

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BBB*
DATE: OCT. 9, 2009

AGENDA ITEM
E-2
OCT. 14, 2009

WIP JPA WITH SLO COUNTY

ITEM

Review Board of Supervisors Action on Proposed JPA and Authorize Negotiation [AUTHORIZE NEGOTIATION]

BACKGROUND

Your Honorable Board, on August 26th, submitted the attached request to Supervisor Achadjian and the Board of Supervisors discussed this matter at its Sept. 22, 2009 Board Meeting (See attached staff note). At the Sept. 22nd Meeting the Board of Supervisors unanimously directed County Staff to develop JPA criteria for Board review by the end of October and to bring back a draft JPA by the end of December. District Staff and County Staff have started to meet to discuss both the criteria and the JPA.

It is staff's understanding that the Criteria will be considered by the Board of Supervisors on November 3, 2009 along with a reimbursement agreement to cover the County's actual cost of forming the JPA. Attached is a rough draft of such a reimbursement agreement that the County has asked NCSD to approve at our October 28th Board Meeting. Staff expects to also present a draft list of criteria developed by County Staff at this meeting.

FISCAL IMPACT

Negotiation of the criteria and the JPA will involve a commitment of previously budgeted staff time and legal consulting cost.

RECOMMENDATION

Staff recommends that the Board authorize staff to expedite the negotiation and to keep the Board advised of progress.

ATTACHMENTS

- NCSD Letter to Supervisor Achadjian
- 9/22 County Staff Note
- Rough Draft Reimbursement Agreement

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2009\WIP JPA 091014.DOC

NIPOMO COMMUNITY

BOARD MEMBERS

JAMES HARRISON, PRESIDENT
LARRY VIERHEILIG, VICE PRESIDENT
MIKE WINN, DIRECTOR
ED EBY, DIRECTOR
BILL NELSON, DIRECTOR



SERVICES DISTRICT

STAFF

BRUCE BUEL, GENERAL MANAGER
LISA BOGNUDA, ASSISTANT GENERAL MANAGER
JON SEITZ, GENERAL COUNSEL

148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932 Website address: NCSD.CA.GOV

Hand Delivery

August 26, 2009

The Honorable Katcho Achadjian, 4th District Supervisor
The Honorable Bruce Gibson, Chairman of the San Luis Obispo County Board of Supervisors
SLO County Government Center
San Luis Obispo, CA 93408

SUBJECT: CONSIDERATION OF THE NIPOMO COMMUNITY SERVICES DISTRICT'S (NCSD) REQUEST THAT THE BOARD OF SUPERVISORS AUTHORIZE THE COUNTY AND THE COUNTY FLOOD CONTROL DISTRICT TO PROCEED WITH THE DEVELOPMENT OF A JOINT POWERS AGREEMENT (JPA) TO FACILITATE THE CREATION OF ONE OR MORE ASSESSMENT DISTRICTS TO FINANCE A SUPPLEMENTAL WATER PROJECT FOR THE DELIVERY OF WATER TO VARIOUS WATER COMPANIES WITHIN THE NIPOMO MESA WATER CONSERVATION AREA.

Dear Supervisor Achadjian and Chairman Gibson,

This letter is a request, on behalf of the NCSD Board of Directors, that an item be placed on an upcoming Board of Supervisors Meeting Agenda regarding the processing of a Joint Powers Agreement (JPA) between the NCSD and the SLO County (and/or SLO County Flood Control District) to facilitate the formation of one or more assessment districts to fund the construction of NCSD's Waterline Intertie (Project). For your review in considering NCSD's request, I am attaching the following documents:

- a. Draft outline of the proposed JPA
- b. A brief history of County Water Studies and the Groundwater Adjudication that pertain to the Nipomo Mesa Water Conservation Area
- c. A map of the Nipomo Mesa Water Conservation Area that depicts the boundaries of the various water companies that would participate in the assessment district
- d. A depiction of the Intertie Project.
- e. The Executive Summary of the NMMA Technical Group Annual Report submitted to Judge Komar.

Name: The Honorable Katcho Achadjian
Subject: Proposed JPA
Date: August 26, 2009

Nipomo Community Services District
Page 2 of 3

The proposed Project is consistent with the June 30, 2005 Stipulation and Judge Komar's Final Judgment in the Santa Maria Basin Water Rights Litigation, which includes the construction of a Supplemental Water Project to import 2,500 acre feet per year of new water onto the Nipomo Mesa (Nipomo Mesa Water Conservation Area as defined in County Ordinance 3090). The Stipulation provides that the Project water will be delivered to NCSD, Golden State Water Company (GSWC), Rural Water Company (RWC) and Woodlands Mutual Water Company (WMWC). The Stipulation also provides for the spreading of Project costs among the four water companies.

The remaining hurdle before Project construction is to secure the approval of a financing plan acceptable to NCSD's customers and the customers of the other three water companies. After lengthy discussion and analysis, the four water companies have concluded that the most palatable mechanism for the construction of the Waterline Intertie Project would be through an assessment district comprised of the properties within the four service areas. This mechanism minimizes the Project's cost to existing developed properties, lowers capacity charges for future development and minimizes or avoids PUC approval of the monetary contributions from GSWC and RWC. The assessment district mechanism requires County participation because GSWC, RWS and WMWC have no authority to establish assessment districts and the NCSD can not unilaterally form assessment districts outside of its boundary.

As of the date of this letter

- The Project is nearing the 60% design level
- The Project EIR has been certified by the NCSD
- The NCSD is developing pre-qualifications proposals for the construction of the Santa Maria River Crossing
- The NCSD has received a draft assessment report from its Engineers spreading NCSD's share of the Project cost to properties within the NCSD boundary.

NCSD believes that the adoption of the JPA is an essential component to the construction of the Project. The County's participation would include the formation of one or more assessment districts, the processing of Prop 218 assessment ballot proceedings, the issuance of assessment bonds (through the County's finance authority) and to collect the assessments on an annual basis to cover the debt service on the bonds that would finance the Project. As provided in the attached draft outline of the JPA, the District and participating water companies would be responsible for the reimbursement of County costs in processing the assessment district.

The District believes that the requested action is consistent with the County's existing water resource policies including the County's frame work for planning as referenced in appendix to the 2007 Resource Management System related to Severity Level III Certifications. We also believe that the County's participation in the formation of a joint assessment district will demonstrate a regional solution to resource deficiencies that will surely help with grant funding, if available.

At this juncture the District is requesting that the Board of Supervisors authorize County staff to proceed with the development of a JPA to facilitate the outcome as referenced in this letter. Of course the JPA would have to be returned to the Board of Supervisors, the Districts Board of Directors and the other water companies for final approval.

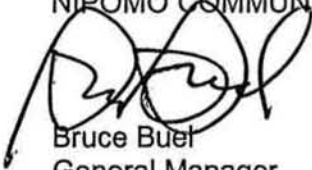
Name: The Honorable Katcho Achadjian
Subject: Proposed JPA
Date: August 26, 2009

Nipomo Community Services District
Page 3 of 3

On behalf of the NCSD Board of Directors and the other participating water companies, thank you for your help in this matter. If you should have any questions, please don't hesitate to call me at 929-1133.

Sincerely,

NIPOMO COMMUNITY SERVICES DISTRICT



Bruce Buel
General Manager

CC: County Board of Supervisor Members James Patterson, Adam Hill & Frank Mecham
NCSD Directors
Jim Grant, CAO
Paavo Ogren, Public Works
The Honorable Gere Sibbach, County Auditor
The Honorable Frank Freitas, County Tax Collector
Warren Jensen, County Counsel
Rick Sweet, City of Santa Maria
Ken Petersen, GSWC
Rob Saperstein, GSWC
Chuck Baker, RWC
Rob Miller, WMWC
Jon S. Seitz, District Legal Counsel
Chronological File

T:\DOCUMENTS\STAFF FOLDERS\BRUCE\LETTERS\090826JPA.DOC

Exhibits to NCSD Application to form JPA

- a. Draft outline a proposed JPA

- b. A brief history of the County Water Studies and the Groundwater Adjudication surrounding the Nipomo Mesa Water Conservation Area

- c. A map of the Nipomo Mesa Water Conservation Area that depicts the boundaries of the various water companies that would participate in the assessment district

- d. A depiction of the Intertie Project.

- e. The Executive Summary of the NMMA Technical Group Annual Report submitted to Judge Komar.

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 and the County are signators 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, 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 Project is designed to transport up to 3,000 AFY of water to the Nipomo Water Conservation Area (NWCA) as established by the County pursuant to Ordinance 3090. The NWCA is referred to as the Nipomo Mesa Water Conservation Area (NMMA) in the above referenced Stipulation; and

WHEREAS, the Project water will be used by the District and Agreeing Water Companies to:

- Provide water to existing customers; and
- Provide water for limited infill within existing boundaries.

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 one or more assessment districts 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 one or more Assessment Districts 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.

Exhibit (b) to NCSD Application to form a JPA

A. SAN LUIS OBISPO COUNTY STUDIES

The County of San Luis Obispo has received a number of water studies for the portion of the Santa Maria Basin underlying the Nipomo Mesa Water Conversation Area (AKA Nipomo Mesa Management Area or NMMA). These studies include:

- The 1996 Woodland Environmental Impact Report;
- A groundwater study of the Arroyo Grande-Nipomo Mesa area by the Department of Water Resources that began in 1993 and was completed in 2002 (2002 DWR Report);
- The March 2004, S.S. Papadopolus & Associates, Environmental and Water-Resource Consultants (SSPA) report titled Nipomo Mesa Groundwater Resource Capacity Study, that reviewed the analysis the 2002 DWR Report and other reports and reached various conclusions and recommendations.

The above studies are summarized in the San Luis Obispo County Department of Planning and Building's, "Resource Capacity Study-Water Supply in the Nipomo Mesa Area dated November 2004, (2004 RCS)". Additionally the 2004 RCS reviewed the County's Resource Management System (RMS) and reaches "conclusions related to the water capacity of the aquifer underlying the NMMA."

The 2004 RMS includes the following determination regarding water supplies underlying the NMMA.

"In order to maintain the sustainability of the groundwater supply, total extractions would have to become stabilized at 6000 AFY. Sustainability can be achieved through some combination of conservation and supply augmentation so that urban extractions do not exceed 3400 AFY or that they increase by no more than the addition of supplemental water to the Nipomo Mesa portion of the basin. To address fully the projected deficits, a combination of conservation and additional supply totaling 4020 AFY should be in place by 2010 and a combination equaling 4600 AFY should be on line by 2020. For example, without any supplemental water, conservation would be the

only mechanism for achieving sustainability. In 2010, 7430 AFY is projected to be extracted for urban use to meet demand. However, if per capita water use could be reduced by 35 percent, the population served could increase by over 50 percent with no corresponding increase in extractions. For the projected 2020 demand of 8700 AFY to be reduced to 4490 AFY to maintain sustainability, per capita water use would need to be reduced by about 48 percent. It is theoretically possible that full implementation of an array of conservation programs could produce a savings of up to 40 percent, as estimated by the Pacific Institute (see discussion in section 6). However, it is more likely that some increment of additional supply, in combination with conservation, will be required.”

The 2004 RCS made the following recommendations as to water supply severity.

“The county General Plan’s Framework for Planning contains a discussion of the objectives, procedures and criteria for levels of severity of the Resource Management System. Regarding water resources, the RMS indicates that “Level of Severity III exists when water demand equals the available resource; the amount of consumption has reached the dependable supply of the resource. A Level III may also exist if the time required to correct the problem is longer than the time available before the dependable supply is reached.”

“This Resource Capacity Study confirms that, for the Nipomo Mesa area, demand presently equals or exceeds the dependable yield. Therefore, Level of Severity III is recommended for the water resources of the Nipomo Mesa area. For other portions of the basin, demand may equal or exceed the dependable yield by 2010 before a supplemental water supply can reasonably be expected to be secured. Level of Severity II is recommended for the balance of the basin within San Luis Obispo County.”

On June 26, 2007, the San Luis Obispo Board of Supervisors certified the waters underlying the NMMA at a Severity Level III.

B. BASIN LITIGATION/JUNE 30, 2005 STIPULATION

On June 30, 2005, the water purveyors and a majority of the overlying water users that are parties to the Santa Maria Groundwater Judication entered into a stipulated settlement that was later approved by the Court and included in the Court's Final Judgment. The Stipulation and Judgment recognizes the Memorandum of Understanding (MOU) between the City of Santa Maria and the Nipomo Community Services District for the wholesale purchase and transmission from the City of Santa Maria to the NMMA a certain amount of water each year (the "Nipomo Supplemental Water"). The Stipulation provides that "the NCSD and Santa Maria shall employ their best efforts to timely implement the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for administrative action and in the California Environmental Quality Act." The Stipulation goes on to provide that "Once the Nipomo Supplemental Water is capable of being delivered, those certain Stipulating Parties listed below shall purchase the following portions of the Nipomo Supplemental Water Yearly:

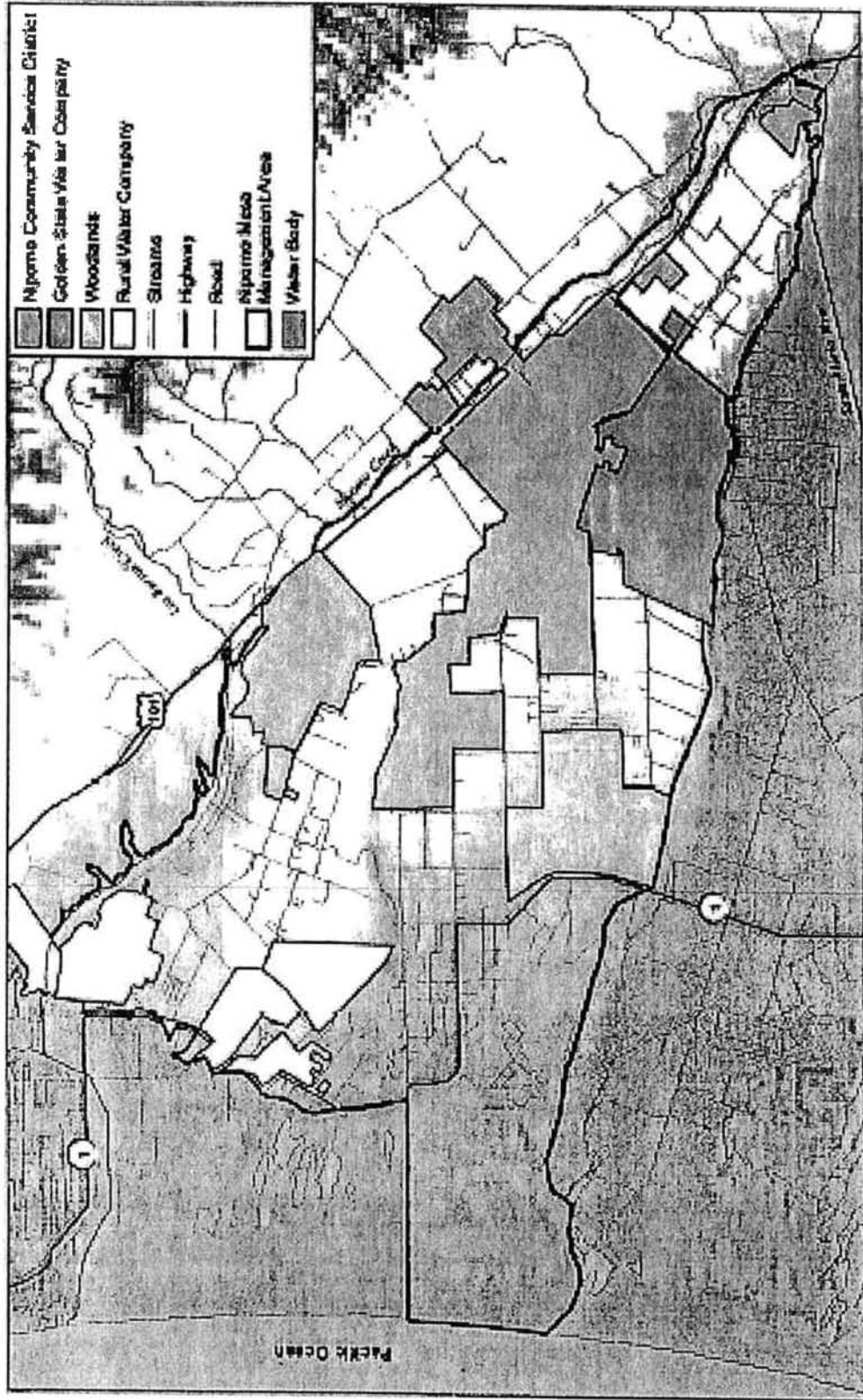
NCSD - 66.68%

Woodlands Mutual Water Company - 16.66%

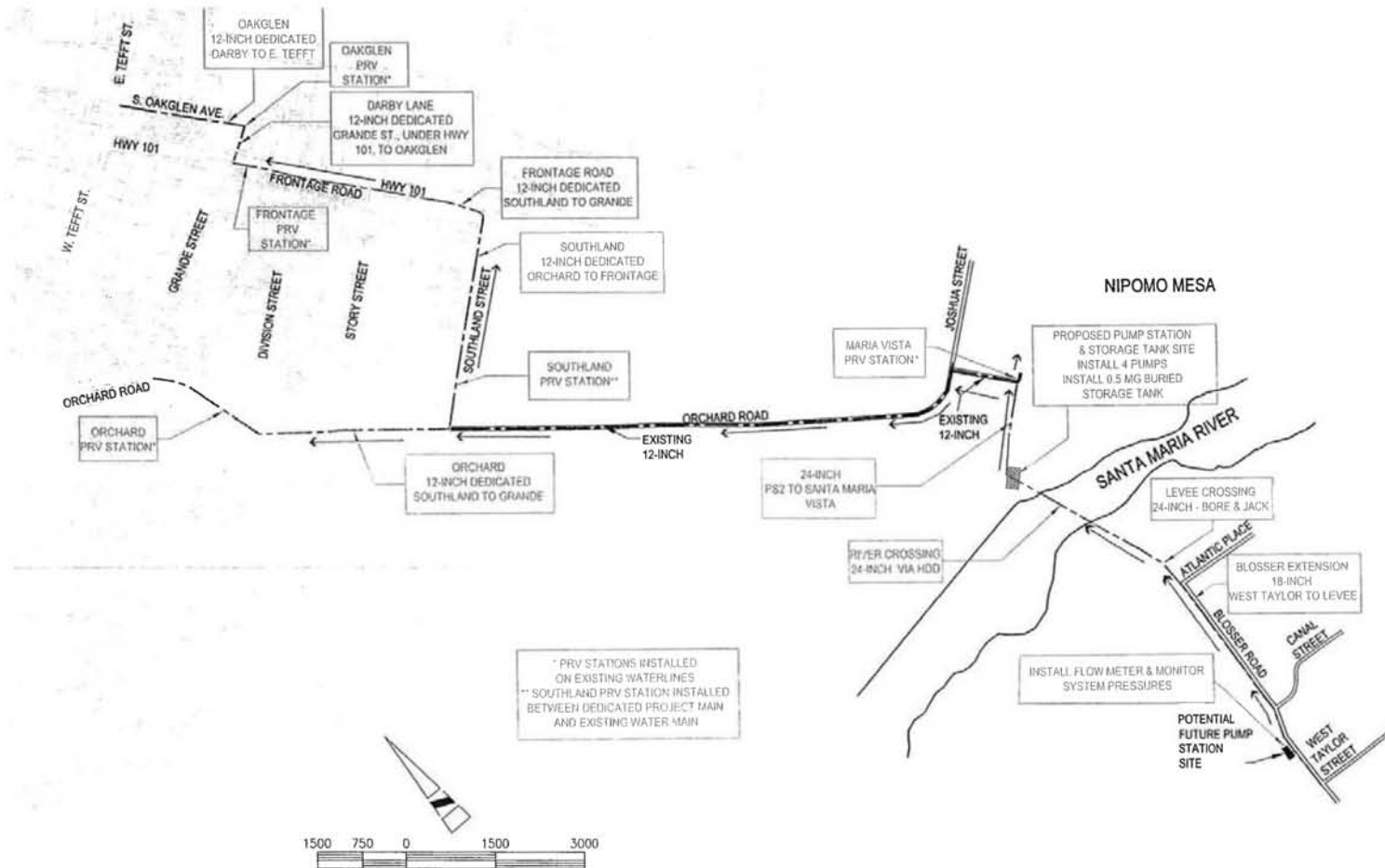
SCWC - 8.33%

RWC - 8.33%."

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



Project Schematic



Nipomo Mesa Management Area

**1st Annual Report
Calendar Year 2008**

**Prepared by
NMMA Technical Group**

Submitted April 2009

Executive Summary

This 1st Annual Report, covering calendar year 2008, for the Nipomo Mesa Management Area (NMMA), is prepared in accordance with the Stipulation and Judgment for the Santa Maria Groundwater Litigation (Lead Case No. 1-97-CV-770214). This and each annual report to follow provides an assessment of hydrologic conditions for the NMMA based on an analysis of the data accruing each calendar year. Each report will be submitted to the court by the end of April in the year following that which is assessed in the report. This Executive Summary contains three sections: ES-1 Background; ES-2 Findings; and ES-3 Recommendations.

ES-1 Background

The NMMA Technical Group (TG) is one of three management areas committees established by the Court and charged with developing the technical bases for sustainable management of the surface and groundwater supplies available to each of the management areas. The TG is responsible for the NMMA. The Northern Cities Management Area lies to the north of the NMMA and the Santa Maria Valley Management Area lies to the south. The goal of each management area is to promote monitoring and management practices so that present and future water demands are satisfied without causing long-term damage to the underlying groundwater resource.

The TG, a committee formed to administer the relevant provisions of the Stipulation regarding the NMMA, prepared this Annual Report for 2008. ConocoPhillips, Golden State Water Company, Nipomo Community Services District, Woodlands Mutual Water Company are responsible for appointing the members of the committee, and along with an agricultural overlying landowner who is also a Stipulating Party, are responsible for the preparation of this annual report.

The TG collected and compiled data and reports from numerous sources including the NMMA Monitoring Parties, Counties of San Luis Obispo and Santa Barbara, California Department of Water Resources, the U. S. Geologic Survey and the Management Area Engineers for the Northern Cities and Santa Maria Valley Management Areas. The TG developed an electronic database to aid in the evaluation of the long-term sustainability of the NMMA portion of the Santa Maria Valley Groundwater Basin. The TG reviewed these data and reports and concluded that additional data and evaluations were required to understand the hydrogeologic conditions of the NMMA in sufficient depth to make comprehensive recommendations for the long-term management of the NMMA.

The TG evaluated the available compiled data to reach the findings presented in the following section of this Executive Summary. The TG recognizes that the data used in the evaluations are not equally reliable but represent what is currently available. In some cases, such as the development of the hydrologic inventory, data regarding the existence, location and depths of confining layers are insufficient to estimate amounts of groundwater in storage available for pumping to meet water demands. This estimate is essential in providing a cross-check of the accuracy of the hydrologic inventory determined as the net difference between components of water inflow to and water outflow from the NMMA. The TG addresses this issue by presenting recommendations for analyses of available data not possible for this 2008 Annual Report and collection of additional data to be used in future annual reports.

ES-2 Findings

Presented in this section of the Executive Summary are brief descriptions of the findings by the TG for calendar year 2008. Presented in the body of this report are the details and bases for these findings.

1. Potentially Severe Water Shortage Conditions exist in the NMMA as characterized by the Key Wells Index (see Section 7.2.3 Status of Water Shortage Conditions). This water shortage condition triggers a voluntary response plan as presented in the Water Shortage Conditions and Response Plan (see Section 7.2.3 Status of Water Shortage Conditions, Appendix B:).
2. The final environmental documentation for the Nipomo Supplemental Water Project is nearing completion and NCS D has informed the TG that construction could begin in roughly 18 months (see Section 1.1.7 Supplemental Water).
3. Nipomo Community Services District, Golden State Water Company, and Woodlands have initiated work on the Well Management Plan (see Section 1.1.6 Well Management Plan).
4. Total rainfall for Water Year 2008 (October 1, 2007 through September 30, 2008) is approximately 90 percent of the long-term average (see Section 3.1.3 Rainfall).
5. Total rainfall through February 2009 is 59 percent of the long-term average total rainfall through February for Water Year 2009 at the Nipomo South and CIMIS Nipomo stations (see Section 3.1.3 Rainfall).
6. The period of analyses (1975-2008) used by the TG is roughly 12 percent "wetter" on average than the long-term record (1920-2008) indicating there is a slight bias toward overstating the amount of local water supply (Section 7.3.1 Climatological Trends).
7. Total estimated deep percolation from rainfall for 2008 is 5,700 AF (see Section 4.1.1 Historical Supply).
8. Total estimated annual recharge is 7,300 AF, the sum of estimated deep percolation from rainfall of 5,700 AF and estimated subsurface flow of 1,600 AF (see Section 4.1.1 Historical Supply, and Section 7.3.3 Water Use and Sources of Supply Trends).
9. The 2008 estimated consumptive water demand of native vegetation is about 6,800 AF (see Section 5.1 Rainfall and Deep Percolation).
10. The total estimated groundwater production is 12,600 acre-feet (AF). The breakdown by user and type of use is shown in the following table (see Section 3.1.9 Groundwater Production (Reported and Estimated)).

Agriculture/Golf	5,300 AF
Urban/Industrial	7,300 AF
Total Production	12,600 AF

11. Total 2008 estimated consumptive water demand of applied water is about 8,600 AF and is roughly equal to the demands for 2007 (see Section 5.7 Return Flow of Applied Water and Consumptive Use).

-
12. Total 2008 estimated return flow from applied water is approximately 4,000 AF (see Section 5.7 Return Flow of Applied Water and Consumptive Use).
 13. Total 2008 estimated consumptive water demand of 8,600 AF (Finding 9) exceeds the estimated annual recharge of 7,300 AF (Finding 6).
 14. Spring groundwater elevations underlying the NMMA, indicated by the Key Wells Index of eight (8) wells, declined from 2006 levels for the second consecutive year (through the spring of 2008), (see Section 7.1.1 Groundwater Conditions).
 15. The Key Wells Index for spring 2008 is below the groundwater elevation criterion established to indicate a Potentially Severe Water Shortage Condition (see Section 7.2.2 Inland Criteria).
 16. Water level and water quality conditions do not indicate Potentially Severe Water Shortages Conditions at the coast (see Section 7.2.1 Coastal Criteria).
 17. Contour maps prepared using spring and fall 2008 groundwater elevations show subsurface flow is generally from east to west (toward the Ocean). They also show a nearly flat gradient in a localized small area near the coast (see Section 6.1.4 Groundwater Contours and Pumping Depressions).
 18. There is no evidence that there are any water quality issues that significantly restrict current use of groundwater to meet the current water demands, recognizing two samples of water with Nitrate exceeding the MCL for drinking water (see Section 6.2.3 Results of Inland Water Quality Monitoring).
 19. There is a lack of understanding of the contribution of Los Berros and Nipomo Creeks to the NMMA water supplies (see Section 3.1.5 Streamflow).
 20. There is a lack of understanding of the contribution of treated wastewater to the NMMA water supplies (see Section 3.1.10 Wastewater Discharge and Reuse).
 21. There is a lack of understanding of the impact of confining layers, their location and physical characteristics on the NMMA water supplies (see Section 2.3.3 Hydrogeology).

ES-3 Recommendations

This section of the Executive Summary presents the three categories of recommendations from the TG. They are: (1) Technical Recommendations, that deal primarily with the need to implement the Monitoring Program to generate data that will make future Annual Reports more complete; (2) Management Recommendations that deal with voluntary actions to mitigate the Potentially Severe Water Shortage Conditions; and, (3) Funding Recommendations, that support the recommended actions and further activities of the TG.

ES-3.1 Technical Recommendations

The TG recommends the following technical recommendations present in the order of importance to the implementation of the Monitoring Program:

-
1. Replacement of the Oso Flaco Lake coastal monitoring well.
 2. Installation of automatic water level data recording and data logging equipment for selected wells included in the Monitoring Program with priority given to the Key Index wells.
 3. Collection of data from CIMIS station #202 on a continuous basis.
 4. Collection of construction data (reference point elevations, depth, screened intervals, diameter, etc.) for all wells included in the Monitoring Program with priority given to the Key Index wells.
 5. Development and formalization of protocols for obtaining groundwater elevation data to be used in generating data to be used by the TG.
 6. Development and formalization of protocols for obtaining surface and groundwater quality data to be used by all parties providing data to the TG.
 7. Establishment of a protocol for the data collection and reporting to the TG the stream flow in Los Berros Creek and Nipomo Creek.
 8. Development and formalization of protocols for determining relevant land use data.
 9. Encourage both stipulating and non-stipulating parties to provide hydrogeologic, land use and groundwater pumping data to the TG.
 10. Implementation of a data review and evaluation program to delineate the location, extent and other characteristics of the hydrogeology of the NMMA.
 11. Evaluation of the costs and benefits of the development of a computer based groundwater flow model for the NMMA.
 12. Coordinate with the Northern Cities Management Area and the Santa Maria Management Area to obtain groundwater elevation data and groundwater elevation contours with the anticipation of considering these results in the 2nd Annual Report Calendar Year 2009.

ES-3.2 Management Recommendations

The TG makes the following recommendations to deal with the finding that the NMMA is in a Potentially Severe Water Shortage Condition:


1. Continue the TG meetings.
2. Submit the draft Well Management Plan including Conservation Measures by Nipomo Community Services District, Golden State Water Company, Woodlands, and Rural Water Company to the TG for review within 120 days of the submission of this Annual Report to the Court.
3. Develop program to address Severe Water Shortage Conditions if they were to occur.
4. Implement or expand public education and communications programs to explain the water shortage conditions and provide suggestions for reducing water use through conservation practices and plumbing repairs.

ES-3.3 Funding Recommendations

The TG recommends the following:

1. The TG to develop a memorandum of understanding or similar document to formalize the methods for funding the activities of the TG. The document shall address:
 - a. Funding capital expenditures incurred by individual parties to install recording devices in their own facilities.
 - b. Funding capital expenditures that may be outside their individual jurisdictions, such as monitoring wells.
 - c. Funding operational expenditures incurred in collecting and providing data to the TG.
 - d. Funding costs incurred by the TG in the collection, compilation and evaluation of data regarding the water conditions in the NMMA and in the preparation of the annual reports.
2. Once the Memorandum of Understanding set forth in ES-3.3.1 above has been completed the Technical Group should petition the Court to revise the current Annual Budget Limit described in the Stipulation and obtain funding to implement its recommendations.

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works Department		(2) MEETING DATE September 22, 2009		(3) CONTACT/PHONE Courtney Howard, Utilities Division, (805) 781-1016	
(4) SUBJECT Discussion on the Status of the County-wide Master Water Plan and Recommendations in "Exhibit A" Regarding Water Resource Planning Efforts Associated with State Water, Lopez Reservoir, County Service Area 12 – Avila Valley, the Nipomo Community Services District and City of Santa Maria Waterline Intertie Project, and County Service Area 23 – Santa Margarita					
(5) SUMMARY OF REQUEST Discuss the status of the Master Water Plan and what it will accomplish and provide feedback to Staff on its development. Approve staff direction listed in "Exhibit A" to allow water resources management efforts related to the optimization of State Water and Lopez Reservoir, the Nipomo CSD and Santa Maria waterline intertie project, and drought reliability for County Service Area 23 – Santa Margarita to move forward in a cooperative manner with local agencies and stakeholders.					
(6) RECOMMENDED ACTION It is recommended that the Board discuss the status of the County-wide Master Water Plan and approve staff direction in "Exhibit A" regarding water resource planning efforts associated with State Water, Lopez Reservoir, County Service Area 12 – Avila Valley, the Nipomo Community Services District and City of Santa Maria Waterline Intertie Project, and County Service Area 23 – Santa Margarita.					
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR FINANCIAL IMPACT N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A					
(11) OTHER AGENCY INVOLVEMENT/IMPACT (LIST): County Planning and Building Department, Water Resources Advisory Committee, State Water Subcontractors, Flood Control Zone 3 Agencies, Avila Valley Advisory Council, Nipomo Community Services District, Rural Water Company, Golden State Water Company, Woodlands Mutual Water Company, County Service Area 23 – Santa Margarita Advisory Council					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input checked="" type="checkbox"/> All		(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board <input checked="" type="checkbox"/> N/A	
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. <u>1 Hr</u>) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)		(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig) <input type="checkbox"/> Contracts (Orig + 3 Copies) <input type="checkbox"/> Ordinances (Orig) <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Email Resolution and Ordinance to CR_Board_Clerk (in Word)			
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A			
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____		(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A Date 4/14/09, A-8	
(23) ADMINISTRATIVE OFFICE REVIEW 					

Ref: 09SEP22-H-1

L:\UTILITY\SEP09\BOS\MasterWtrPlan 9-22-09 trl.doc.CH:lc



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo, CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

TO: Board of Supervisors

FROM: Courtney Howard, Water Resources Engineer

VIA: Dean Benedix, Utilities Division Manager
Paavo Ogren, Director of Public Works

DATE: September 22, 2009

SUBJECT: Discussion on the Status of the County-wide Master Water Plan and Approval of Staff Direction in "Exhibit A" Regarding Water Resource Planning Efforts Associated with State Water, Lopez Reservoir, County Service Area 12 – Avila Valley, the Nipomo Community Services District and City of Santa Maria Waterline Intertie Project, and County Service Area 23 – Santa Margarita

Recommendation

It is recommended that your Honorable Board discuss the status of the County-wide Master Water Plan and approve the staff direction in "Exhibit A" regarding water resource planning efforts associated with State Water, Lopez Reservoir, County Service Area 12 – Avila Valley, the Nipomo Community Services District and City of Santa Maria Waterline Intertie Project, and County Service Area 23 – Santa Margarita.

Discussion

County Wide Master Water Plan:

The latest update of the County Master Water Plan was prepared in 1972, with an update in 1986 and 1998. There have been major changes in the water resources picture for the County since the completion of those comprehensive documents, such as the construction of the State Water and Nacimiento pipelines, groundwater basin litigation, new water users, new water regulations, formation of the Integrated Regional Water Management Program, and the completion of various local and sub-regional water management studies and plans, that make developing a new County-wide Master Water Plan critical for ensuring effective

management of the County's water resources now and into the future. Therefore, the Board initiated preparation of the new Master Water Plan by approving a contract with Carollo Engineers on April 14, 2009.

The primary purpose of the Master Water Plan is to provide a comprehensive description and analysis of County-wide water resources now and into the future. It will also identify and evaluate water management strategies for addressing identified and projected deficiencies similar to Urban Water Management Plans and General Plan Water Elements. Since many different water management entities in the County have developed water resource analysis and land use planning documents for individual communities and areas in the County, the Master Water Plan seeks to combine those efforts with an analysis of the areas not covered by local plans, and to complete an integrated County-wide Master Water Plan. This effort will identify, consolidate, integrate, and, if possible, fill in any analysis gaps in order to understand how water resources are influenced by all of the entities utilizing them, and to identify additional opportunities for water resource management. The Master Water Plan will also provide a comprehensive description of how water resources are currently managed throughout the County, and how the results of the Master Water Plan will be utilized in other water resource documents and programs.

Details of the new Master Water Plan will include multiple water management strategies, including optimization of existing water management infrastructure such as the State Water, Salinas, Whale Rock, Lopez and Nacimiento Systems to meet water resource needs County-wide. However, there are several efforts associated with some of this infrastructure, as discussed below, that warrant initiation prior to the completion of the Master Water Plan.

Central Coast Branch of the State Water Project:

Due to the strain on local groundwater resources, several agencies have expressed interest in entering into discussions with the Central Coast Water Authority (CCWA)¹ in order to optimize the capacity of the Central Coast Branch of the State Water Project. While there appears to be excess capacity, the contract between CCWA and the District specifies a numerical amount of water each entity receives, and would therefore need to be re-negotiated to incorporate terms for the use of any excess pipeline capacity. It is recommended that your Honorable Board authorize Staff to work with elected officials and other representatives from local agencies, including State Water Subcontractors, and the Central Coast Water Authority on the optimization of the Coastal Branch of the State Water Project. As appropriate, Staff can report to the Water Resources Advisory Committee and your Honorable Board when significant information is developed, such as the quantity of excess capacity, identification of local agency needs and buy-in costs. Criteria for use of State Water will also need to be developed and considered by the Water Resources Advisory Committee and your Honorable Board at the appropriate time.

¹ The Central Coast Water Authority is the Joint Powers Authority that operates and maintains the Central Coast Branch of the State Water Project under contract with the State Department of Water Resources and represents Santa Barbara County State Water participants.

Lopez Reservoir:

Flood Control Zone 3 Agencies have expressed interest in determining the feasibility of raising the spillway of the Lopez Reservoir Dam as another way to mitigate the strain on local groundwater resources and meet General Plan build-out needs. It is recommended that your Honorable Board support a Flood Control Zone 3 Agency, as selected by the Zone 3 Advisory Committee, leading efforts on a Lopez Reservoir Dam Spillway Raise feasibility study.

The efforts should also include County Service Area No. 12 (CSA 12). As a contractor to Zone 3, CSA 12 receives water from the Lopez Project and then sells that water to a number of sub-contractors, some of which consistently utilize more than their contractual allocations of water.

Lopez Project Arroyo Grande Creek Habitat Conservation Plan (HCP) and Interim Downstream Release Schedule (IDRS):

Flood Control Zone 3 is currently conducting an HCP in conjunction with state and federal resource agencies. The purpose of the HCP is to provide protections to the listed species found within Arroyo Grande Creek while ensuring that Zone 3 can meet its contractual and downstream release obligations. Upon completion, the HCP will establish a framework for the future management of water deliveries from Lopez Reservoir to the Zone 3 contractors as well as for downstream releases for environmental and agricultural needs. Additionally, the HCP will provide Zone 3 with certain legal protections in the event any listed species in Arroyo Grande Creek are inadvertently harmed or killed due to Zone 3 operations.

As indicated by its title, the IDRS is an interim operating plan specifically designed to maintain consistent flows in Arroyo Grande Creek in the winter through the reduction of downstream releases when those releases will be supplemented by rainfall and local runoff during storm events. Additionally, the IDRS shall provide the basis for future winter downstream releases under the permanent operating plan for the reservoir.

It is recommended that your Honorable Board support Zone 3's continuing efforts to complete the HCP in as timely a manner as possible. Completion of the HCP and ultimately the development and completion of a permanent operating plan for Lopez Reservoir are essential for ensuring maximum utilization of this critical water resource. At this time, staff should also initiate discussions with agricultural users of the supply.

Nipomo CSD and Santa Maria Waterline Intertie Project:

The Nipomo Community Services District (NCSD) desires to construct a waterline intertie project, to the City of Santa Maria, in cooperation with private water companies including the Woodlands Mutual Water Company, the Golden State Water Company and the Rural Water Company. While the NCSD has power to create an assessment district to finance their portion of the project, the private water companies do not. The private water companies and the NCSD are requesting the assistance of the County and are proposing to utilize an interagency infrastructure financing mechanism to fund the construction of the

waterline intertie project. It is recommended that your Honorable Board direct staff to return with criteria for an interagency agreement.

County Service Area 23 – Santa Margarita Drought Reliability:

On May 18, 2004, Staff provided information on supplemental water alternatives for the community of Santa Margarita. At that time, the Board directed staff to pursue cooperative development of water supply alternatives with Santa Margarita Ranch. Since then, the focus on water supply alternatives has changed to reflect CSA 23 receiving a \$3,000,000 loan/grant from the USDA in 2008. A portion of the loan is to be used to fund a source of supplemental water for the community. The alternatives being considered at this time are:

- State Water Tie-In
- Nacimiento Water Tie-In with a water treatment plant

The USDA has indicated it will not fund development of another well in the community as a supplemental water source.

The CSA 23 Advisory Committee, at their last meeting on September 3, 2009, voted to recommend presenting a State Water tie-in project to the community for a 218 vote.

It is recommended that your Honorable Board consider County Service Area 23 – Santa Margarita drought reliability options and direct staff to return with detailed policy discussion and recommendations.

Other Agency Involvement/Impact

The Planning Department has participated in the scope development and consultant selection process, and is expected to continue assisting the District through the development of the new Master Water Plan; especially with land use information. Throughout the development of the Master Water Plan, the Water Resources Advisory Committee (WRAC) member agencies will be asked to assist in the compilation of historical information and in planning estimates for future water demand. At key project milestones, the WRAC will be given updates on the status of the project and will have an opportunity to give the District feedback on the approach, issues, and progress of the project. Additionally, the Draft Final Report will be taken to the WRAC for review, comment and endorsement prior to the issuance of a final report.

Agencies involved in State Water issues include the State Water Subcontractors, designated members of the WRAC and the CCWA.

Flood Control Zone 3 agencies, including CSA 12, are also WRAC members and State Water Subcontractors, are involved with the Lopez Reservoir and Arroyo Grande Creek HCP and IDRS recommendations.

The NCSD, Woodlands Mutual Water Company, the Golden State Water Company, and the Rural Water Company are involved with funding the construction of the Supplemental

Water Intertie Project with the City of Santa Maria.

The CSA 23 Advisory Group has been working with staff in considering drought related options for State Management.

Financial Considerations

On March, 2009 your Board approved the cost of developing the Master Water Plan. Labor costs associated with the recommendations in "Exhibit A" would be funded through existing operating budgets of the specific special district.

Results

Discussing the status of the Master Water Plan will provide the Board an opportunity to gain an understanding of what the Master Water Plan will accomplish and provide feedback to Staff on its development. Approval of the recommended actions will allow water resource management efforts related to the optimization of State Water and Lopez Reservoir, the NCSD and Santa Maria waterline intertie project, and drought reliability for CSA 23 to move forward in a cooperative manner with local agencies and stakeholders. This will contribute to and support the County-wide goal of managing our water resources to provide for livable and well-governed communities.

Attachments: Exhibit A - Water Resource Planning – Staff Direction

File: CF 900.43.01

Reference: 09SEP22-H-1

L:\UTILITY\SEP09\BOS\MasterWtrPlan 9-22-09 bd ltr.doc.CH:lc

EXHIBIT A

Water Resource Planning – Staff Direction

1. Authorize staff to work with elected officials or other representatives from local agencies (including State Water Subcontractors) interested in State Water as a water supply management option, and the Central Coast Water Authority (CCWA), on the optimization of the Coastal Branch of the State Water Project.
2. Support a Flood Control Zone 3 Agency, as selected by the Zone 3 Advisory Committee and including participation of County Service Area No. 12, to lead efforts on a Lopez Reservoir Dam Spillway Raise feasibility study.
3. Support Flood Control Zone 3's continuing efforts to complete the Arroyo Grande Creek Habitat Conservation Plan and subsequently a permanent reservoir operating plan in as timely a manner as possible, and to initiate discussions with agricultural users of the supply.
4. Consider a proposal by the Nipomo Community Services District to utilize an interagency infrastructure financing mechanism to fund the construction of the waterline intertie project with the City of Santa Maria, and direct staff to return with criteria for an interagency agreement.
5. Consider County Service Area 23 – Santa Margarita drought reliability options, and direct staff to return with a detailed policy discussion and recommendations.

REIMBURSEMENT AGREEMENT
By and Between
the County of San Luis Obispo
and Nipomo Community Services District

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and effective this _____ day of _____, 2008, by and between the **NIPOMO COMMUNITY SERVICES DISTRICT**, a community services district, hereinafter referred to as "District," and the **COUNTY OF SAN LUIS OBISPO**, a political subdivision of the State of California, hereinafter referred to as "County."

WHEREAS, the District desires to have the County evaluate the feasibility of the County entering into a joint powers, or other appropriate agreement with the District and/or other entities which would allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project (hereinafter referred to as the "Feasibility Analysis"); and

NOW, THEREFORE, the parties hereto agree as follows:

A. District is Responsible for County's Feasibility Analysis Costs.

1. The District shall reimburse the County for all costs incurred by the County (including County staff time) related to Feasibility Analysis activities performed by County personnel or its independent contractors, including, but not limited to:
 - a. Any and all legal, fiscal, accounting, administrative and engineering analysis and research that the County determines is relevant to the Feasibility Analysis;
 - b. Any and all legal, fiscal, accounting, administrative and engineering analysis and research that the County determines is relevant to the drafting of a joint powers and/or other appropriate agreement(s) that would allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project;
2. The District shall advance to the County the amount of \$10,000 as a deposit for the cost of Feasibility Analysis activities. Said deposit shall be paid to the County within five (5) business days of the approval of this Agreement by the County's

Board of Supervisors. The County is hereby authorized to reimburse itself for all Feasibility Analysis costs incurred by the County by withdrawing said costs from said deposit. In the event any Feasibility Analysis costs incurred by the County exceed the remaining balance of the deposit, District shall reimburse the County for all Feasibility Analysis costs within ten (10) business days of being invoiced by the County for said costs.

3. If the County's reasonable estimate of the remaining Feasibility Analysis costs ever exceeds the remaining balance of the deposit, the District shall make a supplemental deposit payment to the County in the amount of said difference within ten (10) business days of the County's written notification. District shall be entitled to a return from the County of any surplus remaining balance of the deposit that exceeds the Feasibility Analysis costs incurred of the County.
4. The County shall provide to the District a detailed invoice of the County's Feasibility Analysis costs within a reasonable time of when the costs are incurred. The County shall not be required to provide any greater detail in said invoice that that received by the County from a third party providing the work.

B. General Provisions.

1. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
2. This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be altered, modified or amended except by an instrument in writing executed by all of the parties.
3. This Agreement has been executed in and shall be governed by the laws of the State of California.
4. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable the remainder of the provision thereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
5. All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid. Notices shall be addressed as appears below for the respective party; provided that, if any party gives notice of a change of name of address, notices to the giver of that notice shall thereafter be given as demanded in that notice. Notices shall be deemed received seventy-two (72) hours after deposit in the United States mail.

County: County of San Luis Obispo
Public Works Department
County Government Center, Room 207
San Luis Obispo, CA 93408
Attention: Will Clemens

District: Nipomo Community Services District
148 South Wilson Street
Nipomo, CA 93444
Attn: Bruce Buel, General Manager

6. The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered a waiver by of any other covenant, condition or promise. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and any provision of this agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.
7. No provision of this Agreement may be modified, waived, amended, or added to, unless authorized in writing and signed by both parties.
8. The District shall defend, indemnify and save harmless the County, its agents and employees from any and all claims, demands, damages, costs, expenses, or liability (hereafter, collectively "Claims") arising from any act or omission of the County, the District or any other person relating to the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, inverse condemnation, equitable relief, willful conduct, violation of statute (including, but not limited to, violation of any assessment district laws, CEQA, or other environmental laws) or negligence. The District shall defend, indemnify and save harmless the County, its agents, and employees from any and all said Claims, regardless of whether the demand or claim is made by the County (or its employees and agents), the District (or its employees and agents), or any other person. The District's foregoing duty to defend, indemnify, and save harmless the County includes any Claims arising from any passively negligent acts or omissions to act committed by the County, its agents, or employees. Nothing contained in the foregoing indemnity provisions shall be construed to require the District to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

- 9 Nothing in this agreement constitutes a warranty or representation that any joint powers or other agreement(s) drafted with funds covered by this agreement will actually allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project. The District is obligated to review any and all such agreement(s) with its own independent counsel, and has no right to rely upon any oral or written statements made by the County at anytime regarding whether any such agreement(s) will actually allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project. District further understands that even if any such agreement(s) would actually allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project, no assessment district will be created if the procedures required for the creation of an assessment district are not successfully completed.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the day and y first above written.

COUNTY

BY: _____
Chairperson of the Board of Supervisors
County of San Luis Obispo
State of California

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM

Warren R. Jensen
County Counsel

BY: _____
Deputy County Counsel

Dated: _____

DISTRICT COUNSEL

BY: _____
Jon Seitz
District Counsel

Dated: _____

DISTRICT

BY: _____
President

ATTEST:

Secretary to the Board