

NIPOMO COMMUNITY SERVICES DISTRICT



AGENDA

SPECIAL MEETING

MARCH 14, 2003 FRIDAY 9:00 A. M.

BOARD ROOM 148 S. WILSON STREET NIPOMO, CA

BOARD MEMBERS

MICHAEL WINN, **PRESIDENT**
JUDITH WIRSING, **VICE PRESIDENT**
ROBERT BLAIR, **DIRECTOR**
CLIFFORD TROTTER, **DIRECTOR**
LARRY VIERHEILIG, **DIRECTOR**

STAFF

DOUGLAS JONES, **GENERAL MANAGER**
DONNA JOHNSON, **SECRETARY TO THE BOARD**
JON SEITZ, **GENERAL COUNSEL**

CALL TO ORDER AND FLAG SALUTE

ROLL CALL

NEXT RESOLUTION 2003-856

Public Comment on Agenda Items

The public has the right to comment on any item on the Special Meeting Agenda. Comments are limited to 3 minutes or otherwise at the discretion of the Chair.


ADMINISTRATIVE ITEM

PRESENTATION BY PERRY LOUCK, CPA & MICHAEL STREAMS, BOND COUNSEL

REVIEW THE PROCESS TO INITIATE SALE OF BONDS

1. RESOLUTION AUTHORIZING THE GENERAL MANAGER TO INCORPORATE AND EXECUTE FORMATION DOCUMENTS FOR A NON-PROFIT PUBLIC BENEFIT CORPORATION AND ESTABLISH BYLAWS

ADJOURN

TO: BOARD OF DIRECTORS
FROM: DOUG JONES 
DATE: MARCH 14, 2003

AGENDA ITEM

MARCH 14, 2003

FORMATION OF NON-PROFIT PUBLIC BENEFIT CORPORATION ESTABLISHED BY-LAWS

ITEM

Resolution authorizing the General Manager to incorporate a California non-profit public benefit corporation

BACKGROUND

The District is interested in financing future water improvements by the sale of bonds. When the District was first established in the mid-sixties, the initial formation legislation did not include the authority of the District Board of Directors to sell bonds. Legislation at that time may not have allowed this or it was overlooked during the creation of the District. To proceed in the matter of proposed funding, bond counsel has developed a procedure whereas a non-profit corporation will be created with the Board of Directors being the directors of the non-profit corporation. Non-profit corporation would issue indebtedness to finance water and other District improvements.

Steps to accomplish:

1. Establish a non-profit benefit corporation

Authorize General Manager to file the Articles of Incorporation of the Nipomo Community Services District Public Facilities Corporation with the State of California

2. Appointment of a Board of Directors

At a later meeting, the Board of the Nipomo Community Services District will be the conducting agency and the incorporator (the General Manager) will resign his position, giving the Board the authority to proceed with the non-profit corporation for its duties and activities.

RECOMMENDATION

Staff recommends that your Honorable Board approve the attached resolution authorizing the General Manager to incorporate the Nipomo Community Services District Public Facilities Corporation.

**ARTICLES OF INCORPORATION OF
NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION**

ARTICLE I

The name of this corporation is: NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION.

ARTICLE II

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Corporation Law (commencing at Section 5110 of the California Corporations Code) for public purposes.

B. The public purposes for which the corporation is organized include the following: to provide assistance to the Nipomo Community Services District (the "District"), and other public agencies in the State of California of which the District is a member, or is otherwise engaged with in connection with a financing, in the financing, refinancing, acquiring, constructing and rehabilitating of facilities, land and equipment, and in the sale or leasing of facilities, land and equipment (collectively, the "Facilities") for the use, benefit and enjoyment of the public served by such agencies and any other purpose incidental thereto.

ARTICLE III

The name and address in the State of California of this corporation's initial agent for service of process is:

Douglas Jones
General Manager
Nipomo Community Services District
148 South Wilson Street
P.O. Box 326
Nipomo, CA 93444-0326

ARTICLE IV

A. This corporation is organized and operated exclusively for the promotion of social welfare within the meaning of 501(c)(4) of the Internal Revenue Code and under the direction of a public-spirited citizen for the sole purpose of acquiring, constructing, rehabilitating, financing and refinancing, or providing for the sale or leasing of said Facilities as a civic venture.

B. No substantial part of the activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

ARTICLES OF INCORPORATION OF
NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION

ARTICLE V

No part of the net earnings, if any, of this corporation, either during its existence or upon its dissolution, shall ever inure to the benefit of any member, private shareholder, individual, person, firm or corporation excepting only the District as set forth below. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall it participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office. The property, assets, profits and net revenues of this corporation are irrevocably dedicated to the District; provided, however, that until all indebtedness of this corporation shall have been paid, such net revenues may be used for the purpose of paying or calling for redemption any bonds, certificates of participation, debentures, notes or other evidences of such indebtedness. Upon the dissolution, liquidation or winding up of this corporation, or upon abandonment, the assets of this corporation remaining after payment of all or provision for all debts or liabilities of this corporation and after compliance with Chapters 15, 16 and 17 of the Nonprofit Corporation Law shall be distributed in accordance with any outstanding agreements between this corporation and the District and, thereafter, shall be distributed to the District.

ARTICLE VI

The number of directors of this corporation shall be fixed by the Bylaws. The initial directors of the corporation shall be the individuals serving as the Board of Directors of the District. Thereafter, the persons who are directors of this corporation, from time to time, shall be selected as provided in the Bylaws. The directors of this corporation shall have no liability for dues or assessments. There shall be no members of this corporation.

IN WITNESS WHEREOF, for the purposes of forming the corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 14th day of March, 2003.

Douglas Jones, Incorporator

**ADOPTION BY INCORPORATOR
OF THE BYLAWS OF THE NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC
FACILITIES CORPORATION**

The undersigned, Douglas Jones (the "Incorporator"), hereby adopts the bylaws attached hereto as Exhibit A (the "Bylaws") as the Bylaws of the Nipomo Community Services District Public Facilities Corporation

DATED: March 14, 2003

Douglas Jones, Incorporator

RESOLUTION 2003-_____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT AUTHORIZING
THE GENERAL MANAGER TO INCORPORATE A CALIFORNIA
NONPROFIT PUBLIC BENEFIT CORPORATION

WHEREAS, the Nipomo Community Services District (the "District"), a community services district under the Community Services District Law, Division 3 of the Government Code of the State of California, desires to finance the costs of constructing certain water facilities (the "Facilities");

WHEREAS, the District intends to finance the construction of the Facilities or portions of the Facilities with the proceeds of the sale of certificates of participation (the "Obligations"); and

WHEREAS, the District desires to authorize the General Manager to incorporate a California nonprofit public benefit corporation in order to provide assistance to the District in its intended financing of the construction of the Facilities and in connection with potential future financings; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Nipomo Community Services District that:

Section 1. The District hereby authorizes the General Manager to incorporate the Nipomo Community Services District Public Facilities Corporation, a California nonprofit public benefit corporation (the "Corporation"), to assist in the undertaking of the financing of construction of the Facilities.

Section 2. The form of the Articles of Incorporation of the Corporation presented at this meeting is hereby approved and the General Manager is authorized to execute such Articles of Incorporation and is hereby authorized and directed to do any and all things and to execute and deliver any and all documents which may be deemed necessary and advisable in order to consummate formation and incorporation of such Corporation.

Section 3. This Resolution shall take effect from and after its date of adoption.

ADOPTED, SIGNED AND APPROVED this 14th day of March, 2003.

President of the Board of Directors

ATTEST:

Secretary of the Board of Directors
Nipomo Community Services District

Bond Issue/Resolution Authorizing GM

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, Donna Johnson, Secretary of the Board of Directors of the Nipomo Community Services District, hereby certify that the above and foregoing Resolution No. 2003-_____ was duly and regularly adopted by the said Board at a regular meeting thereof held on the 14th day of March, 2003, and that it was so adopted by the following vote of said Board:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14th day of March, 2003.

Secretary of the Board of Directors of the Nipomo
Community Services District

EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION

ARTICLE I

Name, Organization and Purpose, Principal Office

Section 1.1. Name. The name of this corporation is NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION (hereinafter referred to as the "Corporation").

Section 1.2. Organization, Purpose and Use of Funds. The Corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law of the State of California (the "Law") exclusively for the promotion of social welfare within the meaning of 501(c)(4) of the Internal Revenue Code (the "Code") and to provide assistance to the Nipomo Community Services District (the "District"), and other public agencies in the State of California of which the District is a member, or is otherwise engaged with in connection with a financing, in the financing, refinancing, acquiring, constructing and rehabilitating of facilities, land and equipment, and in the sale or leasing of facilities, land and equipment (collectively, the "Facilities") for the use, benefit and enjoyment of the public served by such agencies and any other purpose incidental thereto. The activities of the Corporation shall be limited to the activities described in its Articles of Incorporation. No gains, profits or dividends shall be distributed to any of the Directors or officers of the Corporation; and no part of the net earnings, funds or assets of the Corporation shall inure to the benefit of any Director or any other person, firm or corporation excepting only the Nipomo Community Services District (the "District") as described herein.

Section 1.3. Principal Office. The principal office of the Corporation is hereby fixed and located at the offices of the Nipomo Community Services District, 148 South Wilson Street, Nipomo, California, 93444-0326. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another. Any such change shall be noted by the Secretary opposite this section, but shall not be considered an amendment to these Bylaws.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

ARTICLE II

No Members

Section 2.1. No Members. Pursuant to Section 5310 of the Law, the bylaws of a nonprofit corporation may provide that the corporation shall have no members. The Corporation shall have no members.

ARTICLE III

Directors

Section 3.1. Powers. Subject to limitation of the Articles of Incorporation, the Bylaws, and the Law, and subject to the duties of Directors as prescribed by the Bylaws, all powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by, the Board of Directors. No Director shall be responsible for any error in judgment or for anything that such Director may do or refrain from doing in good faith. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers, to wit:

First - To select and remove all officers, agents and employees of the Corporation, prescribe such powers and duties for such officers, agents and employees as may not be inconsistent with law or the Articles of Incorporation or Bylaws, fix their compensation and require from such officers, agents and employees security for faithful service;

Second - To conduct, manage and control the affairs and business of the Corporation and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation or Bylaws, as the Directors may deem best; and

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

Third - To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the name of the Corporation or otherwise, promissory notes, bonds, certificates of participation, debentures, deeds of trust, mortgages, pledges, hypothecation or other evidences of debt and securities therefor.

Section 3.2. Number of Directors. The authorized number of Directors shall be five until changed by amendment of the Articles of Incorporation or by amendment of the Bylaws.

Section 3.3. Selection and Term of Office. The initial Directors of the Corporation shall be the members of the Governing Board of the District as initially approved by resolution of the incorporator of the Corporation. Except as hereinafter provided and in accordance with Section 5220(d) of the Law, each Director shall hold office for a term concurrent with such Director's term as a member of the Governing Board of the District. Unless a vacancy in the office occurs as herein provided, the Director appointed shall hold office until the expiration of such Director's term and until a successor has been designated and has accepted the office. Notwithstanding anything contained herein, no Director of the Corporation may be removed from office so long as such Director continues to serve on the Governing Board of the District.

Section 3.4. Vacancies. Subject to the provisions of Section 5224 of the Law, any Director may resign effective upon giving written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No such resignation shall be effective, however, unless and until such Director shall have resigned from the Governing Board of the District.

A vacancy or vacancies on the Board of Directors shall be deemed to exist in case of the death, resignation, vacancy on the Governing Board of the District, expiration of a Director's term, removal of any Director or if the authorized number of Directors is increased.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

Vacancies on the Board shall be filled by the member of the Governing Board of the District succeeding the Director whose office is vacant.

Section 3.5. Organization and Annual Meetings. The Board of Directors shall hold an annual meeting for the purpose of organization and the transaction of other business. Subject to Section 3.11 hereof, annual meetings of the Board shall be held without call or notice on the date of the first regularly scheduled meeting of the Governing Board of the District in the month of July of each year at the regularly scheduled meeting time of the Governing Board of the District; provided, however, should said day fall upon a holiday observed by the Corporation at its principal office, then said meeting shall be held at the same time as the next regularly scheduled meeting of the Governing Board of the District which is a business day.

Section 3.6. Regular Meetings. The Board of Directors by resolution may provide for the holding of regular meetings and may fix the time and place of holding such meetings.

Section 3.7. Special Meetings; Notice Waiver. A special meeting of the Board of Directors shall be held whenever called in accordance with Section 5211(a)(2) of the Law and Section 3.11 hereof.

Section 3.8. Adjourned Meetings; Notice of Adjournment. The Board of Directors may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a majority may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this Section 3.8, the resulting adjourned regular meeting is a regular meeting for all purposes.

Section 3.9. Majority. Every act or decision done or made by a majority of the Directors present at a meeting duly held shall be regarded as the act of the Board of Directors unless a greater number is required by law or by the Articles of Incorporation.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

Section 3.10. Fees and Compensation. Directors shall receive no compensation or expenses from the Corporation for services as Directors of the Corporation.

Section 3.11. Ralph M. Brown Act. Notwithstanding any of the provisions of these Bylaws to the contrary, all meetings of Directors shall be subject to the Ralph M. Brown Act, commencing at Section 54950 of the Government Code of the State of California.

Section 3.12. Conduct of Meetings. The President or, in the absence of the President, the Vice President, or, in the absence of the Vice President, a Chairman chosen by a majority of the Directors present, shall preside.

ARTICLE IV

Officers

Section 4.1. Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board of Directors, one or more additional Vice Presidents, one or more Assistant Secretaries, one or more Assistant Chief Financial Officers, and such other officers as may be appointed by the Board of Directors. One person may hold two or more offices, except that the offices of President and Secretary or President and Chief Financial Officer may not be combined.

Section 4.2. President. The person serving from time-to-time as the President of the Governing Board of the District shall serve as the President of the Corporation. The President shall be the executive officer of the Corporation and, subject to the control of the Board of Directors, shall have general supervision, direction and control of the affairs of the Corporation. The President shall preside at all meetings of the Board of Directors.

Section 4.3. Vice President. The person serving from time-to-time as Vice President of the Governing Board of the District shall serve as Vice President of the Corporation or if there is no Vice President of the Governing Board of the District, then a Vice President shall be elected by the Board of Directors. In the absence or disability of the

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for the Vice President respectively by the Board of Directors or by the Bylaws.

Section 4.4. Secretary. The person serving from time-to-time as Board Secretary to the Governing Board of the District shall serve as Secretary of the Corporation. The Secretary shall keep at the principal office of the Corporation a book of minutes of all meetings of Directors, with the time and place of holding, how called or authorized, the notice thereof given, and the names of those present at Directors' meetings.

Section 4.5. Chief Financial Officer. The person serving from time-to-time as General Manager of the District shall serve as Chief Financial Officer of the Corporation. The Chief Financial Officer shall be the chief financial officer and shall keep and maintain adequate and correct books of account showing the receipts and disbursements of the Corporation, and an account of its cash and other assets, if any. Such books of account shall at all reasonable times be open to inspection by any Director.

The Chief Financial Officer shall deposit all moneys of the Corporation with such depositories as are designated by the Board of Directors, and shall disburse the funds of the Corporation as may be ordered by the Board of Directors, and shall render to the President or the Board of Directors, upon request, statements of the financial condition of the Corporation.

Section 4.6. Subordinate Officers. Subordinate officers shall perform such duties as shall be prescribed from time to time by the Board of Directors or the President.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

ARTICLE V

Miscellaneous

Section 5.1. Execution of Documents. The Board of Directors may authorize any officer or officers as agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or other person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 5.2. Inspection of Bylaws. The Corporation shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by members of the public and the Directors at all reasonable times during office hours.

Section 5.3. Annual Report. The Corporation, having no members, hereby expressly dispenses with the annual report referred to in Section 6321 of the Law.

Section 5.4. Fiscal Year. The fiscal year of the Corporation shall begin July 1 of each year and end on the last day of June of the succeeding year, except the first fiscal year which shall run from the date of incorporation to June 30, 2003.

Section 5.5. Dissolution. In the event of dissolution of the Corporation in any manner and for any cause, after the payment or adequate provision for the payment of all of its debts and liabilities, all of the remaining funds, assets and properties of the Corporation shall be paid or distributed to the District.

Section 5.6. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the Law shall govern the construction of these Bylaws. If any section, subsection, sentence, clause or phrase of these Bylaws, or the application thereof, is contrary to the Law, the provisions of

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

the Law shall prevail. Without limiting the generality of the foregoing the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person.

ARTICLE VI

Amendments

Section 6.1. Power of Directors. New Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Board of Directors. No amendment to these Bylaws shall be effective until approved by the Board of Directors.

**EXHIBIT A
BYLAWS OF
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PUBLIC FACILITIES CORPORATION**

CERTIFICATE OF SECRETARY

OF

NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION

I hereby certify that I am the duly elected and acting Secretary of said corporation and that the foregoing Bylaws, comprising 8 pages, constitute the Bylaws of said corporation as duly adopted at a meeting of the Board thereof held on March 28, 2003.

Secretary

STRADLING YOCCA CARLSON & RAUTH

MEMORANDUM

TO: Board of Directors – Nipomo Community Services District
FILE NO. 24546-0001

FROM: Michael L. Streams, Jr.

DATE: March 12, 2003

SUBJECT: Nipomo Community Services District Public Facilities Corporation

The Nipomo Community Services District (the “District”) is contemplating financing certain improvements to its water facilities by incurring additional indebtedness. To achieve this objective, it is proposed that the District cause to be executed and delivered Certificates of Participation which will be secured by payments the District will make pursuant to an Installment Purchase Agreement. In order to make this financing structure work, a second entity must be a party to the Installment Purchase Agreement. It is proposed that a nonprofit public benefit corporation to be known as the “Nipomo Community Services District Public Facilities Corporation” be formed for this purpose.

The purpose of this memorandum is to discuss the mechanics of the proposed financing, set forth the procedures for forming the Corporation and to discuss the ongoing administrative duties with respect to the Corporation.

Certificates of Participation. The District has previously financed capital improvements to its water system and sewer system by issuing revenue bonds that were approved by District voters pursuant to the Community Services District Law of the Government Code of California (the “Law”). Given that the District does not plan to conduct an election to issue additional bonds, an alternate financing structure is needed. Other provisions of the Law enable the District to finance capital improvements to the water system by entering into an Installment Purchase Agreement and causing Certificates of Participation to be executed and sold, the proceeds of which will be used to finance the improvements.

The District is empowered to enter into such a financing transaction by the Community Services District Law. Specifically, Section 61610 of the Government Code states that a district may acquire real or personal property of every kind within or without the district by grant purchase, gift, devise, lease or eminent domain thereby, permitting the District to purchase water system facilities.

Furthermore, Section 61616 affords the District broad powers to make contracts for any and all purposes necessary or convenient for the full exercise of its powers and Section 61623 specifically states that a district having power to own or operate a water system may contract with any person or private corporation of any kind or with any city, county, district, municipal corporation, political subdivision, public corporation, etc., to purchase, to acquire from or to sell to a water system.

In general, a certificates of participation financing involves an agreement between two public entities (e.g., Entity 1 and Entity 2), whereby Entity 2 agrees to purchase the capital improvements (e.g., the project) from Entity 1. As such, this particular financing transaction requires that there be two distinct public entities as parties to the Installment Purchase Agreement. This is the rationale behind forming the Corporation.

Formation of the Corporation

The Corporation will be formed and incorporated by an individual (the "Incorporator") who is designated and authorized by the District to execute and deliver the Corporation's Articles of Incorporation which are thereafter filed with the Secretary of State of the State of California. The Incorporator files an IRS Form SS-4 and obtains from the Internal Revenue Service an Employment Identification Number. The Incorporator adopts the initial Bylaws of the Corporation and designates the initial Board of Directors of the Corporation. At the first initial meeting of the Board of Directors of the Corporation (the "Board of Directors"), the Incorporator resigns, the Board of Directors approves and ratifies the Bylaws and their appointment as the Board of Directors. The Board of Directors then elects officers of the Corporation. These actions are proposed to occur at a meeting at the District's offices in late March or early April.

Ongoing Administration of the Corporation


Tax-Exemption Applications of the Corporation. The Corporation is a California nonprofit public benefit corporation and is formed according to 501(c)(4) of the Internal Revenue Code. To obtain a tax-exempt status, the Corporation must file within 15 months from the date of incorporation with the Internal Revenue Service (the "IRS") and the State of California Franchise Tax Board (the "FTB") tax-exemption applications. The Corporation will receive acknowledgement from the IRS

Nimpo Community Services
District Public Facilities Corporation
March 12, 2003
Page Three

and the FTB soon after the filing of the applications, and the process of receiving tax-exemption status letters from the IRS and the FTB may take up to six months.

Corporation Maintenance. To maintain a good standing with the State of California, the Corporation must have at least an annual meeting of the Board of Directors. The Corporation is required to file with the Attorney General's Registry of Charitable Trusts Form RRF-1 after the close of each fiscal year end. The Corporation is required to file every other year with the Secretary of State of the State of California a Statement of Information. In addition, the Corporation should file with the IRS a Form 990 and with the FTB a Form 199 for the first fiscal year of the Corporation's existence. The Corporation is not required to file these tax returns thereafter since it holds no assets or liabilities; however, if the Corporation has gross receipts that exceed \$25,000, the Corporation must file with the IRS Form 990 and with the FTB Form 199.

cc: Perry Louck

TO: BOARD OF DIRECTORS
FROM: DOUG JONES 
DATE: MARCH 14, 2003

AGENDA ITEM

MARCH 14, 2003

FORMATION OF NON-PROFIT PUBLIC BENEFIT CORPORATION ESTABLISHED BY-LAWS

ITEM

Resolution authorizing the General Manager to incorporate a California non-profit public benefit corporation

BACKGROUND

The District is interested in financing future water improvements by the sale of bonds. When the District was first established in the mid-sixties, the initial formation legislation did not include the authority of the District Board of Directors to sell bonds. Legislation at that time may not have allowed this or it was overlooked during the creation of the District. To proceed in the matter of proposed funding, bond counsel has developed a procedure whereas a non-profit corporation will be created with the Board of Directors being the directors of the non-profit corporation. Non-profit corporation would issue indebtedness to finance water and other District improvements.

Steps to accomplish:

1. Establish a non-profit benefit corporation

Authorize General Manager to file the Articles of Incorporation of the Nipomo Community Services District Public Facilities Corporation with the State of California

2. Appointment of a Board of Directors

At a later meeting, the Board of the Nipomo Community Services District will be the conducting agency and the incorporator (the General Manager) will resign his position, giving the Board the authority to proceed with the non-profit corporation for its duties and activities.

RECOMMENDATION

Staff recommends that your Honorable Board approve the attached resolution authorizing the General Manager to incorporate the Nipomo Community Services District Public Facilities Corporation.

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NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION**

ARTICLE I

The name of this corporation is: NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION.

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A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Corporation Law (commencing at Section 5110 of the California Corporations Code) for public purposes.

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ARTICLE III

The name and address in the State of California of this corporation's initial agent for service of process is:

Douglas Jones
General Manager
Nipomo Community Services District
148 South Wilson Street
P.O. Box 326
Nipomo, CA 93444-0326

ARTICLE IV

A. This corporation is organized and operated exclusively for the promotion of social welfare within the meaning of 501(c)(4) of the Internal Revenue Code and under the direction of a public-spirited citizen for the sole purpose of acquiring, constructing, rehabilitating, financing and refinancing, or providing for the sale or leasing of said Facilities as a civic venture.

B. No substantial part of the activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

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ARTICLE VI

The number of directors of this corporation shall be fixed by the Bylaws. The initial directors of the corporation shall be the individuals serving as the Board of Directors of the District. Thereafter, the persons who are directors of this corporation, from time to time, shall be selected as provided in the Bylaws. The directors of this corporation shall have no liability for dues or assessments. There shall be no members of this corporation.

IN WITNESS WHEREOF, for the purposes of forming the corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 14th day of March, 2003.

Douglas Jones, Incorporator

**ADOPTION BY INCORPORATOR
OF THE BYLAWS OF THE NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC
FACILITIES CORPORATION**

The undersigned, Douglas Jones (the "Incorporator"), hereby adopts the bylaws attached hereto as Exhibit A (the "Bylaws") as the Bylaws of the Nipomo Community Services District Public Facilities Corporation

DATED: March 14, 2003

Douglas Jones, Incorporator

RESOLUTION 2003-_____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT AUTHORIZING
THE GENERAL MANAGER TO INCORPORATE A CALIFORNIA
NONPROFIT PUBLIC BENEFIT CORPORATION

WHEREAS, the Nipomo Community Services District (the "District"), a community services district under the Community Services District Law, Division 3 of the Government Code of the State of California, desires to finance the costs of constructing certain water facilities (the "Facilities");

WHEREAS, the District intends to finance the construction of the Facilities or portions of the Facilities with the proceeds of the sale of certificates of participation (the "Obligations"); and

WHEREAS, the District desires to authorize the General Manager to incorporate a California nonprofit public benefit corporation in order to provide assistance to the District in its intended financing of the construction of the Facilities and in connection with potential future financings; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Nipomo Community Services District that:

Section 1. The District hereby authorizes the General Manager to incorporate the Nipomo Community Services District Public Facilities Corporation, a California nonprofit public benefit corporation (the "Corporation"), to assist in the undertaking of the financing of construction of the Facilities.

Section 2. The form of the Articles of Incorporation of the Corporation presented at this meeting is hereby approved and the General Manager is authorized to execute such Articles of Incorporation and is hereby authorized and directed to do any and all things and to execute and deliver any and all documents which may be deemed necessary and advisable in order to consummate formation and incorporation of such Corporation.

Section 3. This Resolution shall take effect from and after its date of adoption.

ADOPTED, SIGNED AND APPROVED this 14th day of March, 2003.

President of the Board of Directors

ATTEST:

Secretary of the Board of Directors
Nipomo Community Services District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, Donna Johnson, Secretary of the Board of Directors of the Nipomo Community Services District, hereby certify that the above and foregoing Resolution No. 2003-_____ was duly and regularly adopted by the said Board at a regular meeting thereof held on the 14th day of March, 2003, and that it was so adopted by the following vote of said Board:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14th day of March, 2003.

Secretary of the Board of Directors of the Nipomo
Community Services District

EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION

ARTICLE I

Name, Organization and Purpose, Principal Office

Section 1.1. Name. The name of this corporation is NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION (hereinafter referred to as the "Corporation").

Section 1.2. Organization, Purpose and Use of Funds. The Corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law of the State of California (the "Law") exclusively for the promotion of social welfare within the meaning of 501(c)(4) of the Internal Revenue Code (the "Code") and to provide assistance to the Nipomo Community Services District (the "District"), and other public agencies in the State of California of which the District is a member, or is otherwise engaged with in connection with a financing, in the financing, refinancing, acquiring, constructing and rehabilitating of facilities, land and equipment, and in the sale or leasing of facilities, land and equipment (collectively, the "Facilities") for the use, benefit and enjoyment of the public served by such agencies and any other purpose incidental thereto. The activities of the Corporation shall be limited to the activities described in its Articles of Incorporation. No gains, profits or dividends shall be distributed to any of the Directors or officers of the Corporation; and no part of the net earnings, funds or assets of the Corporation shall inure to the benefit of any Director or any other person, firm or corporation excepting only the Nipomo Community Services District (the "District") as described herein.

Section 1.3. Principal Office. The principal office of the Corporation is hereby fixed and located at the offices of the Nipomo Community Services District, 148 South Wilson Street, Nipomo, California, 93444-0326. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another. Any such change shall be noted by the Secretary opposite this section, but shall not be considered an amendment to these Bylaws.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

ARTICLE II

No Members

Section 2.1. No Members. Pursuant to Section 5310 of the Law, the bylaws of a nonprofit corporation may provide that the corporation shall have no members. The Corporation shall have no members.

ARTICLE III

Directors

Section 3.1. Powers. Subject to limitation of the Articles of Incorporation, the Bylaws, and the Law, and subject to the duties of Directors as prescribed by the Bylaws, all powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by, the Board of Directors. No Director shall be responsible for any error in judgment or for anything that such Director may do or refrain from doing in good faith. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers, to wit:

First - To select and remove all officers, agents and employees of the Corporation, prescribe such powers and duties for such officers, agents and employees as may not be inconsistent with law or the Articles of Incorporation or Bylaws, fix their compensation and require from such officers, agents and employees security for faithful service;

Second - To conduct, manage and control the affairs and business of the Corporation and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation or Bylaws, as the Directors may deem best; and

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

Third - To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the name of the Corporation or otherwise, promissory notes, bonds, certificates of participation, debentures, deeds of trust, mortgages, pledges, hypothecation or other evidences of debt and securities therefor.

Section 3.2. Number of Directors. The authorized number of Directors shall be five until changed by amendment of the Articles of Incorporation or by amendment of the Bylaws.

Section 3.3. Selection and Term of Office. The initial Directors of the Corporation shall be the members of the Governing Board of the District as initially approved by resolution of the incorporator of the Corporation. Except as hereinafter provided and in accordance with Section 5220(d) of the Law, each Director shall hold office for a term concurrent with such Director's term as a member of the Governing Board of the District. Unless a vacancy in the office occurs as herein provided, the Director appointed shall hold office until the expiration of such Director's term and until a successor has been designated and has accepted the office. Notwithstanding anything contained herein, no Director of the Corporation may be removed from office so long as such Director continues to serve on the Governing Board of the District.

Section 3.4. Vacancies. Subject to the provisions of Section 5224 of the Law, any Director may resign effective upon giving written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No such resignation shall be effective, however, unless and until such Director shall have resigned from the Governing Board of the District.

A vacancy or vacancies on the Board of Directors shall be deemed to exist in case of the death, resignation, vacancy on the Governing Board of the District, expiration of a Director's term, removal of any Director or if the authorized number of Directors is increased.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

Vacancies on the Board shall be filled by the member of the Governing Board of the District succeeding the Director whose office is vacant.

Section 3.5. Organization and Annual Meetings. The Board of Directors shall hold an annual meeting for the purpose of organization and the transaction of other business. Subject to Section 3.11 hereof, annual meetings of the Board shall be held without call or notice on the date of the first regularly scheduled meeting of the Governing Board of the District in the month of July of each year at the regularly scheduled meeting time of the Governing Board of the District; provided, however, should said day fall upon a holiday observed by the Corporation at its principal office, then said meeting shall be held at the same time as the next regularly scheduled meeting of the Governing Board of the District which is a business day.

Section 3.6. Regular Meetings. The Board of Directors by resolution may provide for the holding of regular meetings and may fix the time and place of holding such meetings.

Section 3.7. Special Meetings; Notice Waiver. A special meeting of the Board of Directors shall be held whenever called in accordance with Section 5211(a)(2) of the Law and Section 3.11 hereof.

Section 3.8. Adjourned Meetings; Notice of Adjournment. The Board of Directors may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a majority may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this Section 3.8, the resulting adjourned regular meeting is a regular meeting for all purposes.

Section 3.9. Majority. Every act or decision done or made by a majority of the Directors present at a meeting duly held shall be regarded as the act of the Board of Directors unless a greater number is required by law or by the Articles of Incorporation.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

Section 3.10. Fees and Compensation. Directors shall receive no compensation or expenses from the Corporation for services as Directors of the Corporation.

Section 3.11. Ralph M. Brown Act. Notwithstanding any of the provisions of these Bylaws to the contrary, all meetings of Directors shall be subject to the Ralph M. Brown Act, commencing at Section 54950 of the Government Code of the State of California.

Section 3.12. Conduct of Meetings. The President or, in the absence of the President, the Vice President, or, in the absence of the Vice President, a Chairman chosen by a majority of the Directors present, shall preside.

ARTICLE IV

Officers

Section 4.1. Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board of Directors, one or more additional Vice Presidents, one or more Assistant Secretaries, one or more Assistant Chief Financial Officers, and such other officers as may be appointed by the Board of Directors. One person may hold two or more offices, except that the offices of President and Secretary or President and Chief Financial Officer may not be combined.

Section 4.2. President. The person serving from time-to-time as the President of the Governing Board of the District shall serve as the President of the Corporation. The President shall be the executive officer of the Corporation and, subject to the control of the Board of Directors, shall have general supervision, direction and control of the affairs of the Corporation. The President shall preside at all meetings of the Board of Directors.

Section 4.3. Vice President. The person serving from time-to-time as Vice President of the Governing Board of the District shall serve as Vice President of the Corporation or if there is no Vice President of the Governing Board of the District, then a Vice President shall be elected by the Board of Directors. In the absence or disability of the

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for the Vice President respectively by the Board of Directors or by the Bylaws.

Section 4.4. Secretary. The person serving from time-to-time as Board Secretary to the Governing Board of the District shall serve as Secretary of the Corporation. The Secretary shall keep at the principal office of the Corporation a book of minutes of all meetings of Directors, with the time and place of holding, how called or authorized, the notice thereof given, and the names of those present at Directors' meetings.

Section 4.5. Chief Financial Officer. The person serving from time-to-time as General Manager of the District shall serve as Chief Financial Officer of the Corporation. The Chief Financial Officer shall be the chief financial officer and shall keep and maintain adequate and correct books of account showing the receipts and disbursements of the Corporation, and an account of its cash and other assets, if any. Such books of account shall at all reasonable times be open to inspection by any Director.

The Chief Financial Officer shall deposit all moneys of the Corporation with such depositories as are designated by the Board of Directors, and shall disburse the funds of the Corporation as may be ordered by the Board of Directors, and shall render to the President or the Board of Directors, upon request, statements of the financial condition of the Corporation.

Section 4.6. Subordinate Officers. Subordinate officers shall perform such duties as shall be prescribed from time to time by the Board of Directors or the President.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

ARTICLE V

Miscellaneous

Section 5.1. Execution of Documents. The Board of Directors may authorize any officer or officers as agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or other person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 5.2. Inspection of Bylaws. The Corporation shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by members of the public and the Directors at all reasonable times during office hours.

Section 5.3. Annual Report. The Corporation, having no members, hereby expressly dispenses with the annual report referred to in Section 6321 of the Law.

Section 5.4. Fiscal Year. The fiscal year of the Corporation shall begin July 1 of each year and end on the last day of June of the succeeding year, except the first fiscal year which shall run from the date of incorporation to June 30, 2003.

Section 5.5. Dissolution. In the event of dissolution of the Corporation in any manner and for any cause, after the payment or adequate provision for the payment of all of its debts and liabilities, all of the remaining funds, assets and properties of the Corporation shall be paid or distributed to the District.

Section 5.6. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the Law shall govern the construction of these Bylaws. If any section, subsection, sentence, clause or phrase of these Bylaws, or the application thereof, is contrary to the Law, the provisions of

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

the Law shall prevail. Without limiting the generality of the foregoing the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person.

ARTICLE VI

Amendments

Section 6.1. Power of Directors. New Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Board of Directors. No amendment to these Bylaws shall be effective until approved by the Board of Directors.

**EXHIBIT A
BYLAWS OF
NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

CERTIFICATE OF SECRETARY

OF

NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION

I hereby certify that I am the duly elected and acting Secretary of said corporation and that the foregoing Bylaws, comprising 8 pages, constitute the Bylaws of said corporation as duly adopted at a meeting of the Board thereof held on March 28, 2003.

Secretary

STRADLING YOCCA CARLSON & RAUTH

MEMORANDUM

TO: Board of Directors – Nipomo
Community Services District

FILE NO. 24546-0001

FROM: Michael L. Streams, Jr.

DATE: March 12, 2003

SUBJECT: Nipomo Community Services District Public Facilities Corporation

The Nipomo Community Services District (the “District”) is contemplating financing certain improvements to its water facilities by incurring additional indebtedness. To achieve this objective, it is proposed that the District cause to be executed and delivered Certificates of Participation which will be secured by payments the District will make pursuant to an Installment Purchase Agreement. In order to make this financing structure work, a second entity must be a party to the Installment Purchase Agreement. It is proposed that a nonprofit public benefit corporation to be known as the “Nipomo Community Services District Public Facilities Corporation” be formed for this purpose.

The purpose of this memorandum is to discuss the mechanics of the proposed financing, set forth the procedures for forming the Corporation and to discuss the ongoing administrative duties with respect to the Corporation.

Certificates of Participation. The District has previously financed capital improvements to its water system and sewer system by issuing revenue bonds that were approved by District voters pursuant to the Community Services District Law of the Government Code of California (the “Law”). Given that the District does not plan to conduct an election to issue additional bonds, an alternate financing structure is needed. Other provisions of the Law enable the District to finance capital improvements to the water system by entering into an Installment Purchase Agreement and causing Certificates of Participation to be executed and sold, the proceeds of which will be used to finance the improvements.

The District is empowered to enter into such a financing transaction by the Community Services District Law. Specifically, Section 61610 of the Government Code states that a district may acquire real or personal property of every kind within or without the district by grant purchase, gift, devise, lease or eminent domain thereby, permitting the District to purchase water system facilities.

Furthermore, Section 61616 affords the District broad powers to make contracts for any and all purposes necessary or convenient for the full exercise of its powers and Section 61623 specifically states that a district having power to own or operate a water system may contract with any person or private corporation of any kind or with any city, county, district, municipal corporation, political subdivision, public corporation, etc., to purchase, to acquire from or to sell to a water system.

In general, a certificate of participation financing involves an agreement between two public entities (e.g., Entity 1 and Entity 2), whereby Entity 2 agrees to purchase the capital improvements (e.g., the project) from Entity 1. As such, this particular financing transaction requires that there be two distinct public entities as parties to the Installment Purchase Agreement. This is the rationale behind forming the Corporation.

Formation of the Corporation

The Corporation will be formed and incorporated by an individual (the "Incorporator") who is designated and authorized by the District to execute and deliver the Corporation's Articles of Incorporation which are thereafter filed with the Secretary of State of the State of California. The Incorporator files an IRS Form SS-4 and obtains from the Internal Revenue Service an Employment Identification Number. The Incorporator adopts the initial Bylaws of the Corporation and designates the initial Board of Directors of the Corporation. At the first initial meeting of the Board of Directors of the Corporation (the "Board of Directors"), the Incorporator resigns, the Board of Directors approves and ratifies the Bylaws and their appointment as the Board of Directors. The Board of Directors then elects officers of the Corporation. These actions are proposed to occur at a meeting at the District's offices in late March or early April.

Ongoing Administration of the Corporation

Tax-Exemption Applications of the Corporation. The Corporation is a California nonprofit public benefit corporation and is formed according to 501(c)(4) of the Internal Revenue Code. To obtain a tax-exempt status, the Corporation must file within 15 months from the date of incorporation with the Internal Revenue Service (the "IRS") and the State of California Franchise Tax Board (the "FTB") tax-exemption applications. The Corporation will receive acknowledgement from the IRS

Nimpo Community Services
District Public Facilities Corporation
March 12, 2003
Page Three

and the FTB soon after the filing of the applications, and the process of receiving tax-exemption status letters from the IRS and the FTB may take up to six months.

Corporation Maintenance. To maintain a good standing with the State of California, the Corporation must have at least an annual meeting of the Board of Directors. The Corporation is required to file with the Attorney General's Registry of Charitable Trusts Form RRF-1 after the close of each fiscal year end. The Corporation is required to file every other year with the Secretary of State of the State of California a Statement of Information. In addition, the Corporation should file with the IRS a Form 990 and with the FTB a Form 199 for the first fiscal year of the Corporation's existence. The Corporation is not required to file these tax returns thereafter since it holds no assets or liabilities; however, if the Corporation has gross receipts that exceed \$25,000, the Corporation must file with the IRS Form 990 and with the FTB Form 199.

cc: Perry Louck

STRADLING YOCCA CARLSON & RAUTH

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Nimpo Community Services
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Page Three

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cc: Perry Louck