTURE FOR COMBINED WATER SYSTEM, ADOPT WATER CONSERVATION PLAN AND AUTHORIZE IMPLEMENTATION (continued)

Jon Seitz, District Legal Counsel, asked for clarification from Director Eby:

Upon motion by Director Eby and seconded by Director Harrison, the Board agreed to have the rate consultant, Mr. Reed, design a two-tier rate structure where water conservation can be achieved. Vote 3-2 with Directors Vierheilg and Winn voting no.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Harrison and Trotter	Directors Vierheilg and Winn	None

00:55:57

- E-3) AUTHORIZE RECORDATION OF LIEN NOTICE ON TITLE OF LOTS WITHIN TRACT 2494 (OWNER: DLG) AT 781 W. TEFFT REGARDING OBLIGATION TO PAY CAPACITY CHARGES

Bruce Buel, General Manager, explained the possibility of recording a notice on the title of lots within Tract 2494 because fees have not been paid for the lots.

The Board discussed the matter. There was no public comment.

Upon motion by Director Vierheilg and seconded by Director Eby, the Board unanimously approved the resolution, as amended by legal counsel, directing staff to record notices. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilg, Eby, Harrison and Trotter	None	None

RESOLUTION NO. 2007-1050
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT DIRECTING STAFF TO RECORD LIEN NOTICES ON THE TITLE OF EACH OF THE 16 LOTS IN TRACT 2494 REGARDING OBLIGATION TO PAY FEES BEFORE METERS ARE SET

03:07:31

- E-4) PREVIEW 11/30/07 & 12/1/07 STRATEGIC PLAN WORKSHOP

Bruce Buel, General Manager, described the plan to hold a Strategic Plan Workshop, the afternoon of Friday, November 30th and all day Saturday December 1, 2007. There was no action required.

03:10:23

- E-5) APPOINT REPLACEMENT MEMBER TO PARKS CITIZENS ADVISORY SUB-COMMITTEE

Director Vierheilg presented his choice of Clyde Cruise for the candidate for the Parks Citizens Advisory Sub-Committee. There was no public comment.

Upon motion by Director Eby and seconded by Director Harrison, the Board unanimously agreed to accept the nomination of Clyde Cruise to serve on the PCAS. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Harrison, Vierheilg, Trotter, and Winn	None	None

03:12:15

F. MANAGER'S REPORT

Bruce Buel, General Manager, presented the information in the Board packet. The Board asked about the possibility of discharging treated wastewater on Mesa Road. Mr. Buel explained that there are many different ways to dispose of wastewater. This possibility is just one way being explored. Water Shortage Ordinance will be presented on December 12th.

03:25:54

G. COMMITTEE REPORTS

1. PARKS COMMITTEE Meeting of 10/15/07

There was no public comment on the Minutes of the Parks Committee meeting.

There will be a Water Conservation Committee meeting Monday, November 26th at 2:00 p.m. A red-lined version of the water shortage ordinance will be presented.

03:26:22

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Eby

Recommended that the Conservation Committee consider looking into using treated wastewater for the parks.

Director Harrison

Nipomo Incorporation Committee for Education (NICE) meeting November 27, 2007, 6:00 p.m. at the Library.

Chamber of Commerce craft fair at the Edwards Barn Saturday, Nov. 17th 9-4.

Parks Sub-Committee planned for November 19th.

Director Winn

Water Resources Advisory Committee to meet December 5th.

The Planning Commission is possibly passing an EIR for Affordable Housing Planning Commission did not meet on November 12th but may meet November 29th.

TDC Committee continues to be very active. Cypress Ridge planning to build 20 houses next to the existing golf course.

Director Eby

Cambria CSD has a place where people can get 200 gallons of non-potable water for free.

Director Trotter

The Audit Management letter should have been part of the audit and the letter to the auditor should have been written from the general manager.

03:44:44

I. CLOSED SESSION ANNOUNCEMENTS

Jon Seitz, District Legal Counsel, announced the following items to be considered during Closed Session.

1. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 SMVWCD VS NCSA SANTA CLARA COUNTY CASE NO. CV 770214 AND ALL CONSOLIDATED CASES.
2. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 MARIA VISTA VS. NCSA CASE NO. CV 040877, MARIA VISTA VS. NCSA CASE NO. CV 061079, AND MARIA VISTA VS. LINDA VISTA FARMS, NCSA ET AL. CASE NO. CV 040150;
3. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9; MARIA VISTA ESTATES V. NCSA ET AL. (CASE NO. ND07-10362RR IN UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT, NORTHERN DIVISION
4. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9; NCSA VS. SLO COUNTY (CASE NO. CV 070066) (DEGROOT)
5. CONFERENCE WITH REAL PROPERTY NEGOTIATORS BRUCE BUEL AND JON SEITZ REGARDING NEGOTIATIONS FOR PURCHASE OF A FEE TITLE INTEREST IN APN 091-152-001 AT CALLENDER ROAD AND HWY 1 (OWNER: TOM MCGONAGILL, OWNER'S NEGOTIATOR: PAT PALANGI) PURSUANT TO SUBDIVISION OF GOVERNMENT CODE SECTION 54956.8

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public present to comment.

K. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 1:04 p.m. Director Trotter left the meeting.

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

Jon Seitz, District Legal Counsel, announced that the Board came back into Open Session at 2:25 pm. The Board heard an update on the items above. On Items 1-4, there was no reportable action. On Item 5 above, the Board agreed to have an appraisal on the property noted. Vote 4-0 with Director Trotter absent.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Harrison, Vierheilg, and Winn	None	Director Trotter

ADJOURN

President Winn adjourned the meeting at 2:27 p.m.

➤ **THE NEXT REGULAR BOARD MEETING IS NOVEMBER 28, 2007.
TENTATIVELY SCHEDULED ITEMS INCLUDE:**

- Water and Sewer Master Plan Introduction
- Edit Reimbursement Agreement Policy