



- D. CONSENT AGENDA *The following items are considered routine and non-controversial by staff and may be approved by one motion if no member of the Board wishes an item removed. If discussion is desired, the item will be removed from the Consent Agenda and will be considered separately. Questions or clarification may be made by the Board members without removal from the Consent Agenda. The recommendations for each item are noted in brackets.*

D-1) APPROVE WARRANTS [RECOMMEND APPROVAL]

NOTE: 2/14/07 & 2/21/07 MINUTES WILL BE CONSIDERED AT 3/14/07 MEETING

E. ADMINISTRATIVE ITEMS

E-1) AUTHORIZE EXECUTION OF HOLLOWAY OUTSIDE USER AGREEMENT FOR SERVICE TO TRACT 2642, AN 18 LOT SUBDIVISION ON SOUTH OAKGLEN AVENUE [ADOPT RESOLUTION]

E-2) RECEIVE EVALUATIONS OF BLACK LAKE WATER BOOSTER STATION REPORTS AND DISCUSS POTENTIAL OPTIONS [PROVIDE POLICY GUIDANCE]

E-3) SUPPORT CERTIFICATION OF LEVEL OF SEVERITY III DESIGNATION FOR NIPOMO MESA MANAGEMENT AREA BY SLO COUNTY BOARD OF SUPERVISORS [ADOPT RESOLUTION]

E-4) CONSIDER ADOPTING REVISIONS TO BOARD BYLAWS [ADOPT RESOLUTION]

E-5) CONSIDER EXECUTION OF SIX MONTH EMPLOYMENT AGREEMENT WITH BUTCH SIMMONS STARTING MAY 11, 2007 [ADOPT RECOMMENDATION]

F. MANAGER'S REPORT

G. COMMITTEE REPORTS

H. DIRECTORS' REQUESTS TO STAFF

Nipomo Community Services District  
REGULAR MEETING  
AGENDA

I. CLOSED SESSION ANNOUNCEMENTS

1. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 SMVWCD VS NCSD SANTA CLARA COUNTY CASE NO. CV 770214 AND ALL CONSOLIDATED CASES.
2. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 MARIA VISTA VS. NCSD CASE NO. CV 040877, MARIA VISTA VS. NCSD CASE NO. CV 061079, AND MARIA VISTA VS. LINDA VISTA FARMS, NCSD ET AL CASE NO. CV 040150;
3. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9; SAN LUIS OBISPO COASTKEEPER VS. NCSD (CASE NO. CV060349)
4. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9; NCSD VS. SLO COUNTY (CASE NO. CV 070066)

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

K. ADJOURN TO CLOSED SESSION

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

ADJOURN

➤ **THE FOLLOWING SPECIAL BOARD MEETING IS MARCH 14, 2007.**

**TENTATIVELY SCHEDULED ITEMS INCLUDE:**

- Accept Hetrick Project
- Award Design of Shop Upgrade
- Award Parks Survey

➤ **THE NEXT SPECIAL BOARD MEETING IS MARCH 21, 2007.**

**TENTATIVELY SCHEDULED ITEMS INCLUDE:**

- Southland WWTF Master Plan

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: FEBRUARY 23, 2007

**AGENDA ITEM**  
**C-3**  
**FEB. 28, 2007**

**UTILITY DEPARTMENT UPDATE**

**ITEM**

Receive Utility Department Update from Utility Supervisor [Receive Presentation].

**BACKGROUND**

Utility Supervisor Dan Migliazzo will present the attached Year End Review for 2006.

**RECOMMENDATION**

Staff recommends that your Honorable Board receive the presentation and ask questions of Utility Supervisor Dan Migliazzo.

**ATTACHMENT –**

- YEAR END REVIEW

T:\doc\board matters\board meetings\board letter 2007\Utility Update

## YEAR END REVIEW FOR 2006

TOWN WATER SECTION- The replacement of our old dry barrel hydrants with wet barrel type went well last year we replaced fifteen of the old style hydrants and replaced four others due to traffic accidents where the hydrant was hit. Some of the older dry barrel hydrants require us to replace complete bury assemblies with new assemblies, we replaced two last year. (One was a replacement the other was traffic related)

We flushed part of the eastern section of town to get our (feet wet) flushing program started. It was a valuable experience for the crewmembers, because they had never been involved with flushing programs before. We are currently working with County Hydrant and Valve in the implementation of the flushing program. They will be working with field crewmembers in the coordination of notification of residents and valve operations in the flushing area.

We began the installation of the polycarbonate air-vac cans in Town replacing the metal type, which require periodic painting and were more expensive to purchase. The new cans are UV protected and graffiti proof (according to the manufacturer), they are much easier to install and handle. (We have been placing them at Black Lake also). This is another link in our standardization program. We started four years ago with service line material, well meters, fire hydrants and residential meters. We continue to make progress with this program and eventually all lift stations, wellheads and electric panels will be included.

We located all but two of our blow-offs assemblies and have flushed more than half of those. (Some required work and that was also completed). We are currently beginning the transfer of our maintenance logs onto the computer program we purchased in 2004. It is a time consuming process pulling our records together and entering them into the different program sections. (We had computer problems accessing the programs so we unable to enter the information).

Our meter replacement program got a shot in the arm with our newest employee taking the lead on the replacement of meters older than 10 years. The replacement of more than 200 meters in year 2006 is a positive step toward our goal total replacement in ten years. (Another link in the preventive maintenance program implementation).

We inspected the majority of construction projects that are currently running through out the District. Some of which are on hold, several others curtailed there progression to completion for one reason or another. We continue to work with MVE personnel in their effort to complete their project.

We replaced and upgraded the Olympic well assembly and reworked the piping to accommodate the new chlorine feed system and made provision for a new meter. Our distribution lead worker had Bevington well electrical panel completely reworked with the help of Mann Electric. All wells have been fitted with elapse time clocks to track our run hours easily. (continuing system upgrades on the wells to standardize the electric panels).

(REVIEW CONTINUED)

TOWN SEWER SECTION – The replacement of lift station pumping equipment is slightly behind schedule, as of December we had replaced one pump in the Gardenia lift station the other is out about six weeks. We had several problems at different lift stations this past year: we pulled pumps up and out to find towels, pavement and other assorted items jamming the pumps. We had certain lift stations that continued to be problematic with heavy grease build-up and power outages. We had one slight spill at the Palms lift station the field crew handled the problem with the help of Valley Septic's Vac-Truck. Clean up was minor, just a matter of disinfecting the material picking it up and washing down the area.

We took basin #4 off line at the Southland WWTP in February and began pumping sludge out to the sludge basins. There was approximately four feet of sludge in the basin, we rented a hydraulic pump and were able to remove 65% of the sludge. We poured a 60'x 10'x 6" concrete ramp into the basin for tractor access to remove the remaining grit, rock and sand. After we have it clean, we will have the liner company out to repair the abrasions in the liner. We should have it back online before this summer, at that time we will begin pulling basin #3 down to remove the sludge and subsurface aeration manifolds from that basin. We installed light standards at the basins to illuminate the wastewater area. (Security measure) We upgraded the electrical wiring and installed new panels that control the aeration equipment.

We addressed the NOV we received earlier in the year. We installed more aeration equipment, reoriented the surface aerators and installed a 5hp mixer in basin #2. Our BOD results remained well below our discharge requirements. We had to mirror results at the Plant in order to confirm some of the results we had received

(REVIEW CONTINUED)

**BLACK LAKE WATER SECTION:** We were able to dive the water storage tank and clean it in 2006, they vacuumed out ½” or better of sand and debris from the interior. The storage tank was not inspected internally for almost ten years, because of the inability to have the tank out of service at any time. The interior of the tank was not in great shape it had rusted areas, lack of coating and build up around the inlet piping.

We installed a new interconnection to supply the Black Lake Community with water in the interim between the rebuilding of the booster station. This connection has the capability to supply the Community at a rate of 1200 gpm +, we also maintain the prior connection, which has the capability 250 – 300 gpm. Both connections maintain a sustained pressure within the Black Lake Community between 80 and 90 psi at the connections.

We began the replacement of air vac cans with our new poly-carbonate style along with the sampling station replacements.

We had a few service line repairs that were made in 2006 and addressed some fire hydrant issues.

We had the efficiency testing done to both wells which is used to determine the electric costs and if there are problems starting to arise.

**BLACK LAKE SEWER SECTION:** The lining of basin two was completed and the surface aeration system was put into service. We had previously done a sludge survey in basin one and three, finding a sludge layer in basin one of nearly seven feet. We then did another survey in August 2006 and finding with the reconfiguration to surface aeration, sludge reduction of two to four feet in less than six months. We scheduled another sludge survey in midyear 2007 after adding a sludge-reducing compound, at that time we will report to your board with the results.

We experienced several power related problems at the lift stations, but with our new telemetry system in place, we have avoided spill problems at those same stations. We also added the Misty Glen lift station to our collections system, it relays the sewerage of the new development to The Oaks lift station.

Thank you for your time in reviewing this report,  
Dan Migliazzo – Utility Supervisor NCSD  
2/22/07

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: FEBRUARY 23, 2007



CONSENT AGENDA

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without removal from the Consent Agenda.**

D-1) APPROVE WARRANTS [RECOMMEND APPROVAL]

*NOTE: 2/14/07 & 2/21/07 MINUTES WILL BE CONSIDERED AT 3/14/07 MEETING*



TO: BOARD OF DIRECTORS  
 FROM: BRUCE BUEL  
 DATE: FEBRUARY 23, 2007

**AGENDA ITEM  
 D-1  
 FEBRUARY 28, 2007**

**HAND WRITTEN CHECKS**

02-08-07 18959 LEBARDS COMPUTER 109.00

**TOTAL COMPUTER  
 CHECKS  
 \$159,046.74**

**VOIDED CHECKS**

18928, 18929,  
 13214

**COMPUTER GENERATED CHECKS**

013212	02/21/07	EBY01	EBY, ED	100.00	.00	100.00	022107	SPEC BD MEETING 022107
013213	02/21/07	HAR02	HARRISON, JAMES	100.00	.00	100.00	022107	SPEC BD MEETING022107
013214	02/21/07	TRO01	TROTTER, CLIFFORD	100.00	.00	100.00	022107	SPEC BD MEETING 022107
				-100.00	.00	-100.00	022107u	Ck# 013214 Reversed
			Check Total.....:	.00	.00	.00		
013215	02/21/07	VIE01	VIERHEILIG, LARRY	100.00	.00	100.00	022107	SPEC BD MEETING 022107
013216	02/21/07	WIN01	WINN, MICHAEL	100.00	.00	100.00	022107	SPEC BD MEETING 022107
13217	02/23/07	EMP01	EMPLOYMENT DEVELOP DEPT	563.43	.00	563.43	A70221	STATE INCOME TAX
13218	02/23/07	MID01	MIDSTATE BANK-PR TAX DEP	2304.25	.00	2304.25	A70221	FEDERAL INCOME TAX
				210.68	.00	210.68	1A70221	FICA
				606.64	.00	606.64	2A70221	MEDICARE (FICA)
			Check Total.....:	3121.57	.00	3121.57		
13219	02/23/07	MID02	MIDSTATE BANK - DIRECT DP	17507.28	.00	17507.28	A70221	NET PAY
13220	02/23/07	PER01	PERS RETIREMENT	5659.44	.00	5659.44	A70221	PERS PAYROLL REMITTANCE
13221	02/23/07	SIM01	SIMMONS, DEBRA	150.00	.00	150.00	A70221	WAGE ASSIGNMENT
13222	02/23/07	STA01	STATE STREET GLOBAL	1105.00	.00	1105.00	A70221	457 DEFERRED COMP
013223	02/28/07	AME02	AMERICAN INDUSTRIAL SUPPL	34.60	.00	34.60	168619	SUPPLIES
013224	02/28/07	AME03	AMERI PRIDE	12.66	.00	12.66	F026301	UNIFORMS
				250.97	.00	250.97	F026821	INTERN UNIFORMS
				5.40	.00	5.40	F028380	UNIFORM
				71.89	.00	71.89	F106523	UNIFORMS
				72.10	.00	72.10	F112300	UNIFORMS
				47.85	.00	47.85	F747278	UNIFORMS
				55.10	.00	55.10	F753040	SHOP TOWELS/RUGS/ETC
				50.60	.00	50.60	F758931	SHOP TOWELS
				359.33	.00	359.33	F805731	UNIFORMS
			Check Total.....:	925.90	.00	925.90		
013225	02/28/07	AQU01	AQUA-METRIC SALES CO.	-1039.50	.00	-1039.50	15006C	CREDIT FOR SCRAP METERS
				2612.61	.00	2612.61	15799 IN	METERS
				1389.96	.00	1389.96	15800 IN	METERS
			Check Total.....:	2963.07	.00	2963.07		
013226	02/28/07	BOY01	BOYLE ENGINEERING CORP	9157.50	.00	9157.50	040236	WATERLINE INTERTIE PROJEC
				12104.10	.00	12104.10	040237	SUPPLEMENTAL WATER SUPPLY
				780.30	.00	780.30	040352	SOUTHLAND-PHASE II
				2735.10	.00	2735.10	040353	HETRICK WATERLINE
				135.00	.00	135.00	040354	PCI-TRACT 2558
				394.20	.00	394.20	040355	PCI-APN 092-130-043
				15700.50	.00	15700.50	040356	SOUTHLAND WWTF MASTER PLA
				102.60	.00	102.60	040409	PCI-TRACT 2632
				4665.60	.00	4665.60	040412	BLACKLAKE COMPARATIVE ANA
			Check Total.....:	45774.90	.00	45774.90		
013227	02/28/07	BRE02	BRENTAG PACIFIC INC.	425.52	.00	425.52	642918	SODIUM HYPOCHLORITE
				754.12	.00	754.12	642919	SODIUM HYPOCHLORITE
			Check Total.....:	1179.64	.00	1179.64		
013228	02/28/07	COM01	COMPUTER NETWORK SERVICES	1087.75	.00	1087.75	071A	COMPUTER SUPPORT

**NIPOMO COMMUNITY SERVICES DISTRICT  
WARRANTS    FEBRUARY 23, 2007**

**AGENDA ITEM  
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013229	02/28/07	CRE01	CREEK ENVIRONMENTAL LABS	200.00	.00	200.00	00484	TOWN WWTP LAB
				24.00	.00	24.00	00606	BL WWTP LAB
				256.00	.00	256.00	00607	WATER SAMPLES
				24.00	.00	24.00	00642	BL WWTP LAB
				200.00	.00	200.00	00643	LAB TEST-SOUTHLAND WWTP
				24.00	.00	24.00	00659	BL WWTP LAB
				24.00	.00	24.00	00681	LAB TEST-BLWWTP
				256.00	.00	256.00	00747	LAB TEST-WATER
				24.00	.00	24.00	00748	LAB TEST-BLWWTP
				24.00	.00	24.00	00781	LAB TEST-BLWWTP
				44.00	.00	44.00	00782	LAB TEST-HETRICK WATERLIN
				200.00	.00	200.00	00783	LAB TEST-SOUTHLAND WWTP
				24.00	.00	24.00	00836	LAB TEST-BLWWTP
			Check Total.....:	1324.00	.00	1324.00		
013230	02/28/07	CSD02	CALIFORNIA SPECIALTY DIST	515.06	.00	515.06	142743	CHLORINE PUMP REPAIR PART
013231	02/28/07	DIG02	DIGITAL WEST VIDEO	497.50	.00	497.50	965	DVD REPRODUCTION-MARIA VI
013232	02/28/07	EBY01	EBY, ED	100.00	.00	100.00	022807	REGULAR BOARD MTG 2/28/07
013233	02/28/07	ENV01	ENVIRONMENTAL EQUIP ENG	8860.43	.00	8860.43	3592	FLOATING AERATOR TOWN WWT
013234	02/28/07	FGL01	FGL ENVIRONMENTAL	64.00	.00	64.00	700604A	TOWN WWTP LAB
				271.00	.00	271.00	700825A	TOWN WWTP LAB
				217.00	.00	217.00	700826A	BL WWTP LAB
				187.00	.00	187.00	701047A	TOWN WWTP LAB
				137.00	.00	137.00	701049A	BL WWTP LAB
				137.00	.00	137.00	701277A	LAB TEST-BL WWTP
				187.00	.00	187.00	701278A	LAB TEST-SOUTHLAND WWTP
			Check Total.....:	1200.00	.00	1200.00		
013235	02/28/07	GRO01	GROENIGER & CO	106.67	.00	106.67	657911	SUPPLIES
				5051.93	.00	5051.93	657912	6 FIRE HYDRANTS
				4180.21	.00	4180.21	657913	4 FIRE HYDRANTS/VAC ENCLC
				172.01	.00	172.01	658576	HYDRANT CAPS
			Check Total.....:	9510.82	.00	9510.82		
013236	02/28/07	GRO02	GROUND UP	4728.75	.00	4728.75	20707	CONSTRUCTION MGMT-HETRICK
013237	02/28/07	HAR02	HARRISON, JAMES	100.00	.00	100.00	022807	REGULAR BOARD MTG 2/28/07
013238	02/28/07	JUS01	JUSTIFACTS CREDENTIAL	48.00	.00	48.00	126062	PRE EMPLOYMENT BACKGROUND
013239	02/28/07	MCD01	MCDONOUGH HOLLAND & ALLEN	20614.05	.00	20614.05	185688	LEGAL SERVICES-HILL/MARIA
013240	02/28/07	NEX01	NEXTEL COMMUNICATIONS	329.48	.00	329.48	021807	CELLULAR SERVICE
013241	02/28/07	OFF01	OFFICE DEPOT	-21.17	.00	-21.17	373945060C	CREDIT FOR RETURNED ITEMS
				35.78	.00	35.78	373945061	SUPPLIES
			Check Total.....:	14.61	.00	14.61		
013242	02/28/07	POS01	POSTMASTER	160.00	.00	160.00	A70220	BULK PERMIT FEE
013243	02/28/07	RBA01	R BAKER, INC	8006.64	.00	8006.64	07011811	FH REPAIR/POT HOLING
				5051.49	.00	5051.49	07011830	POT HOLING
			Check Total.....:	13058.13	.00	13058.13		
013244	02/28/07	REL01	RELIABLE	32.81	.00	32.81	FNK72500	OFFICE SUPPLIES
				-12.65	.00	-12.65	FNK72500C	CREDIT-RETURNED STAPLER
				322.27	.00	322.27	FNK74500	SUPPLIES
				3.70	.00	3.70	YWQ16700	STAPLES
			Check Total.....:	346.13	.00	346.13		
013245	02/28/07	RIC01	RICHARDS, WATSON, GERSHON	11435.85	.00	11435.85	150931	WATER RIGHTS ADJUDICATION
				742.50	.00	742.50	150932	COASTKEEPER LAWSUIT
			Check Total.....:	12178.35	.00	12178.35		

**NIPOMO COMMUNITY SERVICES DISTRICT  
WARRANTS      FEBRUARY 23 2007**

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013246	02/28/07	RUS01	RUSSCO	230.05	.00	230.05	17011	SUPPLIES
013247	02/28/07	SAN09	SAN LUIS MAILING SERVICE	125.65	.00	125.65	31406A	MAILING BILLS
				575.05	.00	575.05	31406B	POSTAGE FOR BILLS
			Check Total.....:	700.70	.00	700.70		
013248	02/28/07	STA03	STATEWIDE SAFETY & SIGNS	137.45	.00	137.45	53079	MARKING PAINT
013249	02/28/07	STR03	STRADLING YOCCA CARLSON	1750.00	.00	1750.00	024546002	PREP OF ANNUAL DISCLOSURE
013250	02/28/07	TGP01	TGP WEST, INC.	322.71	.00	322.71	3661	SUNDALE WELL MAINTENANCE
013251	02/28/07	THE02	THE TRIBUNE	508.32	.00	508.32	6522509	JOB ADVERTISEMENT
013252	02/28/07	TRO01	TROTTER, CLIFFORD	100.00	.00	100.00	022807	REGULAR BOARD MTG 2/28/07
013253	02/28/07	USA01	USA BLUEBOOK	1214.62	.00	1214.62	316596	2 CHECK VALVES
013254	02/28/07	VIE01	VIERHEILIG, LARRY	100.00	.00	100.00	022807	REGULAR BOARD MTG 2/28/07
013255	02/28/07	WIN01	WINN, MICHAEL	100.00	.00	100.00	022807	REGULAR BOARD MTG 2/28/07

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL, GENERAL MANAGER *BB*  
DATE: FEBRUARY 23, 2007

<b>AGENDA ITEM</b>
<b>E-1</b>
<b>February 28, 2007</b>

TRACT 2642 OUTSIDE USER AGREEMENT

**ITEM:**

Authorize execution of Holloway outside user agreement for service to 18 lot subdivision on South Oakglen Avenue [ADOPT RESOLUTION]

**ATTACHMENTS:**

- Exhibit "A" – Depiction of Owners' property (Tract 2642)
- Exhibit "B" – Summary of LAFCO procedures in approving outside user agreements
- Exhibit "C" – Resolution -XXX approving outside user agreement and establishing monthly/bi-monthly rates and charges
- Exhibit "D" – LAFCO Resolution 2006-09 conditionally approving Annexation No. 27 (Tract 2642) to the Nipomo Community Services District
- Exhibit "E" – Outside user agreement

**INTRODUCTION**

On January 24, 2007, the District Board of Directors reviewed the application of Carl and Debra Holloway ("Owners") for an outside user agreement for water, sewer and solid waste service to Tract 2642. At the conclusion of the Agenda Item the Board approved a motion authorizing negotiations of a draft agreement with the Holloway family and that the agreement obligates annexation of the Property once supplemental water is available and that the Property Owner, be charged with constructing and dedicating utilities to the District. Attached as Exhibit "E" is an outside user agreement ("Agreement") that staff believes is consistent with the Board's motion.

**BACKGROUND**

Tract 2642 consists of approximately twenty (20) acres, that will be divided into eighteen (18) separate parcels (see Exhibit "A" to Staff Report). Tract 2642 is located off of South Oakglen Avenue and is within the District's current sphere of influence. The District has previously approved Tract 2642 for annexation and the Local Agency Formation Commission ("LAFCO") has conditionally approved the annexation (Exhibit "C"). Because of the time it will take to provide supplemental water, Mitigation W-2 to the LAFCO Resolution (Exhibit "D"),

Owner is requesting an outside user agreement for water and sewer service in lieu of considering providing water to Tract 2642 by way of a mutual water company and providing sewer service through the use of individual septic tanks.

Staff estimates water demand as follows:

Typical -	.97 AFY x 18 = <b>17.46 AFY</b>
Design Conservation Requirements - (District Code §3.05.030)	.55 AFY x 18 = <b>9.9 AFY</b>

The eighteen (18) parcels would draw from the underlying groundwater basin, if supplied by a mutual water company, and would not be subject to District's conservation measures and rates and charges.

The Owners have requested the District to provide water service (outside user agreement) to Tract 2642. To facilitate District services to Tract 2642, Owners have agreed to the following:

1. To construct water and sewer improvements and connect the same to the District's water and sewer system, all in accordance with District's rules, regulations, ordinances and agreements.
2. Pay District costs in processing the outside user agreement and annexation.
3. Abandon the use of a mutual water company to provide water service and individual septic tanks to provide sewer service;
4. Diligently complete and not oppose the annexation of the Property to the District.
5. The Property and individual parcels will receive water service on the same terms and conditions, including water conservation measures, as other District water customers.
6. Bi-monthly water and sewer rates will be established in accordance with Exhibit "C" (Resolution). Staff recommends that once water meters are set that the District monthly and bi-monthly rates be established at 1.5 times the District's standard rates and charges for water, sewer and solid waste services.

### **ANALYSIS**

Pursuant to Government Code §61101 the District is authorized to provide water service outside of its boundaries subject to Government Code §56133 (requirement of LAFCO approval).

Pursuant to Water Code §71613 the District may supply and deliver water to Tract 2642 at special rates, terms and conditions as are determined by the Board for such service. (Note that Water Code sections, related to municipal water districts, are incorporated into Community Services District law).

Nipomo Community Services District Code Section 3.16.010 and 3.16.020 address outside user agreements and provide as follows:

**3.16.010 When allowed.**

*It is the general policy of the district that district water service is limited to parcels within the district boundaries. The district board of directors may authorize water service to parcels outside the district boundaries upon a finding that:*

*A. There exists an extreme hardship and there is excess capacity within the district system to serve such parcel; or*

*B. There is a benefit to the district or the community, such as the Owners providing the district with a water resource.*

**3.16.020 Rates/Conditions.**

*The water usage rates and conditions for district water services outside the district boundaries shall be determined by resolution of the board of directors.*

Pursuant to District Code Section 3.16.010(B) the District would benefit from the proposed outside user agreement for the following reasons:

1. The District has a longstanding policy of opposing mutual water companies that draw water from the same groundwater basin that currently supplies the District. The outside user agreement requires the Owners to construct an water and sewer improvements, connect the same to the District's current water and sewer system, all in accordance with District's current rules, regulations, ordinances, specifications and agreements.
2. The Owners are required to pay the District's fees for connections, including water (including supplemental water and sewer capacity charges), prior to the recording of the final map or setting meters whichever occurs first, thereby providing additional monetary resources for the District's plans for supplemental water.
3. Owners are required to pay the District's standard annexation fee of approximately ten thousand dollars (\$10,000) prior to recording of the final map, LAFCO final approval of the annexation or setting water meters, whichever occurs first.
5. Except for monthly/bi-monthly rates and charges, water and sewer service will be provided under the same terms and conditions (including conservation measures) as other water customers within the District.

6. Until such time as the annexation is complete, the water, sewer, and solid waste customers within Tract 2642 will pay 1.5 times the bi-monthly rates and charges as other District customers pay.

The Agreement requires LAFCO approval under the Cortese-Knox-Hertzberg Local Government Reorganization Act, specifically Government Code §56133 (a) and (b) which provide:

*(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.*

*(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.*

Attached hereto as Exhibit "B" is a summary of the LAFCO procedures in approving outside user agreements.

### **Recommendation**

Receive Staff Report and public comment and:

1. Approve Resolution 2007-XXX approving the outside user agreement, and establishing bi-monthly rates and charges for District services, conditioned on LAFCO approval; or
2. Amend or modify Staff recommendation.

**EXHIBIT A**

**LEGAL DESCRIPTION**

BEING A SUBDIVISION OF A PORTION OF LOTS  
24 & 25, OF RANCHO NIPOMO (A MB 13) PER  
MAPS AS FILED IN THE OFFICE OF THE COUNTY  
RECORDER, LYING IN THE COUNTY OF SAN LUIS  
OBISPO, STATE OF CALIFORNIA

APN# 090-171-005  
090-171-027  
090-171-028  
090-171-029

END





## Provision of Services by Contract

Effective January 1, 1994, a city or district may provide new or extended services by contract or agreement outside its boundaries only if it first requests and receives written approval from LAFCO (56133). The definition of city and special district services can be found in the glossary of the procedures guide and is based on the classification system adopted by the San Diego LAFCO in section 4.4 of its rules pursuant to Government Code Section 56074. In accordance with these definitions, services include the public facilities necessary to perform the service function. Conditions of approval and exceptions include:

**Conditions of Approval:** LAFCO may approve a request for out-of-agency services if the affected territory is within the agency's sphere of influence and is in anticipation of a later change of organization.

**Exceptions:** LAFCO authority over out-of-agency services does not apply to:

1. Contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider;
2. Contracts for the transfer of nonpotable or nontreated water; and
3. Contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes, or directly support agricultural industries. However, prior to extending surplus water that will support or induce development, the agency must receive written approval from LAFCO. LAFCO authority over out-of-agency services also does not apply to publicly owned electric utilities providing electric services, which do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility outside of the utility's jurisdictional boundaries.

**Health or Safety Concerns:** The Commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the health and safety of the public or the affected residents if both of the following requirements are met:

1. Documentation of a threat to the health and safety of the public or the residents has been provided to the Commission; and

EXHIBIT   B

2. The Commission has notified any alternate service provider that has filed a map and a statement of its service capabilities with the Commission.

### **Procedures**

Unless the extension of services is in response to a health or safety threat to property outside an agency's sphere of influence, applicants will be required to submit an annexation/detachment application, or other documentation demonstrating that the agreement is in anticipation of a subsequent jurisdictional change (e.g., irrevocable offer to annex). The proponent will be charged the applicable annexation/detachment fee prior to San Diego LAFCO consideration of the out-of-agency service agreement. A 30% surcharge will be added to the annexation/detachment fee, and is due prior to Commission consideration of the related annexation/detachment proposal. The surcharge will not apply in instances where the service agreement is in response to a health or safety problem, and where the annexation will be processed immediately following approval of the service agreement.

If the extension of services is in response to a health or safety threat to property outside an agency's sphere of influence, applicants are encouraged, but not required, to submit an annexation application.

All of the requirements associated with processing an annexation/detachment proposal, such as rezoning, environmental review, etc., will apply when processing an out-of-agency service agreement.

The San Diego LAFCO Executive Officer is authorized to administratively approve out-of-agency service agreements that are in response to health or safety threats, if all conditions of approval have been met in accordance with Government Code Section 56133, and the applicant has satisfactorily demonstrated the existence of public health, safety, or welfare impacts (e.g., letter from the County Health Department). The Executive Officer is required to update the Commission at the next regularly scheduled San Diego LAFCO meeting regarding administratively approved service agreements.

RESOLUTION NO. 2007- XXX

DRAFT

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
APPROVING AN OUTSIDE USER AGREEMENT FOR WATER AND SOLID  
WASTE SERVICES TO TRACT 2642**

**WHEREAS**, Carl and Debra Holloway (“Owners”) have requested an Outside User Agreement (“Agreement”) for water and solid waste services to Tract 2642 (“Property”); and

**WHEREAS**, based on the Staff Report, Staff presentation and public comment, the Board of Directors finds that there is a benefit to the District in approving an outside user agreement pending the property’s annexation to the District. The findings and conclusions of the Staff Report are incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT THAT:**

1. The Agreement, attached hereto as Exhibit “A”, is hereby approved.
2. The Agreement shall become effective upon:
  - a. The Applicant making the initial deposit as required by the Agreement.
  - b. Local Agency Formation Commission approval.
3. The District’s bi-monthly rates and charges for water, sewer and solid wastes services shall be 1.5 times the charges established by District ordinance and resolutions (as amended from time to time) for District residential customers.
4. The above Recitals are true and correct and incorporated herein by reference.

Upon the motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_ and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
CONFLICTS:

the foregoing resolution is hereby adopted this \_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Michael Winn  
President, Board of Directors  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz  
District Legal Counsel

**IN THE LOCAL AGENCY FORMATION COMMISSION  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA**

Thursday, June 15, 2006

**PRESENT:** Commissioners Shirley Bianchi, David Brooks, Richard Roberts, Allen Settle,  
Chairperson Barbara Mann, Alternate Commissioners, Tom Murray, James R.  
Patterson and Duane Picanco

**ABSENT:** Vice-Chairman Katcho Achadjian

**RESOLUTION NO. 2006-09**

**RESOLUTION CONDITIONALLY APPROVING ANNEXATION NO. 27 TO THE NIPOMO  
COMMUNITY SERVICES DISTRICT (HOLLOWAY / SOUTH OAKGLEN)**

The following resolution is now offered and read:

**WHEREAS**, on June 5, 2006 there was filed with this Commission a request to consider a proposal for Annexation No. 27 to the Nipomo Community Services District (Holloway / S. Oakglen) and

**WHEREAS**, the Executive Officer has given the notices required by law and forwarded copies of his report to officers, persons and public agencies prescribed by law; and

**WHEREAS**, the matter was set for public hearing at 9:00 a.m. on June 15, 2006, and the public hearing was duly conducted and determined and a decision was made on June 15, 2006; and

**WHEREAS**, at said hearing this Commission heard and received all oral and written protests, objections and evidence, which were made, presented or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said proposal and report; and

**WHEREAS**, the Mitigated Negative Declaration prepared by the Local Agency Formation Commission as lead agency has been duly noticed, and submitted for this annexation and this Commission finds, based upon the information submitted and received at the public hearing, that the Mitigated Negative Declaration is adequate for approving this annexation; and

**WHEREAS**, the Commission has considered all factors required to be considered by Government Code Sections 56668 et seq. and adopts as its written statements of determinations therein, the determinations set in the Executive Officer's report dated June 15, 2006 said determinations being incorporated by reference herein as though set forth in full; and

**WHEREAS**, the Commission duly considered the proposal and finds that the proposal to annex territory to the Nipomo Community Services District be approved with the following conditions and mitigations:

1. Prior to the final processing of the annexation, the applicant shall submit to LAFCO documentation of approval of the Tentative Tract Map, Conditional Use Permit and

Resolution 2006-09  
Page 2

associated CEQA documentation from the County.

2. The mitigations/conditions listed below are from the Final Program EIR Certified May 2004 regarding the District's Sphere of Influence, and are incorporated into this approval as conditions with which the District needs to comply prior to final processing of this annexation:

**Mitigation W-1:** Prior to LAFCO approval of any annexation, the District shall:

1. Implement a water conservation program that decreases water use by 15% based on per connection water consumption. Annexations shall only be approved of the District provides documentation that certifies a 15% decrease in water use has occurred since the approval date of the Sphere of Influence. Conservation measures shall be implemented at the District's discretion.
2. Complete or update the Urban Water Management Plan to reflect the need to provide water service in the amount of 1,000 acre-feet for the expanded Sphere of Influence. The Urban Water Management Plan prepared or updated by the District shall be prepared consistent with the State of California's Urban Water Management Plan Act. A Registered Professional Engineer specializing in water resource planning shall certify that the Plan is consistent with the State's Urban Water Management Plan Act.

**Mitigation W-2:** Prior to approval by LAFCO of any annexation, the District shall complete negotiations for a supplemental water source outside the Nipomo Hydrologic Sub-Area and provide documentation that an agreement is in place to deliver such water by January 1, 2009. Documentation shall be consistent with Section 5, Step Two, Documenting Supply, of the SB 610 Guldebook dated October 8, 2003. A Registered Professional Engineer specializing in water planning shall review and certify such documentation.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Local Agency Formation Commission of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct, and valid.
2. That the map and legal description approved by this Commission is attached hereto, marked as Exhibits A and B and incorporated by reference herein as though set forth in full.
3. That the Executive Officer of this Commission is authorized and directed to mail copies of this resolution in the manner provided by law.
4. That Annexation No. 27 to the Nipomo Community Services District (Holloway / S. Oakglen) should be conditionally approved.

Upon a motion of Vice Commissioner Bianchi, seconded by Commissioner Settle, and on the following unanimous voice vote:

AYES: Commissioners Shirley Bianchi, David Brooks, James R. Patterson, Duane Picanco, Richard Roberts, Allen Settle and Chairperson Barbara Mann

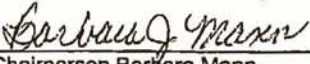
NAYS: None

Resolution 2006-09  
Page 3

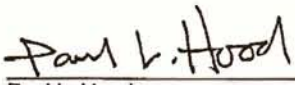
ABSENT: Vice-Chairman Katcho Achadjian

ABSTAINING: None

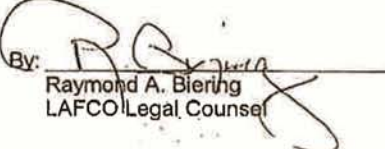
The foregoing resolution is hereby adopted unanimously.

  
\_\_\_\_\_  
Chairperson Barbara Mann  
Local Agency Formation Commission

ATTEST:

  
\_\_\_\_\_  
Paul L. Hood  
Executive Officer

APPROVED AS TO FORM AND LEGAL EFFECT:

By:   
\_\_\_\_\_  
Raymond A. Biering  
LAFCO Legal Counsel





Recording Requested by and mail to:

Executive Officer  
The Local Agency Formation Commission  
1042 Pacific Street, Suite A  
San Luis Obispo, CA 93401

PLACE RECORDING LABEL HERE

**CERTIFICATE OF COMPLETION**

Pursuant to Government Code Section 57200, this Certificate is hereby issued by the Executive Officer of the Local Agency Formation Commission of San Luis Obispo County, California.

1. Short-form designation by LAFCO is Annexation No. 27 to the Nipomo Community Services District
2. The name of each district or city involved in this change of organization or reorganization and the kind or type of change of organization ordered for each city or district are as follows:

<u>City or District</u>	<u>Type of Change or Organization</u>
Nipomo Community Services District	Annexation

3. The above listed cities and/or districts are located within San Luis Obispo County.
4. A description of the boundaries of the above cited change of organization or reorganization is shown on the attached map and legal description, marked Exhibits A and B and by reference incorporated herein.
5. The territory involved in this change of organization or reorganization is uninhabited.
6. This change of organization or reorganization has been approved subject to the following terms and conditions, if any: None
7. The date of adoption of the Resolution ordering this change of organization or reorganization without election, or the Resolution confirming an order for this change of organization or reorganization after confirmation by the voters was June 15, 2006.

I hereby certify that I have examined the above cited ordinance or resolution for a change in organization or reorganization and have found this document to be in compliance with Resolution No. 2006-09 approving said change of organization or reorganization and adopted by the Local Agency Formation Commission of the County of San Luis Obispo on June 15, 2006.

Date: 7/6/06

LAFCO File No. 1-R-06

Paul L. Hood

Paul L. Hood  
Executive Officer

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

NIPOMO COMMUNITY SERVICES DISTRICT  
P.O. Box 326  
Nipomo, CA 93444

---

APN# 090-171-005  
090-171-027  
090-171-028  
090-171-029

Exhibits:

- "A" – Legal Description
- "B" – Plan Check & Inspection Agreement
- "C" – Resolution of District

**AGREEMENT AFFECTING REAL PROPERTY  
NIPOMO COMMUNITY SERVICES DISTRICT  
AND CARL HOLLOWAY AND DEBRA HOLLOWAY  
AGREEMENT FOR PROVIDING WATER, SEWER AND  
SOLID WASTE SERVICES TO TRACT 2642**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the Nipomo Community Services District (herein referred to as "District") and Carl Holloway and Debra Holloway (hereinafter referred to as the "Owner(s)") with reference to the following Recitals:

**RECITALS**

A. Owner is the legal fee simple owner of certain real property located in San Luis Obispo County, California, referred to as Tentative Vesting Tract 2642 (herein "Property" or "Tract 2642"), which is located off South Oakglen Avenue, Nipomo, California, and is more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference.

B. The Property consists of approximately twenty (20) acres, to be developed into eighteen (18) separate residential parcels and one (1) open space parcel to be used for existing farm structures and agricultural purposes. The Property is subject to an Annexation Agreement executed by Owner and District on January 25, 2006.

C. On or about June 16, 2006, the San Luis Obispo County Local Agency Formation Commission ("LAFCO") adopted Resolution 2006-09, a resolution conditionally approving the Annexation No. 27 (the Property), to the Nipomo Community Services District ("Holloway/South Oakglen"). Said Resolution is incorporated herein as set forth at length.

D. The Property is within the District's Sphere of Influence and is immediately adjacent to the District's boundaries and is subject to the above referenced LAFCO Resolution regarding annexation. Therefore, LAFCO, pursuant to Government Code §56133, must approve this Agreement.

E. Pending completion of Annexation 27, Owner has requested District provide the Property with water service, sewer service, and solid waste services, (collectively "District Services") whereby Owner will:

1. At its sole cost and expense apply to LAFCO for approval of this Agreement.
2. Promptly construct water and sewer improvements in accordance with District requirements and Plan Check and Inspection Agreements attached hereto as Exhibit "B".
3. Diligently complete and not oppose further action taken by LAFCO in approving Annexation 27.
4. Upon LAFCO approval of this Agreement, agree not to form a mutual water company to provide water service to the Property and agrees not to use septic tanks to provide sewer service to the Property and individual parcels therein.

F. District is willing to provide water and sewer service and solid waste service to Tract 2642 on the terms and conditions hereinafter provided.

NOW, THEREFORE, for valuable consideration receipt of which is hereby acknowledged the parties agree as follows:

1. **Service Limitations.**

A. The District's obligation to provide water service to the Property and parcels therein is limited, during the term of this Agreement, to setting eighteen (18) water meters to serve eighteen (18) single family residential units within Tract 2642. Sewer service is likewise limited, during the term of this Agreement, to eighteen (18) single family residential units. Water and sewer service to the existing farm home and other agricultural structures is not envisioned at this time, however the home may be connected to District service in the future if the residents desire (District fees will be applied if and when the connection is made).

B. Except as provided in subparagraph A, above, Owner shall not connect, or allow to be connected, any other lot or premises or building or structure for the delivery of water and sewer services.

2. **Deposit for District Costs.**

At the time of execution of this Agreement, Owner shall deposit the sum of two thousand dollars (\$2,000) for legal, engineering and administrative services in preparing this Agreement and LAFCO processing of this Agreement. . Owner authorizes District to withdraw from the deposit as these costs are incurred by District. pursuant to this Agreement.

District will notify Owner whenever the deposit is reduced to five hundred dollars (\$500) or less. Within fifteen (15) days after such notification is mailed, Owner shall make an additional deposit in the same amount as the initial deposit.

Upon LAFCO's final consideration of this Agreement, , any funds so advanced by the Owner in excess of the District's actual costs shall be returned to Owner. Conversely, any costs incurred by the District over and above the amount advanced by the Owner shall be paid by the Owner upon demand.

**3. Water Treatment and Water Quality.**

The water provided to the Property pursuant to this Agreement shall be treated to District drinking water standards, and shall be treated to no greater extent than that provided to other District water users.

**4. Payment of Annexation Fees.**

Prior to the completion of annexation, or the recording of the final map, or setting the first water meter, whichever occurs first, Owner shall make a non-refundable deposit to the District in the amount of ten thousand dollars (\$10,000) representing the District's Annexation fees of \$500 per acre.

**5. Payment of Capacity Charges/Will Serve Letter.**

A. Prior to District issuing a Will Serve Letter, for District Services, Owner shall deposit with District, the 100% estimate of District's then established connection and capacity charges, including supplemental water capacity charges, for District Water and Sewer Services. Said fees, for eighteen(18) single family units, is currently calculated at \$334,314.

B. The District's connection and capacity charges, including supplemental water capacity charges, shall be calculated and owing as of the date the District sets water meters to serve the affected property/parcels from which the amount of the deposit shall be deducted.

**6. District Service.**

A. The District Services to be provided to the Property and individual parcels include water service, sewer service and solid waste service. The District shall not set water meters or otherwise provide service to the Property, or individual parcels therein, until the following have occurred:

1. The District has adopted a Resolution of Acceptance of the Improvements as provided by District rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B"); and
2. Owner has paid the District all applicable fees and charges of the District, including connection fees and capacity charges, all in accordance with the Ordinances, Rules and Regulations of the District.

3. Building permits have been issued by the County of San Luis Obispo for residential and commercial units.

B. The Owner agrees that it will comply with all District rules, regulations and ordinances (including regulations and ordinances related to water conservation) that regulate or otherwise affect the delivery of District Services to District customers.

C. Until such time as the Annexation is deemed complete by LAFCO the monthly (or bi-monthly) rates and charges for water service, sewer service and solid waste service shall be set by Resolution of the Board of Directors as attached hereto as Exhibit "C".

#### **7. Secondary Units.**

The District will not provide water service to secondary units located on the Property or individual parcels contained therein until such time as annexation of the Property to the District is deemed complete by LAFCO. From and after the completion of the annexation, the District will provide water to secondary units in accordance with the then established rules, regulations and ordinances of the District, as amended from time to time.

#### **8. Term of Agreement.**

Except for Owner's obligations referenced in paragraph 2 of this Agreement, and unless otherwise terminated as provided herein, shall become effective on the date LAFCO approves this Agreement and shall remain in effect until Annexation 27 is deemed complete.

#### **9. District's Right to Terminate.**

Owner shall be in default, and District shall have the right to terminate this Agreement, if Owner fails:

- A. To make payments as required by this Agreement;
- B. To promptly design and construct the water and sewer improvements in accordance with District's rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B");
- C. To commence construction of water and sewer improvements within eighteen (18) months of LAFCO's approval of this Agreement. Owner shall be entitled to one six (6) month extension; and/or
- D. To comply with any other terms or conditions of this Agreement.

District shall provide Owner with Notice of Termination and Owner shall have fifteen (15) days from the date of such Notice to cure the default. After the fifteen (15) day period to cure, the District may immediately terminate this Agreement and terminate District services to the Property.

**10. Owner Not An Agent of District.**

Neither Owner or any of Owner's agents or contractors are or shall be considered to be agents of the District in connection of the performance of Owner's obligations under this Agreement.

**11. Covenants and Conditions.**

The obligations of Owner pursuant to this Agreement are both covenants and conditions.

**12. Attorney's Fees.**

In the event that any arbitration, litigation, or other proceeding of any nature between the District and Owner becomes necessary to enforce or interpret all or any portion of this Agreement, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees and costs paid or owing as a result of such proceeding.

**13. Notices.**

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District:

Nipomo Community Services District  
P.O. Box 6064  
Nipomo, California 93412  
Attn: General Manager

Owner:

Carl R. and Debra L. Holloway  
561 South Oakglen Avenue  
Nipomo, California 93444

**14. Sale of Property.**

No transfer of this Agreement, by assignment or otherwise, by Owner shall be valid until and unless approved by the District in writing. Said approval shall not be unreasonably withheld or delayed. Such approval shall be conditioned on the agreement of the successor or transferee to be bound by the terms and conditions of this Agreement and the payment of District's administrative and legal costs in approving the transfer.

**15. Indemnity.**

Owner shall indemnify, defend and hold harmless District and its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including costs and fees of litigation) of every nature arising out of this Agreement, except such loss or damage which was caused by the proven sole negligence or willful misconduct of District.

**16. Other Agreements.**

This Agreement, along with any Exhibits and attachments, is in addition to other agreements such as the Annexation Agreement entered into by the Parties. This Agreement shall not be construed as a waiver, novation of the Annexation Agreement entered into by District and Owner.

**17. Headings.**

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

**18. Cooperation.**

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

**19. Interpretation of this Agreement.**

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

**20. Successors and Assigns.**

The District and Owner agree that Owner's Obligations, Agreements and Covenants contained in this Agreement shall run with the land and shall be binding upon Owner, its heirs, successors, executors, administrators, and assigns and shall inure to the benefit of District and its successors and assigns.



**21. Venue**

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**22. Agreement to be Recorded.**

Owner and District intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo.

**23. Incorporation of Recitals.**

The parties agree that the Recitals constitute the factual basis upon which the District and the Owner have entered into this Agreement. The District and the Owner each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

**24. Severability.**

If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

**25. Authority to Execute Agreement.**

A. Owner represents and warrants that: (a) this Agreement will constitute legal, valid, and binding obligations of Owner enforceable in accordance with its terms; and (b) the execution and delivery of this Agreement is within Owner's power and authority without the joinder or consent of any other party.

B. Indemnity. Owner and the undersigned jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A. above.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

Nipomo Community Services District

By: \_\_\_\_\_  
Michael Winn, President  
Board of Directors

Owner: Carl R. Holloway

Owner: Debra L. Holloway

By: \_\_\_\_\_  
[Signatures must be notarized]

By: \_\_\_\_\_  
[Signatures must be notarized]

\_\_\_\_\_  
Jesse L.B. Hill, Attorney for  
Carl and Debra Holloway

Attest:

Approved as to Form:

\_\_\_\_\_  
Donna K. Johnson, Secretary  
Nipomo Community Services District

\_\_\_\_\_  
Jon S. Seitz, District Legal Counsel  
Nipomo Community Services District

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *B7D*  
DATE: FEBRUARY 23, 2007

**AGENDA ITEM  
E-2  
FEB. 28, 2007**

**DISCUSS BLACK LAKE WATER SYSTEM OPTIONS**

**ITEM**

Receive evaluations of Black Lake water system booster station reports and discuss potential options [PROVIDE POLICY OPTIONS].

**BACKGROUND**

Staff has previously (2/14/07) distributed the October 2006 Boyle Technical Memorandum, the December 2006 Jaspar Peer Review and the February 2007 Boyle Comparison (available for review at the office). Attached is a legal opinion from District Legal Counsel Jon Seitz, a Glossary of Terms as requested by Director Trotter and a copy of Staff's 2/15/07 Letter to Black Lake (without attachments). These six documents comprise the setting for discussion of the options for either merging the two systems or proceeding with one of the recommended upgrades if Black Lake is to remain as a separate fund. As stated in Staff's 2/15/07 letter, staff believes that the District is neutral in regards to which option is selected, however, it would be highly desirable to compile an analysis of the relative equity positions of the two systems and it is vital to the health of the Town System that interim plumbing work be performed prior to this Summer's high water demand period so that Black Lake Well #4 can be used for production.

It should be noted that staff has shared the various reports with Black Lake but as of this date no meeting has been held to review the material.

**RECOMMENDATION**

It is recommended that your Honorable Board discuss the options outlined in the reports and provide policy guidance regarding the options so that staff can discuss any such positions with Black Lake. In addition, staff requests authority to secure a proposal from Bob Reed to perform the equity and rate analysis described in the 2/15/07 letter for subsequent Board consideration and to calendar discussion of a staff proposal for re-plumbing Black Lake Well #4 at a subsequent Board Meeting.

**ATTACHMENT**

- Legal Opinion
- Glossary of Terms
- 2/15/07 Staff Letter to Black Lake

T:\doc\board matters\board meetings\board letter 2007\Black Lake Booster Options

JON S. SEITZ  
MICHAEL W. SEITZ

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 953  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipomo Community Services District

JOHN L. SEITZ  
(1924-1986)  
GERALD W. SHIPSEY  
(RETIRED)

**Draft**  
*Attorney/Client Privilege*  
*Attorney Work Product*  
*Confidential*

February 20, 2007

MEMORANDUM

TO: BRUCE BUEL, GENERAL MANAGER  
BOARD OF DIRECTORS  
NIPOMO COMMUNITY SERVICES DISTRICT

FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL

RE: ANNEXATION OF BLACK LAKE TO NCSD AND  
CONSOLIDATION OF WATER SYSTEMS

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In the early 1990's (and prior to my representation of the NCSD), the NCSD proposed the annexation of Black Lake to the NCSD. The Local Agency Formation Commission ("LAFCO") Staff noted that the annexation would require the District to extend its boundaries and that such extension could cause growth pressures on the intervening parcels in the residential rural land use category. Apparently, there was concern that the Black Lake water and sewer systems had sufficient capacity to provide service outside the Black Lake Specific Plan. Based on these concerns, LAFCO Staff initially recommended an environmental impact report ("EIR") to further analyze the proposed annexation.

Prior to the consideration of the environmental determination, representatives of LAFCO, the NCSD, County Planning and Engineering and the Black Lake Homeowner's Association met to review measures that would minimize the impact of the annexation on the environment.

Based on the results of that meeting, on September 24, 1992, the NCSD General Manager sent a letter assuring LAFCO that it had not been the District's intention to utilize the wastewater treatment plant capacity for areas other than the Black Lake and that the NCSD had always considered that Black Lake had prior rights to existing groundwater supply and that the existing intertie between the two water systems would be for emergency use only.

Based on the District's letter, the LAFCO Commission adopted a negative declaration that the Sphere of Influence and Service recommendations would not result in adverse environmental impacts and further, should specific proposals be presented in the future that would call for annexation and/or development of any involved properties, new and independent environmental assessment will be conducted, and the appropriate environmental document prepared.

LAFCO clearly addressed the potential impacts of Black Lake's water system and/or wastewater system supporting future development outside of the Black Lake boundaries.

In addition, pursuant to LAFCO mitigation measures (adopted as part of the Nipomo Community Services District's 2004 Sphere of Influence Update and Municipal Service Review), annexations to the District will not be approved until such time as the District contracts for supplemental water. Mitigation W-2 states:

***Mitigation W-2:** Prior to approval by LAFCO of any annexation, the District shall complete negotiations for a supplemental water source outside the Nipomo Hydrologic Sub-Area and provide documentation that an agreement is in place to deliver such water by January 1, 2009. Documentation shall be consistent with Section 5, Step Two, Documenting Supply, of the SB610 Guidebook dated October 8, 2003. A Registered Professional Engineer specializing in water planning shall review and certify such documentation.*

Further, under the District's Annexation Policy, annexation proponents are required to provide or pay for supplemental water for the proposed area of annexation.

The potential for Black Lake to permanently connect with the Towne Division for the purposes of achieving efficiency between the two water systems was not addressed by LAFCO. However, both LAFCO and the District have clearly addressed the issues of future annexations and the requirement for supplemental water.

Therefore, I conclude that there are no existing LAFCO prohibitions related to consolidating the two water systems.

END OF MEMORANDUM

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## MEMORANDUM

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TO: Cliff Trotter, NCSD Board Member

FROM: Josh Reynolds, PE, Boyle Engineering Corporation

SUBJECT: Blacklake Booster Station Definitions

February 21, 2007

Below are the requested terms and definitions used in the Blacklake Booster Station Interim Draft Technical Memorandum dated October 2006.

Hydro-pneumatic tank	A pressure vessel to maintain water pressure when the pumps are off. The name comes from the use of air to maintain the pressure. Air is a compressible fluid, water is not (or at least mostly it is not) as the tank fills the air in the tank is compressed and the pressure increases. When the pumps are off the higher pressure forces water out of the tank in to the distribution system. When pressure drops to a set point the pump(s) are turned on.
Bladder-tank	Serves the same function as a hydropneumatic tank. Uses a butyl rubber or PVC bladder inside the tank to hold the water. Bladder-type tanks reduce the amount of maintenance required.
SCADA	Supervisory Control and Data Acquisition – A software package that gathers real time data for monitoring and controlling equipment remotely. Information that is frequently monitored includes system pressure, flow rate, tank levels, pump status, etc.
PLC	Programmable Logic Controller - An electronic device used for automation of programs to control machine operation set by the operator. For instance a PLC can be used to turn the pumps on when system pressure drop below a set point.
Demand	Is the quantity of water being used by the customers within the distribution system. The booster station must be capable of delivering this flow. Demand is typically defined for minimum, average, maximum and future consumption. Water demand is typically the least at nighttime.
Diurnal curve	A graph of flow versus time over a 24-hour period. It is called a diurnal curve because a typical demand curve will peak in the morning as irrigation systems run and people get ready for work and school, then the flow will decline in the afternoon and peak again late in the day as people return home to prepare meals, wash clothes, etc.
O&M	Operations and Maintenance.
NPSHa	The Net Positive Suction Head available is the amount of pressure a pump has on the suction side. Insufficient NPSH during pump operation can result in damage to the pump.
NPSHr	Net Positive Suction Head Required for a given pump. This is measured in the lab by the pump manufacturers. It is important when selecting a pump that NPSHr is less than NPSHa, or the pump could be damaged.
Surge Protection	Surge protection can provide a cushion or outlet to absorb or release the force created by a rapidly moving pressure wave in a pipeline. A common source of surge is caused by abruptly stopping a rapidly moving water column. Surge protection can take the form of a surge tank (similar to a hydropneumatic tank) which cushions the pressure wave, or a surge anticipation valve which sense the oncoming pressure wave and opens a valve to release the pressure to the atmosphere.

DIP AWWA	Ductile-iron pipe manufactured according to American Water Works Association standards have standardized pressure ratings and dimensions.
Mag	Short for Electromagnetic Flow Meter. A flow meter that measures flow in a pipe by sensing the change in a magnetic field that is created by the movement of the fluid in the carrying pipe. Does not require any mechanical implement to be inserted into the stream of flow.
Mobilization	The movement of personnel, equipment, supplies and incidentals to the project site.
FPS	Feet per second is a measurement of velocity. Typically applied to the speed of water in a pipe or channel.
PDR	Preliminary Design Report
LS	Lump sum – a unit of measurement to pay a contractor one line item for an otherwise complicated installation.
ENR	Engineering News Record magazine publishes economic trends related to construction and material costs. The index can be used to inflate a cost opinion in the future by checking the current ENR index and comparing it to the ENR index at the time the cost opinion was prepared.
VFD	Variable Frequency Drive - A method of obtaining variable pump speed through the control of electrical frequency being fed to the pump motor (in the US, AC power is delivered at a frequency of 60 cycles per second). VFD has become a general term for a specific method of varying pump speeds. There are many other methods for varying the speed of a pump, such as magnetic couplings, gears, belts, etc.
PRV	PRV - pressure reducing valve - As the name suggests this is a valve that reduces water pressure as the water flows through the valve. They work on the principle of flow through an orifice. Generally these valves are hydraulically actuated and self modulating (they don't need electricity to run and can operate over a large range of inlet pressure). PRV has become the generic name, although they are often also pressure sustaining meaning that the valve will begin to close if the upstream pressure drops below a set point. Detailed information on PRVs reliability and functionality is available from vendors such as Cla-Val.
Centrifugal pumps	A centrifugal pump is a kinetic machine converting mechanical energy into hydraulic energy through centrifugal activity. As opposed to other types of pumps primarily positive displacement (like a car piston or the human heart).
Split case pumps	A type of centrifugal pump with inlet flow approaching tangentially and guided to the eye of the impeller by the shape of the pump casing. Generally these pumps are also separately coupled (aka frame mounted) with the motor mounted on a frame and driving a shaft with a bearing and coupling between the motor and the impeller shaft and casing. The existing pumps at Blacklake fit this definition.
End-suction pumps	A type of centrifugal pump. In this case an end suction pump (flow enters the impeller through an eye at the center and leaves tangentially through a connecting pipe. Can be close coupled with a motor mounted directly to the impeller shaft or separately coupled as described in split case pumps.
Vertical turbine pumps	A water pump with the motor located above ground, connected by a shaft to the pump below. Generally with more than one bowl or stage. This is still a centrifugal pump. Well pumps are generally vertical turbine pumps.

# NIPOMO COMMUNITY

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# SERVICES DISTRICT

## STAFF

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LISA BOGNUDA, ASSISTANT ADMINISTRATOR  
JON SEITZ, GENERAL COUNSEL

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February 15, 2007

Mr. George Billinger  
445 Colonial Place  
Nipomo, CA 93444

**SUBJECT:** RESPONSE TO 11/20/06 REQUEST FOR INFORMATION

Dear Mr. Billinger

First, let me apologize for the delay in responding. I finally got Boyle's "Comparative Analysis of Black Lake Supply Options" and I am now in a position to answer your letter with some engineering support.

Next, I am attaching Boyle's November Design Memorandum, Jaspar's December Peer Review, and Boyle's February Comparative Analysis. Also attached are various spread sheets depicting financial data that I will refer to in response to your questions. I have not copied the Black Lake Water Tank Inspection Report because of its size but I would be happy to lend it to you if you want to review it.

Following are your questions and my responses:

1. Status of the NCSD Operating Budget?

Please see the financial spread sheet with the caption Fund #140 for a summary of revenues and expenditures for the Black Lake Water Operating Fund from July 1, 2006 through December 31, 2006. As detailed in the spread sheet, the Fund's Revenues are ahead of the pro-rated target and expenses are below the pro-rated target. Thus, the Operating Fund is performing satisfactorily.

2. Status of the NCSD Replacement Budget?

Please see the financial spread sheet with the caption Fund #820 for a summary of revenues and expenditures for the Black Lake Water Replacement Fund from July 1, 2006 through December 31, 2006. As detailed in the spread sheet, the Fund's Revenues are ahead of the pro-rated target and expenses are below the pro-rated target. Thus, the Replacement Fund is performing satisfactorily.



3. How can we compute the cost of merging the two systems?

Please see Boyle's attached "Comparative Analysis of Black Lake Water Supply Options." As set forth in the Comparative Analysis, Boyle estimates that the physical cost of merging the two systems would be run from \$180,000 to \$240,000. In addition, NCSD would incur some administrative costs in changing the rates and the billing for the Blacklake Customers and the Board would need to determine the equity interests for the two systems with the help of a rate study.

4. On what date would the merger occur?

There does not appear to be a magic date, but the review and approval process should take about four months, once a consensus is reached that satisfies both parties. I propose that we shoot for January 1, 2008, when rates will change anyway.

5. What is the District's cost to refurbish the Black Lake Water System?

Although all three of the attached reports comment on these costs, Boyle's Comparative Analysis provides an overview of the different estimates. As set forth in the Comparative Analysis, the short run costs of refurbishing the Black Lake Water System are estimated to run between \$615,000 and \$822,000.

6. Advantages/Disadvantages for each option to Black Lake?

A. Advantages of Merger/Disadvantage of Stand Alone

Black Lake customers would avoid the \$615,000 to \$822,000 in upgrades to the Black Lake Water System and the resulting borrowing and the resulting rate increase. In addition, Town water rates are now lower than Black Lake Water Rates and the Black Lake Water Rates are scheduled to increase more rapidly than Town Water Rates even without an additional rate increase. If a merger proceeds, we will probably ask our rate consultant to evaluate the impact of the Merger, and to secure an opinion in regards to any temporary surcharge on Black Lake customers to address equity issues. We can not predict if such a surcharge will be necessary not can we guarantee that any such temporary surcharge would be less than the currently projected differential between Town Customers and Black Lake Customers.

B. Disadvantages of Merger/Advantages of Stand Alone

By merging the two systems, Black Lake Water customers will not be able to see their exact revenues and costs and will be a smaller fraction of the constituency commenting on rates and issues involving the Town System since there will only be one fund.

7. Advantages/Disadvantages for each option to Town?

A. Advantages of Merger/Disadvantages of Stand Alone

Generally, water systems enjoy an "Economy of Scale" as they gain customers. In this specific case, it is not clear if the equity position of Black Lake will increase or decrease the average equity position of the average Town customer. This is one of the issues that NCSD's Rate consultant will be asked to untangle if the merger proceeds.

B. Disadvantages of Merger/Advantages of Stand Alone

In the short term, supplying the majority of Black Lake's demands with Town System production will stress our capacity in our Peak Consumption period, unless Black Lake Well #4 can be plumbed in prior to July 2007. In the long run, the merger could help both systems as a function of economy of scale assuming that the respective equities of the two systems can be balanced.

8. Future Replacement Costs for the Blacklake System?

NCSD has commissioned Cannon and Associates to evaluate these costs in the upcoming Water and Sewer Master Plan. Cannon is scheduled to provide an update on the Master Plan to the Board on February 21, 2007 and to deliver a draft Plan no later than June 2007. Until I get this plan, we can not adequately respond to this question.

9. Future Replacement Costs for the Town System?

NCSD has commissioned Cannon and Associates to evaluate these costs in the upcoming Water and Sewer Master Plan. Cannon is scheduled to provide an update on the Master Plan to the Board on February 21, 2007 and to deliver a draft Plan no later than June 2007. Until I get this plan, we can not adequately respond to this question.

10. NCSD Position on Merger?

The NCSD Board has taken no position on the issue, except to appoint Director Trotter to negotiate with your Committee. From a physical water supply perspective, staff is very concerned over supply both Black Lake and Town with Town Water this summer and fall. We will be requesting that the Board authorize some interim investments so that Black Lake Well #4 be plumbed into either the Town System or the Bypass before we hit our peak demand period from July to October.

11. What is Black Lake's dollar contribution to the Sundale Well?

Please see the Spreadsheet entitled "Sundale Well". As set forth in this spread sheet, the total capital cost of the Sundale Well was approximately \$455k of which, Town spent \$323,449 and Black Lake spent \$131,252.

Name: Mr. George Billinger  
Subject: Black Lake Water System Options  
Date: February 15, 2007

Nipomo Community Services District  
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As you know, the NCSD Board will review the attached reports at their February 28, 2007 Board Meeting. I do not expect that the Board will take any action at that meeting, but they may express preferences to forward to the Black Lake Community. It would be helpful if you could attend this meeting and provide input to the Board. Additionally, Director Trotter and I are available to meet with you before or after February 28, 2007 to initiate our discussion. Please advise if you are ready to meet with us.

Finally, I am available to discuss this letter with you should you have any questions or comments. Feel free to call me at the office or on my cell phone 234-5909.

Sincerely,

NIPOMO COMMUNITY SERVICES DISTRICT



Bruce Buel  
General Manager

CC: Honorable Board  
Lisa Bognuda  
Dan Migliazzo  
Jon Seitz, Shipsey and Seitz  
Josh Reynolds, Boyle  
Chronological File  
Black Lake Booster Station File

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