

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: NOVEMBER 7, 2008

**AGENDA ITEM**  
**D-3**  
**NOVEMBER 12, 2008**

ACCEPT QUARTERLY FINANCIAL REPORT

**ITEM**

ACCEPT QUARTERLY FINANCIAL REPORT [RECOMMEND APPROVAL]

**BACKGROUND**

The District's fiscal year is now 25% complete. The consolidated operating revenues are at 29.94% of the budget, operating expenditures are at 20.02% of the budget and general and administrative expenditures are at 18.66% of the budget.

Attached are the following which provide an overview of the first three months of the fiscal year:

Page 1	Summary of Approved Budget Amendments
Page 2	Summary of Revenues, Expenses and Cash Balances by Fund
Page 3	Consolidated Balance Sheet
Page 4-5	Consolidated Income Statement
Page 6-7	Graphs for Consolidated Revenues and Expenses
Page 8-11	Graphs for major funds (Town Water, Town Sewer, Blacklake Water and Blacklake Sewer)

Detailed information by fund is available in the office.

**RECOMMENDATION**

It is recommended that your Honorable Board accept and direct Staff to file the quarterly financial report for the first quarter of fiscal year 2008-2009.

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NIPOMO COMMUNITY SERVICES DISTRICT  
 SUMMARY OF APPROVED BUDGET AMENDMENTS  
 FIRST QUARTER ENDING SEPTEMBER 30, 2008

DATE	DESCRIPTION	FUNDS	APPROVED BUDGET	APPROVED AMENDMENT	AMENDED BUDGET
	NONE				

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NIPOMO COMMUNITY SERVICES DISTRICT  
SUMMARY OF REVENUES AND EXPENSES BY FUND  
THREE MONTHS ENDING SEPTEMBER 30, 2008

FUND	FUND #	YTD REVENUES	YTD EXPENSES	FUNDED REPLACEMENT	YTD SUPRLUS/ (DEFICIT)
Administration	110	91,659	(91,659)	0	0
Town Water	120	1,002,119	(369,225)	(187,500)	445,394
Town Sewer	130	298,956	(241,445)	(31,250)	26,261
Blacklake Water	140	91,492	(85,165)	0	6,327
Blacklake Sewer	150	41,569	(66,295)	0	(24,726)
Blacklake Street Lighting	200	273	(3,648)	0	(3,375)
Street Landscape Maintenance	250	114	(1,167)	0	(1,053)
Solid Waste	300	18,697	(13,989)	0	4,708
Drainage Maintenance	400	435	0	0	435
Supplemental Water Capacity Fees	500	27,166	0	0	27,166
Property Taxes	600	24,834	(27,040)	0	(2,206)
Town Water Capacity Fees	700	33,675	(1,003)	0	32,672
Town Sewer Capacity Fees	710	36,057	0	0	36,057
Funded Replacement-Town Water	800	16,896	0	187,500	204,396
Funded Replacement-Town Sewer	810	22,725	0	31,250	53,975
Funded Replacement-BL Water	820	1,884	0	0	1,884
Funded Replacement-BL Sewer	830	0	0	0	0
Town Sewer Sinking Fund	880	57,949	0	0	57,949
<b>TOTAL</b>		<b>1,766,500</b>	<b>(900,636)</b>	<b>0</b>	<b>865,864</b>

CASH BALANCE OF EACH FUND  
AS OF SEPTEMBER 30, 2008

FUND	FUND #	CASH BALANCE 9/30/2008
Administration	110	18,876
Town Water	120	2,020,735
Town Sewer	130	361,765
Blacklake Water	140	60,112
Blacklake Sewer	150	(16,481)
Blacklake Street Lighting	200	36,656
Street Landscape Maintenance	250	15,606
Solid Waste	300	547,689
Drainage Maintenance	400	5,480
Supplemental Water	500	1,733,727
Property Taxes (incl COP)	600	3,283,409
Town Water Capacity Fees	700	4,850,087
Town Sewer Capacity Fees	710	5,189,833
Funded Replacement-Town Water	800	2,530,788
Funded Replacement-Town Sewer	810	3,303,361
Funded Replacement-BL Water	820	271,841
Funded Replacement-BL Sewer	830	(134,321)
Sinking Fund-Town Sewer	880	57,750
Funds held by Trustee		249,709
<b>TOTAL</b>		<b>24,386,622</b>

NIPOMO COMMUNITY SERVICES DISTRICT  
BALANCE SHEET - CONSOLIDATED  
AS OF SEPTEMBER 30, 2008

ASSETS

Cash and Cash Equivalents	24,386,622.49
Accounts Receivable - Utility Billing	305,616.00
Unbilled Accounts Receivable	652,500.00
Property, Plant & Equipment	40,027,356.89
Accumulated Depreciation	(12,253,188.72)
Prepaid Expenses	34,452.51
Accrued Interest Receivable	153,630.41
Reservation Fee	37,500.00
Loan Fees - SRF Loan	256,834.00
Accumulated Amortization - SRF Loan Fees	(162,957.16)
Revenue COP's Bond Discount	178,100.60
Accumulated Amortization - Bond Discount	(30,425.28)
<b>Total Assets</b>	<b>53,586,041.74</b>

LIABILITIES

Accounts Payable	287,159.50
Refunds Payable	604.86
Construction Meter Deposits	8,500.00
Compensated Absences Payable	61,802.00
Deposits	60,997.82
Payroll Taxes Payable	(3,942.38)
Deposit - Maintenance Guarantee	3,657.55
Deposit - Pomeroy Rd Water Line	24,170.00
Deferred Revenue	6,300.00
Revenue Bonds - Current Portion	10,000.00
SRF Loan #110 - Current Portion	34,868.35
SRF Loan #120 - Current Portion	42,180.25
Revenue COP's-Current Portion	85,000.00
Revenue Bonds Payable - Long Term Portion	110,000.00
SRF Loan #110 Payable - Long Term Portion	348,683.50
SRF Loan #120 Payable - Long Term Portion	463,982.75
Revenue COP's - Long Term Portion	3,510,000.00
<b>Total Liabilities</b>	<b>5,053,964.20</b>

FUND EQUITY

Contributed Capital - Assets	11,004,855.78
Contributed Capital - Capacity Fees (CY)	17,429.25
Contributed Capital - Supplemental Water Fees (CY)	46,705.75
Contributed Capital - Capacity Fees (PY)	17,312,497.62
Contributed Capital - Supplemental Water Fees (PY)	2,947,664.75
Contributed Capital - Right of Way	70,100.00
Contributed Capital - Assessment Districts	1,290,867.00
Contributed Capital - Grants	2,767,269.66
Retained Earnings-Reserved (Debt Service)	15,600.00
Retained Earnings-Reserved (Emergencies)	50,000.00
Retained Earnings-Reserved (Sewer Grant)	315,000.00
Retained Earnings-Reserved (Funded Replacement)	6,694,880.14
Retained Earnings - Unreserved	5,133,343.14
CURRENT EARNINGS	865,864.45
<b>Total Fund Equity</b>	<b>48,532,077.54</b>
<b>Total Liabilities and Fund Equity</b>	<b>53,586,041.74</b>

UNAUDITED

NIPOMO COMMUNITY SERVICES DISTRICT  
 INCOME STATEMENT - CONSOLIDATED  
 FOR THE PERIOD ENDING SEPTEMBER 30, 2008

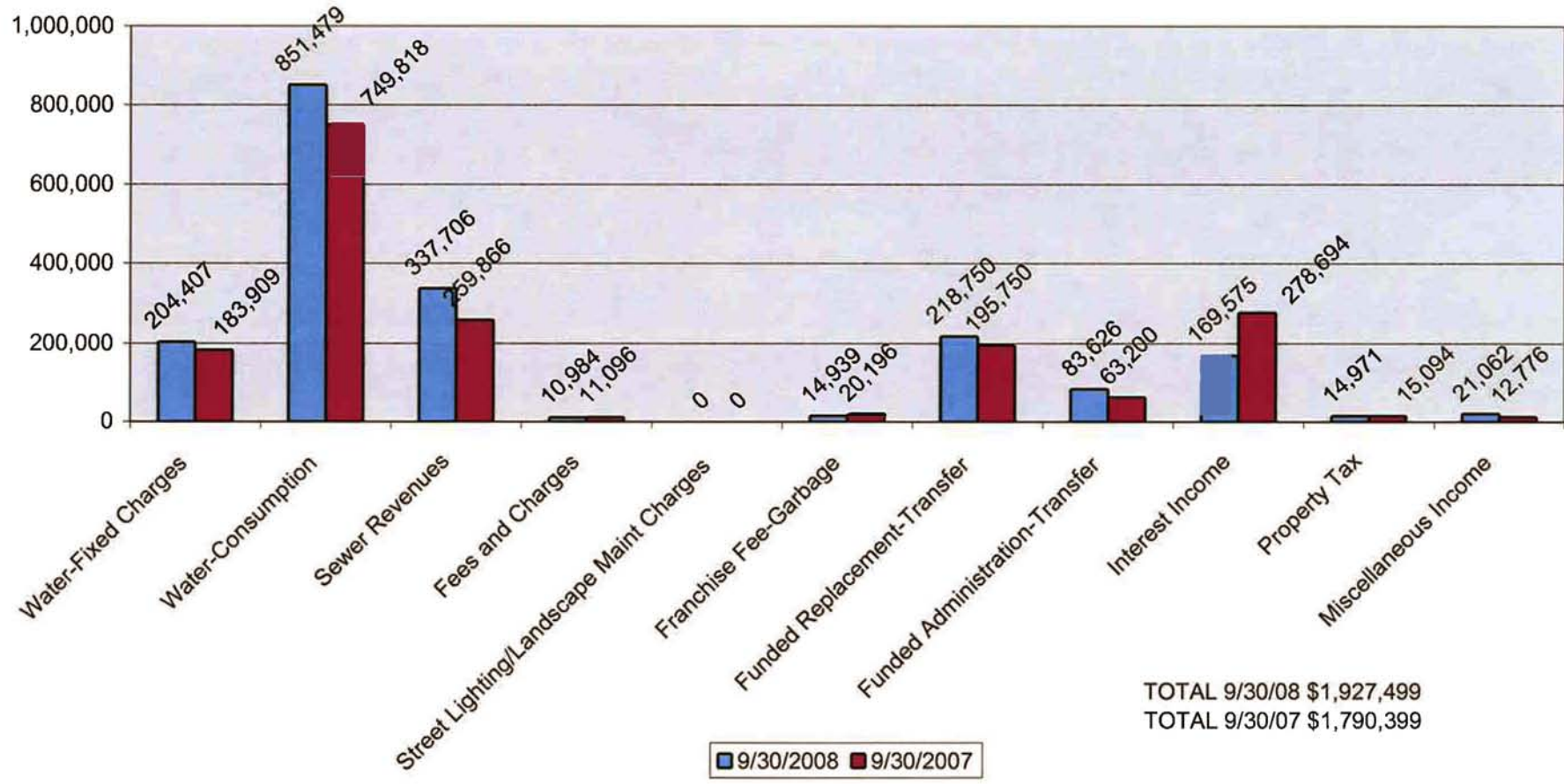
	YTD ACTUAL	ANNUAL BUDGET	% OF BUDGET
<b>REVENUES</b>			
Water - Fixed Charge	204,407.33	785,000.00	26.04 %
Water - Usage	839,011.14	2,034,000.00	41.25 %
Construction Water	6,774.54	0	.00 %
Fire System Fee	1,185.50	3,800.00	31.20 %
Emergency Intertie Water Sales - SCWC	4,509.92	0	.00 %
Sewer Charges	337,706.61	1,446,500.00	23.35 %
Fees and Penalties	10,884.73	38,400.00	28.35 %
Meters	0	6,875.00	.00 %
Plan Check & Inspection Fees	100.00	500.00	20.00 %
Franchise Fees	14,939.47	91,200.00	16.38 %
Miscellaneous Income	21,059.55	33,700.00	62.49 %
Street Lighting Charges	0	18,836.00	.00 %
Landscape Maintenance Dist Charges	0	10,857.00	.00 %
Operating Transfers In - Funded Administration	83,625.72	477,131.00	17.53 %
Operating Transfers In - Funded Replacement	218,749.98	875,000.00	25.00 %
<b>Total Revenues</b>	<b>1,742,954.49</b>	<b>5,821,799.00</b>	<b>29.94 %</b>
<b>OPERATIONS AND MAINTENANCE</b>			
Wages and Benefits	113,421.98	711,525.00	15.94 %
Electricity	106,534.48	557,120.00	19.12 %
Natural Gas	24,844.95	86,000.00	28.89 %
Water	393.84	3,150.00	12.50 %
Chemicals	7,613.61	31,000.00	24.56 %
Lab Tests	21,867.76	78,000.00	28.04 %
Operating Supplies	10,628.14	150,000.00	7.09 %
Outside Services	14,012.33	44,000.00	31.85 %
Permits and Operating Fees	8,122.16	17,500.00	46.41 %
Repairs and Maintenance	91,480.25	395,600.00	23.12 %
Engineering	8,463.05	13,500.00	62.69 %
Fuel	7,700.22	39,670.00	19.41 %
Paging Service	1,511.88	7,205.00	20.98 %
Meters - New Installation	0	20,000.00	.00 %
Meters - Replacement Program	0	44,500.00	.00 %
Uniforms	1,882.59	7,340.00	25.65 %
Landscape Maintenance & Water	754.92	3,580.00	21.09 %
Clean Up	161.39	11,000.00	1.47 %
Conservation Program	8,554.50	138,975.00	6.16 %
Street Sweeping/Trash Collection	5,999.36	25,100.00	23.90 %
Operating Transfers Out - Funded Replacement	218,749.98	875,000.00	25.00 %
<b>Subtotal - O &amp; M</b>	<b>652,697.39</b>	<b>3,259,765.00</b>	<b>20.02 %</b>
<b>GENERAL AND ADMINISTRATIVE</b>			
Wages and Benefits	138,171.52	638,025.00	21.66 %
Utilities	1,856.48	28,000.00	6.63 %
Audit	3,585.00	8,500.00	42.18 %

NIPOMO COMMUNITY SERVICES DISTRICT  
 INCOME STATEMENT - CONSOLIDATED  
 FOR THE PERIOD ENDING SEPTEMBER 30, 2008

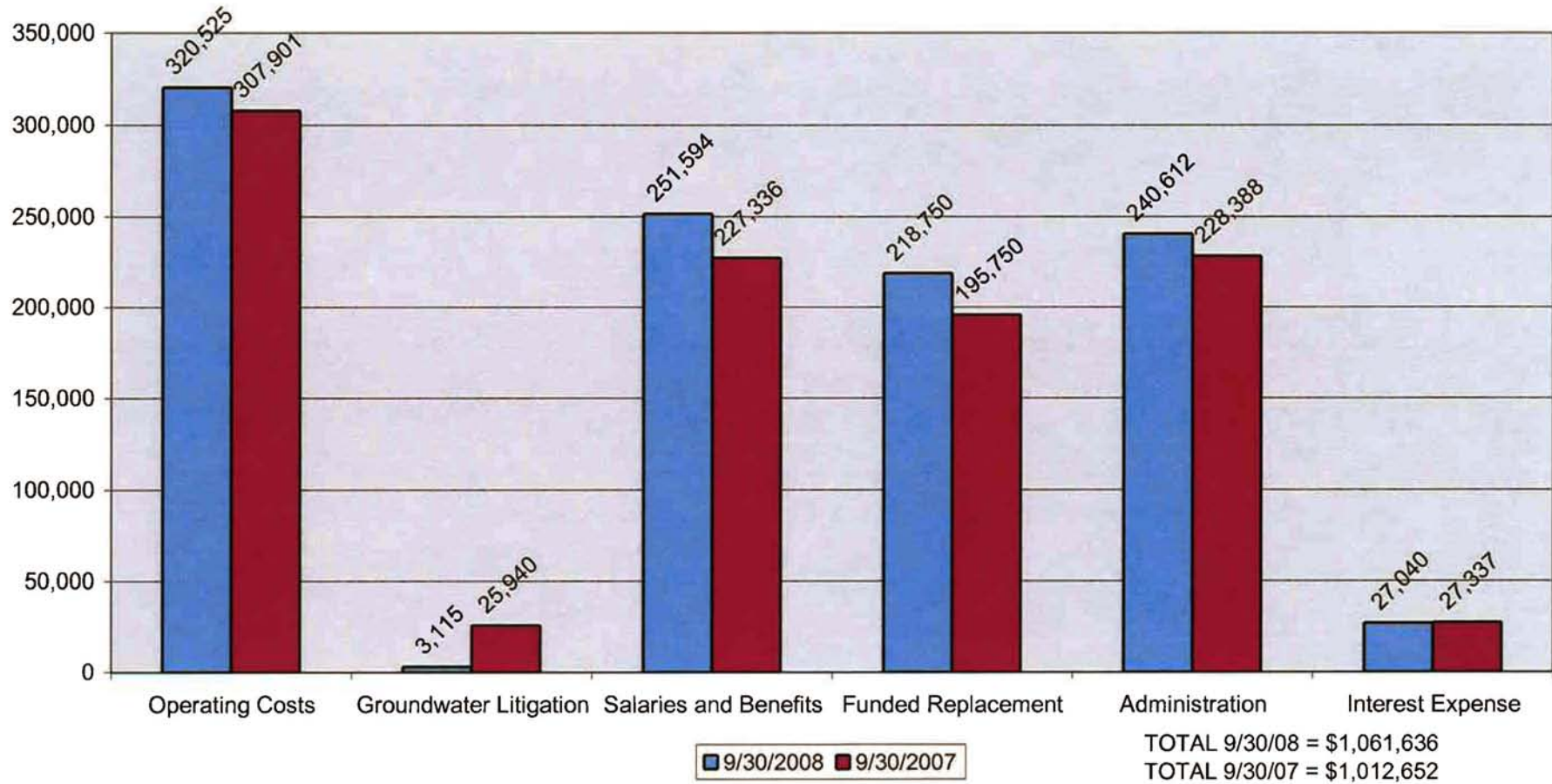
	YTD ACTUAL	ANNUAL BUDGET	% OF BUDGET
Bank Charges and Fees	295.00	2,100.00	14.05 %
Computer Expense	11,578.86	47,000.00	24.64 %
Director Fees	4,600.00	25,200.00	18.25 %
Dues and Subscriptions	753.00	12,000.00	6.28 %
Education and Training	2,006.79	35,000.00	5.73 %
Elections	0	5,000.00	.00 %
Insurance - Liability	10,176.00	42,000.00	24.23 %
LAFCO Funding	19,756.00	19,756.00	100.00 %
Landscape and Janitorial	3,240.00	14,320.00	22.63 %
Legal - General Counsel	24,682.02	132,000.00	18.70 %
Legal - Special Counsel	1,367.54	0	.00 %
Legal - Water Counsel	3,115.20	90,000.00	3.46 %
Professional Services	43,162.97	235,000.00	18.37 %
Miscellaneous	1,181.35	5,500.00	21.48 %
Newsletters & Mailers	1,191.60	11,000.00	10.83 %
Office Supplies	8,940.85	19,000.00	47.06 %
Outside Service	2,857.22	24,500.00	11.66 %
Postage	4,471.58	20,000.00	22.36 %
Public Notices	1,113.00	13,350.00	8.34 %
Repairs and Maintenance	5,970.53	113,590.00	5.26 %
Property Taxes	0	1,065.00	.00 %
Telephone	2,084.92	7,500.00	27.80 %
Travel and Mileage	2,115.60	20,000.00	10.58 %
Operating Transfer Out - Funded Administration	83,625.72	477,131.00	17.53 %
<b>Subtotal - G &amp; A</b>	<b>381,898.75</b>	<b>2,046,537.00</b>	<b>18.66 %</b>
<b>NON OPERATING INCOME</b>			
Interest Income	169,574.68	645,110.00	26.29 %
Property Tax Revenues	14,971.42	508,140.00	2.95 %
Town Sewer Sinking Fund Transfer In	57,750.00	231,000.00	25.00 %
<b>Subtotal - Non Operating Income</b>	<b>242,296.10</b>	<b>1,384,250.00</b>	<b>17.50 %</b>
<b>NON OPERATING EXPENSES</b>			
Interest Expense	27,040.00	167,424.00	16.15 %
Town Sewer Transfer Out	57,750.00	231,000.00	25.00 %
<b>Subtotal - Non Operating Expenses</b>	<b>84,790.00</b>	<b>398,424.00</b>	<b>21.28 %</b>
<b>Net Surplus/(Deficit)</b>	<b>865,864.45</b>	<b>1,501,323.00</b>	<b>57.67 %</b>

UNAUDITED

**NIPOMO COMMUNITY SERVICES DISTRICT  
 COMBINED REVENUES FOR ALL FUNDS  
 THREE MONTHS ENDED  
 SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**

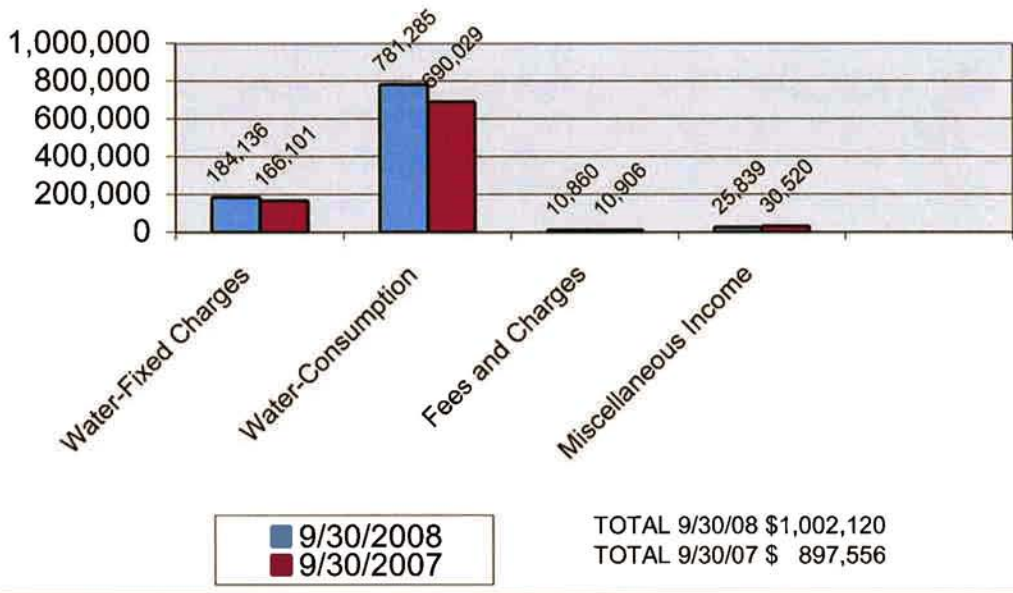


**NIPOMO COMMUNITY SERVICES DISTRICT  
 COMBINED EXPENDITURES FOR ALL FUNDS  
 THREE MONTHS ENDED  
 SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**





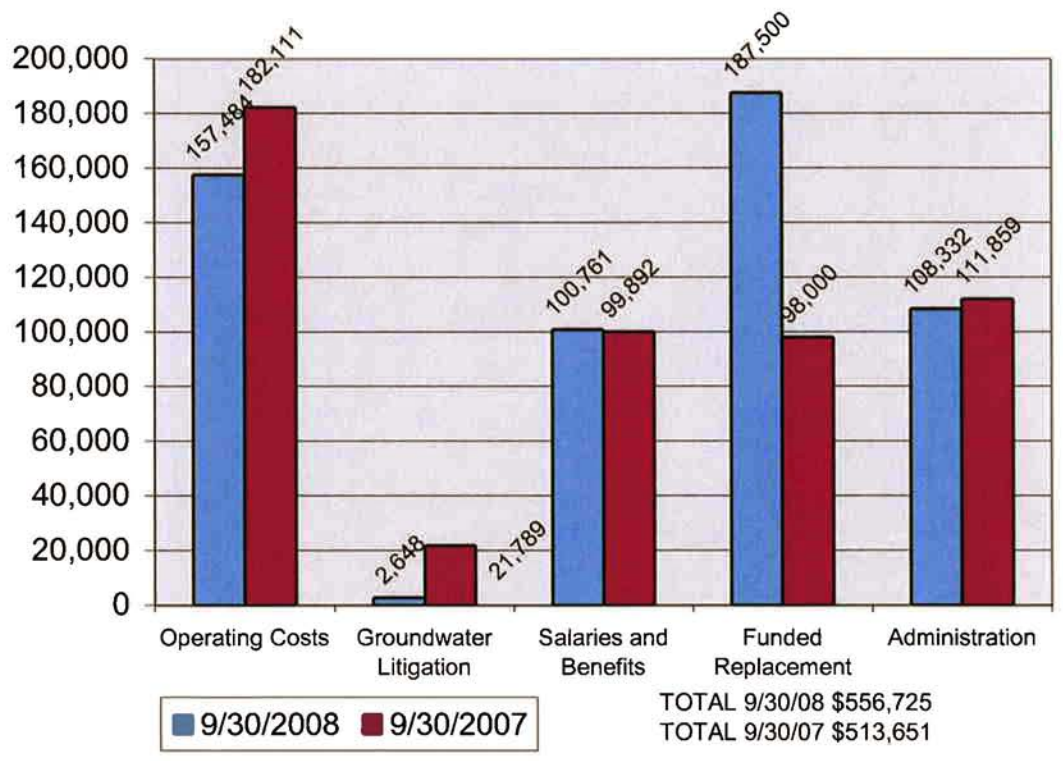
**NIPOMO COMMUNITY SERVICES DISTRICT  
TOWN WATER FUND #120  
REVENUES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



■ 9/30/2008  
■ 9/30/2007

TOTAL 9/30/08 \$1,002,120  
 TOTAL 9/30/07 \$ 897,556

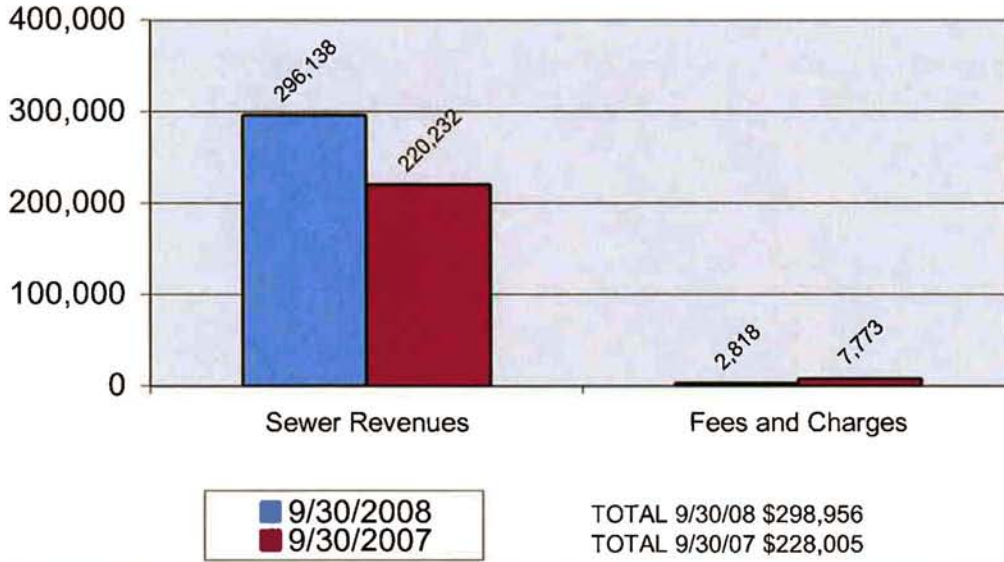
**NIPOMO COMMUNITY SERVICES DISTRICT  
TOWN WATER FUND #120  
EXPENDITURES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



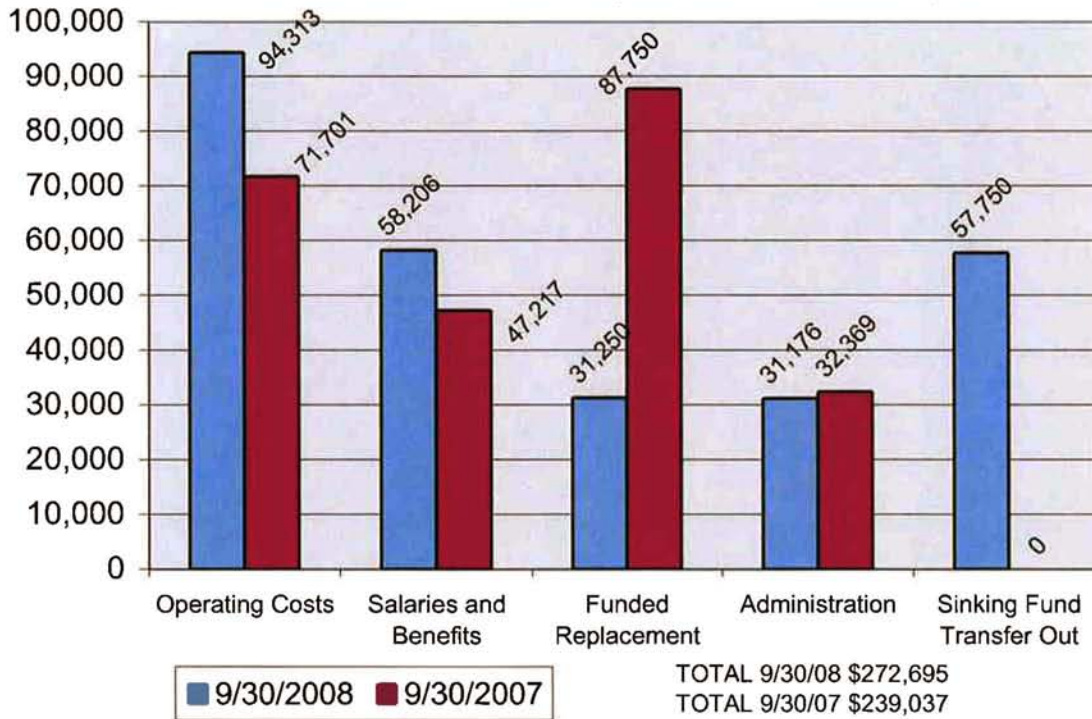
■ 9/30/2008    ■ 9/30/2007

TOTAL 9/30/08 \$556,725  
 TOTAL 9/30/07 \$513,651

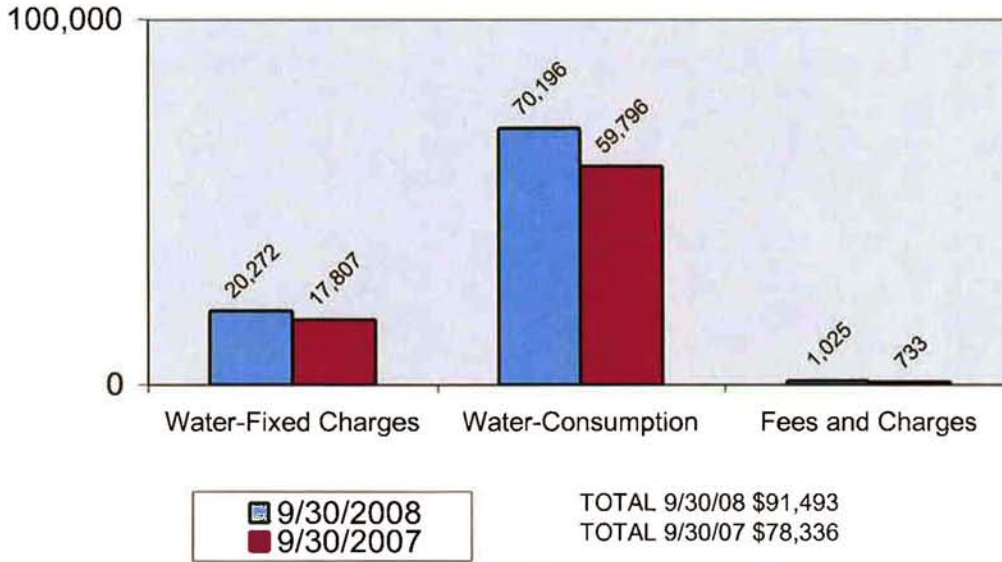
**NIPOMO COMMUNITY SERVICES DISTRICT  
TOWN SEWER FUND #130  
REVENUES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



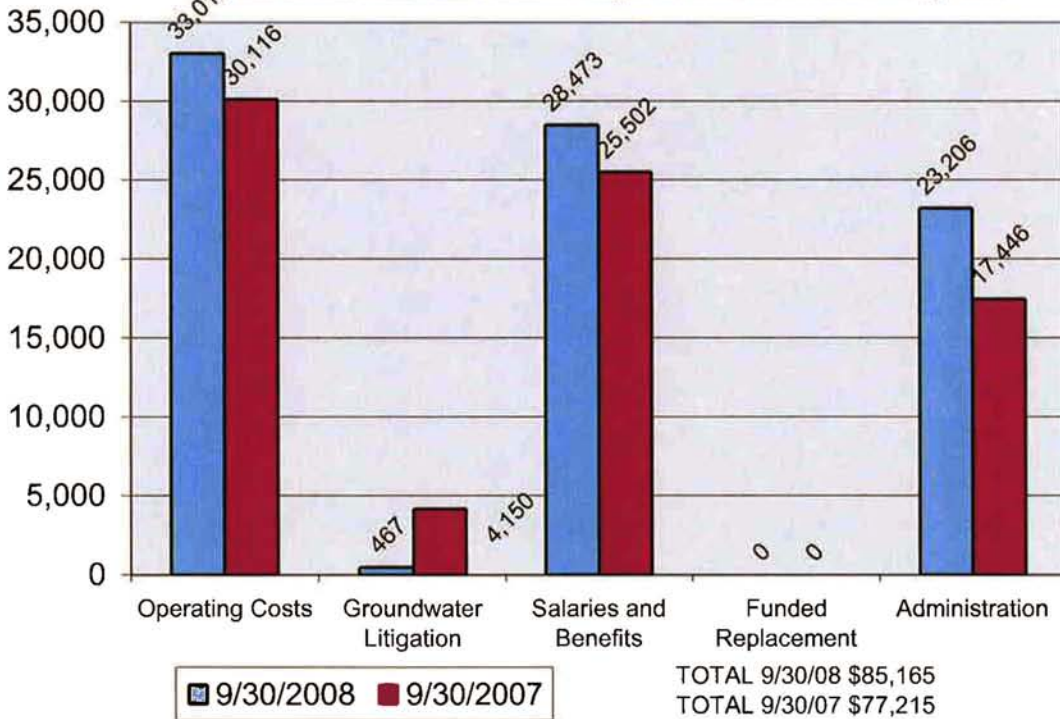
**NIPOMO COMMUNITY SERVICES DISTRICT  
TOWN SEWER FUND #130  
EXPENDITURES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



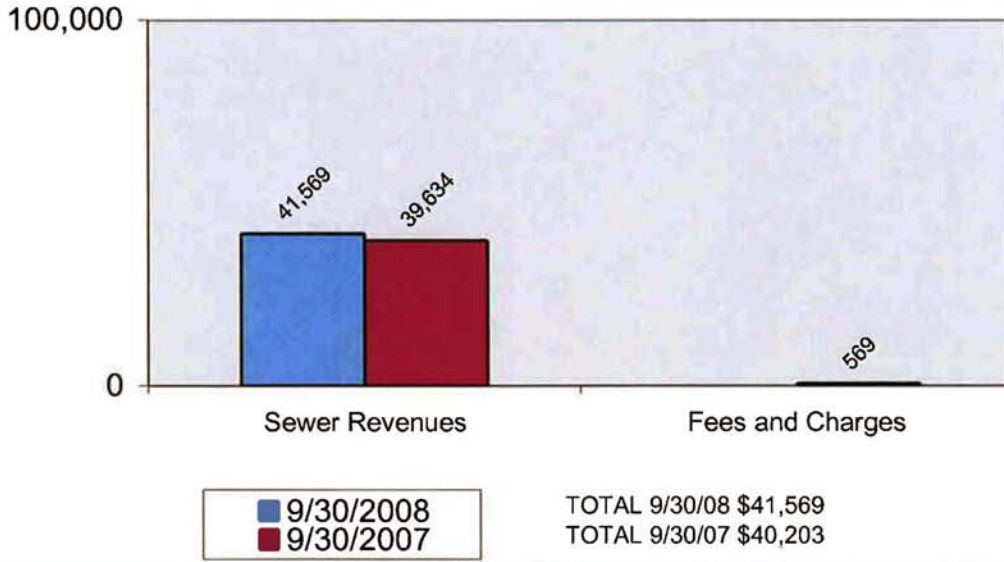
**NIPOMO COMMUNITY SERVICES DISTRICT  
BLACKLAKE WATER FUND #140  
REVENUES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



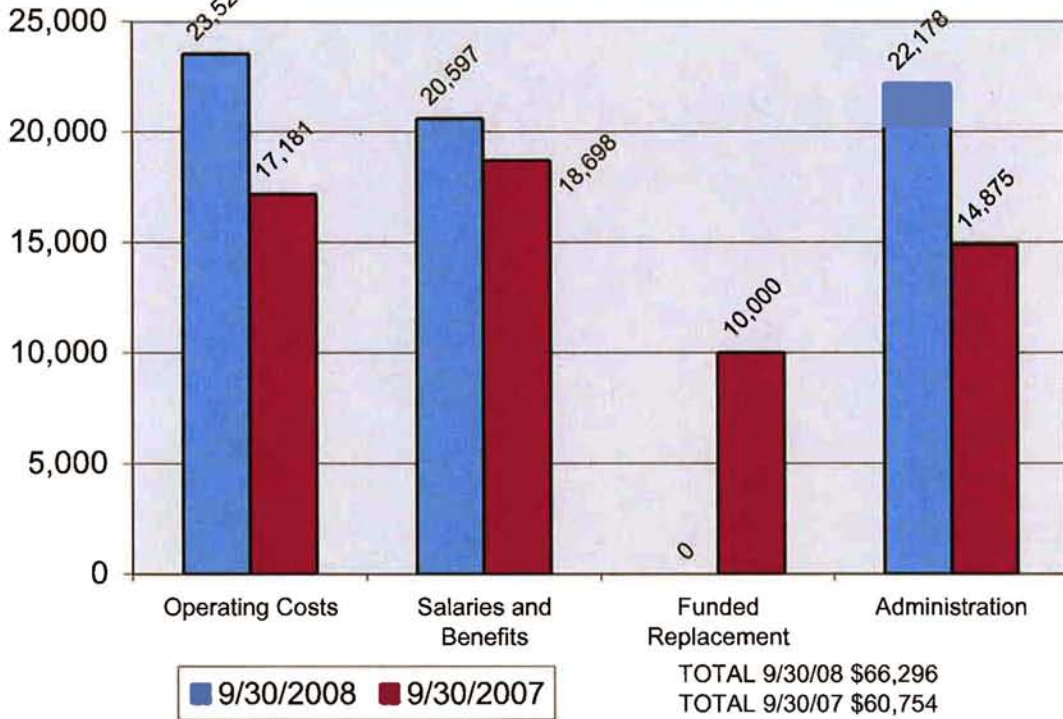
**NIPOMO COMMUNITY SERVICES DISTRICT  
BLACKLAKE WATER FUND #140  
EXPENDITURES-SEPTEMBER 30,, 2008 AND SEPTEMBER 30, 2007**



**NIPOMO COMMUNITY SERVICES DISTRICT  
BLACKLAKE SEWER FUND #150  
REVENUES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



**NIPOMO COMMUNITY SERVICES DISTRICT  
BLACKLAKE SEWER FUND #150  
EXPENDITURES-SEPTEMBER 30, 2008 AND SEPTEMBER 30, 2007**



TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: NOVEMBER 6, 2008

**AGENDA ITEM  
D-4  
NOVEMBER 12, 2008**

**AUTHORIZE RETENTION OF STRUCTURAL ENGINEER TO DESIGN  
MODIFICATIONS TO IMPROVE MIXING AT STANDPIPE WATER STORAGE  
RESERVOIR**

**ITEM**

Authorize execution of task order with Cannon to design civil and structural modifications to the existing standpipe water storage reservoir inlet/outlet piping to improve mixing within the tank [RECOMMEND APPROVAL].

**BACKGROUND**

The District's 2007 Water and Sewer Master Plan Update recommended that the inlet/outlet piping of the existing standpipe water storage reservoir be modified to increase mixing, reduce thermal stratification, reduce potential for taste and odor problems, and reduce potential for loss of chlorine residual within the tank. The recommended solution was to reroute the tank inlet to discharge at the top of the tank instead of the bottom of the tank.

Staff obtained a proposal from Cannon to design the necessary structural and civil modifications to the tank inlet piping. The scope of work includes preparation of a topographic survey of the existing site conditions, structural design of the new inlet piping, related support system and attachment to existing tank, preparation of construction documents and preparation of a construction cost estimate. The tentative schedule is to complete the work within 42 days of the notice to proceed. The proposed fee is \$22,240. Attached is a copy of the proposal.

The FY 08-09 Budget includes \$150,000 in the Town Water Capacity Charge (Fund #700) for this project.

**RECOMMENDATION**

Staff recommends that your Honorable Board authorize the General Manager to execute a task order with Cannon to design civil and structural modifications to the existing standpipe water storage reservoir inlet/outlet piping for a not-to-exceed amount of \$22,240.

**ATTACHMENTS**

- Cannon Proposal Dated October 17, 2008

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2008\STANDPIPE MODIFICATION.DOC



October 17, 2008

Mr. Bruce Buel  
General Manager  
Nipomo Community Services District  
148 S. Wilson Street  
Nipomo, CA 93444

**PROJECT: NCS D STANDPIPE TANK MODIFICATIONS**

Dear Bruce:

This proposal presents our scope of work and fee estimate to provide engineering and survey services for design modifications to the Standpipe Water Tank. The goal of this effort is to prepare construction documents for use by the District to effectuate inlet piping modifications that will increase mixing and reduce thermal stratification, potential taste & odor problems, and loss of chlorine residual.

Our scope includes civil and structural design modifications to the existing standpipe tank inlet/outlet piping along with site specific topographic survey. The modifications will include civil design for rerouting of the existing inflow line and structural design of a pipe support system to allow for the inlet pipe to discharge at the top of the tank. This top-in, bottom-out design will encourage mixing within the tank and improve water exchange and turnover.

**SCOPE OF WORK**

**TASK 1 – 30% DESIGN**

A topographic survey is needed to provide the existing condition of the site for design purposes. We will prepare a topographic survey of the project site in sufficient detail to complete the design. We anticipate including the following information as part of the topographic survey:

- Coordinates will be based on California Coordinate System Zone 5 NAD83 Datum.
- Elevations will be based on North American Vertical Datum of 1988 (NAVD88) and referenced to project benchmark per construction plans for 1.0 Million Gallon Standpipe and Water Transmission Lines, WO# 91:024, dated June 16<sup>th</sup>, 1992.
- One permanent benchmark will be set on site, with the description and elevation to the nearest one-hundredth of a foot noted on survey drawing.
- Contours represented with 5-foot index and 1-foot intermediate.
- Location of general surface improvements and visible utilities within the project site.

1050 Southwood Drive, San Luis Obispo, CA 93401  
T 805.544.7407 F 805.544.3863  
CannonCorp.us



- Location of center-line of existing pipelines and valve assemblies. We will provide a "pipe centerline axis model" of stand-pipe and over-flow pipe structures together with number associated photo images of the location point.
- Location of stairway (shot taken at outside edge of tank) at bottom, mid-point and top of stairway, and location of centerline of man-ways at outside edge of tank.

Upon completion of the topographic survey we will prepare 30% design drawings showing existing pipe line network and proposed pipe line alignments for the new standpipe inlet. We will provide structural design that will analyze the vertical filled pipe for dead and lateral loads, design for gravity loads using full height vertical column supports for the pipe to transfer loads to new foundation pads, and we will design for lateral loads using attachments to the tank.

We will provide a drawing (or drawings) with general structural notes, an elevation of the pipe support system with referenced section cuts, and details for the foundations, pipe support connections, and attachments to the tank at a design detail level of 30%. The added support pad(s) will bear on soil above the existing tank pad, which extends out 9-ft past the perimeter of the tank.

Upon completion of the 30% design we will attend one meeting with NCSD staff to review the submittal.

#### **TASK 2 – 75% DESIGN**

We will incorporate revisions from our meeting on the 30% design submittal into the 75% design package. We will expand on plan detail of the pipe installation and include details for any trench/excavation necessary to install the new pipe line. We will include additional notes and details for constructing the new standpipe tank inlet piping. Detailed horizontal and vertical control for the pipe alignment will be provided during this phase of design. We will prepare an Opinion of Probable Construction Cost estimate and Technical Specifications for your review with the 75% design submittal.

Upon completion of the 75% design we will attend one meeting with NCSD staff to review the submittal.

#### **TASK 3 – FINAL DESIGN**

We will incorporate revisions from the 75% design submittal and appropriate information gathered from our meeting into the final design package. We will add remaining detail to allow for construction of the standpipe inlet. We will prepare a final construction cost estimate and final technical specifications based on your comments and revisions made to the plans during the final design phase.



**ASSUMPTIONS & EXCLUSIONS**

The District will provide copies of applicable documents related to existing utilities within the project site, including record drawings from previous projects in the area.

Services that may accompany a project of this type are excluded from this Scope of Work at this time; these services include the following and may be added to our Scope of Work on a time and materials basis:

- Title Reports, Survey monumentation, records of survey, and legal descriptions and exhibits;
- This Survey does not include locating property boundary lines. Should it be necessary to plot or flag the property lines for this project, this work will be performed as an addendum to this proposal or through separate Additional Services Agreement;
- Bid Support, Construction Staking, Construction Management or Construction Support Services;
- Underground utility relocation designs and utility potholing;
- Project meetings (other than those described in the Scope of Work);
- Permitting, including local agency liaison, application and permit processing and tracking, and permit fees;
- NPDES compliance reporting, Storm Water Pollution Prevention Plans (SWPPP), and Erosion and Sediment Control Drawings;
- Archeological, botanical, biological, landscaping, and geotechnical services; and
- Additional property research or field cadastral surveying other than described above; (these services will be performed through a separate services agreement with the City.)

Additional work will be billed on a time and materials basis or as an addendum to this proposal with prior written authorization from the City.

**FEES:**

Fees are based on hourly rates and do not include City or County checking and recording fees, or title company fees. All project meetings other than those stated above will be billed on a Time and Materials basis.

Task 1 – 30% Preliminary Design	\$13,350
Task 2 – 75% Design	\$5,200
Task 3 – 100% Final Design	\$3,440
Reimbursables	<u>\$250</u>
<b>TOTAL FEES</b>	<b>\$22,240</b>





**ACCEPTANCE AND TERMS:**

Cannon Associates bills monthly for work in progress and payment is due within 10 calendar days of receipt of the bill. Overdue amounts will be surcharged at 18 percent per annum or 1.5 percent monthly.

If this meets with your approval, please return the signed Acceptance of Proposal which will serve as our notice to proceed.

The fees quoted in this proposal are valid for 60 days from this date. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry P. Kraemer", is written over a horizontal line.

Larry P. Kraemer, PE  
Director, Public Works Division  
C 44813

Attachments: Project Schedule



Cost Summary for Standpipe Modifications  
Nipomo Community Services District

	Associate Civil Engineer	Director, Public Works Division	Civil Engineer III	Chief Structural Engineer	Structural Engineer IV	Senior Survey Consultant	Survey Technician IV	Two-Man Survey Crew	Total Hours	Fee Estimate Subtotal	Reimbursable Expenses	Fee Estimate TOTAL
<b>RATES</b>	\$130	\$160	\$110	\$145	\$110	\$160	\$90	\$210				
	<b>HOURS</b>											
Task 1. 30% Design	12	5	18	7	30	2	6	18	99	\$13,350		\$13,350
Task 2. 75% Design	17	5	9	3	7				41	\$5,200		\$5,200
Task 3. Final Design	6	3	9	3	7				28	\$3,440		\$3,440
Reimbursables											\$250	\$250
Total Hours Per Person:	35	13	36	13	44	2	6	18	167			
											<b>TOTAL:</b>	<b>\$22,240</b>

ID	Task Name	Start	Finish	Duration	November							December				J		
					10/12	10/19	10/26	11/2	11/9	11/16	11/23	11/30	12/7	12/14	12/21		12/28	
1	<b>NCSD Stand Pipe Modifications</b>	Mon 10/27/08	Tue 12/23/08	42 days														
2	***Notice to Proceed***	Mon 10/27/08	Mon 10/27/08	0 days														
3	<b>Task 1. 30% Design</b>	Mon 10/27/08	Mon 11/24/08	21 days														
4	Survey	Mon 10/27/08	Thu 11/13/08	14 days														
5	Structural Engineering	Mon 11/17/08	Fri 11/21/08	5 days														
6	Civil Design (Plans)	Mon 11/17/08	Fri 11/21/08	5 days														
7	Progress Meeting #1	Mon 11/24/08	Mon 11/24/08	1 day														
8	<b>Task 2. 75% Design</b>	Tue 11/25/08	Tue 12/9/08	11 days														
9	Structural Engineering	Tue 11/25/08	Mon 12/8/08	10 days														
10	Civil Design (Plans, Specs, Cost Estimates)	Tue 11/25/08	Mon 12/8/08	10 days														
11	Progress Meeting #2	Tue 12/9/08	Tue 12/9/08	1 day														
12	<b>Task 3. Final Design</b>	Wed 12/10/08	Tue 12/23/08	10 days														
13	Structural Engineering	Wed 12/10/08	Tue 12/16/08	5 days														
14	Civil Design (Plans, Specs, Cost Estimates)	Wed 12/10/08	Tue 12/23/08	10 days														
15	Design Complete	Tue 12/23/08	Tue 12/23/08	0 days														

Project: NCSD Standpipe Tank Mods. Date: Fri 10/17/08	Task		Rolled Up Task		Project Summary	
	Split		Rolled Up Split		External Milestone	
	Progress		Rolled Up Milestone		Deadline	
	Milestone		Rolled Up Progress			
	Summary		External Tasks			

\\bender\public\proj\2008\081006\1 Project Administration\civil\_08\_10\_17\_Schedule.mpp

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: NOVEMBER 7, 2008

**AGENDA ITEM**  
**D-5**  
**NOVEMBER 12 2008**

**REVIEW PERSONNEL POLICY AMENDMENTS DESIGNATING CERTAIN  
POSITIONS AS SENSITIVE POSITIONS**

**ITEM**

Review Personnel Policy amendments designating certain positions with the sensitive position designation.

**BACKGROUND**

NCSD Personnel Policy currently requires a pre-employment drug screening for all positions.

A recent court decision *Lanier v City of Woodburn* case by the Federal Ninth Circuit Court of Appeal found that mandatory pre-employment drug testing may be unconstitutional for many positions (See attached article for complete details). A pre-employment drug test can be given if a public employer can demonstrate that the position involves public safety or poses a significant danger to public safety. All other positions are exempt from pre-employment drug testing.

District Legal Counsel, Jon Seitz, has reviewed this information and has recommended NCSD edit the Personnel Policy to designate certain positions with the sensitive position designation and require pre-employment drug testing for those positions.

**FISCAL IMPACT**

None

**RECOMMENDATION**

Staff recommends that the Board review the proposed changes to the Personnel Policies and provide staff with proposed edits, if any, and thereon by motion:

- 1) Direct Staff to circulate the proposed amendments to the District's Personnel Policies to District employees and Directors for further comment; and
- 2) Set December 10<sup>th</sup>, 2008 for further consideration and adoption of the proposed amendments to the District's Personnel Policies.

**ATTACHMENTS**

- Article from the ACWA JPIA regarding Pre-Employment Drug Test May Be Unconstitutional
- Personnel Policy Numbers 1010, 2000 and 5070 (red-lined)

# Pre-Employment Drug Test May Be Unconstitutional

Continued from page 1

reasonable search without warrant or suspicion, and unsupported by a special need that would outweigh a reasonable expectation of privacy. The City appealed.

## Legal Analysis

At issue before the Ninth Circuit was whether the City's policy of requiring candidates to pass a pre-employment drug test was constitutional on its face and as applied to this particular candidate.

The Ninth Circuit stated that since a pre-employment drug test is a suspicionless search, it is constitutionally permissible only in very limited circumstances.

In that particular case, the City's arguments in support of its drug-testing policy were that drug abuse is one of the most serious societal problems, has an adverse impact on job performance, and must be kept away from children. The Ninth Circuit, however, held that the need for a suspicionless pre-employment drug test must be much more specific and substantial than the general existence of a societal problem.

The City invoked the fact that the library page may interact with children while manning the youth and children section of the library. The Ninth Circuit found this argument unpersuasive. It found that while Lanier may staff a youth services desk for an hour or so on an as-needed basis, there was no evidence that children's safety or security is entrusted to her, or that she was in a position to exert influence over children through continuous interaction or supervision. The Ninth Circuit distinguished the facts of this case from those in *Knox County Education Association v. Knox County Board of Education* (6<sup>th</sup> Cir. 1998) 158 F.3d 361, in which the court of appeal upheld

the county's policy of conducting suspicionless drug tests on school teachers and administrators due to the fact that people in these positions acted in lieu of parents and were charged with enforcing anti-

to California Appellate and Supreme Court rulings. California courts have long held that blanket pre-employment drug testing is acceptable. This decision establishes that in Federal Court in order for pre-employment drug testing to be constitutional, public employers must be able to demonstrate a special need for the test above and beyond the generalized interest in screening out drug users from employment.

Therefore, blanket drug testing of applicants for public employment is not going to pass constitutional muster unless the employer can demonstrate that the

position sought involves public safety or poses a significant danger to public safety.

Some guidance for how to meet the requirements of *Lanier* may be found in *Smith vs Fresno Irrigation District*, which is a California random post-employment drug test case, focusing on the issue of safety. The court determined that safety sensitive positions are subject to post employment random drug testing, finding that the position of ditch tender qualified as a safety sensitive position. In reaching its decision, the court discussed what qualifies as a safety sensitive job as follows:

These cases demonstrate that it is not the number of persons who could be injured by a drug-impaired worker that determines the constitutional validity of random drug testing. Instead, the cases focus on the degree, severity and immediacy of the harm posed. The " 'immediacy' " of the threat of injury and the fact that a single misperformed duty could have irreparable consequences have been determined to be important factors in determining the

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*The Ninth Circuit stated that since a pre-employment drug test is a suspicionless search, it is constitutionally permissible only in very limited circumstances.*

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drug laws in schools. Other job positions that the Ninth Circuit deemed sufficiently significant to public safety to warrant suspicionless drug testing included railway car operator, armed interdiction of illegal drugs, work in a nuclear power facility, work involving matters of national security, work involving the operation of natural gas and liquefied natural gas pipelines, work in the aviation industry, and work involving the operation of dangerous instrumentalities, such as trucks that weigh more than 26,000 pounds, that are used to transport hazardous materials, or that carry more than fourteen passengers at a time.

However, in *Lanier* the court found that the library did not sufficiently establish that the position of library page amounted to a safety or security sensitive job warranting a drug test in the absence of suspicion. Thus, the requirement of a pre-employment drug test for Lanier's position was declared unconstitutional.

## Application

This decision is in stark contrast

safety sensitivity of a job. Irremediable consequences result when an employee is not able to rectify his or her mistake and the coworkers of the employee have no opportunity to intervene before harm occurs.

We also reject plaintiff's assertion that his coworkers' safety was adequately assured by the fact a supervisory employee always worked in his construction and maintenance crew. Plaintiff contends the opportunity to scrutinize a worker in his day-to-day activities is an adequate remedy for the District's safety concerns. We disagree. As the United States Supreme Court noted, a drug-impaired individual will seldom display any outward signs detectable by the layperson.

The *Smith* court also referenced the trial court's reliance on Cal. Admin. Code tit. 2, § 599.961, which defines "sensitive positions" in which drugs and alcohol could endanger the health and safety of others. The regulation describes such positions as follows:

(1) Their duties involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; and

(2) errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others; and

(3) employees in these positions work with such independence, or, perform such tasks that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

### Recommendations

At this point, this case is good

federal law applicable to California public agencies. We recommend that the JPIA advise its members that a pre-employment drug test for a non-safety or security related job position without "special need" may be found unconstitutional, sub-

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*We recommend that the JPIA advise its members that a pre-employment drug test for a non-safety or security related job position without "special need" may be found unconstitutional, subjecting the agency to legal exposure.*

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jecting the agency to legal exposure. We would recommend that pre-employment drug testing now be conducted only on positions which the District determines are safety or security sensitive in nature. In making that determination, some objective guidance can be found in the *Smith* decision and the definitions found in 2 CCR §599.961, although there is no guarantee that a federal court will necessarily agree.

We recommend that each District review its job descriptions in advance of pre-employment testing to identify safety and security sensitive positions and define them as such in their job description in advance of performing pre-employment drug and alcohol tests.

As always, a new decision which impacts the human resources operations of the members presents an excellent opportunity for an annual review of job descriptions and policies.

*This legal opinion provided by: Neal Meyers and Golnar Fozie from Daley & Heft and Rob Greenfield from the Law Offices of Robert Greenfield*

## The Finance Department Welcomes A New Employee

The JPIA's Finance Department is enjoying the addition of its latest employee. Bobbette Wells joined the Finance Department as the Administrative Assistant reporting to the Chief Financial and Operations Officer, Andy Sells. Bobbette comes to the JPIA with many years of administrative support and office management experience and will be assuming many new responsibilities.

First and foremost, Bobbette will be Andy's new "right-arm," working to coordinate Andy's many responsibilities and provide assistance to his busy schedule. She will also be



Bobbette Wells, Administrative Assistant II in the Finance Department.

providing support in the Finance Department, assisting with back-up of other key staff, performing some accounting functions, assisting with building management, and other duties as they surface.

Please join the JPIA in welcoming Bobbette to its staff!

*Written by: Nancy Stangel, Director of Administration*

## 1010 - DEFINITIONS

1. **Anniversary Date:** The annual date established as the month and day an employee successfully completes the introductory period of one year. Employee's anniversary date is not affected by authorized leave of absence.
2. **Confidential Position:** A position so designated by the Board of Directors that has access to privileged and confidential information relating to District Administration, employer-employee relations and other personnel matters. The employee's access to such confidential matters shall be strictly limited to the areas of work in which each individual position is normally engaged.
3. **Sensitive Position:** Sensitive Positions are employment positions in which drug or alcohol affected performance could clearly endanger the health and safety of the individual employee, the community and/or others. These positions have the following general characteristics:
  - A. Their duties involve a greater-than-normal level of trust, responsibility for impact on the health and safety of the community and other employees; and
  - B. Errors in judgment in a tentative or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of the individual, the community and/or other employees; and
  - C. Employees in these positions work with such independence, or perform such tasks that it cannot be safely assumed that mistakes such as those described in (B) could be prevented by a supervisor or another employee.

Due to the type of responsibilities, such as supervision of (1) utility maintenance programs and projects, (2) District maintenance employees, (3) the development of maintenance programs and (4) enforcement of District disciplinary procedures including substance abuse, Sensitive Positions include District Management and Supervisor Positions.

Sensitive Positions include (but are not limited to) the District Manager, the District Finance Director/Assistant District Manager, the District Engineer, the District Utility Superintendent, the District Utilities Supervisor, District Inspectors, District Utility Operators, District Utility Workers and district Maintenance Workers.

- ~~3.4.~~ **Contract Employee:** Employee hired as specified in an employment contract. Any persons employed on a substitute or temporary basis shall be employed by contract.
- ~~4.5.~~ **Corrective Counseling Plan:** Plan approved by the General Manager to rectify or improve substandard performance as indicated by evaluation.
- ~~5.6.~~ **Elected Positions:** Those positions filled by popular vote or by appointment pending the next scheduled election.
- ~~6.7.~~ **Employee:** Any person legally occupying a position in the District service.

7.8. Exempt Employee: Employee designated as Executive, Administrative or Professional are exempt employees, as defined by the Fair Labor Standards Act. An exempt employee is expected to complete his/her assigned duties rather than adhere to a strict workday schedule. Consequently, no overtime or compensatory time will be provided for working beyond a forty-hour work-week.

8.9. Immediate Family: Is defined as being spouse and the following, if living in the employee's household: parents, grandparents, child, step child, brother or sister, grandchild or corresponding relatives by marriage or any other person who is a legal dependent of employee.

9.10. Introductory Employees: An introductory period regarded as part of the examination process which provides the General Manager the opportunity to observe and evaluate an employee's competence and ability to perform assigned duties. A new and/or returning employee shall be regarded as an introductory employee for the first 365 calendar days of employment. Introductory employees serve entirely at the will and pleasure of the General Manager and may be terminated by the General Manager without cause and without right of appeal or hearing at any time.

10.11. Leave of Absence: Permission to be absent from duty without pay for a specified period and purpose.

11.12. Step-Merit Increase: That periodic increase in salary that is based on performance and duration of employment in any given position.

12.13. Part-Time Position: A position, approved by the District Board, in which an employee works a continuing, year-round shift averaging 20 hours or more per week. All such employees are entitled to vacation and sick leave according to a formula adopted by the Board of Directors.

13.14. Reclassification: As approved by the Board, a significant change in the duties and responsibilities of a position. A reclassification downward does not affect an employee's anniversary date. In a reclassification upward, the anniversary date is changed to the date the Board approves the reclassification.

14.15. Regular Employees: A regular employee is one who has been hired to fill a regular position in any job classification and has completed his/her introductory period and works 30 or more hours per week on a regular and continuous basis.

15.16. Regular Pay Rate: The hourly rate actually paid an employee for the normal work time performing the duties for which that employee has been employed by the District.

16.17. Transfer: At the General Manager's discretion, a change of an employee from one position to another with the same or comparable duties.



## CHAPTER TWO - EMPLOYMENT

### 2000 - RECRUITMENT

#### 1. Employment – Hiring

An applicant for employment shall be evaluated on the basis of his/her submitted material(s), personal interview(s), and demonstrated ability. This District may retain all employment applications for a period of one year, where upon they shall be discarded. The District will only solicit applications when position openings exist, when employees have tendered letters of resignation or retirement, or when vacancies or new position openings are anticipated. Upon completion of such evaluation, the Board needs to be notified of final applicants, and the General Manager, or designee, shall select the applicant to be employed to fill the position opening, and shall promptly notify the Board of Directors of the name of the person selected. The Board of Directors may, but need not, review and approve such selection. If two people are hired on the same day for jobs that have the same rate of pay, it must be determined who was hired first. If two people are hired on the same day for different rates of pay, the employee with the higher pay rate will be deemed the employee hired first.

#### 2. Employment - Philosophy

It is the philosophy of the District to promote from within the District, unless it would be in the District's best interest to hire from the outside. For this reason, most employment openings as they occur will be announced to all departments. There may be however, instances where the General Manager will fill a position without announcing it. All interested employees will be considered for the announced employment opening.

#### 3. Employment of Relatives

The District may disqualify from competition any applicant for employment or transfer request where the result of a positive hiring or transfer decision would put an employee in direct supervision of (or under the direct supervision of) a close family relative or otherwise create a security, safety, or morale problem for the District. For purposes of this section only, excluded relations would include parent, child, grandparent, grandchild, uncle, aunt, niece, nephew, cousin, sibling, spouse, cohabitants, or in-law relations.

#### 4. Pre-Employment Physical Examination

All offers of employment for regular, part-time and contract positions shall be made contingent upon the respective applicant's successfully passing a physician's examination and drug test, to be provided at District expense.

An applicant shall not be employed until a ~~negative drug screen result is obtained and a~~ qualified physician has certified the applicant is qualified to do the type of work required by the position being applied for.

Prior to conducting the exam, the physician will be supplied with a specification/description of the position for which the applicant is applying, which shall include the description of the physical requirements and working environment of the position.

Applicants who refuse to cooperate in the examination and testing shall not be considered for employment. ~~Applicants who have a positive drug test shall be denied employment.~~

Re-testing of an individual who was previously employed by the District will be required if more than three (3) months have elapsed since said individual's last day of work for the District.

Appointments with the medical facility providing the examination and drug testing shall be made at least one day prior to ~~testing the examination~~, if possible, with the applicant provided minimal advance notice (no more than one day, if practical).

When the applicant reports to the medical facility for the scheduled examination and drug testing, identification shall be provided to said facility in the form of a photograph and verifiable signature (e.g. vehicle operator's license).

All ~~test examination~~ results shall be kept confidential. ~~The applicant may be told he/she failed to pass the test, but only the General Manager and Assistant Administrator shall have access to the actual test results.~~

District employment application forms shall contain a notice to applicants as follows:

~~A. Nipomo Community Services District has a policy that any offer of employment shall be contingent upon the applicant successfully passing a physician's exam examination and a urine and blood test for illicit drugs pursuant to Section 5070. Persons who do not receive refuse to cooperate in the examination or do not receive a physician's certification of said physician's certification of qualification to do the type of work required by the position applied for, or who test positive for the presence of illicit drugs in his/her body will not be considered further for employment. If an applicant has reason to believe that he/she will not pass a physician's examination or will register positive on a drug test, or if an applicant is unwilling to consent to such a test or examination, it is recommended that he/she not submit an application.~~

~~B. Immediately prior to reporting for drug testing, all applicants shall complete a Consent and Release Form to be kept on file in the District office which shall conform to the format in Appendix B.~~

5. Pre-Employment Drug Testing for Positions Designated as Sensitive Postions

In addition to the physical examination referenced in paragraph 4, above, all offers of employment for Sensitive Designated positions (Sensitive Positions) shall be made contingent upon the respective applicant's successfully passing a drug test, to be provided at District's expense.

Applicants who refuse to cooperate in the testing shall not be considered for employment. Applicants whose final test results are positive for substance abuse shall be denied employment.

Appointments with the medical facility providing the drug testing shall be made at least one day prior to testing, if possible, with the applicant provided minimal advance notice (no more than one day, if practical).

When the applicant reports to the medical facility for the scheduled drug testing, identification shall be provided to said facility in the form of a photograph and verifiable signature (e.g. vehicle operator's license).

All test results shall be kept confidential.

District employment application forms shall contain a notice to applicants as follows:

A. Nipomo Community Services District has a policy that any offer of employment in a Sensitive Position designation shall be contingent upon the applicant successfully passing a urine and blood test for illicit drugs pursuant to Section 5070. Persons who are unwilling to cooperate in the testing or test positive for the presence of illicit drugs in his/her body will not be considered for employment.

B. Immediately prior to reporting for drug testing, all applicants for Sensitive Positions shall complete a Consent and Release Form to be kept on file in the District office which shall conform to the format in Appendix B.

5.6. DMV Record

All applicants shall submit a current Department of Motor Vehicle record and may be required to provide proof of insurance to the District. The insurance carrier of the District will be requested to verify eligibility of insurability based upon the applicant's previous driving history. Applicants who are denied insurability by the District's insurance carrier will be disqualified.

6.7. Immigration

The District requires satisfactory evidence prior to the commencement of introductory employment of legal authority to work in the United States.

7.8. Written/Oral Examination

The District may conduct employment testing and interviews of job applicants.

Individuals who will require reasonable accommodation to take a test as part of the selection process must make such request when submitting the application.

8. Verification

The successful job applicant may be fingerprinted before employment and all statements submitted on the employment application or attached resume shall be subject to verification.

9. Personnel Action Form

Every appointment, transfer, demotion, step increase, suspension without pay, separation from service, or any information or action which affects the salaried status of an employee shall be initiated by the General Manager on a Personnel Action Form. Personnel Action Form is located at Appendix "F".

### **EQUAL OPPORTUNITY EMPLOYMENT**

It is the policy of the Nipomo Community Services District that there shall be no discrimination based upon race, national origin, religion, sex, physical handicap, sexual orientation, veteran status or age in any personnel action, including recruitment, appointment, performance evaluation, promotion, the granting of leaves, and any disciplinary or grievance action.

## 5070 - SUBSTANCE ABUSE

The Board of Directors for the District is concerned with the physical safety of all employees, potential damage to property and equipment, mental and physical health of employees, productivity and work quality, medical insurance costs, and the harm done to employees and their families by the inappropriate use of controlled substances. The District is equally committed to protecting the health and safety of customers and the public from hazards relating to substance abuse.

### 1. Prohibited Conduct

VIOLETION OF ANY OF THE FOLLOWING RULES WILL RESULT IN DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION OF EMPLOYMENT:

- A. Possessing, using, manufacturing, distributing, dispensing, selling or purchasing illegal drugs or other controlled substances while on the job or off the job.
- B. Conviction or a plea or "no contest" to any of the offenses stated in subparagraph A above.
- C. Possessing or drinking alcoholic beverages while on duty and/or on the premises of the District.
- D. Driving a vehicle on District business while under the influence of alcohol (as defined by the California Vehicle Code) or illegal drugs.
- E. Reporting to work while under the influence of alcohol or any illegal drug.

For the purposes of applying this policy:

- (a) Being under the influence of drugs and/or other controlled substances means being impaired in any way from fully and proficiently performing job duties and/or having a detectable amount of said substance in one's body.
- (b) Being under the influence of alcohol means being impaired in any way from fully and proficiently performing job duties, and/or having a 0.04 percent or more, by weight, of alcohol in one's blood.

### 2. Voluntary Assistance

Employees with substance abuse (i.e., alcohol/drug abuse) problems are encouraged to seek assistance. An employee will not be disciplined because he/she voluntarily requests assistance for substance abuse problem and information gathered from employees seeking voluntary assistance will be treated as confidential and will only be provided to those persons who, for business reasons, have the need to know such information. This would include providing information necessary for management to administer disability benefits, apply for work restrictions, assure compliance with treatment, or administer discipline consistent with the terms of this policy.

However, seeking assistance or raising any claim related to substance abuse does not relieve an employee of his/her responsibility to meet the District's performance, safety or attendance standards, does not relieve an employee of his/her responsibility to adhere to this policy and does not insulate the employee from discipline for reasons other than seeking assistance for a substance abuse problem.

Employees who have a problem with alcohol or drugs and who decide to enroll voluntarily in an alcohol rehabilitation program will be given unpaid time off to participate in the program. The employee may use any accrued sick leave or vacation benefit while on leave. However, additional benefits will not be earned during the leave of absence unless the employee is eligible for benefits applicable to other medical leaves as provided in District policies.

An employee convicted of Driving-Under-the-Influence (DUI), who is required to use District vehicles in performing his/her job duties, shall report this and any driving restrictions before returning to work. Failure to do so shall be grounds for termination.

3. Required Notice of Prescription or Over-the-Counter Drug Use.

The use of either prescription or over-the-counter drugs or medication may impair an employee's ability to work safely and efficiently and create an unsafe work environment. In order to assure that employee performance on the job is not misconstrued and to assure a safe and efficient work environment, an employee using either prescription or over-the-counter drugs or medication which may impair his/her ability to work safely and efficiently must inform his/her supervisor prior to his/her first work assignment after taking the drug or medication. By fulfilling this obligation, employees will avoid disciplinary action for failure to notify supervision.

4. Applicant Testing. for Positions Designated as Sensitive Postions

A. All offers of employment will be contingent upon an applicant's passing a test to determine whether alcohol, illegal drugs or controlled substances are present in his/her body.

B. If an applicant is found to have falsified, substituted, or tampered with any sample of a body fluid (urine/blood/saliva) associated with testing for substances, he/she will not be offered employment or if he/she has already been offered employment, he/she will be terminated.

C. Applicants whose final results are positive for substance abuse will not be allowed to re-apply for employment or be offered employment at the District for a period of 24 months.

5. Medical Evaluation where Work Performance is Impaired.

A. When management believes an employee's work performance is impaired by drug or alcohol use, including when an employee appears at work in an impaired condition even though no work has been performed, management may require the employee to

submit to a medical evaluation by a qualified physician at District's expense.

- B. An employee who refuses to submit to the medical evaluation will be subject to discipline for such refusal. However, in the circumstances specified in this Section 5, an employee who refuses to substance abuse testing as part of the medical evaluation will not be subject to discipline for that refusal.
  - C. If a qualified physician, as part of the examination specified in paragraph A, above, determines that an employee is not capable of working safely, said employee will be transported to his/her home by a supervising employee and not allowed to drive himself or herself home.
  - D. In the cases specified in this Section 5(A), management may, with or without a medical evaluation, relieve the employee of work without pay until the employee furnishes satisfactory medical evidence to the District that he/she is capable of work.
6. Drug and Alcohol Testing under Specific Circumstances.
- A. Where management has reasonable grounds to believe that the employee's faculties are impaired on the job due to drug or alcohol abuse and such impairment presents a clear and present danger to the physical safety of the employee, co-workers or the public, management will require the employee to submit a medical evaluation, including substance abuse testing.
  - B. Where an employee is directly involved in an accident on the job and management has reasonable grounds to believe that the employee's faculties were impaired due to drug or alcohol abuse, management will require the employee to submit to a medical evaluation, including substance abuse testing, as part of the accident investigation or benefit plan administration process.
  - C. In the circumstances specified in Section 6(A) and (B), an employee who refuses to submit to a medical evaluation, including substance abuse testing, or who tests positive for substance abuse will be subject to discipline up to and including termination.
7. Scope of Medical Testing and Evaluations.
- A. Employees shall submit to all medical examinations and testing required by this policy within four (4) hours of the District's request for an evaluation.
  - B. Immediately prior to reporting for a drug/alcohol testing, all employees shall complete a Consent and Release Form to be kept on file in the District office, which shall conform to the general format as shown on Appendix B.
  - C. The scope of tests performed shall be for the purpose of detecting and identifying the presence of alcohol and/or drugs and not for the purpose of detecting and identifying any other medical condition.

8. Employee's Right to Challenge the Results of a Positive Substance Abuse Test

In all cases where an employee is tested for substance abuse, and the test is positive, he/she has the right to challenge the results of the test at a qualified facility of his/her choice at District expense if an adequate quantity of body fluid is provided. This second test is a confirmatory test that must be performed with the same sample of body fluid utilized for the first test.

9. Discipline

Discipline procedures will comply with Section 5020.

10. Searches

Management reserves the right, in accordance with applicable state and federal law, to conduct searches of District premises and property for the purpose of protecting the safety and well-being of its employees, customers and the public, and for the purpose of preventing criminal activity on District premises. The District has a right to place in custody of law enforcement authorities any suspected illegal or controlled substances or contraband discovered on the District's premises.

11. Overview of Alcohol/Drug Testing Protocol

Laboratory Certification:

All laboratories used to perform urine testing pursuant to this program will be certified under the National Institute on Drug Abuse guidelines developed for the Department of Health and Human Services.

Testing:

In testing samples, the testing laboratory will test specifically for alcohol and/or those drugs and classes of drugs required by Nipomo Community Services District Alcohol and Drug Testing Guidelines. The current panel of drugs which will be tested for are as follows:

- Alcohol
- Amphetamines
- Barbiturates
- Benzodiazepines
- Cannabinoids (Marijuana)
- Cocaine
- Methadone
- Methaqualone
- Opiates
- Phencyclidine
- Propoxyphene



#### Split Sample:

If the employee provides enough urine for a second sample, there will be a split sample option available. When a test kit is received by the laboratory with two samples, one sealed urine specimen bottle shall be removed immediately for testing. The remaining urine sample shall be immediately placed in secure refrigerated storage.

#### Confirmatory Test:

All Specimens which test positive on the initial test will be confirmed using a second more specific gas chromatography/mass spectrometry (GC/MS) test.

#### Medical Review Officer Involvement:

After a laboratory confirmed positive test, an employee, where appropriate, will be afforded an opportunity to have a Medical Review Officer review his/her medical history and other relevant medical data at the employee's expense. The Medical Review Officer will be a licensed physician, knowledgeable in drug pharmacology and drug abuse disorders, and may be an employee or independent contractor. The interview with the Medical Review Officer may be conducted by telephone.

If the Medical Review Officer determines and reports that a test is positive, upon request of the employee, an aliquot of the remaining urine specimen or the second sealed bottle will be forwarded to another NIDA approved laboratory of the party's choice for GC/MS confirmatory testing of the presence of the drug.

#### Reporting of Results:

All specimens which test negative on either the initial test or the GC/MS confirmation test shall be reported only as negative. Only specimens that test positive on both the initial and the confirmation test shall be reported as positive.

In reporting a positive test result, the laboratory will state the specific substance(s) for which the test is positive and will, when requested by the Medical Review Officer, provide the quantitative results of both the screening and the GC/MS confirmation test, in terms of nanograms per milliliter. All positive test results must be reviewed by the certifying scientist or laboratory director and certified as accurate.

#### Specimen Retention:

All specimens deemed positive must be retained by the laboratory for a period of one year in a secure storage facility.

## 12. Non-Smoking Policy

The District is committed to a philosophy of good health and a safe workplace. In keeping with this philosophy, it is important that the workplace and office environment reflect the District's concern for good health. Smoking is therefore not permitted inside District offices,

enclosed work areas, within twenty five (25) feet outside of an exit, or in District vehicles or equipment.

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: NOVEMBER 7, 2008



CONFIRM PERS "PICK-UP" POLICY

**ITEM**

Confirm existing Public Employees' Retirement System (PERS) "Pick-Up" Policy [ADOPT RESOLUTION].

**BACKGROUND**

Nipomo Community Services District has contracted with PERS since 1975 to provide retirement benefits to its employees. NCSD has always contributed the employer and employee share of the contributions to PERS on behalf of its employees.

Pursuant to PERS Circular Letter 200-049-08 dated October 3, 2008 (attached), PERS is requiring all agencies that are "picking-up" the employees share of the contribution to adopt the attached Resolution to comply with Internal Revenue Code (IRC) Section 414(h)(2) by December 31, 2008.

PERS has confirmed in a letter dated October 24, 2008 (attached) that NCSD has not submitted a "pick-up" resolution.

**FISCAL IMPACT**

None

**RECOMMENDATION**

Staff recommends that the Board adopt the attached resolution.

**ATTACHMENTS**

- Circular Letter from CalPERS dated October 3, 2008
- Letter from CalPERS dated October 24, 2008
- Resolution

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P.O. Box 942709  
Sacramento, CA 94229-2709  
**888 CalPERS** (or **888-225-7377**)  
Telecommunications Device for the Deaf  
No Voice (916) 795-3240  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

Date: October 3, 2008  
Reference No.:  
Circular Letter No.: 200-049-08  
Distribution: VI, XII, XVI  
Special:

# **Circular Letter**

**TO: PUBLIC AGENCIES, COUNTY SUPERINTENDENT OF SCHOOLS,  
SCHOOL DISTRICTS**

**SUBJECT: EMPLOYER "PICK-UP" - REVENUE RULING 2006-43  
DECEMBER 31, 2008 DEADLINE FOR ACTION**

**ATTENTION: FINANCE DIRECTORS, HUMAN RESOURCE DIRECTORS**

This Circular Letter is being sent to advise employers of Revenue Ruling 2006-43 concerning the pick-up of employee contributions to California Public Employees Retirement System (CalPERS), and of actions that an employer may be required to take before December 31, 2008 to ensure compliance with pick-up requirements.

## **BACKGROUND AND PURPOSE**

Internal Revenue Code (IRC) Section 414(h)(2) allows public agencies and school employers to designate required employee contributions as being "picked-up" by the employer and treated as employer contributions for tax purposes. The effect of a pick-up is to defer tax on employee contribution amounts until the member retires and receives retirement benefits, or separates from employment and takes a refund of contributions. Absent the 414(h)(2) provision applicable to governmental plans, employee contributions to a defined benefit pension plan qualified under Section 401(a) would automatically be after-tax contributions (e.g. taxable income to the employee at the time the contribution was made).

Since the early 1980s, CalPERS has taken steps to ensure that contracting agency and school employers have adopted and submitted to CalPERS appropriate written evidence of pick-ups prior to reporting tax-deferred member contributions to CalPERS. This Circular Letter is being sent as a reminder of the federal tax reporting requirements, to encourage each contracting agency and school employer who reports tax-deferred member contributions to review their documents and, if necessary, adopt conforming documentation prior to the deadline set by Revenue Ruling 2006-43. To view the ruling, visit CalPERS online.

RECEIVED  
OCT 14 2008

NIPOMO COMMUNITY  
SERVICE DISTRICT

**REVENUE RULING 2006-43**

Revenue Ruling 2006-43 provides, in general, that an employee contribution will not be treated as "picked-up" under IRC 414(h)(2) unless:

- (1) The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer (this action must be memorialized in writing), and
- (2) The employer does not permit participating employees to opt out of the pick-up or to receive the contributed amounts directly instead of having them paid by the employer to the plan.

Revenue Ruling 2006-43 allows employers who do not have written evidence of a pick-up, but their actions show that they intended to establish and carry out a pick-up, to be treated as meeting the requirements of 414(h)(2) for past pre-tax contributions if the employer takes formal action in writing prior to December 31, 2008 with respect to future picked-up contributions. If formal action is not taken prior to December 31, 2008, only contributions taken after the written documentation is in place may be treated as picked-up.

**WRITTEN DOCUMENTATION**

Many of you offer a pick-up of employee contributions under a resolution approved by the IRS in a private letter ruling issued to CalPERS on December 6, 1985, (PLR 8609084). If your agency has adopted the approved resolution to implement 414(h)(2) pick-ups, you may continue to rely on that ruling and need not adopt a new resolution. This approved form, which is Sample E---Resolution for Employer Pick-up can be viewed at CalPERS online. If you have not previously sent a copy of the resolution to us, or if you did not complete Sample E, but have other written documentation, please send a copy of your document or resolution to us immediately.

After 1985, CalPERS provided additional pick-up resolutions for adoption by contracting agencies that distinguishes whether the pick-up was to be actually paid by the employer or by the employee. When an employer pays the employee contributions, it is referred to as Employer Paid Member Contributions (EPMC). The employer may also report the value of EPMC as special compensation. Contracting agencies that adopted any of these resolutions were requested to submit the resolutions to CalPERS. Samples of Resolutions A through D can be viewed at CalPERS online. You may continue to rely on these resolutions but you should review them and validate that the resolution covers all of the employees whose contributions are reported as tax-deferred. If you have not previously sent a copy of the resolution to us, please do so immediately.

## **CALPERS NEW BUSINESS ENVIRONMENT**

CalPERS is in the process of building and installing a new business reporting system. One of the design features will enhance CalPERS ability to maintain accurate and up to date information about contracting agency and school employer pick-ups. As a way of ensuring that our system will accurately record your agency's pick-up provision, CalPERS requires all affected agencies to provide a copy of their existing or future pick-up resolutions or other written documentation. This will ensure ongoing compliance with federal tax reporting requirements. The new system will validate that you have documentation on file with CalPERS before accepting tax-deferred member contributions. If documentation is not on file, your records will be rejected and will be held until the appropriate documentation is received.

## **CONCLUSION**

If you are submitting tax-deferred contributions on behalf of your members, we request that you review your files for documentary evidence authorizing such employer pick-up of employee contributions. If you do not have evidence, please take steps to have your governing board adopt an appropriate resolution prior to December 31, 2008.

Please send a copy of your pick-up documentation to:

CalPERS  
Employer Services Division  
Compensation Review Unit  
P.O. Box 942709  
Sacramento CA 94229-2709

If you have any questions, please call the Employer Contact Center at **888 CalPERS** or **(888 225-7377)**.

Lori McGartland, Chief  
Employer Services Division

Visit the CalPERS website at [www.calpers.ca.gov](http://www.calpers.ca.gov) (2008 Circular Letters) for more information on the following:

- 1 - Revenue Ruling 2006-43
- 2 - Sample Resolution E
- 3 - Sample Resolutions A - D



**Employer Services Division**  
P.O. Box 942709  
Sacramento, CA 94229-2709  
Telecommunications Device for the Deaf - (916) 795-3240  
(888) 225-7377 FAX (916) 795-4166

October 24, 2008

Lisa Bognuda  
Nipomo Community Services District  
P. O. Box 326  
Nipomo, CA 93444

**SUBJECT: TAX DEFERRED MEMBER CONTRIBUTIONS AND  
REVENUE RULING 2006-43**

As noted in Circular Letter 200-049-08 dated October 3, 2008, the Internal Revenue Service has issued Revenue Ruling 2006-43 concerning the "pick-up" of employee contributions, and actions that an employer may be required to take before December 31, 2008 to ensure compliance with "pick-up" requirements. You are receiving this additional letter because our payroll records indicate that your payroll includes tax-deferred member contributions ("pick-ups"), but we do not have a copy of the "pick-up" resolution in our files.

CalPERS is taking steps to ensure that contracting agency and school employers adopt and submit appropriate written documentation of "pick-ups" prior to reporting tax-deferred employee contributions to CalPERS.

In addition, CalPERS is in the process of building and installing a new business reporting system and we are seeking to obtain up to date information about contracting agency and school employer "pick-ups". As a way of ensuring that our system will accurately record your agency's "pick-up" resolution and to ensure ongoing compliance with CalPERS' regulations and federal tax reporting requirements, we request that you review your files for documentary evidence authorizing employer "pick-up" of employee contributions. The new system will validate that you have documentation on file with CalPERS before accepting tax-deferred member contributions. If documentation is not on file, your records will be rejected and will be held until the appropriate documentation is received. If you do not have documentary evidence of the authorization for employer "pick-ups", we request that you take steps to have your governing board adopt an appropriate resolution by December 31, 2008. To view sample resolutions, visit CalPERS online.

**RECEIVED**

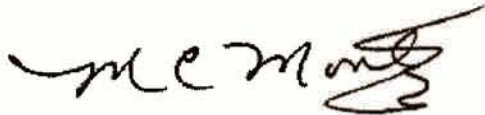
**OCT 27 2008**

**NIPOMO COMMUNITY  
SERVICES DISTRICT**

Please send a copy of your "pick-up" authorization documentation to:

CalPERS  
Employer Services Division  
Compensation Review Unit  
P.O. Box 942709  
Sacramento CA 94229-2709

If you have any questions, please call our Employer Contact Center at **888 CalPERS** or **(888 225-7377)**.

A handwritten signature in black ink, appearing to read "M. Montez", written in a cursive style.

Marion Montez, Section Manager  
Compensation & Employer Review Units



NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2008-XXX PERS PICK UP POLICY

AN RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
CONFIRMING PERS EMPLOYER "PICK-UP" POLICY

WHEREAS, the Nipomo Community Services District has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the Board of Administration of the Public Employees' Retirement System adopted this resolution regarding section 414(h)(2) IRC on September 18, 1985; and

WHEREAS, the Internal Revenue Service has stated in December 1985, that the implementation of the provisions of section 414(h)(2) IRC pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of section 414(h)(2) IRC; and

WHEREAS, the Nipomo Community Services District has determined that even though the implementation of the provisions of section 414(h)(2) IRS is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to its employees who are members of the Public Employees' Retirement System:

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

I. That the Nipomo Community Services District will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.

II. That the contributions made by the Nipomo Community Services District to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the Nipomo Community Services District in lieu of contributions by the employees who are members of the Public Employees' Retirement System.

III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the Nipomo Community Services District to the Public Employees' Retirement System.

IV. That the Nipomo Community Services District shall pay to the Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.

V. That the amount of contributions designated as employee contributions and paid by the Nipomo Community Services District to the Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the Public Employees' Retirement Law (California Government Code sections 20000, et seq.).

NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2008-XXX PERS PICK UP POLICY

AN RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
CONFIRMING PERS EMPLOYER "PICK-UP" POLICY

VI. That the contributions designated as employee contributions made by Nipomo Community Services District to the Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

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 12<sup>th</sup> day of November 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

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL   
DATE: NOVEMBER 7, 2008

**AGENDA ITEM**  
**D-7**  
**NOVEMBER 12, 2008**

ACCEPT WATER IMPROVEMENTS  
TRACT 2341 WOODLANDS OFFSITE IMPROVEMENTS

**ITEM**

Accept off-site water improvements for Tract 2341 Woodlands [ADOPT RESOLUTION].

**BACKGROUND**

In August 2004, the District agreed to allow the Woodlands to replace the 10" water main in Via Concha from Dawn Road to the Woodlands entrance with a 16" water main and it install the double check valve for an emergency intertie off of the West end of Camino Caballo.

Upon completion of a developer's project, the District accepts improvements of the project after all requirements have been met. The developer has installed the water system to District Standards and has met the District's standard conditions:

- Installed the improvements
- Provided the necessary paperwork, including the Offer of Dedication and the Engineer's Certification

Staff expects that a separate agreement will be negotiated with the Woodlands regarding the use of the intertie and the construction of a suitable meter, prior to finalization of the MOU with the Woodlands.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve Resolution 2008-XXXX Accept the off-site Water System Improvements for Tract 2341.

**ATTACHMENTS**

Resolution 2008-XXXX Accept TR2341  
Utility Plan

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**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2008-1107**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ACCEPTING OFF-SITE WATER IMPROVEMENTS FOR TRACT 2341 (WOODLANDS)**

**WHEREAS**, the District approved the construction plans in August, 2004, for the water improvements to be constructed; and

**WHEREAS**, the water improvements have been constructed and said improvements are complete and certified by the Owners' Engineer; and

**WHEREAS**, on April 10, 2008, the Owner offered the water improvements to the Nipomo Community Services District; and

**WHEREAS**, this District has accepted such offer without obligation except as required by law; and

**WHEREAS**, an agreement will be negotiated for the use of the emergency intertie including the cost of designing and installing the meter.

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

That the off-site water improvements to serve Tract 2341 in Nipomo are accepted by this District.

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

AYES:

NOES:

ABSENT:

CONFLICT:

the foregoing resolution is hereby adopted this 12<sup>th</sup> day of November, 2008.

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Jon S. Seitz  
General Counsel