

NIPOMO COMMUNITY SERVICES DISTRICT

Celebrating 43 - Years of Service 1965 - 2008

MINUTES

MARCH 12, 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 VIERHEILIG, **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.

00:00:43

B. ROLL CALL

At Roll Call, all Board members were present.

00:01:07

C. PRESENTATIONS AND PUBLIC COMMENT

C-1) COMMANDER BRIAN HASCALL OF SLO COUNTY SHERIFF'S OFFICE

Commander Brian Hascall of the San Luis Obispo County Sheriff's Office gave an update regarding the activities of the Nipomo Mesa Sheriff's Department. He informed the Board and public that residential and commercial burglaries are the greatest problem that is happening in Nipomo now. He asked that the public report anything unusual in the neighborhood. Stay alert and try to get a license plate number. The Board thanked him for his report.

C-2) BATTALION CHIEF BILL FISHER OF CAL FIRE

Battalion Chief Bill Fisher of Cal Fire gave an update on the Cal Fire activities on the Nipomo Mesa. There were 73 total calls (4 fire, 12, vehicle, 52 medical, and 5 other) at the Nipomo Station 20. There were 47 total calls (7 fires, 4 vehicle accidents, 20 medical and 16 other) at the Mesa Station 22. The Board thanked him for his report.

C-3) TOM MARTIN OF SOUTH COUNTY SANITARY

Presentation re Extension of Solid Waste Franchise Agreement

Tom Martin, Manager of the South County Sanitary, gave an update on the negotiations with the other agencies in the County to have a 15-year contract. The Board talked with Mr. Martin about the possible contract.

C-4) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST

Receive Announcements from Directors Items of District & Community Interest

Director Vierheilig announced that the Orchid Show held over the past weekend was successful and thanked all those who attended.

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C-4) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST (continued)

Director Eby stated that the SCAC (South County Advisory Council) will be holding elections Monday, March 17, 08 in the NCSD Board room from 11:00 a.m. to 8:00 p.m.

Save the Mesa will be hold a candidates' forum for the SLO County Board of Supervisors position April 5, 2008, 1:30 p.m. The candidates to be featured will be Hill and Lenthall.

Director Trotter introduced George Billinger who is stepping down from the position of President of the Blacklake Management Association. Mr. Billinger introduced Nancy Fleming who will be the new president.

Director Eby stated that at the March 5th Water Resources Advisory Council meeting, the revised Draft EIR for the Santa Margarita Ranch was reviewed. WRAC members sent fifteen comments on the draft EIR.

Director Winn stated that the deadline for comments to WRAC on the Santa Margarita Ranch issue is Friday, March 28, 2008. The next WRAC meeting will be April 2, 2008, in San Luis Obispo.

Friday, April 4, 2008, 9:00 a.m. in Santa Clara - motions to be made and discussions reporting the judge's decision.

Bruce Buel, General Manager – announced that the Open House for the Operations Center at 509 Southland will be held Wednesday, March 19, 2008 from 4 to 6 p.m. The District Engineer and Utility Superintendent will be introduced.

C-5) PUBLIC COMMENT ON ITEMS NOT ON AGENDA

Bill Petrick, NCSD resident – stated that the NCSD Board is failing in representing the community. He asked for the resignation of Mr. Buel, General Manager, because of mismanagement and actions exceeding his authority and Mr. Seitz, District Legal Counsel, for failure to adequately advise the Board for its legal actions. If the Blacklake water system had been properly maintained so that it had not faiedl, there would not be the equity surcharge issue.

Analise Theise, Nipomo resident – stated that she is frustrated and angry with communication with Mr. Buel. She asked for the Board to look into the matter.

Holger Andersen, Nipomo resident – stated that Bruce Buel misrepresented the community with denying that there have been negotiations or intention to buy the property on Mesa Road.

00:32:00

D. CONSENT AGENDA

D-1) APPROVE WARRANTS

D-2) APPROVE BOARD MEETING MINUTES

Approve Minutes of 2/27/08 Meeting

D-3) AGREE TO CONDUCT SPECIAL MEETING RE OAKGLEN PLAN AND TENTATIVE SET DATE/TIME

D-4) ADOPT RESOLUTION RATIFYING ADOPTION OF WATER CONSERVATION PROGRAM

D-5) NOTICE OF COURT HEARING AND PROPOSED JUDGMENT (DEGROOT)

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D. CONSENT AGENDA (continued)

Bruce Buel, General Manager, stated that Director Winn had submitted some edits to the Minutes for the February 27th meeting. The edits were placed on the back table. There were no further comments on the Minutes.

Director Eby stated he had a question about Item D-3.

Director Harrison asked to pull Item D-4 for separate consideration.

Director Vierheilg had questions about Item D-5. On Page 3 1(b) of the Judgment, why is there is no amount specified?

Jon Seitz, District Legal Counsel, answered that Rural Water did not want an amount specified because they set their own rates.

Director Eby asked how the Special Meeting of the Oakglen Specific Plan would be conducted. Mr. Buel answered that it would be a joint meeting with NCSD presiding and members from San Luis Obispo County Planning Department and members from South County Advisory Council in attendance.

Upon motion by Director Eby and seconded by Director Harrison, the Board unanimously adopted the Consent Agenda Items D-1, D-2, D-3, and D-5, as amended. Vote 5-0.

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

D-4

Bruce Buel, General Manager, explained that the Board adopted the Water Conservation as amended at the February 13, 2008 Board meeting. The proposed resolution is a formality to serve as proof of the adoption of the Water Conservation Program.

Director Harrison suggested that the core and non-core measures mentioned be listed or referenced. He also asked about other items in the Program.

Celeste Whitlow, Water Conservation Specialist, answered questions from the Board. She explained that the program is a living document subject to review and revisions.

The following member of the public spoke:

Bill Petrick, NCSD resident – stated that pages 16-19 of the Water Conservation Program used selected facts for scare tactics and with no validated proof.

Upon motion by Director Trotter and seconded by Director Eby, the Board adopted Resolution 2008-1069 adopting the Water Conservation Program, as edited. Vote 4-1 with Director Harrison voting no.

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

RESOLUTION NO. 2008-1069
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING A WATER CONSERVATION PROGRAM

The Board took a break at 10:16 a.m. and returned at 10:28 a.m.

E. ADMINISTRATIVE ITEMS

00:33:03

E-1) REVIEW/EDIT DRAFT ORDINANCE MERGING TOWN WATER SYSTEM WITH BLACKLAKE WATER SYSTEM AND SET SCHEDULE

Bruce Buel, General Manager, reviewed the slide presentation explaining the proposed ordinance merging Town water system with Blacklake water system.

Director Trotter asked to remove Summit Station and Lyn Road portions of the distribution system because the assets do not benefit Blacklake. It was discussed that those areas also do not benefit other housing developments, such as Thompson Road Estates, homes on Camino Caballo, etc. but that the assets are a part of the whole Town Division.

The following members of the public spoke:

Pat Eby, NCSD customer and Blacklake resident – stated that the rate schedule adopted June 8, 2005 has been illegal since the second intertie was installed at Blacklake in 2006 and the Blacklake water system was abandoned. She read the following quote from California State law, specifically Section 6 of the law passed under Proposition 218:

“(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: ...

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted.”

“CA Water Code §71614: A district may fix the rates at which water shall be sold. Different rates may be established for different classes or conditions of service, but rates shall be uniform throughout the district for like classes and conditions of service.”

Mrs. Eby further stated that since the connection of the intertie and implementation of the Town system at Blacklake, Blacklake customers receive identical water service as Town customers, and uniform rates must apply. She asked for a credit to Blacklake customers for the water used since implementation.

She stated: "Any Board member who knowingly votes for an illegal ordinance can be held personally liable for that action. Such a lawsuit could be a personal lawsuit and would not necessarily be a lawsuit against NCSD. As such, the liability insurance covering elected Board members will very likely not apply and the Board member could be required to foot his own legal bills and pay any damages awarded by the court. If this Board proceeds to approve the draft Ordinance in Item E-1 on the published agenda for March 12, 2008, I will do whatever is in my power to seek proper redress."

Bill Petrick, representative of the Blacklake Management Association – stated that when the Board sub-committee met with the representatives of the BLMA, the option proposed in the ordinance was not discussed. He stated that this is a way to avoid a Prop 218 protest. He advised the Board about possible personal risk by approving the ordinance. He stated that there has been no public testimony in favor of the surcharge. He requested that the Board kill the ordinance and any surcharge.

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E-1) REVIEW/EDIT DRAFT ORDINANCE MERGING TOWN WATER SYSTEM WITH BLACKLAKE WATER SYSTEM AND SET SCHEDULE (continued)

The Board discussed the proposed ordinance. The Board asked about the lawsuit allegations, the appropriateness of the surcharge, if a differential is used, what effect it would have on the resident and the funded replacement fund. The Board discussed revenue-generated per connection rates with different scenarios, such as:

- Reed Report recommendation,
- Reed Report, excluding the Tefft Street monies,
- Reed Report, excluding Tefft Street, Summit Station and Lyn Road, or
- New option of revenue-generated rates - Director Vierheilg's proposal to use the differential in FY 05-06 contributions per meter.

The subcommittee agreed to meet with the Blacklake committee before April 9th, if the Blacklake committee desired another meeting.

Director Vierheilg made a motion and Director Trotter seconded the motion to take the calculations reviewed today, edit the ordinance, to look at the options discussed (listed above) at today's meeting and present a report with draft language for the ordinance to be presented on April 9, 2008. Director Vierheilg withdrew his motion and made a motion to put the ordinance on hold today. That motion died for lack of a second.

Director Harrison made a motion to adopt the ordinance and bring it back for first reading and adoption April 9, 2008. The motion died for lack of a second.

Upon motion by Director Vierheilg and seconded by Director Harrison, the Board agreed to bring the numbers with options and a draft ordinance but not for a first reading of the ordinance back to the April 9, 2008 Board meeting. Vote 5-0.

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

01:30:32

E-2) AUTHORIZE SUBMITTAL OF REQUEST TO SLO COUNTY TO TRANSFER PROPERTY LOCATED AT NE CORNER OF TEFFT AND CARRILLO (COMMONLY KNOWN AS MILLER PARK) AND TO NEGOTIATE MEMORANDUM OF UNDERSTANDING

Bruce Buel, General Manager, reviewed the Board letter recommending submittal of a request to San Luis Obispo County to transfer the property located at the northeast corner of Tefft and Carrillo Street.

The following members of the public spoke:

Jim Tefft, Nipomo resident – stated his support for staff's recommendation and would like NCSD to continue planning efforts in parallel with the County.

Peg Miller, NCSD resident – stated that many years ago her late husband, Jim Miller, offered to put up the park and maintain it. She supports the District moving with haste.

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- E-2) AUTHORIZE SUBMITTAL OF REQUEST TO SLO COUNTY TO TRANSFER PROPERTY LOCATED AT NE CORNER OF TEFFT AND CARRILLO (COMMONLY KNOWN AS MILLER PARK) AND TO NEGOTIATE MEMORANDUM OF UNDERSTANDING (continued)

The Board discussed the issue. The District cannot move in parallel until the County approves the property negotiations. Director Eby stated his reservation with using property taxes for the park until the District finds the money for the supplemental water.

Upon motion by Director Harrison and seconded by Director Vierheilig, the Board unanimously approved staff's recommendation to authorize the submittal of a formal request to SLO County to transfer the property and to negotiate a Memorandum of Understanding so that the responsibilities of the two parties are clearly delineated. Vote 5-0.

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

01:40:44

- E-3) CONSIDER ADOPTION OF RESOLUTION SUSPENDING PROCESSING OF INTENT-TO-SERVE LETTERS UNTIL JUNE 11, 2008

Jon Seitz, District Legal Counsel, reviewed the events leading to the proposition of the suspension of Intent-to-Serve letters. The Board was concerned with the volume of groundwater in storage. SAIC will monitor the volume of groundwater underlying the Nipomo Mesa Management Area in the spring.

The Board discussed the proposed resolution.

The following member of the public spoke:

Bill Petrick, NCSD resident – stated that the letter from Mr. Seitz assumes the information from SAIC is factual. Mr. Petrick stated that the Papadopoulos Report and the DWR Report are wrong. Negotiations made in private may be violating the Brown Act. He also stated that Mr. Seitz report says the delivery date for a supplemental water supply is targeted for March, 2011. He stated that the facts are that groundwater in storage is 87,500 acre feet. Since 2001, the level has been above the average value and does not look like a steady decline. The health of the aquifer is up to the Technical Group, not NCSD.

Director Winn stated that all contracts are negotiated out of the public eye and that process is provided for in the Brown Act. After contracts have been successfully negotiated they are reported out to the public before final adoption.

Mr. Seitz answered concerning his report. The District received SAIC reports and the Papadopoulos Report. The County has adopted a Severity Level III. The Papadopoulos Report was a study and analysis of the DWR report; and it states that the DWR supports a finding of an overdraft. The recharge is less than the beneficial use of the water. Based on that report, the County, through John Hand, did an independent study The County Resource Capacity Study for the ground basin. The study came up with similar numbers to the Papadopoulos Report. The limiting of Intent-to-Serve letters is only in the District, not Mesa-wide.

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E-3) CONSIDER ADOPTION OF RESOLUTION SUSPENDING PROCESSING OF INTENT-TO-SERVE LETTERS UNTIL JUNE 11, 2008 (continued)

Director Eby stated that he supports the resolution. He gave the Board a report showing the precipitation probability for the month of March. It shows there is a 50% chance that our precipitation will be less than normal in March and possibly April. Director Vierheilg stated that adopting this resolution is exercising caution for a relatively short period of time. Director Harrison disagrees with other directors that the groundwater level is critical. He stated that we are not in a declining state of storage of water. This is a premature action, and we should wait until the report is received.

Upon motion by Director Eby and seconded by Director Trotter, the Board adopted Resolution 1070 suspending applications for Intent-to-Serve letters until July 1, 2008. Vote 4-1 with Director Harrison voting no.

**RESOLUTION NO. 2008-1070
AN RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SUSPENDING APPLICATIONS FOR
INTENT-TO-SERVE LETTERS FOR WATER SERVICE**

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

The Board went to Closed Session next.

02:15:38

I. CLOSED SESSION ANNOUNCEMENTS

Jon Seitz, District Legal Counsel, announced the following items to be considered in 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)

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

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K. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 12:11 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 out of Closed Session. He reported that the Board heard an update on the items listed above. There was no reportable action.

02:17:46

E-4) AUTHORIZE SUBMITTAL OF COMMENTS TO SLO COUNTY REGARDING AFFORDABLE HOUSING ORDINANCES REVISED DRAFT EIR

Jon Seitz, District Legal Counsel, discussed the Draft EIR for Affordable Housing. CEQA, being an informational document, assumes that a project shows: 1) there is no impact, 2) there is significant impact but it can be mitigated, and 3) significant impact that cannot be mitigated.

The Board discussed some revisions needed in the draft EIR including the following listed in the Board letter:

1. A description of the Level of Severity III for NMWCA for water supply certified by the Board of Supervisors.
2. A description of the Limitations imposed by SLO County Ordinance 3090;
3. An assessment of the increased water demand and sewer flow resulting from implementation of each of the ordinances
4. An assessment of the water supply alternatives available to satisfy that increased demand;
5. An assessment of the feasibility of mitigations to reduce impacts to levels of less than significant;
6. Specific proposals to revise the draft ordinances to ensure that increased densities will not occur in planning areas with Levels of Severity II or III until adequate water is available to reduce those Levels of Severity below level II.

E-4) AUTHORIZE SUBMITTAL OF COMMENTS TO SLO COUNTY REGARDING AFFORDABLE HOUSING ORDINANCES REVISED DRAFT EIR (continued)

Upon motion by Director Vierheilg and seconded by Director Harrison, the Board authorized staff to submit a comment letter regarding all agreed upon comments. Vote 4-0.

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

02:57:42

F. MANAGER'S REPORT

Bruce Buel, General Manager,
Jon Seitz, District Legal Counsel, will be teaching a class for the San Luis Obispo Chapter of the California Special District's Association regarding Ethics Training.
Chamber Breakfast meeting March 25, 2008, 7:30 a.m. Mike Winn will be the featured speaker.
RWQCB comments will be brought to next meeting.

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03:10:36

G. COMMITTEE REPORTS

1. Feb 25, 2008 Supplemental Water Project Committee Meeting
2. March 3, 2008 Finance & Audit Committee Meeting

The Committee Reports stand as written.

Members of the Finance Committee will have a phone conference March 20, 2008, to discuss employee benefits. The committee will meet again on April 10, 2008, 9:00 a.m. The Supplemental Water Project Committee.

03:12:11

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Winn stated he would like a letter to SLO Planning and SLO Public Health concerning residential wells/potable wells and also to make sure there is a backflow device. Staff agreed to bring this item back to the Board on April 9, 2008

He would like staff to communicate with SLO County Planning staff before the Intent-to-Serve suspension is in effect. He would like a report on the amount of water consumed by the Nipomo Regional Park. He would like a copy of the Cachuma report.

ADJOURN

President Winn adjourned the meeting at 2:00 pm.

- **THE NEXT REGULAR BOARD MEETING IS MARCH 26, 2008.**
TENTATIVELY SCHEDULED ITEMS INCLUDE:
- Revise Standard Specifications
 - On-Site Waste Management Regulations