

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: AUGUST 7, 2009

**AGENDA ITEM**  
**E-4**  
**AUGUST 12, 2009**

CHILI COOK-OFF

**ITEM**

Discuss Chamber request to sponsor August 22, 2009 Chili Cook-Off [REJECT REQUEST OR TAKE ALTERNATE ACTION]

**BACKGROUND**

A representative of the Chamber approached Director Nelson at the July Chamber Luncheon regarding NCSD's willingness to sponsor the Chamber's August 22, 2009 Chili Cook-Off. President Harrison has agendized this item so that the Board could respond. The event is from 3pm to 6pm on Saturday August 22, 2009 at the Adobe Plaza. Sponsorship includes cooking Chili, participating in the tasting and manning a booth during event hours.

This event does not relate well to the District's main mission and the use of staff time would require payment of overtime rates (\$67 to \$84 per hour).

**FISCAL IMPACT**

Should the Board direct staff to participate, the event could cost \$500 to \$800. Should the Board wish to participate without Staff assistance, the event costs would relate to the cost of the supplies. Funds for this event would have to come from the Property Tax reserve.

**RECOMMENDATION**

Staff recommends that the Board reject the request and thank the Chamber for the invitation. Staff would not object to the Board Member participation.

**ATTACHMENTS** – NONE

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: AUGUST 7, 2009

**AGENDA ITEM  
E-5  
AUGUST 12, 2009**

REQUEST SUPERVISOR ACHADJIAN TO PLACE JPA ON AGENDA

**ITEM**

Authorize requesting Supervisor Achadjian to place an item on a Board of Supervisors Agenda regarding adoption of a Joint Powers Agreement (JPA) between NCSD and the County for funding the Waterline Intertie Project [RECOMMEND APPROVAL]

**BACKGROUND**

At the August 6<sup>th</sup> Purveyor's Meeting, County Auditor Gere Sibbach indicated that he had not been successful in calling a second meeting of the County's Debt Advisory Committee and Supervisor Achadjian suggested that the District formally request that he place an item on a Board of Supervisor's Meeting Agenda regarding adoption of a JPA for funding the Waterline Intertie Project. The representatives at the meeting from Golden State Water Company, Rural Water Company and the Woodlands Mutual Water Company all supported this suggestion and indicated that they would be willing to co-sign an appropriately worded letter request. Mr. Sibbach agreed to submit a memorandum describing the Committee's quorum problem.

Attached is a copy of the draft JPA. Also attached is a copy of staff submittal to the Debt Advisory Committee.

**FISCAL IMPACT**

Development of this letter request would use previously budgeted staff time and legal consulting cost.

**RECOMMENDATION**

Staff recommends that the Board agree to the suggestion and authorize the General Manager to draft such a letter request including the Auditor's Memorandum, to secure purveyor and agency staff review of the draft and to submit a final draft to Supervisor Achadjian.

**ATTACHMENTS**

- Draft JPA
- Staff Submittal to Debt Advisory Committee

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JOINT POWERS AGREEMENT  
BETWEEN THE COUNTY OF SAN LUIS OBISPO  
AND THE NIPOMO COMMUNITY SERVICES DISTRICT

Providing for the Creation of an Assessment District  
To Fund Costs and Capital Improvements  
For the Santa Maria Intertie Project

THIS AGREEMENT ("Agreement") is made in multiple parts and is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the Nipomo Community Services District, a community services district formed and operated pursuant Section 61000 et seq. of the Government Code (hereinafter referred to as "District"), the County of San Luis Obispo Flood Control and Water Conservation District (hereinafter referred to as "County FLCWCD"), the County of San Luis Obispo, a political subdivision of the State of California (hereinafter referred to as "County"), and the Agreeing Water Companies (as defined herein) with reference to the following recitals:

**RECITALS**

WHEREAS, the District, the County, and the County FLCWCD are each a "public agency" as that term is defined in the California Government Code, Section 6500; and

WHEREAS, the District is a signator to a June 30, 2005 Stipulation approved by the Superior Court of the State of California, County of Santa Clara, in that certain groundwater adjudication commonly referred to as the Santa Maria Valley Water Conservation District vs. the City of Santa Maria, et al. (lead case number CV770214) (herein "Stipulation"); and

WHEREAS, the Stipulation was later incorporated into a final judgment in the above-referenced litigation on January 25, 2008; and

WHEREAS, pursuant to said Stipulation, the District is in the process of designing a supplemental water intertie project with the City of Santa Maria (herein "Project"); and

WHEREAS, the Project is designed to transport up to 3,000 AFY; and

WHEREAS, pursuant to said Stipulation, the Woodlands Mutual Water Company, the Golden State Water Company and Rural Water Company have agreed to purchase a portion of the Project water. Said companies are referred to herein collectively as the Private Water Companies; and

WHEREAS, the boundaries of the Private Water Companies are established by the California Public Utility Commission; and

WHEREAS, the Agreeing Water Companies are the Private Water Companies who signed this Agreement; and

WHEREAS, the Private Water Companies and the District are within the Nipomo Mesa Water Conservation Area as established by the County. Pursuant to the County's resource management system, the Nipomo Mesa Water Conservation Area is designated as Severity Level III; and

WHEREAS, the District is in the process of designing the Project and intends to create an assessment district pursuant to Street and Highway Code Section \_\_\_\_\_ to finance the District's costs to construct the Project; and

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California, commonly known as the Joint Exercise of Powers Act, two or more public agencies may, by Agreement, jointly exercise any power common to the contracting parties; and

WHEREAS, the District and the County find and determine that it would be in their mutual interest and the public benefit to coordinate their power, authority, and expertise and to cooperate in the formation of a single assessment district to finance the Project costs including the construction of the Project; and

WHEREAS, pursuant to Water Code Section 71722, the District may join with one or more other public agencies, private corporations, or other persons for the purpose of carrying out any of the powers of the District and for that purpose may contract with such other public agencies, private corporations or persons to finance acquisition, constructions, and operations.

#### **PART I: JOINT POWERS AGREEMENT**

THE COUNTY, THE COUNTY FLCWCD, AND THE DISTRICT ENTER INTO THIS JOINT POWERS AGREEMENT WITH THE FOLLOWING TERMS AND CONDITIONS:

A. **Purpose.** The purpose of this Part I of this Agreement is the formation of an Assessment District pursuant to Streets and Highway Code Section \_\_\_\_\_ to finance the construction of the Project.

B. **Assessment District Boundaries.** The Assessment District boundaries shall include the District boundary and the boundaries of the Agreeing Water Companies

**C. District's Responsibilities.** The District shall have the following responsibilities under this Part I of this Agreement.

- 1) Pay for the formation of the Assessment District;
- 2) Provide a financial advisor;
- 3) Provide an assessment engineer;
- 4) Produce an assessment report;
- 5) Provide information to property owners; and
- 6) Construct the Project.

**D. County of San Luis Obispo Flood Control and Water Conservation District's Responsibilities.** The County FLCWCD shall have the following responsibilities.

- 1) Process the formation of an Assessment District to fund the Project including the adoption of all necessary resolutions.
- 2) Prepare and transmit assessment ballots;
- 3) Tabulate assessment ballots;
- 4) Confirmation of ballot tabulation;
- 5) Prepare annual transmission of assessment roll to County auditor; and
- 6) Prepare annual transmission of assessment proceeds to the bond trustee.

**E. County's Responsibilities.** The County of San Luis Obispo shall, through the San Luis Obispo Finance Authority, have the following responsibilities.

- 1) Retention of bond issuance team;
- 2) Adoption of bond issuance resolutions;
- 3) Sale of bonds;
- 4) Pay for the issuance of bonds;
- 5) Transmittal of the proceeds of bond sales to District for Project construction;
- 6) Preparation and transmittal of annual disclosure statements; and
- 7) Tracking of bond retirement.

**PART II: AGREEMENT BETWEEN AGREEING WATER COMPANIES AND THE  
DISTRICT**

THE DISTRICT AND THE AGREEING WATER COMPANIES AGREE AS  
FOLLOWS:

**A. Agreeing Water Companies' Responsibilities.** The Agreeing Water Companies shall have the following responsibilities.

- 1) Advance the District's estimated cost for the formation of the Assessment District within their respective boundaries including but not limited to those costs referenced in Part I, Section C, Paragraphs 1 through 5 and payments to the San Luis Obispo County Flood Control and Water Conservation District (Part I, Section D) and to the County of San Luis Obispo (Part I, Section E), above. The estimated costs attached hereto as Exhibit A. In the event the estimated costs are insufficient to reimburse District, then the Private Water Companies agree to pay the difference upon demand of the District; and
- 2) In the event the bond proceeds are insufficient to construct the Project, then the Private Water Companies, on a pro rata basis agree to pay such additional costs upon demand of District.

**B. District's Responsibilities.** The District shall have the following responsibilities.

- 1) Reimburse Private Water Companies for costs referenced in Part II, Paragraph A(1), above, to the extent the District is reimbursed from bond proceeds.

**PART III: MISCELLANEOUS PROVISIONS APPLICABLE TO  
PART I AND PART II**

ALL PARTIES AGREE AS FOLLOWS:

**A. Other Agreements.** This Agreement, will be in addition to other agreements, between the District and Agreeing Water Companies that will address, among other things, the costs for delivery of supplemental water and the operation and maintenance of the Project.

**B. Cooperation of Parties.** The Parties recognize that it is essential to cooperate fully concerning the handling of data and information contemplated in this Agreement. In connection with this Agreement, the Parties agree to provide any data, information, and documentation reasonably necessary to the performance of this Agreement.

**C. Modification.** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions,

alternatives, substitutes or revisions are valid or binding unless authorized by the Parties in writing.

**D. Successors and Assigns.** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties.

**E. Review for Legal Adequacy.** Each Party to this Agreement acknowledges and agrees that this Agreement has been reviewed by each Party's respective legal counsel for legal adequacy.

**F. Waiver.** No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by any Party shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. No delay or omission of any Party in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this Agreement.

**G. Severability Provision.** If any term or portion of this Agreement is held to be invalid, illegal, void, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**H. Signature in Counterparts.** This Agreement may be executed in counterparts by all Parties. The Agreement is effective as to any signatory Party on execution and, for purposes of enforcement, true copies of signatures shall be deemed to be original signatures.

**I. Term of Agreement.** This Agreement shall automatically terminate on \_\_\_\_ days after the District adopts the Resolution accepting Project construction.





# NIPOMO COMMUNITY SERVICES DISTRICT

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**TO:** THE HONORABLE KATCHO ACHADJIAN  
**FROM:** BRUCE BUEL, NCSD GENERAL MANAGER *BB*  
**DATE:** JUNE 4, 2009  
**RE:** NCSD PROPOSAL TO FORM ASSESSMENT DISTRICT

Following is a narrative explaining why NCSD is proposing to construct the Waterline Intertie Project (WIP); why we are proposing to form an Assessment District; and why we are proposing a JPA with SLO County/SCFCWCD. Please see attached Map showing boundaries of participants and draft JPA Text as reference materials.

## WHY CONSTRUCT THE WIP?

1. The Board of Supervisors has certified a Level of Severity III for Water Supplies for the Nipomo Mesa based on State/County/Court studies that prove that the Consumptive Use of Nipomo Groundwater exceeds Recharge and the basin is threatened by salt water intrusion.
2. The Board of Supervisors has listed the WIP as a High Priority Project in the County's Integrated Water Management Plan.
3. The Board of Supervisors and NCSD have executed a 2009 Memorandum of Understanding in which the County agrees to cooperate with NCSD so that NCSD to implement its Waterline Intertie Project
4. The Court has ordered NCSD to build the WIP and ordered Golden State Water Company (GSWC), Rural Water Company (RWC) and The Woodlands to pay for their respective share of the yield.
5. Failure to construct the WIP would frustrate the County's proposals to site much of its future unincorporated growth and job development in Nipomo



## **WHY FORM AN ASSESSMENT DISTRICT?**

1. Both GSWC and RWC are investor owned public utilities whose rates are controlled by the CA Public Utilities Commission (CPUC). The CPUC has twice rejected GSWC's Petitions to fund its share of the WIP capital cost. Both GSWC and RWC support NCSD's proposal to include all of the landowners in their respective service areas so that CPUC approval is not necessary even though neither Utility would be able to earn profit off of the investment. The Woodlands also supports the proposal.
2. Formation of an Assessment District minimizes the out of pocket cost to the existing customers and thus, enhances the political viability of securing property owner approval. Nipomo's voters have not historically supported development of new water for the Mesa, having rejected participation in State Water twice.
3. Developers dislike NCSD's current Supplemental Water Capacity Charge of \$13,000 per equivalent dwelling unit and have complained loudly that the magnitude of the capacity charge makes new development infeasible. NCSD would be able to reduce or eliminate our Supplemental Water Capacity Charge if development's share of WIP Capital Cost is incorporated into the Assessment District.

## **WHY FORM A JPA?**

1. NCSD could form an Assessment District for the properties within its boundaries, but none of the utilities have the authority to do so for their service areas. By forming a JPA with the County, one large Assessment District can be processed and funding secured from all of the partners.
2. Failure to use assessment funding, results in a large segment of the WIP Capital Cost unfunded and potentially uncollectible in spite of the Court mandate.
3. NCSD and the other water suppliers are willing to pay for all of the costs involved in forming the assessment district and conduct all of the activities possible under law with its employees and agents.
4. NCSD expects that the Bond Market will react more favorably to the County's Financial Status as opposed to NCSD's financial status in the form of a better bond rating and/or interest rate.
5. NCSD expects that the interagency cooperation illustrated by such a JPA would assist in secure state proposition Grant Funding.

regarding groundwater elevations and water quality data necessary to implement the NMMA Monitoring Program.

