

TO: BOARD OF DIRECTORS
FROM: JON S. SEITZ,
DISTRICT LEGAL COUNSEL
DATE: MARCH 7, 2008

**AGENDA ITEM
E-3**

MARCH 12, 2008

ITEM

Suspension of Intent-to-Serve Letter applications

BACKGROUND

On February 27, 2008, the District Board of Directors considered the application for an Intent to Serve Letter for a seventy-one (71) room hotel project at 549 Hill Street, downtown Nipomo. The application, assuming full occupancy, estimated the project would require 8.22 acre feet per year. During the discussion of the agenda item, Board members expressed concerns regarding the projects impact on the groundwater basin in light of the recent Science Application International Corporation ("SAIC") reports that evidenced the decline in the groundwater in storage of the underlying groundwater basin. At the conclusion of the hearing, the Board of Directors continued the application until receipt of SAIC's 2008 Spring Report on the volume of groundwater underlying the Nipomo Mesa Management Area ("NMMA") in storage above mean sea level ("MSL"). The Board also requested District Staff to prepare a Resolution suspending further consideration of Intent-to-Serve Letters until the SAIC 2008 Spring Report is received and evaluated. That Resolution is attached to this Staff Report (Resolution 2008-XXX).

The portion of the groundwater basin that is the main source of water for District water customers is known as the NMMA through the current groundwater adjudication and is also referred to as the Nipomo Mesa Water Conservation Area ("NMWCA") by the County in implementing its Resource Management System. The District has retained SAIC to provide reports to the District regarding groundwater in storage above MSL within the NMMA.

The District has received several reports related to the Spring volume of groundwater underlying the NMMA storage above sea level. Those reports are summarized as follows:

- A. The October 9, 2006 Draft Technical Memorandum estimated that the volume of groundwater underlying the NMMA in storage above MSL was reduced by approximately three thousand (3,000) acre feet between April of 2000 and April of 2006 (approximately 500 acre feet per year).
- B. The May 29, 2007 Draft Technical Memorandum estimated that the volume of groundwater underlying the NMMA in storage above MSL was reduced by approximately twelve thousand acre feet (12,000 AF) between April, 2006, and April, 2007.

Additionally, the San Luis Obispo County Board of Supervisors ("County"), in June 2007, certified the Nipomo Mesa Water Conservation Area as a Severity Level III, meaning that existing water demand equals or exceeds the dependable supply. County Staff is currently working on water conservation measures, focusing on retro-fits, as the initial steps in addressing the Severity Level III Certification.

Further, the District has commenced further negotiations with the City of Santa Maria to import supplemental water as referenced in the Settlement Stipulation and Judgment in the current Groundwater Adjudication lawsuit. Delivery date of this new water currently targeted for March, 2011.

With regards to Intent-to-Serve Letters and sufficient water capacity to serve new development, District Code §3.28.020 states:

“all intent-to-serve letters shall be based on findings that sufficient excess water and sewer capacity exists to serve the project”.

With a steady decline in water in storage from April 2000 through April 2006, coupled with the dramatic decline between Spring 2006 and Spring 2007 of 12,000 acre feet, the County certification of a Severity Level III for the NMWCA, and what appears to be a substandard rainfall year, it is prudent to consider placing a hold on the finding that there is sufficient excess capacity within the NMMA to supply new projects (see District Code §3.28.20, above).

The temporary suspension of Intent-to-Serve Letters would continue until the Spring 2008 SAIC Report on the volume of groundwater underlying the NMMA in storage above sea level is received and evaluated by the Board of Directors. Without further action of the Board of Directors after receipt of the SAIC 2008 Spring Report, the attached Resolution sunsets on July 1, 2008.

The adoption of Resolution 2008 - XXX (attached) will not directly affect further development within the NMMA that is outside the District boundaries. Further, the suspension of Intent-to-Serve Letters will delay collection of supplemental water capacity charges and sewer capacity charges that are imposed on new development within the District.

Lastly, applications for Intent-to-Serve Letters that will not impact the net water demand on the NMMA could still be processed. For example, existing Intent-to-Serve Letter(s) could be transferred to a new applicant, provided the transferor's Intent-to-Serve Letter(s) has the same water demand and the same commitment for payment of supplemental water capacity charges and sewer capacity charges that would be imposed on the Applicant's project.

RECOMMENDATION

After receipt of the Staff Report, Staff presentation, Board discussion and public comment consider the following options:

- A. Adopt Resolution 2008-XXX that places a temporary suspension on Intent-to-Serve Letters; or
- B. Amend, modify or reject above option.

ATTACHMENT

Resolution 2008-XXX

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2008-_____**

**AN RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SUSPENDING APPLICATIONS FOR
INTENT-TO-SERVE LETTERS FOR WATER SERVICE**

WHEREAS, the Nipomo Community Services District's ("District") current water supply is groundwater extracted primarily from the Nipomo Mesa Management Area (NMMA), (also referred to as the Nipomo Water Conservation Area by the County of San Luis Obispo), of the Santa Maria Groundwater Basin. A small proportion of NCSD's water is pumped from groundwater in the Nipomo Valley; and

WHEREAS, the District is in receipt of Science Application International Corporation's ("SAIC") October 9, 2006 Draft Technical Memorandum that estimates that the volume of groundwater underlying the NMMA in storage above sea level was reduced by approximately three thousand (3,000) acre feet between April of 2000 and April of 2006 (approximately 500 acre feet per year); and

WHEREAS, the District is in receipt of SAIC's May 29, 2007 Draft Technical Memorandum that estimates that the volume of groundwater underlying the NMMA in storage above sea level was reduced by approximately twelve thousand acre feet (12,000 AF) between April, 2006 and April, 2007; and

WHEREAS, SAIC has been directed to calculate and report, to the District, the Spring 2008 volume of groundwater underlying the NMMA in storage above sea level (Spring SAIC Report); and

WHEREAS, the San Luis Obispo County Board of Supervisors ("County") in June 2007, certified the Nipomo Water Conservation Area as a Severity Level III, meaning that existing water demand equals or exceeds the dependable supply; and

WHEREAS, District Code §3.28.020 provides:

"all intent-to-serve letters shall be based on findings that sufficient excess water and sewer capacity exists to serve the project"; and

WHEREAS, the District Board of Directors, at a public meeting, on March 12, 2008, considered the Staff Report, and public testimony regarding the temporary suspension of Intent to Serve Letters; and

WHEREAS, the District Board of Directors finds that it is unable to make the findings required by District Code §3.28.020, "that sufficient excess water ---" exists to serve new projects, until such time as the District has received and evaluated the Spring SAIC Report; and

WHEREAS, based on the Staff Report, Staff presentation, and public comment, the District Board of Directors further finds this Resolution is adopted for the protection of the health, safety and welfare of District water customers who depend on the NMMA as its source of water supply.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED, by the Board of Directors of the District as follows:

Section 1. Suspension of Intent-to-Serve Letters for Water Service

Applications for Intent-to-Serve Letters for District Water Service, that increase the net demand on the groundwater basin are hereby suspended.

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

Section 2. Applications

Applications for Intent-to-Serve Letters that increase the demand on the groundwater basin will be received and filed by District Staff. Application fees are suspended until further order of the Board of Directors.

Section 3. Reconsideration

The District Board shall reconsider the suspension of Intent-to-Serve Letters after the receipt and evaluation of the Spring SAIC Report.

Section 4. Effective Date

This Resolution shall take effect immediately and, without further order of the Board of Directors, shall automatically terminate on July 1, 2008.

Section 5. Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference. The Recitals and referenced reports and studies contained therein constitute and support the findings of the District in support of this Resolution.

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 _____ 2008.

Michael Winn, President
Nipomo Community Services District
Board of Directors

ATTEST:

APPROVED AS TO FORM

Donna K. Johnson
Secretary to the Board

Jon S. Seitz
District Legal Counsel