

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL  
DATE: FEBRUARY 6, 2009

**AGENDA ITEM  
E-1  
FEB 11, 2009**

**MERGER OF BLACKLAKE AND TOWN WATER SYSTEMS**

**ITEM**

Consider second reading and adoption of ordinance and adoption of resolution implementing the merger of the Town & Blacklake Water Systems [ADOPT ORDINANCE & RESOLUTION].

**BACKGROUND**

On November 26, 2008, your Honorable Board introduced the ordinance merging the Town and Blacklake Water Systems, set a Protest Hearing for January 28, 2009, and directed staff to transmit notices to each parcel and non-owner customer in the Blacklake Division service area. Staff mailed the notice on December 9, 2008, to the 586 eligible parcels (thus, the threshold for a majority protest would have been 293 valid protests). As of the close of the January 28, 2009 Protest Hearing, a total of ten protests were received and the Board determined that there was not a majority protest.

Attached is the Second Reading version of the draft ordinance merging the two systems and a draft resolution establishing uniform water rates and providing for Blacklake water customers to prepay the surcharge.

**FISCAL IMPACT** – None

**RECOMMENDATION**

Staff recommends that your Honorable Board receive any public comment that is offered; adopt the attached ordinance and the attached resolution; and direct staff to publish the final version of the ordinance. (It should be noted that the ordinance was read by title at the November 26, 2009 meeting).

**ATTACHMENTS**

- Draft Ordinance
- Draft Resolution

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**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2009-111**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADDING CHAPTER 3.40 TO THE DISTRICT CODE MERGING  
TOWN WATER DIVISION AND BLACKLAKE WATER DIVISION**

**WHEREAS**, it is a major responsibility of the Nipomo Community Services District ("District") to:

- A. Operate and maintain its water production and distribution facilities so as to provide adequate fire protection and water service to District water customers;
- B. Maintain adequate levels of revenue, equitably collected from District water customers, to meet the District's financial commitments including operation, maintenance, replacement and administrative costs of District's water production and distribution facilities; and

**WHEREAS**, the District operates two (2) water divisions, commonly known as the Town Water Division and the Blacklake Water Division; and

**WHEREAS**, the Town Water Division, by design, uses water tanks and a gravity water system to provide water pressure for potable water and fire protection; and

**WHEREAS**, the Blacklake Water Division, by design, uses a hydro-pneumatic pump station that includes tanks and variable speed pumps (collectively "Booster Station") to provide water pressure for potable water and fire protection; and

**WHEREAS**, the District has adopted separate water rates for the operation and maintenance of the two water divisions. The current rates and charges are identified in Appendix "A" to Chapter 3.03 of the District Code and are attached hereto and incorporated herein by this reference; and

**WHEREAS**, the Blacklake Booster Station is worn out and cannot provide reliable pressure for potable water and fire protection within the Blacklake System; and

**WHEREAS**, to address the immediate need to provide Blacklake residents with potable water and fire protection, the District, in October of 2006, constructed a second and larger intertie between the Town Division and the Blacklake Division that provides a temporary bypass of the Booster Pump Station; and

**WHEREAS**, the District is considering the merger of the Blacklake Water Division and the Town Water Division whereby:

- The temporary bypass intertie constructed in October, 2006, would be declared permanent.
- The Blacklake Water Division projects known as the Blacklake Booster Station and Blacklake Hydromatic Tank would no longer be required to provide fire service and potable water within the Blacklake Water Division and would be abandoned.
- Town Water Division and the Blacklake Water Division would be merged into a single water division known as the Nipomo Community Services District Water System or District Water System.
- The Town Division Water rates adopted by Ordinance 2005-103 would be the initial District Water System user rates subject to a Buy-in Charge to be paid by Blacklake water customers; and



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TOWN WATER DIVISION AND BLACKLAKE WATER DIVISION**

**WHEREAS**, consistent with Government Code §61040 (c), the District Board of Directors has:

- Received and reviewed a September 24<sup>th</sup>, 2008 Reed Group Letter Report titled "Water System Financial Plan and Equity Study"; and
- Formed an Ad Hoc committee that met with a committee of Blacklake residents to analyze capital improvements required to finalize the merger of the two divisions and establish a formula to establish Blacklake water customers' contribution to the combined operating reserve account; and

**WHEREAS**, the District General Manager has authored a report titled "Blacklake Water Fund Merger and Town Water Fund Financial Plan and User Rates Final Report" ("District Final Report") that provides a financial analysis and contribution formula for the capital improvements required to finalize the merger of the two divisions and establishes Blacklake's contribution to existing Town Division operating water reserves to establish a merged systems' operating reserve account. The Final Report establishes Blacklake water customers' total contribution of \$277,742 (two hundred seventy-seven thousand, seven hundred and forty-two dollars) to the merged system or \$437 (four hundred and thirty-seven dollars) per equivalent one inch Blacklake meter (herein "Buy-in charge"). The District Final Report is on file with the District and is available for inspection; and

**WHEREAS**, on November 26, 2008, the District Board of Directors tentatively approved the District Final Report for establishing the Blacklake Water Division user rates and Buy-in Charge and the merger of the two water divisions; and

**WHEREAS**, based upon facts and analysis presented by the Technical Reports and studies, the District Final Report, the Staff Report, and public testimony received, the Board of Directors finds:

- A. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code Section 54954.2 (The Brown Act);
- B. The Final Report establishes a reasonable methodology for establishing the water user rates and Blacklake Buy-in charges for the merger of the two water divisions.
- C. The application of this Ordinance is conditioned on Blacklake Water Division customers' approval of the merger and adjusted rates pursuant to the protest procedures of Article XIII D of the California Constitution. Therefore, this Ordinance does not adjust water rates within the Blacklake Water Division.

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Directors of the District as follows:

**Section 1.** Protest Procedures (Article XIII D of the California Constitution)

The merger of the Blacklake Water Division and the Town Water Division and the application of Sections 1, 2, 3, and 4 of this Ordinance are conditioned on Blacklake Water Division customers and property owners approval of the merger and the adjusted water rates pursuant to the protest provisions of Article XIII D of the California Constitution (commonly known as Proposition 218) and Government Code §53755.



NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2009-111

AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADDING CHAPTER 3.40 TO THE DISTRICT CODE MERGING  
TOWN WATER DIVISION AND BLACKLAKE WATER DIVISION

**Section 2.** Chapter 3.40 titled Merger of District Water Divisions shall be added to the District Code as follows:

3.40.010 Merged Water Divisions

- A. The District's Town Water Division and the Blacklake Division Water Division are hereby merged into a single water division known as the Nipomo Community Services District Water System or the District Water System.
- B. Subject to the provisions of Section 3.40.020, below, the Town Division water rates shall be the initial water rates of the merged divisions.
- C. The temporary intertie constructed in October, 2006, and the four-inch emergency intertie are hereby declared to be permanent connections.
- D. The Blacklake Water Division projects known as the Blacklake Booster Station and the Blacklake Hydro-Pneumatic Tank are no longer required and are hereby abandoned.

3.40.020 Buy-in Charge

- A. There is hereby established a total Blacklake Buy-in Charge of \$277,742 (two hundred seventy-seven thousand seven hundred forty-two dollars) which equates to \$437 (four hundred and thirty-seven dollars) per equivalent one inch meter.
- B. The increase in the Blacklake customer water rates over the Town Division water rates (herein "Differential Water Rates") for payment of the Buy-in Charge along with the merger of the two water divisions shall be approved by the Blacklake water customers and property owners pursuant to the protest procedures of Article XIII D of the California Constitution and Government Code §53755.
- C. The Buy-in Charge shall be paid, with interest accumulating at three percent (3%) per annum, to the District Water System from the Differential Water Rates until paid in full (approximately 10 years).
- D. Blacklake Water Division customers will be given the opportunity during the month of March 2009 to make a lump sum payment of the Buy-in Charge to avoid the three percent (3%) interest rate.

3.40.030 Rates and Charges

- A. The Buy-in charge shall constitute a separate surcharge on individual water bills within Blacklake until paid in full. The Buy-in charge (Differential Water Rate), once established, shall not be considered or adjusted in future rate adjustments for the merged water divisions (District Water System).
- B. District Water System rates and charges shall be adjusted from time to time pursuant to the provisions of Article XIII D of the California Constitution (commonly known as Proposition 218).

**Section 3.** Budget Adjustment

**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2009-111**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADDING CHAPTER 3.40 TO THE DISTRICT CODE MERGING  
TOWN WATER DIVISION AND BLACKLAKE WATER DIVISION**

The District Staff is directed to return to the Board with a budget adjustment, for the construction of the Misty Glen and Augusta Drive intertie and the rehabilitation of the Blacklake water tank

**Section 4. Accounting**

For Accounting purposes:

- A. Blacklake Water Division Fund Account 140 and Town Water Division Water Fund Account 120 will be combined into a single fund; and
- B. Blacklake Water Division Fund Account 820 and Town Water Division Water Fund Account 800 will be combined into a single fund; and
- C. Blacklake Water Division Accounts and Town Water Division Accounts will be operated under a single accounting system effective July 1<sup>st</sup>, 2009.

**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 Ordinance.

**Section 6. Effect of Repeal on Past Actions and Obligations.**

This Ordinance does not affect prosecutions for Ordinance violations committed prior to the effective date of this Ordinance, does not waive any fee or penalty due and unpaid on the effective date of this Ordinance, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any Ordinance.

**Section 7. Severance Clause.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

**Section 8. Effect of Headings in Ordinance.**

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

**Section 9. Effective Date.**

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.



**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2009-111**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
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ADDING CHAPTER 3.40 TO THE DISTRICT CODE MERGING  
TOWN WATER DIVISION AND BLACKLAKE WATER DIVISION**

Before the expiration of fifteen (15) days after passage it shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in the Santa Maria Times and the San Luis Obispo Tribune.

Introduced at its regular meeting of the Board of Directors held on November 26, 2008, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the 11<sup>th</sup> day of February, 2009 by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICTS:

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James Harrison, President  
Nipomo Community Services District  
Board of Directors

ATTEST:

APPROVED AS TO FORM:

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DONNA K. JOHNSON  
Secretary to the Board

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JON S. SEITZ  
District Legal Counsel

**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2009-111**

**EXHIBIT "A"**

**APPENDIX A TO CHAPTER 3.03**

**WATER RATES AND CHARGES**

**BI-MONTHLY AVAILABILITY CHARGES\***

(The bi-monthly availability charge shall take effect August 1, 2005, and Future increases shall take effect on January 1, of each succeeding year.)

**TOWN DIVISION**

SIZE OF METER	AUGUST 1, 2005	2006	2007	2008	2009
1 Inch or Less	\$16.76	\$18.43	\$20.64	\$22.71	\$24.52
Litigation Charge	\$6.32	\$6.32	\$6.32	\$6.32	\$6.32
1 ½ Inch	\$47.56	\$52.32	\$58.60	\$64.46	\$69.61
Litigation Charge	\$14.36	\$14.36	\$14.36	\$14.36	\$14.36
2 Inch	\$75.33	\$82.86	\$92.81	\$102.09	\$110.25
Litigation Charge	\$19.92	\$19.92	\$19.92	\$19.92	\$14.36
3 Inch	\$140.17	\$154.18	\$172.68	\$189.95	\$205.15
Litigation Charge	\$27.92	\$27.92	\$27.92	\$27.92	\$27.92
4 Inch	\$232.77	\$256.05	\$286.77	\$315.45	\$340.68
Litigation Charge	\$36.00	\$36.00	\$36.00	\$36.00	\$36.00
6 Inch	\$464.07	\$510.48	\$571.73	\$628.91	\$679.22
Litigation Charge	\$59.58	\$59.58	\$59.58	\$59.58	\$59.58
8 Inch	\$741.74	\$815.92	\$913.83	\$1,005.21	\$1,085.63
Litigation Charge	\$68.08	\$68.08	\$68.08	\$68.08	\$68.08

**BLACKLAKE DIVISION**

SIZE OF METER	AUGUST 1, 2005	2006	2007	2008	2009
1 Inch or Less	\$15.09	\$18.10	\$22.08	\$26.06	\$30.75
Litigation Charge	\$6.32	\$6.32	\$6.32	\$6.32	\$6.32
1 ½ Inch	\$41.73	\$50.07	\$61.09	\$72.08	\$85.06
Litigation Charge	\$14.36	\$14.36	\$14.36	\$14.36	\$14.36
2 Inch	\$65.74	\$78.89	\$96.24	\$113.57	\$134.01
Litigation Charge	\$19.92	\$19.92	\$19.92	\$19.92	\$14.36
3 Inch	\$121.81	\$146.17	\$178.33	\$210.43	\$248.31
Litigation Charge	\$27.92	\$27.92	\$27.92	\$27.92	\$27.92
4 Inch	\$201.90	\$242.28	\$295.58	\$348.78	\$411.56
Litigation Charge	\$36.00	\$36.00	\$36.00	\$36.00	\$36.00
6 Inch	\$401.93	\$482.32	\$588.42	\$694.34	\$819.32
Litigation Charge	\$59.58	\$59.58	\$59.58	\$59.58	\$59.58
8 Inch	\$642.06	\$770.48	\$939.98	\$1,109.18	\$1,308.83
Litigation Charge	\$68.08	\$68.08	\$68.08	\$68.08	\$68.08

\*The above bi-monthly availability charge reflects the adjusted rate established by Ordinance 2003-95 to meet the District's financial obligations. Litigation charges off-set District financial obligations relating to the lawsuit entitled Santa Maria Valley Water Conservation District vs. the City of Santa Maria, the Nipomo Community Services District, et al. When the District's financial obligation regarding this lawsuit have been satisfied, the litigation charge will be removed.



**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2009-111**

**EXHIBIT "A" (Continued)**

APPENDIX B TO CHAPTER 3.03

WATER RATES AND CHARGES

(The bi-monthly usage rates shall take effect August 1, 2005, and future increases shall take effect on January 1, of each succeeding year.)

**TOWN DIVISION**

RESIDENTIAL USAGE RATES

	AUGUST 1, 2005	2006	2007	2008	2009
Tier 1 (0-40 Units)	\$1.12	\$1.23	\$1.38	\$1.52	\$1.64
Tier 2 (> 40 Units)	\$1.91	\$2.10	\$2.35	\$2.59	\$2.80

**TOWN DIVISION**

NON-RESIDENTIAL USAGE RATES

(Multi-family, Commercial, Irrigation, Agriculture, Industry and Construction)

	AUGUST 1, 2005	2006	2007	2008	2009
All Water Use	\$1.41	\$1.55	\$1.74	\$1.91	\$2.06

**BLACKLAKE DIVISION**

RESIDENTIAL USAGE RATES

	AUGUST 1, 2005	2006	2007	2008	2009
Tier 1 (0-40 Units)	\$0.97	\$1.16	\$1.42	\$1.68	\$1.98
Tier 2 (> 40 Units)	\$1.70	\$2.04	\$2.49	\$2.94	\$3.47

**BLACKLAKE DIVISION**

NON-RESIDENTIAL USAGE RATES

(Multi-family, Commercial, Irrigation, Agriculture, Industry and Construction)

	AUGUST 1, 2005	2006	2007	2008	2009
All Water Use	\$1.18	\$1.42	\$1.73	\$2.04	\$2.41



**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2009-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING WATER RATE ADJUSTMENT AND BUY-IN CHARGE WITHIN THE CURRENT  
BLACKLAKE WATER DIVISION TO FACILITATE THE MERGER  
OF THE BLACKLAKE WATER DIVISION AND TOWN WATER DIVISION**

**WHEREAS**, the District has historically operated two (2) water divisions commonly referred to as the Blacklake Water Division and the Town Water Division; and

**WHEREAS**, the Blacklake Water Division, by design, uses a hydro-pneumatic pump station that includes tanks and variable speed pumps to provide water pressure for potable water and fire protection. The Town Water Division, by design, uses water tanks and a gravity water system to provide water pressure for potable water and fire protection; and

**WHEREAS**, each water division has been subject to separate water-rate structures; and

**WHEREAS**, the Blacklake Booster Pump Station and hydro-pneumatic tank are worn out and cannot provide reliable pressure for potable water and fire protection within the Blacklake Water Division; and

**WHEREAS**, the District has introduced Ordinance 2009-111 that, if adopted, would merge the Blacklake Water Division with the Town Water Division. The adoption of said Ordinance is conditioned on Blacklake Water Division customers and property owners approval of the merger, the adjusted water rates and Buy-In Charge pursuant to the protest provisions of Section 6 of Article XIII D of the California Constitution; and

**WHEREAS**, the District General Manager has authored a report titled "Blacklake Water Fund Merger and Town Water Fund Financial Plan and User Rates Final Report" ("District Final Report"). The District Final Report:

- A. Establishes the existing Town Division bi-monthly water rates as the merged systems' water rates; and
- B. Provides a financial analysis and contribution formula for the capital improvements required to finalize the merger of the two water divisions and establishes Blacklake's contribution to existing Town Division operating water reserves to establish a merged systems' operating reserve account; and

**WHEREAS**, the District Final Report establishes Blacklake water customers' total contribution at \$277,742 (two hundred and seventy-seven thousand, seven hundred and forty-two dollars) to the merged system, or \$437 (four hundred and thirty-seven dollars) per equivalent one inch Blacklake meter (herein "Buy-in charge"). The District Final Report is on file with the District and is available for inspection; and

**WHEREAS**, Government Code §61115 authorizes the District to adopt rates and charges by Resolution; and

**WHEREAS**, on January 28, 2009, and pursuant to the introduction of Ordinance 2009-111, the District conducted a duly noticed public hearing wherein the Board of Directors considered public comment in support of and in opposition to the proposed merger, the proposed rate adjustment and whether or not a majority protest exists to the proposed rate



NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2009-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING WATER RATE ADJUSTMENT AND BUY-IN CHARGE  
WITHIN THE CURRENT BLACKLAKE WATER DIVISION TO FACILITATE THE  
MERGER OF THE BLACKLAKE WATER DIVISION AND TOWN WATER DIVISION

adjustment and Buy-In Charge pursuant to Section 6 of Article XIII D of the California Constitution. At the conclusion of the public hearing, the Board found that approximately ten written protests were received and that a majority protest did not exist. The Board further set February 11, 2009, as the date to consider the adoption of a Resolution implementing the rate adjustment and Buy-In Charge including a repayment program; and

**WHEREAS**, based on facts and analysis presented in the District Final Report, written protests received prior to the close of the January 28, 2009 public hearing, the Staff Report, Staff Presentation and public testimony received, the Board of Directors finds:

- A. The public hearing adopting this Resolution has been properly noticed pursuant to Government Code §54954.2 (The Brown Act).
- B. The rates and charges including the Buy-In Charge adopted by this Resolution:
  - 1. Are for the purposes of meeting operation, maintenance and capital replacement expenses for providing water service for the merged water systems.
  - 2. Do not exceed the funds required to provide water service within the former Blacklake Division.
  - 3. Do not exceed the proportional cost of services attributable to those parcels receiving water service within the former Blacklake Division.

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

Section 1. 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.

Section 2. Rates and Charges.

The Town Division rates and charges, as adjusted from time to time, established in Appendix A to Chapter 3.03 of the District Code attached hereto as Exhibit "A" are hereby adopted as the combined (merged) water systems' bi-monthly water rates.

Section 3. Blacklake Buy-In Charge and Repayment Program.

- A. There is hereby established a total Blacklake Buy-in Charge of \$277,742 (two hundred seventy-seven thousand seven hundred forty-two dollars) which equates to \$437 (four hundred thirty-seven dollars) per equivalent one-inch meter.



**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2009-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING WATER RATE ADJUSTMENT AND BUY-IN CHARGE  
WITHIN THE CURRENT BLACKLAKE WATER DIVISION TO FACILITATE THE  
MERGER OF THE BLACKLAKE WATER DIVISION AND TOWN WATER DIVISION**

- B. The Buy-In Charge shall be repaid through a bi-monthly surcharge applied to Blacklake customers' water utility bills for a ten-year period as referenced in the below chart. The Buy-In Charge shall be fully repaid with interest at 3%.

1-inch equivalent water meter	\$8.44
1½-inch water meter	\$25.32
2-inch water meter	\$40.51

\*Includes 3% interest rate

- C. Blacklake customers shall be given the opportunity to prepay their share of the Buy-In Charge with a lump-sum payment, as referenced in the below chart, thereby avoiding interest costs and the bi-monthly Buy-In Charge.

1-inch equivalent water meter	\$437
1½-inch water meter	\$1,311
2-inch water meter	\$2,098

- D. Blacklake water customers will be given the opportunity to prepay their share of the Buy-In Charge during the month of March, 2009. District Staff is instructed to provide notice to Blacklake water customers of the opportunity to prepay the Buy-In Charge.
- E. Subject to the Blacklake water customers making the one-time payment (as described above), the Buy-In Charge will constitute a separate surcharge on individual water bills within Blacklake until paid in full (approximately July 1, 2019). The surcharge, once established, will not be considered or adjusted in future rate adjustments for the merged water divisions.

**Section 4. Repeal of Prior Ordinances and Resolutions.**

All Ordinances, Resolutions and sections of Ordinances and Resolutions that are inconsistent with this Resolution are hereby repealed.

**Section 5. Effect of Repeal on Past Actions and Obligations.**

This Resolution does not affect prosecutions for violations committed prior to the effective date of this Resolution, does not waive any fee or penalty due and unpaid on the effective date of this Resolution, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any prior Resolution or Ordinance.

**Section 6. CEQA Findings**

The Board of Directors of the District finds that the rates and charges adopted by this Resolution exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080(b)(8) and CEQA Guidelines Section 15273. The District General Manager is directed to prepare and file appropriate notices.

NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2009-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING WATER RATE ADJUSTMENT AND BUY-IN CHARGE  
WITHIN THE CURRENT BLACKLAKE WATER DIVISION TO FACILITATE THE  
MERGER OF THE BLACKLAKE WATER DIVISION AND TOWN WATER DIVISION

Section 7. Severance Clause.

If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Resolution. The Governing Board of the District hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 8. Effective Date.

This Resolution shall take effect immediately upon the District adopting Ordinance 2009-111. The rates, charges and Buy-In Charge adopted by this Resolution shall take effect July 1<sup>st</sup>, 2009.

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 \_\_\_\_\_ 2009.

\_\_\_\_\_  
James Harrison, 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



**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2009-XXXX**

**EXHIBIT "A"**

**APPENDIX A TO CHAPTER 3.03**

**WATER RATES AND CHARGES**

**BI-MONTHLY AVAILABILITY CHARGES\***

(The bi-monthly availability charge shall take effect August 1, 2005, and Future increases shall take effect on January 1, of each succeeding year.)

**TOWN DIVISION**

SIZE OF METER	AUGUST 1, 2005	2006	2007	2008	2009
1 Inch or Less	\$16.76	\$18.43	\$20.64	\$22.71	\$24.52
Litigation Charge	\$6.32	\$6.32	\$6.32	\$6.32	\$6.32
1 ½ Inch	\$47.56	\$52.32	\$58.60	\$64.46	\$69.61
Litigation Charge	\$14.36	\$14.36	\$14.36	\$14.36	\$14.36
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3 Inch	\$140.17	\$154.18	\$172.68	\$189.95	\$205.15
Litigation Charge	\$27.92	\$27.92	\$27.92	\$27.92	\$27.92
4 Inch	\$232.77	\$256.05	\$286.77	\$315.45	\$340.68
Litigation Charge	\$36.00	\$36.00	\$36.00	\$36.00	\$36.00
6 Inch	\$464.07	\$510.48	\$571.73	\$628.91	\$679.22
Litigation Charge	\$59.58	\$59.58	\$59.58	\$59.58	\$59.58
8 Inch	\$741.74	\$815.92	\$913.83	\$1,005.21	\$1,085.63
Litigation Charge	\$68.08	\$68.08	\$68.08	\$68.08	\$68.08

\*The above bi-monthly availability charge reflects the adjusted rate established by Ordinance 2003-95 to meet the District's financial obligations. Litigation charges off-set District financial obligations relating to the lawsuit entitled Santa Maria Valley Water Conservation District vs. the City of Santa Maria, the Nipomo Community Services District, et al. When the District's financial obligation regarding this lawsuit have been satisfied, the litigation charge will be removed.

**TOWN DIVISION**

**RESIDENTIAL USAGE RATES**

	AUGUST 1, 2005	2006	2007	2008	2009
Tier 1 (0-40 Units)	\$1.12	\$1.23	\$1.38	\$1.52	\$1.64
Tier 2 (> 40 Units)	\$1.91	\$2.10	\$2.35	\$2.59	\$2.80

**TOWN DIVISION**

**NON-RESIDENTIAL USAGE RATES**

(Multi-family, Commercial, Irrigation, Agriculture, Industry and Construction)

	AUGUST 1, 2005	2006	2007	2008	2009
All Water Use	\$1.41	\$1.55	\$1.74	\$1.91	\$2.06

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: FEBRUARY 6, 2009

**AGENDA ITEM  
E-2  
FEBRUARY 11, 2009**

EDIT WIP OBJECTIVES

**ITEM**

Edit Waterline Intertie Project Objectives [RECOMMEND APPROVAL]

**BACKGROUND**

The Waterline Intertie Project Committee on January 26, 2009 recommended that the Board edit Objective 4 in response to the attached Comment Letter received from Paul Hood of SLO County LAFCO by adding the following sentences:

Each phase will be separately approved and funded by authorization of the NCSD Board of Directors. Phases 1 and Phase 2 will supply water only to customers in the current NCSD boundaries, and other water purveyors in the NMMA, specifically the Woodlands Water Company, Golden State Water Company, and Rural Water Company. Only in Phase 3 will water be made available to new customers in the 2004 Sphere of Influence that are annexed into the NCSD boundaries.

Attached is a reprint of the current Objectives

**FISCAL IMPACT** – NONE

**RECOMMENDATION**

Staff believes that the proposed language clarifies the Board's intent and recommends that the Board revise the objectives as detailed above. Should the Board adopt this edit, then pages III-6, VII-2 and VII-7 of the Final EIR would reflect this edit.

**ATTACHMENTS**

- LAFCO Comment Letter
- Current Bylaws

t:\documents\board matters\board meetings\board letter 2009\WIP Objectives.doc



## **B. PROJECT OBJECTIVES**

The basic objective of the proposed Nipomo Community Services District Waterline Intertie Project is to construct a pipeline connection from the City of Santa Maria water distribution system across the Santa Maria River to the existing water distribution system within the Nipomo Community Services District. In so doing, the proposed project will also achieve the following objectives:

1. Slow the depletion of the above-sea-level groundwater in storage beneath the Nipomo Mesa Groundwater Management Area (NMMA) of the Santa Maria Groundwater Basin to reduce the potential for sea water intrusion by using supplemental water consistent with the settlement agreement and the judgment related to the groundwater adjudication. Since projections have shown that sea water intrusion could occur in 12-14 years with no new development, and under 8 years in a "dry years" scenario, the nearest-term project completion is essential. The conservative goal of this project is to provide at least 2,000 acre-feet per year (AFY) of supplemental water to the NMMA by 2013.
2. Comply with the 2005 groundwater adjudication settlement stipulation and judgment that dictates the need for active management of the NMMA.
3. Assist in stabilizing the groundwater levels in the NMMA by reducing pumping in the NMMA.
4. Augment current water supplies available to the Nipomo Community Services District by a phased delivery of supplemental water. Phase I will supply approximately 2,000 AFY by pipeline from Santa Maria following Phase 1 construction completion. Phase II will supply up to an additional 1,000 AFY by pipeline from Santa Maria (a cumulative total of 3,000 AFY). A third phase (Phase III), if implemented, would supply up to an additional 3,200 AFY (a cumulative total of 6,200 AFY) by pipeline from Santa Maria.
5. Augment current water supplies available to the Woodlands and other water purveyors on the Mesa by 831 acre-feet per year as follows: Woodlands (415 AFY), Golden State Water Company (208 AFY) and Rural Water Company (208 AFY).
6. Increase the reliability of District water supply by providing a diversity of water sources. Avoid the potential use of supplemental water return flows from the District, the Woodlands and the other purveyors, being used to support the water requirements of new development.
7. Comply with Local Agency Formation Commission (LAFCO) conditions for securing supplemental water prior to annexation of lands now within the District's

Sphere of Influence. This supplemental water for annexations shall be in addition to the 3,000 AFY developed by Phases I and II.

8. Avoid multiple waterline crossings of the Santa Maria River and associated environmental impacts, by constructing a single pipeline capable of transporting sufficient water for potential NMMA growth consistent with the South County Area Plan (Inland) of San Luis Obispo County's General Plan. The pipeline diameter crossing the Santa Maria River would accommodate a 6,200 AFY capacity.
9. Slow the depletion of the above-sea-level groundwater in storage beneath the NMMA by:
  - A. Providing supplemental water for new development within the current service area of the District and the Mesa's other water purveyors (Golden State and Rural Water) consistent with the South County Area Plan (Inland);
  - B. Facilitating supplemental water delivery for new development within the District's Sphere of Influence consistent with the South County Area Plan (Inland) and the conditions in LAFCO's 2004 Sphere of Influence Update;
  - C. Providing the basis for the assessment of County Impact Fees upon development outside the District's Sphere of Influence and the service areas of the Mesa's other water purveyors (Golden State and Rural Water Companies).

These project objectives play an important role in this EIR in that these objectives provide the basis for judging the merits of the proposed project. These objectives also assist in the evaluation (and possible adoption or rejection) of alternatives to the proposed project (see Section VII. Alternatives to the Proposed Project).



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NIPOMO COMMUNITY  
SERVICES DISTRICT

January 9, 2009

Mr. Bruce Buel  
Nipomo Community Services District  
148 South Wilson Street  
Nipomo, CA 93444

Subject: Draft Environmental Impact Report NCSD Waterline Intertie

Dear Mr. Buel:

Thank you for the opportunity to comment on the Draft Environmental Impact Report being prepared by the Nipomo Community Services District for the Waterline Intertie with the City Santa Maria. LAFCO may use the Final EIR to assist in evaluating future LAFCO actions that may be considered in the area. We offer the following comments regarding the Draft EIR:

1. The Draft EIR appears to provide a comprehensive analysis of all of the issues regarding the waterline intertie project. The District and their Consultant Team are to be commended for having completed such a thorough and well researched document.
2. On page III-2 the EIR discusses LAFCO's Sphere of Influence Update in 2004, the associated Program EIR and the mitigation measures that were implemented as conditions of approval. It should be noted that these were conditions of approval placed on the NCSD's Sphere of Influence using the Program EIR. The conditions are attached for reference.
3. On page III-6, Project Objective #7 should be clarified with regard to when compliance with LAFCO conditions will occur. The existing wording appears to indicate that the supplemental water for annexations will not be available until Phase III of the project is complete. This should be clearly stated in objective 7 since in the EIR it appears that Phases I and II of the project are intended to serve areas already within the NCSD.

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4. On page V-9, the EIR states that LAFCO has authority over Land Use matters in the area. LAFCO is specifically precluded by the Cortese/Knox/Hertzberg Act from making any decisions with regard to land use.

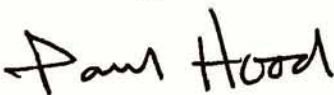
**56375(3)** *A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at buildout, and are consistent with the city's general plan. However, the commission shall not specify how, or in what manner, the territory shall be zoned. The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city.*

LAFCO does consider land use information as a factor in its decision making process, however; the decisions made by LAFCO are regarding the boundaries of a jurisdiction. The Cities and County General Plans are used as one factor to be considered in the annexation process.

5. On page VII-2, objective 7., comment number 3 above should be considered.
6. On page VII-7, the last sentence reference LAFCO requirements with regard to the service area and Sphere of Influence. If the requirements being referenced are the conditions of approval, these apply to areas within the Sphere of Influence and proposed for annexation, not areas already within the Service Area. Properties within the service area are subject to decisions and policies made by the NCSO with regard to water service.

Thank you for the opportunity to comment on the Draft EIR. If you have any questions regarding our comments please contact David Church at 781-5795.

Sincerely,



PAUL HOOD  
LAFCO Executive Officer

cc. LAFCO Commissioners  
Doug Wood, Douglas Wood and Associates



**NIPOMO COMMUNITY SERVICES DISTRICT  
CONDITIONS OF APPROVAL**  
Sphere of Influence Update and Municipal Service Review  
May 20, 2004

**LAND USE**

1. Prior to providing services to an area or property in the District's Sphere of Influence one or more of the following processes shall be completed:
  - a. Approval by the County of San Luis Obispo of Tract or Parcel Map, Conditional Use Permit, Specific Plan, and/or General Plan Amendment, or
  - b. Approval by LAFCO of an Outside User Agreement or an Annexation.

These processes shall be subject to the environmental review process consistent with the California Environmental Quality Act (CEQA). Any conflicts between the Sphere of Influence and the General Plan shall be resolved through these processes stated above. Impacts associated with premature or "leapfrog" development, development outside the Urban Reserve Line, potential growth-inducing impacts, and the availability of public services shall also be addressed and mitigated to the greatest possible degree through these discretionary approval processes.

2. The proposed Sphere of Influence shall be reduced from the eight Study Areas to exclude all of Study Area #6.

A map identifying the Sphere of Influence is found in the Exhibit A of this resolution.

3. The District shall not provide sewer services to Study Areas #4 (except for the Southland Specific Plan Area and areas zoned Residential Suburban), #5 (Residential Suburban zoning only), #7, and #8. This condition shall be applied by LAFCO to any annexations proposed in those Study Areas as shown in the map found in Exhibit A of this resolution and by the District through any annexation agreements they approve.

## WATER

4. Except as provided below, prior to LAFCO approval of any annexation, the District shall:
  - A. Implement a water conservation program that decreases water use by 15% based on per connection water consumption. Annexations shall only be approved if 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.
  - B. 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. The Registered Professional Engineer shall be selected from a list of qualified professionals provided by LAFCO.
5. 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 Guidebook dated October 8, 2003. A Registered Professional Engineer specializing in water planning shall review and certify such documentation. The Registered Professional Engineer shall be selected from a list of qualified professionals provided by LAFCO.
6. Prior to final approval of any annexation that is a "project", as defined under the Water Code 10912, the District shall submit a Water Assessment pursuant to the procedures found in the Guidebook for Implementation of SB 610 and SB 221, using only the steps applicable to SB 610.
7. Conditions 4, 5, and 6 shall not apply to the following proposed annexations:
  - A. **County Service Area 1 Reorganization.** This proposal would dissolve CSA 1 and annex those areas into the District. The District would not be providing water service, but would assume the provision of sewer services and the maintenance of drainage facilities to these areas.



This proposal has no impacts on District water resources since these areas are already served by Cal Cities Water Company.

- B. Patterson Annexation.** This annexation is one single-family residence that was not included in the Robertson Annexation because it was not covered by the County's environmental determination. Mr. Patterson has filed an application with LAFCO. The proposal is being processed. It is reasonable to assume that the impacts on the District's water supply would be insignificant.
  
- C. Moss Lane Annexation.** These are the six residences that were not a part of the Maria Vista annexation. These residences have failing wells that may create a health and safety problem in the near future. Hookups are readily available through Maria Vista. The impact to the District's water supply would be insignificant.