

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO  
GENERAL MANAGER



DATE: SEPTEMBER 15, 2010

**AGENDA ITEM  
E-6**

**SEPTEMBER 22, 2010**

**FRONTAGE ROAD TRUNK SEWER REPLACEMENT PROJECT  
ENVIRONMENTAL DETERMINATION**

**ITEM**

Consider Frontage Road Trunk Sewer Replacement Project Environmental Determination [RECOMMEND RECEIVE REPORT AND EITHER APPROVE THE DETERMINATION OR PROVIDE INSTRUCTIONS TO STAFF].

**BACKGROUND**

Attached is an Initial Study for the Frontage Road Trunk Sewer Replacement Project prepared by Doug Wood of Doug Wood and Associates. As set forth in the Initial Study, there are no significant adverse environmental impacts assuming the proposed mitigations are implemented. Should your Honorable Board agree with this evaluation, then the next step would be to circulate a Notice of Intent to Adopt a Mitigated Negative Declaration. The Notice of Intent would be mailed to responsible agencies, trustee agencies and interested parties along with a copy of the Initial Study. Following closure of the 30 day review period, the District would append comments received to the Initial Study and finalize its environmental determination.

Doug Wood from DWA is scheduled to present the Initial Study at the Board meeting.

**FISCAL IMPACT**

The FY 10-11 Budget includes a total of \$2,200,000 for the design and construction of the Frontage Road Trunk Sewer Replacement Project. Preparation of the Initial Study cost approximately \$5740 and was authorized by the Board on August 11, 2010. Development of this draft did use previously budgeted staff time.

**RECOMMENDATION**

Staff recommends that the Board receive the report and either approve the determination that there are no apparent significant adverse environmental impacts assuming proper mitigation and authorize staff to circulate a Notice of Intent to Adopt a Mitigated Negative Declaration to all responsible agencies, trustee agencies and interested parties or provide direction to Staff.

**ATTACHMENTS**

- Draft Initial Study for Frontage Road Trunk Sewer Replacement Project

**SOUTH FRONTAGE ROAD  
TRUNK SEWER REPLACEMENT PROJECT  
EXPANDED INITIAL STUDY**

Prepared for:

**NIPOMO COMMUNITY SERVICES DISTRICT**  
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Prepared by:

**DOUGLAS WOOD & ASSOCIATES, INC.**  
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San Luis Obispo, California 93401  
(805) 544-1680

September 14, 2010

# I. INTRODUCTION AND PURPOSE

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This Expanded Initial Study assesses the potential environmental impacts and identifies appropriate mitigation measures associated with the proposed South Frontage Road Trunk Sewer Replacement project (to be referred to herein as the “proposed trunk sewer replacement project” or “proposed project”). The Nipomo Community Services District, as Lead Agency for this environmental document, has the responsibility for determining whether or not to approve the proposed project to be operated by the Nipomo Community Services District.

As part of their decision-making process, the Nipomo Community Services District is required to review and consider the potential environmental effects that could result from this proposed trunk sewer replacement project. Together with the technical analyses applicable to this project and other environmental documents incorporated by reference, this analysis will serve as the initial environmental review for the proposed trunk sewer replacement project. This review is required by the California Environmental Quality Act of 1970 (CEQA) as amended (Public Resources Code Section 21000 et. seq.) and the State CEQA Guidelines as well as Guidelines for the Implementation of CEQA adopted by the Nipomo Community Services District.

The Nipomo Community Services District is preparing this Expanded Initial Study to assist in their consideration of whether to prepare a Negative Declaration, a Mitigated Negative Declaration or an Environmental Impact Report for this proposed project. In the event that an EIR is required, this Initial Study will focus the EIR on the impacts determined to be potentially significant, identify any impacts determined to not be significant, describe the anticipated extent of analyses within the EIR and to assist the public and other responsible agencies in their evaluation of the proposed project and their formulation of initial environmental concerns in response to the Notice of Preparation.

This Expanded Initial Study will be the final environmental document for the proposed project pursuant to CEQA requirements if a Negative Declaration or a Mitigated Negative Declaration is required. Section 15070 of the State CEQA Guidelines states that “a public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when the Initial Study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment.” This determination will be based upon the information and analyses contained in this Expanded Initial Study in combination with any other documents incorporated by reference.

This Expanded Initial Study has been prepared in a manner which provides complete and adequate California Environmental Quality Act (CEQA) coverage for all actions and approvals associated with the proposed project. These actions include: design approval

and authorization to proceed with construction of the proposed trunk sewer replacement project and certification of this Expanded Initial Study by the Nipomo Community Services District. The proposed project design, grading and construction plans will require review and approval as well as issuance of encroachment permits by the County of San Luis Obispo, Department of Public Works and the possible acquisition of rights-of-way or easements necessary for construction and/or long-term maintenance.

This Expanded Initial Study begins with Section I. Introduction and Purpose, which provides an introductory discussion of the purpose and scope of the document. Section II. Summary/Mitigation Monitoring Program summarizes the potential impacts and proposed mitigation measures. This section also contains the State-mandated Mitigation Monitoring Program (pursuant to AB3180). Section III. Project Description provides a detailed description of the proposed South Frontage Road Trunk Sewer Replacement project.

Section IV. Environmental Setting provides an overview description of existing environmental conditions within and in the vicinity of the project site.

Section V. Environmental Evaluation contains the environmental checklist required by Section 15063(d)(3) of the State CEQA Guidelines. This checklist is intended to determine the nature and extent of various environmental effects of the proposed project followed by an explanation to justify the determination. In many instances, project impacts are identified as “no impact” or “less than significant impact.” The summary discussion following the checklist item provides the basis for this determination. Checklist items identified as “potentially significant unless mitigation incorporated” or “significant impact” are discussed within Section V. Environmental Evaluation and in greater detail in Section VI. Impacts and Mitigation Measures. Section VII. Environmental Determination makes the final determination as to whether an EIR, Negative Declaration or Mitigated Negative Declaration is appropriate. Section VIII. Certification provides the required Lead Agency Certification Statement.

Section 15150 of the State CEQA Guidelines permits an environmental document to incorporate by reference other documents that provide relevant data to the proposal currently being considered. The South County General Plan, Inland as well as other long-range planning documents prepared by the County of San Luis Obispo as well as engineering and other technical analyses prepared by the Nipomo Community Sewer District as noted throughout this Expanded Initial Study are hereby incorporated by reference.

This Expanded Initial Study provides a full and objective discussion of the potential environmental impacts of the proposed South Frontage Road Trunk Sewer Replacement project. In preparing this document, the Nipomo Community Services District decision-makers, staff and members of the public will be fully informed as to the potential impacts and required mitigation measures associated with the proposed project. In accordance

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I. Introduction and Purpose

*South Frontage Road Trunk Sewer Replacement  
Expanded Initial Study*

with Section 15021 of the State CEQA Guidelines, this document is intended to enable the Nipomo Community Services District, as Lead Agency for this environmental document, to fully evaluate these environmental impacts and mitigation measures in their consideration of the proposed project. The Lead Agency has an obligation to balance possible adverse effects of the project against a variety of public objectives, including economic, environmental and social factors, in determining whether the project is acceptable and approved for construction, operation and maintenance.

Pursuant to California Public Resources Code 21082.1, the Nipomo Community Services District has independently reviewed and analyzed the information contained in this Expanded Initial Study prior to its consideration and certification. The conclusions and discussions contained herein reflect the independent judgment of the Nipomo Community Services District relative to that information at the time of publication.

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I. Introduction and Purpose

*South Frontage Road Trunk Sewer Replacement  
Expanded Initial Study*



## II. SUMMARY/MITIGATION MONITORING PROGRAM

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This Expanded Initial Study assesses the potential environmental impacts and identifies appropriate mitigation measures for the potential impacts associated with the proposed South Frontage Road Sewer Trunk Replacement project.

### ***A. PROJECT SUMMARY***

The proposed South Frontage Road Trunk Sewer project involves the replacement of an existing 12-inch trunk sewer which runs along South Frontage Road from Division Street to the Southland Wastewater Treatment Facility (WWTF) influent pump station. This existing trunk sewer is currently in poor condition and is surcharging (i.e., the sewer line is completely full with wastewater backing partly up into existing manholes) during high flow conditions. Approximately 4,300 linear feet of existing sewer line will be replaced with a trunk sewer line ranging in size from 21 inches (from Division Street to Southland Street) to 24 inches (from Southland Street to the WWTF) (see Figure 4, South Frontage Road Pipeline). The sizes of the replacement sewer line are based upon the Water and Sewer Master Plan Update for the Nipomo Community Services District (dated December, 2007) and the Southland Wastewater Treatment Facility Master Plan (dated January, 2009). As noted above, installation of this replacement sewer line will avoid the need for emergency repairs in the future while also providing a wastewater transmission facility capable of meeting future peak wastewater flow rates through the year 2030.

The proposed replacement sewer line will be installed in 20 to 40 foot segments beginning at the Southland Wastewater Treatment Facility and leading north to Division Street. Each segment will be trenched, the pipeline installed and backfilled prior to proceeding to installation of the next segment. Installation of the replacement sewer line will also require replacement of existing manholes and connection to existing sewers from the side streets.

The proposed project involves a series of approvals and discretionary actions by the Nipomo Community Services District and other involved local agencies. These actions include: design approval and authorization to proceed with construction of the proposed sewer replacement project and certification of this Expanded Initial Study by the Nipomo Community Services District. The proposed project design, grading and construction plans will require review and approval as well as issuance of encroachment permits by the County of San Luis Obispo, Department of Public Works and the possible acquisition of rights-of-way or easements necessary for construction and/or long-term maintenance.

The Nipomo Community Services District anticipates that the proposed project will be constructed in one phase which is expected to require approximately six to eight months.

## ***B. IMPACT/MITIGATION SUMMARY AND MITIGATION MONITORING PROGRAM***

Provided below is a summary listing of all potentially significant environmental impacts and mitigation measures associated with the proposed project. Following each mitigation measure is an indication of the action involved with enforcement or implementation of the mitigation measure (i.e. "Specific Action"), the timing of implementation (i.e. "Mitigation Milestone") and the Responsible Monitoring Party. This Mitigation Monitoring Program is intended to reflect the requirements of AB 3180 which requires a monitoring program to insure the implementation of these mitigation measures.

POTENTIALLY SIGNIFICANT IMPACT	MITIGATION MEASURE	SPECIFIC ACTION	MITIGATION MILESTONE	RESPONSIBLE MONITORING PARTY
<p><u>Water</u></p> <p>The proposed project will result in short-term landform alteration during project construction and the disturbance of impervious surfaces and exposed soils which could potentially alter the amount and composition of surface runoff which may degrade downstream water quality.</p>	<p>i. In compliance with the San Luis Obispo County Land Use Ordinance, the District shall prepare an Erosion and Sedimentation Control Plan outlining measures to address both temporary (i.e. site disturbance, stockpiling and construction activities) and final (post-construction) methods for stabilizing exposed soils, minimizing the potential for erosion and sedimentation as well as maintaining downstream water quality. These measures shall include, but may not be limited to:</p> <p>a. Provisions for utilization of Best Management Practices (BMP's) to prevent the discharge of construction materials, contaminants, washings, concrete, fuels and oils including proper maintenance of construction vehicles and equipment, conducting vehicle or equipment fueling off-site or within bermed areas with an impervious surface, conducting any mixing or storage of concrete in contained areas, insuring that equipment washing is conducted off-site and removal of all refuse and excess material from the construction site as soon as possible.</p> <p>b. The use, if necessary, of silt fencing, straw bales or sandbags in order to reduce the potential for erosion from disturbed soils and</p> <p>c. Implementation of other methods for</p>	<p>Prepare an Erosion and Sedimentation Control Plan.</p>	<p>Prior to and during project grading and construction.</p>	<p>County of San Luis Obispo and the Nipomo Community Services District.</p>



POTENTIALLY SIGNIFICANT IMPACT	MITIGATION MEASURE	SPECIFIC ACTION	MITIGATION MILESTONE	RESPONSIBLE MONITORING PARTY
<p><u><b>Air Quality</b></u></p> <p>Fugitive dust may be generated during grading required for the proposed project.</p> <p><u><b>Transportation/Circulation</b></u></p> <p>The proposed project may result in the temporary diversion of automobile traffic, pedestrians or bicyclists on South Frontage</p>	<p>stabilizing disturbed soils and minimizing soil loss from the construction site.</p> <p>2. The following fugitive dust mitigation measures shall be initiated at the start and maintained throughout the duration of the grading or construction activity:</p> <ul style="list-style-type: none"> <li>a. Construction vehicle speed at the work site shall be limited to fifteen (15) miles per hour or less;</li> <li>b. Prior to any ground disturbance, sufficient water must be applied to the area to be disturbed to prevent the generation of visible emissions;</li> <li>c. Storage piles must be kept adequately wetted, treated with a chemical dust suppressant or covered when material is not being added to or removed from the pile;</li> <li>d. Equipment must be washed down before moving from the project site onto a paved public road and</li> <li>e. Visible track-out onto a paved public road must be cleaned using wet sweeping or a HEPA filter equipped vacuum device within twenty-four (24) hours.</li> </ul> <p>3. All project construction sites occurring onto or adjacent to public roadways shall provide adequate signage, barriers and, if necessary, flagmen in order to</p>	<p>Implement fugitive dust mitigation measures.</p> <p>Provide adequate signage, barriers and, if necessary,</p>	<p>During project grading and construction.</p> <p>During project grading and construction.</p>	<p>Nipomo Community Services District and County Air Pollution Control District.</p> <p>Nipomo Community Services District.</p>

II. Summary/Mitigation Monitoring Program  
*South Frontage Road Trunk Sewer Replacement  
Expanded Initial Study*

POTENTIALLY SIGNIFICANT IMPACT	MITIGATION MEASURE	SPECIFIC ACTION	MITIGATION MILESTONE	RESPONSIBLE MONITORING PARTY
<p>Road at the project entrance during grading and construction.</p> <p><b>Biological Resources</b></p> <p>The proposed project has the potential to result in temporary impacts to sensitive wildlife species observed in areas adjacent to the Southland Wastewater Treatment Facility.</p> <p><b>Utilities</b></p> <p>The proposed project will result in short-term landform alteration during project</p>	<p>insure safe diversion of vehicular traffic, bicyclists and/or pedestrians. These measures shall also insure continued access from adjacent properties to local roadways.</p> <p>4. Pre-construction surveys shall be conducted by a qualified biologist two weeks prior to the initiation of construction activities in areas south of Southland Street impacted by project construction, in order to identify the possible presence of the Coast horned lizard, Western spadefoot toad and the American badger. If these species or evidence of their habitation is observed, construction in these areas shall be avoided until the California Department of Fish and Game is contacted and an appropriate buffer zone is established or until the species is relocated.</p> <p>5. A qualified biological monitor shall conduct a worker orientation program for all construction contractors (site supervisors, equipment operators and laborers) which emphasizes the potential for presence of special-status species within the project area, identification their habitat requirements and applicable regulatory policies and provisions regarding their protection and measures being implemented to avoid and/or minimize impacts.</p> <p>6. In compliance with the San Luis Obispo County Land Use Ordinance, the District shall</p>	<p>flagmen.</p> <p>Conduct pre-construction surveys.</p> <p>Conduct worker orientation program.</p> <p>Prepare an Erosion and Sedimentation</p>	<p>Prior to and during project grading and construction.</p> <p>Prior to project grading and construction.</p> <p>Prior to and during project grading and</p>	<p>Nipomo Community Services District.</p> <p>Nipomo Community Services District.</p> <p>County of San Luis Obispo and the Nipomo</p>

II. Summary/Mitigation Monitoring Program  
*South Frontage Road Trunk Sewer Replacement  
Expanded Initial Study*

POTENTIALLY SIGNIFICANT IMPACT	MITIGATION MEASURE	SPECIFIC ACTION	MITIGATION MILESTONE	RESPONSIBLE MONITORING PARTY
<p>construction and the disturbance of impervious surfaces and exposed soils which could potentially alter the amount and composition of surface runoff which may degrade downstream water quality.</p>	<p>prepare an Erosion and Sedimentation Control Plan outlining measures to address both temporary (i.e. site disturbance, stockpiling and construction activities) and final (post-construction) methods for stabilizing exposed soils, minimizing the potential for erosion and sedimentation as well as maintaining downstream water quality. These measures shall include, but may not be limited to:</p> <ul style="list-style-type: none"> <li>a. Provisions for utilization of Best Management Practices (BMP's) to prevent the discharge of construction materials, contaminants, washings, concrete, fuels and oils including proper maintenance of construction vehicles and equipment, conducting vehicle or equipment fueling off-site or within bermed areas with an impervious surface, conducting any mixing or storage of concrete in contained areas, insuring that equipment washing is conducted off-site and removal of all refuse and excess material from the construction site as soon as possible.</li> <li>b. The use, if necessary, of silt fencing, straw bales or sandbags in order to reduce the potential for erosion from disturbed soils and</li> <li>c. Implementation of other methods for stabilizing disturbed soils and minimizing soil loss from the construction site.</li> </ul>	<p>Control Plan.</p>	<p>construction.</p>	<p>Community Services District.</p>



### **III. PROJECT DESCRIPTION**

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#### ***A. PROJECT LOCATION***

The proposed South Frontage Road Trunk Sewer Replacement project (to be referred to herein as either the “proposed trunk sewer replacement project” or “proposed project”) is located along South Frontage Road from Division Street to the Southland Wastewater Treatment Facility (WWTF) within the unincorporated community of Nipomo, a distance of approximately 4,300 linear feet or 0.82 miles. South Frontage Road runs parallel to and immediately west of U.S. Highway 101 and is located approximately one-quarter mile south of the Tefft Street/Highway 101 interchange (see Figure 1, Location Map, Figure 2, Vicinity Map and Figure 3, Aerial Photograph).

#### ***B. PROJECT BACKGROUND***

On May 26, 2010, the Nipomo Community Services District, Board of Directors directed District staff to develop a schedule for building and construction of the South Frontage Road Trunk Sewer Replacement Project. This proposed sewer replacement was designed in conjunction with other wastewater treatment facilities improvements being conducted by the District in order to insure design compatibility and adequate capacity within the replacement sewer line to meet future peak wastewater transmission demands.

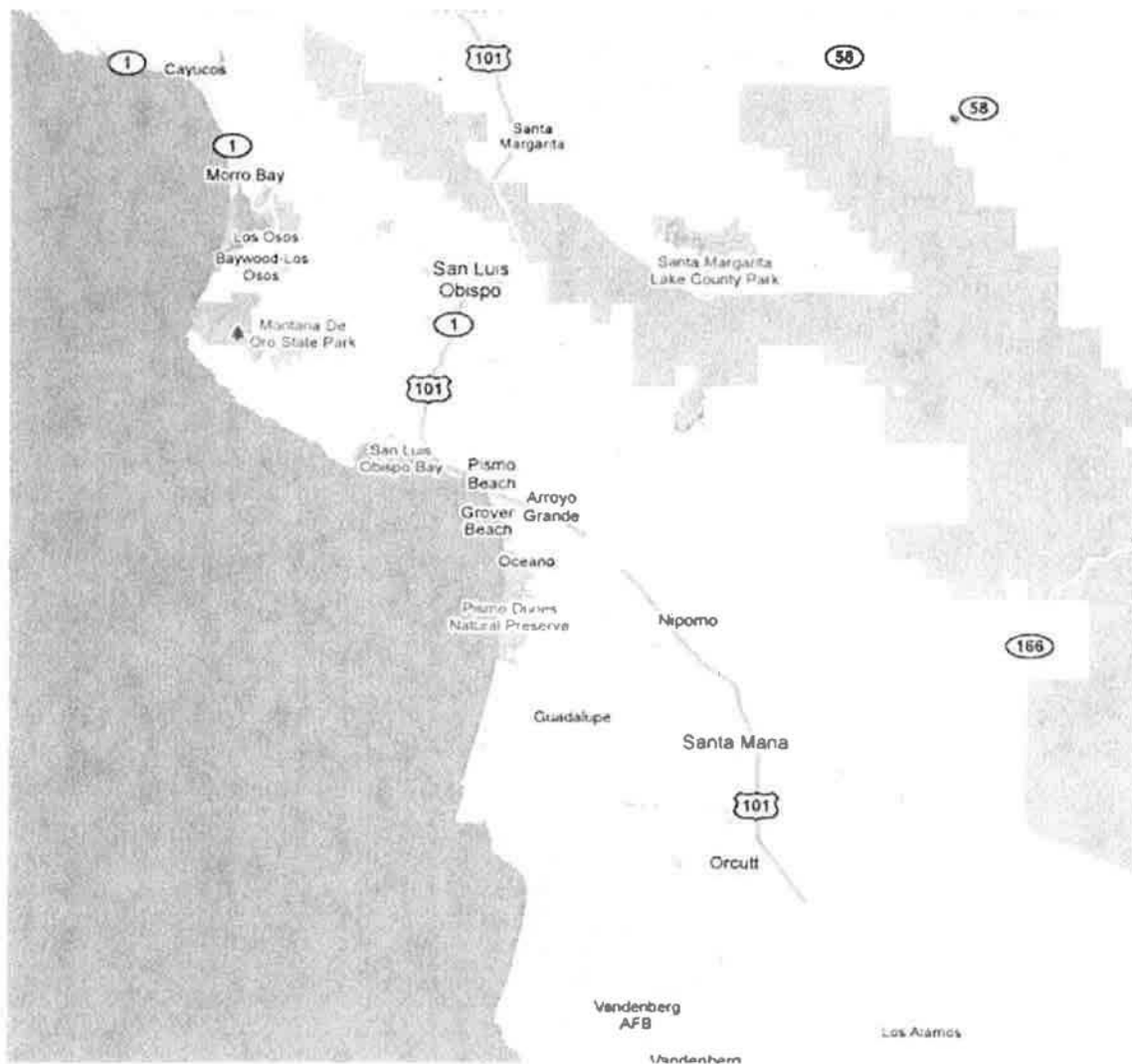
#### ***C. PROJECT OBJECTIVES***

The basic objective of the proposed project is to replace an existing 12-inch trunk sewer which runs from Division Street to the Southland Wastewater Treatment Facility (WWTF) with a 21 to 24-inch trunk sewer line. The existing 12-inch trunk sewer is currently in poor operationing condition. Replacement of the 12-inch trunk sewer will avoid the need for emergency repairs in the future and will provide a transmission facility capable of meeting estimated future peak wastewater flow rates through the year 2030.

#### ***D. PROJECT CHARACTERISTICS***

The proposed South Frontage Road Trunk Sewer project involves the replacement of an existing 12-inch trunk sewer which runs along South Frontage Road from Division Street to the Southland Wastewater Treatment Facility influent pump station. This existing trunk sewer is currently in poor condition and is surcharging (i.e., the sewer line is completely full with wastewater backing partly up into existing manholes) during high flow conditions. Approximately 4,300 linear feet of existing sewer line will be replaced with a trunk sewer line ranging in size from 21 inches (from Division Street to Southland Street) to 24 inches (from Southland Street to the WWTF) (see Figure 4, South Frontage Road Pipeline). The sizes of the replacement sewer line are based upon the Water and Sewer Master Plan Update for the Nipomo Community Services District (dated December, 2007) and the Southland Wastewater Treatment Facility Master Plan (dated

**FIGURE 1**  
Regional Map



***South Frontage Road  
Trunk Sewer Replacement***

Douglas Wood & Associates, Inc.

*Expanded Initial Study*



**FIGURE 2**  
Vicinity Map



***South Frontage Road  
Trunk Sewer Replacement***

Douglas Wood & Associates, Inc.

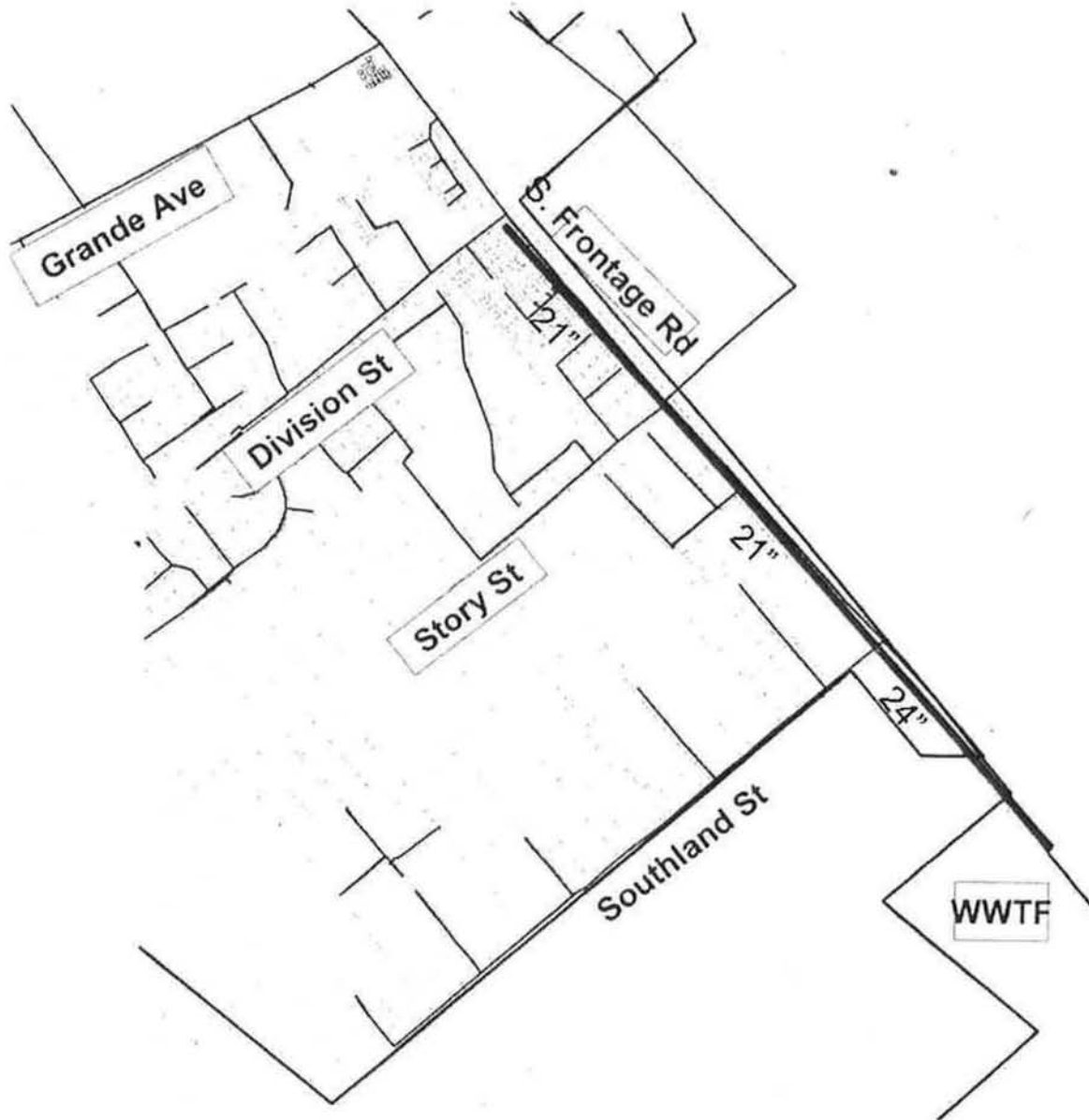
*Expanded Initial Study*

**FIGURE 3**  
Aerial Photograph



*South Frontage Road  
Trunk Sewer Replacement  
Expanded Initial Study*

**FIGURE 4**  
South Frontage Road Pipeline



***South Frontage Road  
Trunk Sewer Replacement***

Douglas Wood & Associates, Inc.

*Expanded Initial Study*

January, 2009). As noted above, installation of this replacement sewer line will avoid the need for emergency repairs in the future while also providing a wastewater transmission facility capable of meeting future peak wastewater flow rates through the year 2030.

The proposed replacement sewer line will be installed in 20 to 40 foot segments beginning at the Southland Wastewater Treatment Facility and leading north to Division Street. Each segment will be trenched with an average trench width of eight feet, the pipeline installed and backfilled prior to proceeding to installation of the next segment. Installation of the replacement sewer line will also require replacement of existing manholes and connection to existing sewers from the side streets.

## ***E. PROJECT APPROVALS***

The proposed project involves a series of approvals and discretionary actions by the Nipomo Community Services District and other involved local agencies. These actions include: design approval and authorization to proceed with construction of the proposed sewer replacement project and certification of this Expanded Initial Study by the Nipomo Community Services District. The proposed project design, grading and construction plans will require review and approval as well as issuance of encroachment permits by the County of San Luis Obispo, Department of Public Works and the possible acquisition of rights-of-way or easements necessary for construction and/or long-term maintenance.

### ***a. Design Approval and Construction***

The Nipomo Community Services District will oversee and ultimately approve the detailed engineering and design plans for the proposed project in accordance with the approved project plans, specifications and requirements, the nature and extent of which is described in Section III.D. Project Characteristics.

### ***b. Environmental Certification***

This Expanded Initial Study will evaluate the potential environmental impacts associated with the construction, operation and maintenance of the proposed South Frontage Road Trunk Sewer Replacement project. This Expanded Initial Study will assist the District in their consideration of whether to prepare a Negative Declaration, a Mitigated Negative Declaration or an Environmental Impact Report for this project. In the event that an EIR is required, this Initial Study will focus the EIR on the impacts determined to be potentially significant, identify any impacts determined to not be significant, describe the anticipated extent of analyses within the EIR and to assist the public and other responsible agencies in their evaluation of the proposed project and their formulation of initial environmental concerns in response to the Notice of Preparation.

This Expanded Initial Study will be the final environmental document for the proposed project pursuant to CEQA requirements if a Negative Declaration or a Mitigated Negative Declaration is required. Section 15070 of the State CEQA Guidelines states that “a public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when the Initial Study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment.” This determination will be based upon the information and analyses contained in this Expanded Initial Study in combination with any other documents incorporated by reference.

In accordance with the State CEQA Guidelines, the final environmental document will enable the Nipomo Community Services District, as Lead Agency, to fully evaluate these environmental impacts and mitigation measures in their consideration of the proposed project.

*c. Encroachment Permits*

The proposed trunk sewer replacement project will require issuance of encroachment permits by the County of San Luis Obispo, Department of Public Works.

*d. Right-of-Way Acquisition*

The proposed project may require the acquisition of rights-of-way or easements by the Nipomo Community Services District necessary for construction and/or long-term operation and maintenance of the proposed trunk sewer replacement project.

***F. PROJECT TIMING***

The Nipomo Community Services District anticipates that the proposed project will be constructed in one phase which is expected to require approximately six to eight months.

## IV. ENVIRONMENTAL SETTING

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The proposed South Frontage Road Trunk Sewer Replacement project is located along South Frontage Road from Division Street to the Southland Wastewater Treatment Facility, a distance of approximately 4,300 linear feet or 0.82 miles. South Frontage Road runs parallel to and immediately west of U.S. Highway 101 within the unincorporated community of Nipomo. The alignment of the proposed replacement sewer line begins approximately one-quarter mile south of the Tefft Street/U.S. Highway 101 interchange.

- ***Topography***

The project area contains nearly level to gently sloping topographic conditions with slope gradients between zero and two percent. The project area has a surface elevation of approximately 300 feet above mean sea level. Elevation changes in the area are due to smoothly eroded hills and shallow linear valleys.

- ***Geology and Soils***

The project site is underlain by tan to brown colored, fine-grained loose sandy soils typical of the Nipomo Mesa. This soil type is well drained with a low potential for landslides and liquefaction with a high potential for erodability. However, the relatively flat nature of the project site reduces the occurrence of potentially significant erosion and sedimentation. Imported gravel and asphalt are found within and adjacent to local roadways including South Frontage Road. The Nipomo Mesa is underlain by massive sand dune deposits whose thickness ranges from 150 to 250 feet in depth.

The project area, while located within the seismically-active Central Coast region, lies outside of any fault rupture zones (formerly Special Studies zones) established by the Alquist-Priolo Act of 1972. Should a major earthquake occur in the area, significant groundshaking is expected to occur. The San Andreas Fault which runs approximately 35 miles northeast of the project site is considered the most likely to generate a major earthquake in the region in the near future. Such an earthquake is expected to produce moderate to strong ground shaking at and near the project site.

- ***Drainage***

The project site is a flat river terrace which drains to the south and southwest ultimately leading to Nipomo Creek which runs parallel to and east of U.S. Highway 101. The project site is located within the Nipomo Creek watershed area which contains approximately 16,318 acres. The area west of Highway 101 is characterized by open flat areas, linear valleys and hilly knolls. Drainage in the project area is conveyed by streets and underground pipes in developed areas and via sheet flow in undeveloped areas.



- ***Biological Resources***

Areas adjacent to South Frontage Road generally contain non-native grasses and ruderal (weedy) plant species. The project site and surrounding area contains three habitat types: coyote brush scrub, ruderal (disturbed) and developed habitats. Given the existing vegetation and its disturbed nature, the project site has a low probability of any sensitive plant species being found.

- ***Land Use***

The project site involves the segment of South Frontage Road from Division Street to the Southland Wastewater Treatment Facility. Areas adjacent to this roadway include a mix of residential, commercial and public utility uses adjacent to South Frontage Road, Southland Street, Tefft Street and other local roadways. Approximately one-quarter mile north of the project site is the Tefft Street/Highway 101 interchange which is surrounded by commercial land uses within the Nipomo Central Business District.

The project site is currently designated Commercial Retail, Residential Single Family and Public Facility by the South County Area Plan. The land use designation on the opposite side of U.S. Highway 101 is Residential Single Family.

- ***Traffic and Circulation***

Primary access to the project area is provided via State Highway 101. In the project area, Highway 101 is a four-lane freeway served by the existing interchange at Tefft Street. The local circulation system serving the project area includes South Frontage Road, Tefft Street, Division Street, Story Street, Grande Avenue and Southland Street. These latter four streets intersect and have their eastern terminus at South Frontage Road. With the exception of the four lanes on Tefft Street, all of these local roadways are two lane paved roads.

- ***Noise***

Ambient noise levels in the project area range from the low-30 to mid-60 dBA. Noise sources include traffic on Highway 101, automobile and truck traffic on local roadways such as South Frontage Road and Tefft Street and other less obtrusive non-urban noise sources.

- ***Climate***

The climate of San Luis Obispo County can be generally characterized as Mediterranean, with warm, dry summers and cooler, relatively damp winters. Inland areas are characterized by a wide range of temperature conditions. Maximum summertime

temperatures can reach the high 90's whereas minimum winter temperatures range to the low 20's.

- ***Public Services and Utilities***

Law enforcement services for the Nipomo area are provided by the County of San Luis Obispo, Sheriff's Department from their Oceano Substation in Oceano. The Oceano Substation has an allocation of 23 patrol deputies and one commander. The Nipomo area is patrolled by vehicle. Fire protection and emergency response services for the Nipomo area are currently provided by Cal Fire. The Nipomo Station 20, located at 450 Pioneer Street in Nipomo (at the corner of Oak Glen Avenue and Pioneer Street near Tefft Street) and the Nipomo Mesa Station 22 located at 2391 Willow Road would be the first stations to participate in any fire or emergency response. Both stations are equipped with two Type I fire engines while the Nipomo Station 20 also has one Schedule B wildland fire engines (used during the dry season), one rescue engine, one battalion chief vehicle and one utility vehicle for both fire-fighting and personnel transport. Cal Fire also has a hazardous materials specialist.

The Nipomo area is situated within the service boundaries of the Southern California Gas Company for natural gas service and Pacific Gas and Electric Company for electrical service. Existing underground natural gas and electrical mains are located throughout the project area that provide utility services to developed land uses. The Nipomo area is provided communications services from Pacific Bell and Charter Communications.

The project area is located within the Nipomo Community Services District which provides wastewater treatment, water supply, storm drainage, retention basins and lighting services in select portions of the Nipomo area.

- ***Cultural Resources***

Surface walkover surveys and an archival records search of the project site revealed one pre-historic site, SLO-1254, which was recorded adjacent to the existing pavement of South Frontage Road between Division and Southland Street. In addition, several Franciscan and Monterey chert flakes (silica rock utilized for the manufacture of or use as a stone tool such as arrowheads, knives or other cutting or scraping tool) were recorded during surface walkover surveys of the Southland Wastewater Treatment Facility. The Nipomo area contains more square meters of light density cultural deposits than any other area in southern San Luis Obispo County. Surveys conducted along the south, west and north sides of Nipomo Mesa have recorded many archaeological sites along the edge of the mesa but very few in the interior.

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO  
GENERAL MANAGER



DATE: SEPTEMBER 16, 2010

## AGENDA ITEM E-7

SEPTEMBER 22, 2010

### CONSIDER RECOMMENDATIONS FROM THE WATER CONSERVATION COMMITTEE

#### ITEM

Consider recommendations from the Water Conservation Committee. [RECOMMEND APPROVAL TO CONTINUE WITH THE WEATHER-TRACK MONITORING PROGRAM, DISTRICT PARTICIPATION IN 2010 CREEK DAY AND 2010 OCTOBER FESTIVAL EVENTS, HEDGE REMOVAL AT DISTRICT OFFICE, AND TO NOT INITIATE AN INCENTIVE PROGRAM REGARDING WATER SOFTENERS].

#### BACKGROUND

The Water Conservation Committee held a meeting on September 13, 2010. The following items were discussed and the committee recommendation for each item is being presented for Board consideration.

•**Landscape Maintenance District #1.** An extended update of Landscape Maintenance District #1 (LMD#1) was provided to the Water Conservation Committee by Mrs. Whitlow. A summary of a meeting held between the landscape maintenance service and Mr. Spagnolo and Mrs. Whitlow were provided to the Committee. Questions were asked by the Committee members, and answered by staff. The Committee made recommendations.

#### Committee Recommendation

Continue with the WeatherTrack monitoring program and provide periodic updates.

•**2010 Creek Day Event, 2010 October Festival Event.** This year, the Creek Day will occur on Saturday, October 2, from 9:00 AM to 1:00 PM. The lead agency is SLO County Environmental Services. They will be funding most of the costs of the event. They have asked for District staff participation.

This year, the October Festival Event will be held on Saturday, October 7, from 10:00 AM to 3:00 PM, at Nipomo Park. Conservation staff will organize and attend the event, with the assistance of an NCSD employee to load/unload and transportation of the booth materials, and set up and take down of the booth. The Committee has recommended that a second booth, next to the NCSD booth, be set up for the NCSD Board of Directors. This booth will be organized and staffed by the Board Members.

#### Committee Recommendations

1. Conservation staff attendance at, and assistance with, the Creek Day 2010 event, providing for the volunteers' lunch, and small water-conservation give-away items.
2. Conservation staff attendance at the October Festival 2010 event. Reservation and payment is to be made for two side-by-side booths. One booth will be an NCSD information booth, and one booth will be for the Members of the Board.

•**NCSD Office Landscape Water-Efficiency Rehabilitation.** In the past, the Board requested staff to obtain a landscape plan for the entire site, with implantation of the design in stages, completing a section at a time. Since that time, NCSD has been addressing a wastewater treatment plant upgrade and importation of supplemental water from Santa Maria, both of which will involve funding and customer rate increases. It was decided to wait until the costs of the two projects were established before committing funds to an NCSD landscape change.



Since then, the plantings near the north landscape boundary have declined and, in most cases, died. The *Myoporum* plants consist largely of dry, woody sticks, and concern has been raised about a fire hazard. Due to the age and brittle condition of the irrigation distribution system, replacing the north-boundary planting would require a complete replacement of that area's irrigation system.

In the office landscape are three large Alder trees, which have invasive surface roots and drop a good deal of litter. Two of the trees have the potential for damage of the office building, and the size and placement of all three trees would prevent the implementation of solar power energy for the office. The trees provide a cooling effect on the west side of the building, which is exposed to hot afternoon sun in the summer. Because of the need to decrease the heat load on the west side of the building during the summer, replacement of the trees will be required, albeit with trees of a shorter height at maturity.

Committee recommendations.

1. Implement removal of the north boundary hedge and replacement with California native and other water-efficient plants.
2. Discussion by the Board of the timing for implementation of the NCS D office landscape rehabilitation project. A Request for Proposal for the landscape project could be issued now and implemented in stages or completed as one project or the project could be postponed until a later date.
3. Discussion by the Board regarding of the Alder trees. The existing trees can be replaced prior to or concurrent with the proposed office landscape project.

**•Customer incentive to replace salt-using water softeners with resin/canister-exchange systems.**

The issue of customers' water softeners adding to the salinity problem at the wastewater treatment facility was discussed. The possibility of offering an incentive program for replacement of the salt-using systems with resin/canister-exchange system was also discussed.

Committee recommendations.

It was felt implementation of an incentive program was not appropriate at this time. Within two years, the supplemental water project will be nearing completion, and the "softer" Santa Maria water may obviate the need for customers' use of water-softening systems.

**FISCAL IMPACT**

Funding to provide attendance at the Creek Day and October Festival events is included in the District's FY 2010-11 operating budget. Funding for the NCS D office landscape project is not currently budgeted.

**ATTACHMENTS**

None

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO  
GENERAL MANAGER



DATE: SEPTEMBER 15, 2010

**AGENDA ITEM  
E-8**

**SEPTEMBER 22, 2010**

**ANNUAL WATER ALLOCATION FOR INTENT-TO-SERVE LETTERS  
FOR WATER YEAR 2010-11**

**ITEM**

Consider review of the annual water allocation for intent-to-serve letters for water year 2010-11 in accordance with Ordinance 2009-114 [RECOMMEND THE BOARD MAINTAIN CURRENT ALLOCATION FORMULAS AND ALLOTMENT]

**BACKGROUND**

The District adopted Ordinance 2009-114 on September 30, 2009. The Ordinance established a limit and procedure for water service allocation for residential development. The allocation system is intended to "meter out" allocations to balance the effect of adding additional burden to the groundwater table while providing enough allocation to support planned orderly development that will support the District's program to acquire supplemental water. Section 3.05.160 states that during the fourth quarter of each allocation year the District Board shall evaluate the water allocation formulas and the water allotment for the ensuing year.

The attached allocation summary shows that 33.3 AF out of 34.3 AF is available. Given the current economic situation, it is unlikely that applications for new projects will result in the need to adjust the current allocation formulas or the amount of the allotments for water year 2010-11.

**RECOMMENDATION**

It is recommended the Board maintain the current allocation formulas and allotment for water year 2010-11.

**ATTACHMENTS**

Allocation summary

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2010\100922 ANNUAL WATER SERVICE LIMITATIONS FOR 2011.DOC

Nipomo Community Services District  
Water Allocation Accounting Summary

<b>WATER YEAR 2009-2010</b>											
Project	Dwelling units per category					Water allotment (acre-feet)				Tally	Notes:
	SFR >12,768	SFR 12.7 to 25.5	SFR 25.5+	MF	Low I	SFR	MF	Low I	Total		
CO 06-0225, Blume at Flint, Kengle; Phase 2/2				2		0.0	(1.0)	0.0	(1.0)	33.3	Low I (low income) pulls from SFR/DUP and MF, proportional to their allotment. BOD Approved 9/9/2009
<b>Totals</b>	0	0	0	2	0	0.0	(1.0)	0.0	(1.0)		
<p>Abbreviations defined:</p> <ul style="list-style-type: none"> <li>SFR = single family residence</li> <li>SEC = secondary dwelling (a.k.a. Granny Unit)</li> <li>DUP = Duplex</li> <li>MF = multi-family development (e.g. multiple dwelling units sharing a common roof)</li> <li>Low I = Low income housing in accordance with County housing definition.</li> </ul>											
<p>Phasing Limit Check (Max 50% of annual allocation or 17.15 AF) Phased allocation = 1</p>											



TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO  
GENERAL MANAGER



DATE: SEPTEMBER 15, 2010

## AGENDA ITEM E-9

SEPTEMBER 22, 2010

### PROPOSAL TO PUBLISH DISTRICT SALARIES AND BENEFITS FOR EXEMPT EMPLOYEES AND BOARD MEMBERS

#### ITEM

Consider a proposal to publish District salaries and benefits for exempt employees and Board members [RECEIVE REPORT AND PROVIDE DIRECTION TO STAFF].

#### BACKGROUND

A request was made by Board President Harrison to place an item on the Board's agenda to discuss a proposal to publish District salaries for exempt employees and Board Members. Recently there have been investigations into salary and benefits paid to public employees in several southern California cities where compensations were higher than cities of comparable size.

The District has both exempt and regular employees. Exempt employees are employees designated as executive, administrative or professional and include the General Manager, Finance Director/Assistant General Manager, District Engineer and Utility Superintendent. All other District employees are classified as regular employees. The District Manager is the only employee that has a specific contract with the District.

Presently all exempt employees and elected officials are required to complete State form 700 which requires disclosure of any conflicts of interest

#### FISCAL IMPACT

There is no fiscal impact associated with item.

#### RECOMMENDATION

Staff recommends Your Honorable Board discuss the proposal to publish District salaries and benefits for exempt employees and board members and provide direction the Staff.

#### ATTACHMENTS

None

t:\board matters\board meetings\board letter\2010\100922 publish district salaries and benefits.doc

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO  
GENERAL MANAGER



DATE: SEPTEMBER 15, 2010

**AGENDA ITEM  
E-10**

**SEPTEMBER 22, 2010**

**CONCEPTUAL AGREEMENT BETWEEN THE NCSD AND GOLDEN STATE WATER COMPANY, WOODLANDS AND RURAL WATER COMPANY FOR COST REIMBURSEMENT RELATED TO THE PROPOSED ASSESSMENT DISTRICT TO FINANCE THE WATER INTERTIE PROJECT**

**ITEM:**

Consider conceptual agreement between the NCSD and Golden State Water Company, Woodlands and Rural Water Company for cost reimbursement related to the proposed assessment district to finance the water intertie project [REVIEW AND EDIT THE ATTACHED AGREEMENT AND BY MOTION TENTATIVELY APPROVE THE AGREEMENT]

**BACKGROUND:**

On August 11, 2010, your Honorable Board approved an Agreement with the County of San Luis Obispo (County MOU) related to the formation of an assessment district to finance the Water Intertie Project. The assessment district will include benefiting properties within the Nipomo Community Services District and the Woodlands Water Company, Rural Water Company and Golden State Water Company (Water Companies). The County MOU is scheduled to be considered by the County Board of Supervisors at its September 21, 2010 meeting.

Pursuant to the County MOU the District will be responsible for:

1. The County's costs in the assessment district formation effort; and
2. Costs related to assessment engineering, educational programs and the hiring of financial advisors.

A total costs for items 1 and 2, above, is currently estimated at \$150,000, excluding Assessment Engineering.

The attached draft Agreement provides a vehicle for the District to recover a portion of these costs from the Water Companies, on a *pro rata* basis, based on the total number of assessable parcels that would be included in the assessment district.

Based on the engineers preliminary report that there are 7,911 parcels within the District and Water Companies the estimated costs would be apportioned as follows:

1. NCSD - 4, 551 parcels or 57.53% of Formation Costs or \$ 86,295.
2. Golden State Water Company - 1,482 parcels or 18.73% of Formation Costs or \$28,095.

3. Rural Water Company – 1,068 parcels or 13.5% of Formation Costs or \$20,250.
4. Woodlands Mutual Water Company – 810 parcels or 10.24% of Formation Costs or \$15,360.

The District's Assessment Engineering costs are estimated at \$105,000 of which \$61,000 has been spent on preliminary engineering.

If the assessment district is successfully formed, then up to 100% of these costs could be recoverable from bond proceeds.

**FISCAL IMPACT:**

The Memorandum of Understanding provides a method for recovering a portion of the costs for the assessment district estimated to be \$63,705.

**RECOMMENDATION:**

Review and edit attached Agreement and by motion tentatively approve the Agreement.

**ATTACHMENTS:**

- Proposed draft Agreement between the District and the Water Companies for reimbursement of the costs.

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**AGREEMENT FOR PAYMENT OF FORMATION COSTS**

Attachments incorporated by reference  
Exhibit "A" – Notice Addresses

This Agreement for Payment of Costs (Agreement) dated as of \_\_\_\_\_ 2010, by and between the Nipomo Community Services District (the "CSD") a public instrumentality duly organized existing under the laws of the State, and Golden State Water Company, Rural Water Company and Woodlands Mutual Water Company (collectively, the "Water Companies"), each a private water company organized under the laws of the State, is undertaken with regard to the following facts:

**RECITALS:**

**WHEREAS**, the CSD has executed a Memorandum of Understanding (the "MOU") by and between the County of San Luis Obispo, California (the "County") and the CSD stating the terms and conditions by which the County will participate in the formation of an assessment district to finance the construction of the Waterline Intertie Project (the "Project"). Said MOU is incorporated herein by this reference.

**WHEREAS**, the County at its September 22, 2010, meeting approved the MOU; and

**WHEREAS**, the CSD and the Water Companies enter into this Agreement to reimburse, on a *pro rata* bases, the CSD's financial obligations identified in the MOU

NOW, THEREFORE, be it agreed and understood by the CSD and the Water Companies, as follows:

1. The foregoing recitals are true and correct and are incorporated herein by this reference including the MOU. The defined terms referenced in Section 1 of the MOU are incorporated herein by this reference.

2. At the time this Agreement is executed by the individual Water Companies, said Water Companies shall deposit with the CSD, for delivery to the County, their estimated individual share of costs referenced in Sections 2, 3 & 5 of the MOU, on a *pro rata* basis, based on the engineers preliminary report that there are 7,911 parcels within the CSD and the Water Companies. The agreed to calculation is as follows:

- a. NCSO - 4, 551 parcels or 57.53% of the estimated Formation Costs - initial deposit \$ 86,295.
- b. Golden State Water Company – 1,482 parcels or 18.73% of the estimated Formation Costs - initial deposit \$28,095.
- c. Rural Water Company – 1,068 parcels or 13.5% of the estimated Formation Costs - initial deposit \$20,250.



- d. Woodlands Mutual Water Company – 810 parcels or 10.24% of the estimated Formation Costs - initial deposit \$15,360.

3. In addition to the deposits referenced in paragraph 2 the Water Companies shall retain, at their own expense (or reimburse the CSD), the CSD's Assessment Engineer for the purposes of developing an Assessment Engineer's Report in support of the Assessment District Formation as referenced in Sections 2 (a) and (b) of the MOU.

4. Within twenty (20) days of receipt of written demand (or invoice) from the CSD each Water Company agrees to pay the CSD:

- a. Their *pro rata* share (as defined in paragraph 2 of this Agreement) of the CSD's formation costs that are in addition to the deposits referenced in paragraph 2 of this Agreement.
- b. Their *pro rata* share (as defined in paragraph 2 of this Agreement) of the CSD's indemnification costs referenced in paragraph 10 of the MOU.

5. Upon receipt of the deposits referenced in paragraph 2 of this Agreement, the CSD will issue the notice to proceed as provided in Section 4 (A) of the MOU.

6. To the extent permitted by law, the CSD and the Water Companies shall be entitled to be reimbursed for amounts paid under paragraphs 2, 3 and 4, hereof from the proceeds of the CSD Bonds, as and when issued. Notwithstanding the foregoing, the CSD can provide no assurances to the Water Companies that the CSD Bonds will in fact be issued, or that they will be issued upon terms sufficient to generate enough proceeds to pay both Project Costs and the Formation Costs. Reimbursement from the CSD's Bonds shall be prioritized as follows:

- a. First to the CSD, all reimbursable Project Costs such as engineering costs, administrative costs, financial costs, environmental costs, permitting cost, etc. incurred by the CSD, that are not included in paragraphs 2, 3 and 4 of this Agreement.
- b. Then reimbursement of the CSD and Water Company Formation costs, referenced in paragraphs 2, 3 and 4 of this Agreement on a *pro rata* basis pursuant to paragraph 2 of this Agreement.

7. This Agreement relates solely to Formation Costs. The parties acknowledge that Project operation, maintenance, replacement and water deliver costs will be by separate agreement.

8. This Agreement shall automatically terminate (A) on the day which is 365 days following the Effective Date of the MOU, (i) if no Assessment District is formed, or (ii) if no CSD Bonds have then been issued; or (B) the day the final CSD Bonds are retired and paid in full. The Water Companies proportional share of the CSD's obligations under Sections 5 (Costs and Expenses), 9 (Indemnification) and 10 (County's

Access to Information) of the MOU shall survive the termination of this Agreement, and shall remain in full force and effect until fully satisfied.

9. No amendment to or variation of the terms of this Agreement, excepting notice addresses, as described in paragraph 13 of this Agreement, shall be valid unless made in writing and signed by the affected parties; no oral understanding or agreement not incorporated herein shall be binding upon any of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding unless authorized by the parties in writing.

10. The terms, covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

11. Each party to this Agreement acknowledges and agrees that this Agreement has been reviewed by legal counsel to such party for legal adequacy.

12. 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.

13. Any notice, demand, or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered at the address(s) shown on Exhibit A, or to such other person as the parties may from time to time designate. Notices, demands and consents under this paragraph, which are sent by mail, shall be deemed to be received five (5) days following the deposit in the U. S. mail.

14. Unless otherwise agreed to in writing the following sections shall apply only to disputed amounts referenced in paragraphs 3 & 4 of this Agreement:

a. The Parties agree in good faith to attempt to resolve amicably disputed amounts. In the event that any dispute cannot be resolved through direct discussions, the Parties agree to endeavor to settle the dispute by mediation. Either Party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to resolve the dispute. If the Parties are unable to agree on a mediator, then either Party can request the Presiding Judge of the San Luis Obispo County Superior Court to appoint a mediator. Said appointment shall be binding on the Parties. The mediator's fee shall be shared equally by the Parties. If the dispute is not settled by mediation, then the Parties agree to submit the dispute to binding arbitration as provided in subparagraph b, below.



b. Either Party may demand arbitration by filing a written demand with the other Party within thirty (30) days from the date of the informal non-binding opinion of the mediator, in accordance with the prevailing provisions of the California Arbitration Act at the time of the written demand. The arbitration procedures are as follows:

(1) The parties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties within five (5) days after demand for arbitration is given, and a third chosen by the two appointed arbitrators. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(2) A hearing on the matter to be arbitrated shall take place before the arbitrator(s) within the County of San Luis Obispo, State of California, at the time and place selected by the arbitrator(s). The arbitrator(s) shall select the time and place promptly and shall give each party written notice of the time and place at least sixty (60) days before the date selected. The procedures of the California Arbitration Act are incorporated herein by reference.

(3) If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties, and if there are three arbitrators, the decision of the two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of a decision by the arbitrator(s) shall be binding on the parties. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provision of the California Arbitration Act.

(4) If three arbitrators are selected, but no two of the three are able to reach an agreement regarding the determination of the dispute, then the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is agreed on by two of the three arbitrators selected.

(5) The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) determine(s).

15. No claim, potential claim, dispute or controversy, including disputed invoices or demands, shall interfere with the progress and performance by the County in the formation of the Assessment District to finance the construction of the Project or, the continued payment of undisputed amounts invoiced by the CSD.

16. Except for disputes that are resolved by non-binding mediation, the prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable

costs and attorney's fees and expert costs expended in connection with such an action from the other party.

17. 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 MOU shall continue in full force and effect.

18. Exhibit A attached hereto is incorporated herein by this reference.

19. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in a Court of competent jurisdiction within the County of San Luis Obispo.

20. This Agreement may be executed in counterparts, each of which shall, together, constitute an entire document.

21. This Agreement shall become effective as of the first written date above.

22. The "Effective Date" of the Agreement shall be the date the County approves the MOU.

23. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, corporations, persons, or firms represented or purported to be represented by such entity(ies), corporation(s), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the first date set forth above:

**NIPOMO COMMUNITY SERVICES DISTRICT**

By \_\_\_\_\_  
Authorized Representative

**GOLDEN STATE WATER COMPANY**

By \_\_\_\_\_  
Authorized Representative

**RURAL WATER COMPANY**

By \_\_\_\_\_  
Authorized Representative

**WOODLANDS MUTUAL WATER  
COMPANY**

By \_\_\_\_\_  
Authorized Representative

DRAFT