

NIPOMO COMMUNITY SERVICES DISTRICT

Celebrating 43 - Years of Service 1965 - 2008

MINUTES

JANUARY 23, 2008 AT 9AM

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

MICHAEL WINN, **PRESIDENT**
JAMES HARRISON, **VICE PRESIDENT**
CLIFFORD TROTTER, **DIRECTOR**
LARRY VIEHEILIG, **DIRECTOR**
ED EBY, **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 AND FLAG SALUTE

President Winn called the meeting to order at 9:00 a.m. and led the flag salute.

B. ROLL CALL & ACKNOWLEDGMENT OF 2008 OFFICERS

At Roll Call, all directors were present.

Bruce Buel, General Manager, announced the newly elected officers for 2008. Director Winn is President for another term. Director Harrison is Vice President. President Winn thanked Director Vierheilig for serving as Vice President for 2007.

00:01:33

C. PRESENTATIONS AND PUBLIC COMMENT

C-1) WATER CONSERVATION COORDINATOR CELESTE WHITLOW

Celeste Whitlow, Water Conservation Specialist, gave an update of the water conservation activities in the District.

- The landscape design for the District office is being put on hold for now.
- A composting bin and a worm bin have been delivered and will be put up for the upcoming workshops.
- Soil workshop will be Feb. 2. The bare areas in the back will be planted during the workshop
- Bids have been received for tree removal and tree grates. Permits are being obtained.
- Application has been sent for membership in the CUWCC (California Urban Water Conservation Council). Rebate information will be available.
- District water consumption for 2007 is up 6-7% from 2006. Some of that is due to lack of rain.
- Outreach materials are being produced and mailed to new customers.
- The February workshops are almost full.
- The conservation information on the website is being revamped. One thing to be added will be a watering index.
- Future outreach will include audits for large water using customers.

The Board asked questions. Is there water management training for gardeners? There was a suggestion to write an explanation of ET (evapo-transpiration).

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C-2) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST
Receive Announcements from Directors Items of District & Community Interest

Director Vierheilig announced the annual Orchid Show on March 8-9 in Arroyo Grande. The preview (March 7) will be a benefit for the Alzheimer's Association. Tickets for the preview are \$40.00.

Director Winn announced:

There was a SCAC Land Use Committee meeting Monday, January 21st.

The January SCAC meeting will be Monday, January 28th at 6:30 p.m.

He will be attending the Land Use Law class Friday, January 25th at UCLA. He stated he will bring materials from the class for the Board's information.

WRAC (Water Resources Advisory Committee) will meet February 6th at the San Luis Obispo Library at 1:30 p.m.

C-3) PUBLIC COMMENT ON ITEMS NOT ON AGENDA

Bill Nelson, NCS D resident – stated that it seems the water restrictions seem to be only for NCS D. Other purveyors in the County, such as Woodlands, are not having to follow the restrictions.

D. CONSENT AGENDA

D-1) APPROVE WARRANTS

D-2) APPROVE BOARD MEETING MINUTES

Approve Minutes of 1/9/08 Meeting

D-3) AWARD BID FOR CONSTRUCTION OF GRATES AROUND OFFICE TREES AND AUTHORIZE EXECUTION OF AGREEMENT

D-4) RECEIVE REPORT FROM STRATEGIC PLAN WORKSHOP AND ORDER IMPLEMENTATION OF RECOMMENDATIONS

D-5) ADOPT 2008 INVESTMENT POLICY

D-6) AMEND CONFLICT OF INTEREST CODE TO ADD DISTRICT ENGINEER AND SUPERINTENDENT AS DESIGNATED POSITIONS

D-7) AUTHORIZE CONTINUATION OF AUTOMATED CLEARINGHOUSE ORIGATION FOR DEBIT TRANSACTIONS FOR BILLING AND PAYROLL VIA RABOBANK

The Board pulled Items D-4 and D-6 for separate consideration.

Item D-4 will be considered at a future meeting.

Director Vierheilig asked about Item D-5. Jon Seitz, District Legal Counsel, informed the Board that there is a minor change in the resolution, Exhibit A. The California Government Code Section number changed in Item 6A-3.

Upon motion by Director Harrison and seconded by Director Eby, the Board unanimously approved Items D-1,2,3,5 & 7 of the Consent Agenda as modified. There was no public comment on these items. Vote 5-0.

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

RESOLUTION NO. 2008-1060
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING THE YEAR 2008 DISTRICT INVESTMENT POLICY

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D. CONSENT AGENDA (CONTINUED)

The following member of the public spoke:

Bill Petrick, NCSD resident – read a statement with comments for Items D-4 and E-6.

Item D-4 Strategic Workshop – He stated his concern that the public may not have been involved in the priority list. The Blacklake surcharge nor the Mesa Road controversy were included. He suggested that the Board move item D-4 to a future meeting and invite the public to comment on the strategic list. A copy of the statement is available for viewing in the District office.

Item D-6 (pulled for separate consideration)

The Board questioned the Disclosure Categories in Exhibit B, Item II. A and C of the resolution under consideration. Jon Seitz, District Legal Counsel, explained the likelihood of influence that the members of staff would have with investments of the District. The Board asked to have all staff members in the designated positions be required to report in Schedules A-F on the Form 700.

Upon motion by Director Vierheilig and seconded by Director Harrison, the Board unanimously adopted Resolution 2008-1061, as amended. There was no public comment on this item. Vote 5-0.

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

**RESOLUTION NO. 2008-1061
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
REVISING DISTRICT'S FORM 700
REPORTING POSITIONS AND REPORTING CATEGORIES**

00:57:10

E. ADMINISTRATIVE ITEMS

E-1) CONDUCT PROTEST HEARING, DETERMINE PROTEST STATUS, AND IF THERE IS NOT A MAJORITY PROTEST CONSIDER ADOPTION OF RESOLUTION INCREASING TOWN SEWER USER FEES

Bruce Buel, General Manager, gave the background information leading to the protest hearing.

- Board retained the Reed Group - April 2007 to develop a Financial Plan for the Town Sewer System,
- Reviewed a draft plan in July,
- Accepted a Final Plan in September (previously distributed and available for review at the NCSD Office),
- Set this hearing,
- Mailed notice to all properties with a Town Sewer Connection,
- Published notice in the newspaper.

The Protest Hearing was opened. The Board discussed the facts concerning the need to upgrade the wastewater treatment facility. The State has given the District a notice of violation of the BOD requirements.

Robert Reed, rate consultant spoke to the Board.

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- E-1) CONDUCT PROTEST HEARING, DETERMINE PROTEST STATUS, AND IF THERE IS NOT A MAJORITY PROTEST CONSIDER ADOPTION OF RESOLUTION INCREASING TOWN SEWER USER FEES (continued)

The following members of the public spoke:

Jeanne Taylor, NCS D resident – stated that the notification of the sewer rate increase should have been mailed in the bill instead of looking like a piece of junk mail. The newspaper coverage should have been in the local paper rather than the Santa Maria Times. This increase will be difficult for the low income and those on a fixed income.

Ethel Landers, NCS D resident, - asked about the Reed Report and where the water would come from. President Winn explained that Ms. Landers was off topic for this item.

John Snyder, Nipomo resident – stated that the District needs to clearly identify what the funds are for. There is too much confusion.

Ian Wallace, NCS D resident – stated that winter water use does not equal sewer use. He stated each billing period includes some irrigating, even in the winter.

Pat Eby, NCS D resident – stated that there is a disparity between the water use and sewer use.

Mike Kelly, Nipomo resident – asked why we don't have the reserves to cover these problems.

Homer Fox, NCS D resident – stated that the collection of the protests was inappropriate. There should have been a third party to collect and count them.

Thomas Mason, NCS D resident – asked about the cost of the upgrade and with the grim financial situation worldwide, what happens if development doesn't happen?

The public comment period was closed. No other protests were presented.

Bruce Buel, General Manager, answered some of the comments:

The notices were sent by the most cost-effective method.

The Santa Maria Times was more cost-effective than the Tribune.

The cost for the study is necessary to protect ratepayers so the end product accomplishes the goals.

The reserves that have been set aside thus far have kept the rates to a minimum and not build a large reserve. The improvements needed are state-mandated. The existing reserves will be used.

Counting the ballots – The law provides for the District to collect the ballots. They have been safe-guarded. It is a public venue. Most districts count their own ballots.

Where will the money come from if there is a moratorium – When the moratorium is lifted, the developers would pay their fair share.

Concept of increasing rates is painful but necessary.

There were 32 protests received. A majority protest would involve the submission of protests for 1,043 properties.

President Winn asked that the staff put future notifications in the Tribune as well as the Santa Maria Times. Neither the Times Press Recorder nor the Adobe Press meets the legal standard to be the newspaper of record. The Board discussed staff's recommendation to adopt the rates.

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- E-1) CONDUCT PROTEST HEARING, DETERMINE PROTEST STATUS, AND IF THERE IS NOT A MAJORITY PROTEST CONSIDER ADOPTION OF RESOLUTION INCREASING TOWN SEWER USER FEES (continued)

Upon motion by Director Eby and seconded by Director Winn, the Board adopted the resolution increasing the sewer rates, as amended and directed staff to implement the new user fees. Vote 4-1 with Director Vierheilg voting no.

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

**RESOLUTION NO. 2008-1062
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AMENDING APPENDIX A TO CHAPTER 4.12 OF THE NIPOMO COMMUNITY SERVICES DISTRICT CODE TO INCREASE SEWER RATES WITHIN THE TOWN DIVISION**

The Board took a break at 11:13 a.m. and returned at 11:25 a.m.

02:11:37

- E-2) CONDUCT PUBLIC HEARING AND CONSIDER ADOPTION OF RESOLUTION INCREASING TOWN SEWER CAPACITY FEES

Bruce Buel, General Manager, reviewed the process taken by the Board up to this point for increasing the Town Sewer Capacity Fees.

- April 2007 -The Reed Group was retained to develop financial plan for sewer system
- July 2007 – reviewed draft plan
- Sept. 2007 – accepted final plan
- Sep 26 2007 – set public hearing and directed staff to publish notice of hearing.
- Published notice twice in January

Mr. Buel explained that if adopted today, the capacity fee would increase as indicated in the resolution and be effective July 1, 2008, and increase each year thereafter by the percentage increase in the 20-Cities Construction Cost Index published by the Engineering News Record using the July, 2007, value of 7,959 as the basis and the Index value for May of each year to calculate the increase. He also stated that the division of the costs of the upgrade is shared between the users through their User Fees and the developers through the Capacity Charges.

The meeting was opened to a public hearing to receive community feedback.

Mr. Robert Reed, of The Reed Group, explained that sewer capacity fees increases reflect the cost of capacity in the Town Sewer System. The increases include the buy-in which reflects the cost of the collection system, the planned treatment improvements, and the capacity allocation.

The Board asked questions:

Does any of this capacity charge fee collected go into off-site discharge from the wastewater treatment facility? Answer: No.

Are there any upgrades in the Town system? Answer: Yes, it is planned to upgrade the undersized trunk line in Frontage Road from Division south to the treatment facility.

The following members of the public spoke:

John Snyder, Nipomo resident – stated that Mr. Reed's August 24, 2007 report does not specify where the \$12 million from the capacity fee increase will be spent.

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E-2) CONDUCT PUBLIC HEARING AND CONSIDER ADOPTION OF RESOLUTION INCREASING TOWN SEWER CAPACITY FEES (CONTINUED)

Greg Nester, Nipomo resident and developer – stated that there have been few sales in the past year and County fees are increasing as well as the requirements for water conservation. He stated that if the Board is looking to development for helping fund the sewer upgrade, it may be a long time.

There was further Board discussion. Upon motion by Director Eby and seconded by Director Trotter, the Board adopted Resolution 2008-1063. Vote 3-2 with Directors Harrison and Vierheilig voting no.

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

RESOLUTION NO. 2008-1063
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING APPENDIX B TO CHAPTER 4.12 OF THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE TO
ESTABLISH NEW TOWN DIVISION SEWER CAPACITY CHARGES

The Board chose to consider Item E-5 & E-6 next.

02:27:44
11:44 a.m.

E-5) APPROVE FORMATION OF AD HOC COMMITTEE TO INTERACT WITH BLACKLAKE COMMUNITY, APPROVE MISSION STATEMENT, AND RATIFY PRESIDENT'S NOMINEES

Bruce Buel, General Manager, explained that at the January 9, 2008 Board meeting, the Board canceled the 1/23/08 Protest Hearing for the Blacklake Sewer User Fee and agreed to receive additional input from the Blacklake community. A Blacklake resident, at that meeting, also requested that your Honorable Board form an Ad Hoc Committee.

The following member of the public spoke:

Pat Eby, NCSD resident – thanked the Board for considering the request to meet with the members of the BLMA committee. She stated that the mission statement as printed in the Board letter differs from the BLMA committee's objectives. The committee as wanting to negotiate user fees and surcharges in good faith and propose them to the full NCSD Board.

Jon Seitz, District Legal Counsel, informed the Board that any time rates are increased, it is subject to Proposition 218.

The Board discussed the matter further. They agreed that the mission statement would include interaction with the BLMA and other interested Blacklake residents. Upon motion by Director Vierheilig and seconded by Director Harrison, the Board agreed to form an Ad Hoc Committee with the mission statement in the Board letter, as modified. President Winn appointed Director Harrison and himself to the committee. Vote 5-0. President Winn set the February 13th regular Board meeting to report back to the Board on the progress of the Ad Hoc Committee's meetings. Vote 5-0.

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

02:50:51
12:07 p.m.

E-6) CONSIDER REQUEST OF DIRECTOR EBY TO MODIFY EXISTING INTENT-TO-SERVE POLICIES

Bruce Buel, General Manager, reviewed the request from Director Eby to modify the existing Intent-to-Serve policy.

Jon Seitz, District Legal Counsel, explained that enactment of a moratorium would entail the adoption of an ordinance declaring a water shortage emergency pursuant to Water Code Section 350.

Board discussion ensued. Director Eby stated that the reason for the request was precipitated by the January 6, 2008 SAIC memo predicting a catastrophic groundwater in storage condition in 12 to 14 years, namely seawater intrusion in regional areas possibly sooner. With the search for a supplemental water supply taking longer than originally planned, it seems that the District does not need to continue supplying water to new development. The District needs to show that we have done our part to solve the problem.

The following members of the public spoke:

El Jay Hansen, rural Arroyo Grande resident – stated that we all share the aquifer. The District should guard against seawater intrusion.

Istar Holliday, rural Nipomo resident – stated that she supports a moratorium. She reminded the Board that years ago, she told the Board about the danger of seawater intrusion. There needs to be water in the pipeline before allowing more development. The Board needs to protect its customers.

Bill Petrick, NCS D resident – read from a statement handed to the Board that he agrees with a moratorium until a relationship between water use and groundwater level is proven and the County approves the model for use by all water purveyors on the mesa. The SAIC model needs to be validated and calibrated. A copy of the statement he handed to the Board is available for viewing in the District office.

Greg Nester, Nipomo resident and developer/developer – stated that the development industry is a part of a community with local employees and local sub contractors. Perhaps there could be some more discussion with the water suppliers and not more studies.

Gordon Gracia, NCS D resident – stated that the Nipomo area is a small portion of the entire County. All of the County should participate in this conservation. It seems a moratorium would handicap this area.

Director Eby answered that the report is the only indicator we have right now. He stated that the milestone necessary to lift a moratorium could be having an agreement with the City of Santa Maria to safely predict when water may be in the system. That could possibly be in approx. 12 months. Also about conditional Intent-to-Serve letters - he would not like to give anyone false hopes to receive water when there may not be any available.

Director Vierheilg stated that the time to lift a moratorium would be when the design of the supplemental water supply is complete, when the funding is secured, an EIR is certified.

Director Harrison stated that a moratorium is short-sighted and premature. The Emergency Water Shortage Regulations will handle the situation.

Director Trotter stated that the District needs to back off from commitment.

Director Winn stated that he does not support a moratorium without a way to avoid litigation. The Emergency Water Shortage Regulations will get to a moratorium if the water level reaches a Level II.

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E-6) CONSIDER REQUEST OF DIRECTOR EBY TO MODIFY EXISTING INTENT-TO-SERVE POLICIES (continued)

Director Eby made a motion to direct staff to agendize this item for a future meeting and to draft an ordinance to reflect options that are still open such as what events would lift the moratorium and other items in his letter to the Board. Director Trotter seconded the motion. Vote 2-3 with Directors Harrison, Vierheilg and Winn voting no. The motion failed.

The Board took Closed Session next.
Item E-3 will be considered after Closed Session.

03:31:30
12:47 p.m.

I. CLOSED SESSION ANNOUNCEMENTS

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

1. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 SMVWCD VS NCSO SANTA CLARA COUNTY CASE NO. CV 770214 AND ALL CONSOLIDATED CASES.
2. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 MARIA VISTA VS. NCSO CASE NO. CV 040877, MARIA VISTA VS. NCSO CASE NO. CV 061079, AND MARIA VISTA VS. LINDA VISTA FARMS, NCSO 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. NCSO 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; NCSO VS. SLO COUNTY (CASE NO. CV 070066)

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment on the Closed Session items.

K. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 12:48 p.m.

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 1:30 p.m.
Jon Seitz, District Legal Counsel, announced that the Board heard an update on the items listed above. There was no reportable action.

03:33:01
1:30 p.m.

E-3) CONDUCT SECOND READING AND CONSIDER ADOPTION OF ORDINANCE AMENDING REIMBURSEMENT POLICY

Bruce Buel, General Manager, explained that the current reimbursement ordinance code needs to be revised to clarify the costs that are allowable for inclusion in the calculation of the reimbursement fee and to require the applicant to provide additional information with the application for reimbursement to facilitate processing. The purpose of the ordinance is to provide a mechanism to at least partially reimburse private parties for a portion of the costs of the public service extensions installed to serve their property if the extensions may also serve adjacent landowners in the future.

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E-3) CONDUCT SECOND READING AND CONSIDER ADOPTION OF ORDINANCE AMENDING REIMBURSEMENT POLICY (CONTINUED)

There was no Board discussion.

There was no public comment.

Upon motion by Director Harrison and seconded by Director Vierheilg, the Board unanimously adopted Ordinance 2008-107. Vote 5-0.

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

**ORDINANCE NO. 2008-107
AN ORDINANCE OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING CHAPTER 5.01 OF THE DISTRICT CODE
REGARDING REIMBURSEMENT AGREEMENTS**

03:35:30

E-4) RECEIVE PRESENTATION FROM DISTRICT LEGAL COUNSEL REGARDING OPTIONS TO REGULATE NEW GROUNDWATER WELLS

Mr. Buel introduced Jon Seitz, District Legal Counsel, to present this item.

Mr. Seitz spoke to the Board and the public.

He informed that the District's primary jurisdiction for regulations is within the District boundary. The District has little authority outside District boundaries except those that require a type of environmental review as part of the project application. He reminded the Board that he is not the District's water law attorney. Mr. Markman has not reviewed or commented on this presentation.

What regulates wells:

- District Annexation Policy – only remaining use for a well on annexed property is for agricultural purposes.
- Yet-to-be signed stipulated judgment restrictions within NMMA for stipulating parties
- Health and safety regulations to upgrade a well location, especially in connection with septic tanks or objectionable material (by Health Dept. standards)
- Not to interfere with the neighbor's well
- Backflow requirements so as not to contaminate the District's water system (*Freeman v. Contra Costa County Water District*)
- Conditional use permit (*Allegretti v. County of Imperial {2006}*)
- Exporting groundwater out of county with a groundwater management program without a permit

Board discussion ensued. The Board asked if the District could impose regulations outside District boundary but within the Sphere of Influence. Mr. Seitz answered no. The Board discussed several scenarios that the District could possibly impose restrictions for wells within the District.

There was no action taken.

04:11:49
2:11 p.m.

F. MANAGER'S REPORT

Bruce Buel, General Manager, presented the Manager's Report as written in the Board letter. There were some Board questions about the completion of the shop upgrade. There was no public comment.

G. COMMITTEE REPORTS

1. Jan 4, 2008 Water Conservation Committee Meeting
2. Jan 14, 2008 Parks Committee Meeting

Director Eby noted that there was a Supplemental Water Committee meeting January 22, 2008. The desalination project could have a three year schedule. The next meeting will be February 25, 2008, at 1:00 p.m.

04:15:35

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Vierheilg asked for the Fall water level reports and the outflow to the ocean.

Director Harrison asked about the Rossi project at Blacklake.

Director Winn asked about the licensing process for landscape gardeners.

He would like directors to have a courtesy copy of the press releases before they are released to insure that they are technically and factually correct.

ADJOURN

President Winn adjourned the meeting at 2:32 p.m.

➤ **THE NEXT REGULAR BOARD MEETING IS FEBRUARY 13, 2008.****TENTATIVELY SCHEDULED ITEMS INCLUDE:**

- Water Conservation Plan
- Miller Park Assessment Report

THE NEXT SPECIAL MEETING IS SCHEDULED FOR JANUARY 30, 2008 AT 6:30PM AT THE FORUM AT NIPOMO HIGH SCHOOL TO DISCUSS EMERGENCY WATER SUPPLY REGULATIONS