

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER

AGENDA ITEM
E-5
JULY 27, 2011

DATE: JULY 20, 2011

**CONSIDER REQUESTING COUNTY PERMISSION ALLOWING
DISTRICT TO LEAD SUPPLEMENTAL WATER PROJECT
ASSESSMENT PROCEEDINGS**

ITEM

Consider Requesting Permission from San Luis Obispo County to Allow the District to Conduct Supplemental Water Project Assessment Proceedings [RECOMMEND BY MOTION AND ROLL CALL VOTE , DIRECT STAFF TO SEND A FORMAL REQUEST TO SAN LUIS OBISPO COUNTY SEEKING PERMISSION TO LEAD ASSESSMENT FOR SUPPLEMENTAL WATER PROJECT]

BACKGROUND

Note: District Counsel researched, prepared, and presented the majority of this Staff Report to your Board on August 11, 2010. This comprehensive summary of the District's Supplemental Water program is reproduced herein to provide context for today's discussion. Updated information begins on Page 5, 'Contract with the County'.

The Nipomo Community Services District (the "District" or "NCSD"). The Woodlands Mutual Water Company ("WMWC"), Golden State Water Company ("GSWC") and Rural Water Company ("RWC") currently rely on groundwater underlying the Nipomo Mesa Management Area (formerly known as the Nipomo Mesa Groundwater Subbasin) of the Santa Maria Groundwater Basin to provide water service to water customers. The Court in the lawsuit summarized, below, designates the Nipomo Mesa Water Conservation Area as the Nipomo Mesa Management Area. For ease of reference this report will use the term Nipomo Mesa Water Conservation Area or NMWCA to describe the geographic area of the groundwater basin that underlies the Nipomo Mesa.

Over the past several years, a number of groundwater studies have been conducted in the Nipomo Mesa area in order to assess the status of groundwater resources. These studies include: 1) Water Resources of the Arroyo Grande – Nipomo Mesa Area in 2002, prepared by the California Department of Water Resources (DWR), dated October 25, 2002; 2) 2004 the Nipomo Mesa Groundwater Resource Capacity Study prepared at the request of the County of San Luis Obispo (the "County") by the firm of S.S. Papadopoulos & Associates, Inc.; 3) "Water Supply in the Nipomo Mesa Area, October, 2004", a Resource Capacity Study prepared by the County of San Luis Obispo, Department of Planning and Building; and 4) Additionally, commencing in June 2008, the Nipomo Mesa Management Area Technical Group files annual reports with the Court pursuant to a 2005 Stipulation and Final Judgment of that Court (see below).

The 2002 Department of Water Resources Report concluded that overdraft of the Santa Maria Groundwater Basin is not likely through the year 2020 but indicates that projected water demands exceed the dependable safe yield of groundwater in the Nipomo Mesa Sub-Area. The March 2004 Papadopoulos Report concluded that the Nipomo Mesa Sub-Basin is currently in

overdraft. The County's November 2004 Resource Capacity Study indicated that in order to maintain sustainability of the Nipomo Mesa groundwater supply, total extractions would have to be stabilized at 6,000 acre-feet per year (as first indicated in the Department of Water Resources Report) and that sustainability can be achieved through a combination of conservation and water supply augmentation.

In recognition of the findings and recommendations contained in the 2002 DWR Report and the 2004 Papadopoulos Report, the District on September 07, 2004, entered into a Memorandum of Understanding with the City of Santa Maria for the purchase of approximately 2,500 acre-feet of water per year to provide supplemental water for the exclusive use of the District (2004 MOU). (see following sections for update).

As recommended in the County's 2004 Resource Capacity Study on June 22, 2007, the County Board of Supervisors certified the Severity Level III for water resources underlying the Nipomo Mesa Water Conservation Area. Table F of the County's Resource Management System provides:

Table F		
RESOURCE DEFICIENCY CRITERIA FOR LEVELS OF SEVERITY		
Level I	Level II	Level III
Projected consumption estimated to exceed dependable supply within 9 years	7 year lead time to develop supplementary water for delivery to users	Resource is being used at or beyond its estimated dependable supply or will deplete dependable supply before new supplies can be developed

GROUNDWATER ADJUDICATION SUMMARY

In 1997 the Santa Maria Valley Water Conservation District filed a groundwater adjudication lawsuit involving the Santa Maria Groundwater Basin that stretches from Orcutt to the South to Pismo Beach to the North. The greater Santa Maria Groundwater Basin includes waters underlying the Nipomo Mesa area (at the time commonly known as the Nipomo Hydrologic Sub-basin). The parties to the lawsuit include the City of Santa Maria, landowners and other water purveyors that pump groundwater from the Santa Maria Groundwater Basin. The NCSD, WMWC, GSWC, and RWC pump water from the underlying Nipomo Mesa Water Conservation Area and are parties to the groundwater adjudication.

The Court in its Partial Statement Of Decision *Re Trial Phase III* found "No evidence of seawater intrusion, land subsidence, or water quality deterioration that would be evidence of overdraft has been presented. Some wells in the Nipomo Mesa area do show lowering of water levels that may result from the pumping depression or other cause, and there may be some effects in that portion of the Basin that are not shared Basin-wide. But, that is not sufficient in any event to demonstrate Basin-wide overdraft" (totality of the greater Santa Maria Groundwater Basin). Subsequently, many of the parties including NCSD, WMWC, GSWC and RWC that overlay the Nipomo Mesa portion of the Groundwater Basin, along with the City of Santa Maria and the County of San Luis Obispo signed a June 30, 2005, Stipulation (the "Stipulation"), that was approved by the Court. The Final Judgment after trial provides "the Court approves the Stipulation, orders the stipulating parties only to comply with each and every term thereof, and incorporates the same herein as though set forth at length".

The Stipulation divides the Santa Maria Groundwater Basin into three management areas known as the Santa Maria Valley Management Area (Southern portion of the Groundwater Basin) the Nipomo Mesa Management Area (the NMMA) (the center portion of the Groundwater Basin) and the Northern Cities Management Area (the northern portion of the Groundwater Basin).

Pursuant to the Stipulation the Woodlands Mutual Water Company, Golden State Water Company and Rural Water Company agreed to participate in the Santa Maria Intertie Project that is the subject of the 2004 MOU. As outlined in the Stipulation the 2,500 AF is to be divided up as follows:

NCSD – 66.68% or 1,669 AFY
WMWC – 16.66% or 415 AFY
GSWC – 8.33% or 208 AFY
RWC – 8.33% or 208 AFY

Additionally, pursuant to the Stipulation the NCSD, Woodlands Mutual Water Company, Golden State Water Company and an Ag representative formed the Nipomo Mesa Management Area Technical Group to monitor the groundwater underlying the Nipomo Mesa Management Area, to file reports with the Court and to make recommendations to the Court. The 2010 Annual Report makes the following recommendations related to the Supplemental Water Project:

“Supplemental Water Supply – An alternative water supply that would allow reduced pumping within the NMMA is likely to be the most effective method of reducing the stress on the aquifer and allow groundwater elevations to recover. The Nipomo Supplemental Water project is likely to be the fastest method of obtaining alternative water supplies. Given the Potentially Severe Water Shortage Conditions within the NMMA and the other risk factors discussed in this Report, the TG recommends that this project be implemented as soon as possible”.

The 2009 Northern Cities Management Annual Report indicates that during the reporting period the interface/mixing zones between seawater and fresh water shifted inland in the Oceano area that borders the NMMA's northern boundary. Subsequent reports from the Northern Cities Management Area indicate that this mixing zone has moved offshore.

SUPPLEMENTAL WATER PROJECT SUMMARY

After entering into the 2005 Stipulation, several additional studies have been prepared by NCSD in order to further evaluate alternatives to the Santa Maria Intertie Project, including: (1). the Preliminary Engineering Memorandum, prepared by Boyle Engineering, dated November, 2006; (2). Evaluation of Supplemental Water Alternatives – Technical Memorandum No. 1, prepared by Boyle Engineering dated June 2007; (3). Evaluation of Desalinization as a Source of Supplemental Water - Technical Memorandum No. 2, prepared by Boyle Engineering dated September 28, 2007; and (4). Evaluation of Supplemental Water Alternatives - Technical Memorandum No. 3, prepared by Boyle Engineering dated November 30, 2007. These memorandums have confirmed that the Santa Maria Intertie Project is the most feasible project to provide alternative water sources within the Nipomo Mesa Water Conservation Area.

The Waterline Intertie Project involves the construction of approximately five miles of new waterlines, pump stations and water storage facilities to transport up to 3,000 AF of new water from the City of Santa Maria. The Project final EIR has been certified by the District as lead

agency and the City of Santa Maria as a responsible agency. The final Supplemental Water Agreement has been approved by the District and the City of Santa Maria.

The Project is nearing 100% design completion and outreach efforts to increase property owner understanding and support of the project is underway. In the first ten (10) years of operation the minimum delivery requirement is 2,000 AFY.

The objectives of the Waterline Intertie Project include:

1. Slow the depletion of the above-sea-level groundwater in storage beneath the Nipomo Mesa Groundwater Management Area (NMMA) of the Santa Maria Groundwater Basin to reduce the potential for sea water intrusion by using supplemental water consistent with the settlement agreement and the judgment related to the groundwater adjudication.
2. Assist in stabilizing the groundwater levels in the NMMA by reducing pumping in the NMMA.
3. Augment current water supplies available to the Woodlands and other water purveyors on the Mesa by 831 acre-feet per year as follows: Woodlands (415 AFY), Golden State Water Company (208 AFY) and Rural Water Company (208 AFY).
4. Increase the reliability of District water supply by providing a diversity of water sources.

ASSESSMENT DISTRICT SUMMARY

The District previously explored various alternatives for financing the construction of the Waterline Intertie Project, namely increasing bi-monthly water rates or the creation of an assessment district. Water rates, if approved, can only be imposed on District customers (developed properties receiving water service) while assessments, if approved, can be imposed on both developed and vacant properties. In September 2008, the Board approved the formation of an assessment district as the best alternative to finance the District's portion of the construction costs of the Waterline Intertie Project. The District, thereon, retained the Wallace Group to prepare assessment data reports for assessing the developed and undeveloped properties within the District.

Subsequently, the District, Woodlands, Golden State Water Company and Rural Water Company began exploring the formation of an assessment district to finance all participating water companies' construction costs. Initially, it was assumed the District could not form assessment districts outside its boundaries and the District entered an agreement with the County to facilitate the formation of an assessment district that would include properties within the NCSD, WMWC, GSWC and RWC to finance all construction costs of the Waterline Intertie Project.

An assessment district that includes the participation of all water companies makes sense for several reasons including the following:

1. Both developed and undeveloped properties will participate in paying for the construction of the Waterline Intertie Project, thus spreading costs beyond the existing water customer base. Undeveloped properties benefit, because property owners will have a source of water to support development within existing water company boundaries consistent with development authorized by the existing County General Plan.

2. Rather than financing the Project with a variety of mechanisms i.e., rates and charges from some participating water companies (that require CPUC. approval) and the District's formation of an assessment district, a single assessment district provides a uniform financing mechanism that includes timely payment of costs and does not require CPUC approval.
3. Assessment District bonds are sold with lower interest rates thereby, reducing total project costs.

CONTRACT WITH THE COUNTY

On August 11, 2010, your Board approved an Agreement with San Luis Obispo County (Approved by County on September 21, 2011) related to the formation of the assessment district to finance the Santa Maria Intertie Project.(Attached).

Subsequently, the District received a legal opinion that assessment proceeding can be led and conducted by a public agency outside of its service area under specific conditions. See the April 18, 2011 Memorandum Re: Alternative Approach for Assessment District Formation for Nipomo-Mesa Water Intertie Project (Attached).

District staff have met and discussed the idea of assuming assessment lead with County staff, which is receptive to the idea. Should your Board decide to form the assessment district in lieu of the County, the District must first obtain permission for doing so from the County and any other entities whose boarders the project work is within (i.e., the City of Santa Maria and possibly County of Santa Barbara).

FISCAL IMPACT

To date, the District has incurred over \$40,000 in charges under the Agreement with the County.

The main fiscal concern surrounding a change in assessment formation lead is impact to the bond rating. District Financial Advisor does not expect any change to bond rating as a result of change in lead and sees some potential of improved bond marketability due to streamlining of project management.

District staff resources are severely stretched by the District's current capital improvement program. However, staff feels the additional demand on staff resources incurred by leading the process will be significantly offset by eliminating the additional layer of coordination required under the Agreement with the County.

RECOMMENDATION

Staff recommends that the Board consider the information presented and either:

By Motion and Roll Call vote, direct staff draft a Resolution of Intention to form an Assessment District and to provide that Resolution to the County with a formal request to lead assessment district formation; or

Provide staff direction.

ATTACHMENTS

- August 11, 2010 SLO County/NCSD MOU
- April 18, 2011, Memorandum Re: Alternative Approach for Assessment District Formation for Nipomo-Mesa Water Intertie Project

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2011\110727 SUPP WATER ASSESSMENT .docx

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU"), dated as of August 11, 2010, by and between the County of San Luis Obispo, California (the "County"), a political subdivision duly organized and existing under the laws of the State of California (the "State"), and the Nipomo Community Services District (the "CSD"), a public instrumentality duly organized and existing under the laws of said State, is undertaken with regard to the following facts:

RECITALS:

WHEREAS, the CSD has a present need to arrange financing for the construction of a waterline intertie project (the "Project") described in that certain Environmental Impact Report ("EIR") approved and adopted by the CSD on May 13, 2009; and

WHEREAS, the Project calls for the design and construction of pipelines and other facilities by the CSD for the conveyance of water from the City of Santa Maria, California ("City") to properties within the CSD; and

WHEREAS, the Project is CSD's effort to implement a physical solution to groundwater conditions within the Nipomo Mesa Management Area ("NMMA") identified in the June 2005 Stipulation (as identified herein) partially settling the Santa Maria Groundwater Basin Litigation. Said Stipulation was duly signed by, inter alia, the CSD, the City of Santa Maria, and the County of San Luis Obispo; and

WHEREAS, the Project is also consistent with the need to address groundwater conditions within the Nipomo Mesa Water Conservation Area (NMWCA) as identified in the County's Resource Capacity Study, Water Supply in the Nipomo Mesa Area, dated November 2004; and

WHEREAS, the CSD represents that water companies pumping groundwater in the NMMA, specifically Golden State Water Company, Rural Water Company, and Woodlands Mutual Water Company (collectively the "Water Companies") are signatories to the Stipulation; and

WHEREAS, the CSD represents that while it has the authority to create an assessment district that includes any properties benefiting from the Project that lie within the CSD's boundaries, the CSD does not have the power to create an assessment district that includes any properties benefiting from the Project that lie outside the CSD's boundaries; and

WHEREAS, the CSD has requested that the County undertake the necessary processes for the possible establishment of an assessment district (the "Assessment District") that would include properties specially benefiting from the Project, including properties that lie both within and outside the CSD's boundaries that specially benefit from the Project and properties within the boundaries of the Water Companies that specially benefit from the Project; and

WHEREAS, the Project is and will be located within or proximate to the boundaries of the County; and

WHEREAS, the parties hereto wish to provide the terms and conditions upon which the possible formation of such an Assessment District would be processed by the County;

NOW, THEREFORE, be it agreed and understood by the parties hereto, as follows:

Section 1. Recitals; Defined Terms. The foregoing recitals are true and correct. Capitalized terms used but not defined herein shall have the meanings set forth in the Recitals hereof or as follows:.

“1913 Act” shall mean Sections 10000 *et seq.* of the Health & Safety Code of the State, comprising the Municipal Improvement Act of 1913.

“Assessment District” shall mean the assessment district, if any, formed at the conclusion of the Assessment Proceedings.

“Assessment Proceedings” shall mean the formal proceedings aimed at the formation of an assessment district for the Project undertaken by the County pursuant to the 1913 Act or any other applicable law relating to procedures for the formation of an assessment district for the Project.

“Auditor-Controller” shall mean the Auditor-Controller of the County.

“Bond Issuance Phase” shall mean the period of time following the Conclusion Date through and including the Closing Date.

“Bond Law” shall mean the Improvement Bond Act of 1915, being Sections 8500 *et seq.* of the Health & Safety Code of the State.

“Cash Contribution” shall mean the cash payments made by the CSD to or on behalf of the County in order to provide for the costs of services associated with the satisfaction of the conditions of this MOU, as it may from time to time be amended. The initial Cash Contribution of the CSD is set forth on Exhibit A to this MOU.

“Claims” shall mean all claims, demands, litigation, losses, judgments, damages, liabilities, costs and expenses, regardless of whether the claim is formally commenced in a court or not. As used herein, “Claims” shall refer to any Claim by any person or entity, including, but not limited to, any Claim by the CSD.

“Closing Date” shall mean the date upon which the CSD Bonds are issued by the County on behalf of the Assessment District, and the proceeds thereof made available to the CSD for the Project.

“Commencement Date” shall be the date the County receives the first “Notice to Proceed – Formation Phase” from the CSD pursuant to Section 4(A) of this MOU.

“CSD Bonds” shall mean any assessment bonds issued by the County under the Bond Law after the Conclusion Date for the initial financing of the Project after an assessment district is created.

“Effective Date” shall mean the date of execution of this MOU by the CSD or by the County, whichever is later, as shown on the signature page hereof. Once each party’s governing body approves this MOU, it shall be promptly signed by its authorized representative.

“Formation Costs” shall mean the costs of any party relating to the Assessment Proceedings and/or any preliminary activities relating to the County’s possible formation of the Assessment District, including, without limitation, the Cash Contribution, legal costs and expenses of the parties hereto, the costs of published and mailed notices, engineering expenses, testing, environmental and soils testing and reporting and fees of financial advisors and consultants.

“Conclusion Date” shall mean the date upon which the Assessment Proceedings are concluded, regardless of whether an Assessment District is formed on such date.

“Formation Phase” shall mean the period of time from the Effective Date through and including the Conclusion Date.

“Project Costs” shall mean the sums paid or to be paid for the acquisition, construction or improvement of any portion or segment of the Project, in accordance with a purchase order or contract therefor, together with all related administrative, engineering, legal, financial and other costs incurred by the CSD in connection with such acquisition, construction or improvement, including all applicable sales taxes and other charges.

“Stipulation” shall mean that certain Stipulation of June 30, 2005, 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, later incorporated into a final judgment in said litigation, issued January 25, 2008).

Section 2. Duties of CSD. The CSD shall, at its own expense and with due diligence, during the term of this MOU, in addition to its obligation to pay costs and expenses as provided in Section 5 below, (a) hire a registered professional engineer to prepare a detailed engineer’s report; (b) deliver to the County a detailed engineer’s report consistent with article XIID, section 4 of the California Constitution and other applicable law that would, *inter alia*, identify all properties receiving special benefits from the Project; (c) retain a financial advisor to serve the CSD; (d) provide adequate information to property owners regarding the Project and the proposed formation of the Assessment District; (e) construct the Project in accordance with engineering plans and specifications provided to the County and in compliance with the Stipulation and the applicable provisions of the EIR; and (f) provide annual disclosure respecting the CSD Bonds as required pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission. At the County’s request, the CSD shall, at its own expense, provide the County with any requested information relating to the Project, including, but not limited to, any and all updated engineering or design information, and any and all agreements signed or approved by the CSD.

Section 3. Duties of County. During the term of this MOU, and in conjunction with the timeframes set forth below, the County shall have the following duties:

(A) During the Formation Phase, the County shall: (1) retain special counsel to assist in the Formation Phase; (2) coordinate the process for the formation of the Assessment District,

including publication and/or mailing of notices required under the 1913 Act and adoption of appropriate resolutions; (3) collect and tabulate the results of balloting; and (4) canvass the final tabulation of ballots.

(B) Following the creation of an Assessment District, if any, the County shall: (1) retain Bond Counsel to assist in the issuance of the CSD Bonds; (2) administer the Assessment District after formation, including the annual delivery of assessment rolls to the Auditor-Controller of the County and the transmission of collected assessments to the fiscal agent to be used as debt service for the CSD Bonds; (3) retain its own financial advisor and underwriter or underwriters in connection with the authorization, issuance and sale of the CSD Bonds; (4) coordinate the issuance of the CSD Bonds through the preparation of appropriate resolutions, fiscal agent agreements, a preliminary and a final official statement and related legal documents; (5) administer the sale of the CSD Bonds; (6) provide for payment of the costs of issuance of the CSD Bonds from proceeds thereof; (7) make the proceeds of the CSD Bonds available to the CSD for the construction of the Project; and (8) require the fiscal agent to maintain appropriate books and records respecting the CSD Bonds, collection and payment of debt service thereon, and investment earnings on unexpended proceeds; provided, however, that the CSD shall be responsible for the payment of all costs and expenses associated with the County's performance under this Section.

Section 4. Notice to Proceed.

(A) Formation Phase. The County shall commence performance of County duties under Section 3(A) above within five (5) days of CSD's "Notice to Proceed – Formation Phase" and unless otherwise directed in writing by the CSD shall proceed with said duties with due diligence.

(B) Bond Issuance Phase. Following the creation of an Assessment District, and after the parties have amended Exhibit A, and the CSD has paid the amended deposit amount to the County, the County shall commence performance of County duties under Section 3(B) above within five (5) days of CSD's "Notice to Proceed – Bond Issuance Phase," and unless otherwise directed in writing by the CSD, shall proceed with said duties with due diligence.

Section 5. Costs and Expenses. The CSD covenants and agrees that it shall pay all Formation Costs and any other costs and expenses of the County relating to the duties described in Sections 3(A) and/or 3(B) above, including reasonable and necessary County staff time and the costs and expenses of consultants retained for said purposes by the County within twenty days of receipt of invoices for such costs and expenses. County invoices shall be itemized and shall identify the person providing the service, the service performed, the amount of time spent on performing the service, the amount charged for each item of service and a description by item for cost and expenses. Within five business days of the Effective Date of this MOU, the CSD shall deposit with the County the sum specified on Exhibit A attached hereto.

Following the creation of an Assessment District, the County and the CSD shall agree upon such additional deposits, costs and expenses as may be necessary for the issuance of the CSD Bonds pursuant to the Bond Law and shall amend Exhibit A to reflect such additional deposits, costs and expenses. In no event shall the County be liable to pay any of the costs and expenses incurred in connection with the execution of this MOU, the processing of the proposed

Assessment District or the issuance of the CSD Bonds, which shall all be the responsibility of the CSD.

Section 6. Reimbursement of Cash Contributions, Expenses. To the extent permitted by law, the CSD shall be entitled to be reimbursed for amounts advanced under Section 2 and 5 hereof from the proceeds of the CSD Bonds, as and when issued. Notwithstanding the foregoing, the County makes no representations and can provide no assurances to the CSD that the CSD Bonds will in fact be issued, that the CSD will be reimbursed therefrom, or that the CSD Bonds will be issued upon terms sufficient to generate enough proceeds to pay both Project Costs and the Formation Costs.

Section 7. Notices and Hearings. In connection with the Formation Phase and the issuance of the CSD Bonds, the County will be required, pursuant to pertinent provisions of the 1913 Act and the Bond Law, to provide notices, including published notices, and to conduct public hearings; the CSD covenants and agrees to post notices (and, as to parties which have previously so requested of the CSD, to mail notices) of each related agenda item being considered and of each related public hearing to be conducted by the County.

Section 8. Assessments Based on Special Benefits. In providing the engineering and related support during the Formation Phase, the CSD understands and agrees that the assessments to be imposed upon properties within the Assessment District, when formed, shall be made strictly upon the basis of special benefit to such properties as required by law.

Section 9. Maintenance and Operation of Project.

(A) CSD Ownership of the Project. Except as to connectors and pumping facilities associated with the Project to be owned and/or operated by the City, the Project and all of its pumps, machinery, conduits, apparatus, fixtures, fittings and equipment of any kind, real property (including rights-of-way) and capacity (except as provided in subparagraph E below) are and shall be, owned and/or operated by the CSD and shall be held and operated and maintained by the CSD as provided for herein.

(B) CSD's Objectives and Covenants. The CSD covenants and agrees that it will operate and maintain the Project in accordance with all relevant and valid governmental laws, ordinances, approvals, rules, regulations and requirements, including, without limitation, such zoning, sanitary, pollution, environmental and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the CSD. The CSD further covenants and agrees that it will maintain and operate the Project in good repair, working order and condition, and that it will from time to time inspect and test all of the Project against then-current water supply industry standards, and that the CSD will pursue all necessary and proper replacement, repairs, renewals and improvements thereto. The CSD's operation of the Project, shall be consistent with the provisions of the "Stipulation" and "Final Judgment." The CSD agrees further that all revenues received from the Project shall be used for the sole benefit of the Project.

(C) CSD's Capital Reserves; Annual Budgets to Be Prepared by the CSD. In order to satisfy its covenants set forth in this MOU, the CSD shall determine the amount of capital reserves necessary for the Project for each upcoming fiscal year and its annual budget shall reflect such capital reserves. The CSD shall provide copies of the draft budget to the County for review and comment prior to final approval by the CSD's governing board.

(D) No Sale, Lease or Disposing of Project. The CSD covenants and agrees not to sell, lease or otherwise dispose of the Project or any part thereof essential to the proper operation thereof or to the earning or collection of the gross revenues of the Project, nor to enter into any MOU or lease which would impair the operation of the Project, or any part thereof necessary in order to secure adequate revenues for the payment of amounts due under this MOU, other than as necessary to secure the CSD Bonds; *provided, however*, that any real or personal property which has become nonfunctional or obsolete or which is not needed for the efficient operation of the Project may be sold or disposed of if such disposition will not have the effect of reducing revenues of the Project below the levels required under this MOU.

(E) Assignment of Capacity. Nothing in this MOU prohibits the CSD from assigning capacity interests in the Project's pipelines and related facilities to any of the Water Companies so long as such assignment is consistent with the final engineer's report and all applicable laws. Copies of any such assignments made by the CSD shall be immediately provided to the County and its Bond Counsel. If the CSD desires CSD Bonds to be issued on a tax-exempt basis, such assignments, if desired by the CSD, should not be undertaken without consultation with and the prior written approval of Bond Counsel to the County. Following the issuance of any CSD Bonds for the Project on a tax-exempt basis, such assignments, if desired by the CSD, shall not be undertaken without consultation with and the prior written approval of Bond Counsel to the County.

(F) CSD to Maintain Project. The CSD covenants and agrees to maintain and preserve the Project in good repair and working order at all times, to operate the same in an efficient and economical manner and to pay all operation and maintenance costs of the Project as they become due, all in accordance with the best business judgment of the CSD.

(G) No Superior Liens or Payments. The CSD covenants and agrees not to create or allow any lien on or payment from the revenues of the Project or any part thereof prior to, or superior to, the CSD's obligations to provide for debt service on the CSD Bonds.

(H) CSD to Insure Project. The CSD covenants and agrees to procure and maintain insurance, that is reasonable, relating to the Project which the CSD shall deem advisable or necessary to protect its interests and/or which may be required for the issuance of CSD Bonds. Such insurance shall afford protection in such amounts and against such risks as are usually covered in connection with similar water enterprises in the State of California; provided, that any such insurance may be maintained under a self-insurance program, so long as such self-insurance program is maintained in accordance with standards and in such amounts as are then usually maintained for similar water delivery projects in the State.

(I) CSD to Pay Obligations; Observe Laws. The CSD covenants and agrees to pay and discharge all valid taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Project or any part thereof when the same shall become due and to duly observe and conform to all valid regulations and requirements of any governmental authority relative to the operation of the Project that are not being contested by the CSD in good faith.

(J) Eminent Domain. CSD covenants and agrees that if all or any material part of the Project shall be taken by eminent domain proceedings, or if the CSD receives any insurance proceeds resulting from a casualty loss to any material portion of the Project, the proceeds

thereof shall be used by the CSD to construct or install replacements for the condemned or destroyed components of the Project or to redeem the CSD Bonds.

Section 10. Indemnification. The County is willing to enter into this MOU only if all of the County's expenses, costs, and possible exposure to liability relating to this MOU are assumed by the CSD to the fullest extent allowed by law. Accordingly, the CSD agrees to indemnify, defend and hold harmless the County, including its officers, employees and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the County, against any and all Claims by any person relating to this MOU, the engineer's report, the Assessment Proceedings, the issuance of the CSD Bonds (including but not limited to, any Claims relating to the exclusion from gross income of interest on the CSD Bonds or the failure to satisfy the requirements of Rule 15c2-12 (Continuing Disclosure), promulgated by the Securities and Exchange Commission), and/or the design, construction, operation or maintenance of the Project, regardless of whether or not the Claim arises from any omission of the County, the CSD, or some other person or entity. The CSD's duty to defend the County extends to all of the aforementioned Claims even if the Claim arises from the active or passive negligence by the County. The CSD's duty to indemnify the County extends to all of the aforementioned Claims even if the Claims arise from any active or passive negligence by the County (but not from any willful acts by the County).

In case any Claim shall be made or action brought against the County or any controlling person as provided above, the County shall promptly notify the CSD in writing setting forth the particulars of such Claim or action and the CSD shall assume the defense thereof, including the retaining of counsel reasonably acceptable to the County and the payment of all expenses. Notwithstanding the CSD's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the CSD shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the CSD to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the CSD and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are materially different from or additional to those available to the CSD; (iii) the CSD shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the CSD shall authorize the indemnified party to employ separate counsel at the expense of the CSD. The CSD will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened Claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such Claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

Nothing contained in the foregoing indemnity provisions shall be construed to require the CSD to:

- A. Indemnify, defend and hold harmless the County from claims by its own employees, contractors and consultants that are unrelated to any act or omission by the CSD, its employees, agents, representatives or contractors; or

B. Indemnify, defend and hold harmless the contractors and consultants retained by County pursuant to this MOU.

Section 11. CSD's Assumption of Risk. The CSD acknowledges that the County is entering into this MOU at the request of the CSD, and that the County has never before (1) created an assessment district, nor issued bonds, for a project that is being constructed, owned and operated by a community services district, or (2) created an assessment district for such a project that included properties outside the boundaries of the community services district. The CSD enters into this MOU with full appreciation of the risks associated with such a venture and assumes all risks associated with a unilateral or mutual mistake of law or fact, frustration of purpose, or impossibility of performance. Under no circumstances shall any obligations or duties of the CSD under this MOU be excused, voided or relieved by any unilateral or mutual mistake of law or fact, frustration of purpose, or impossibility of performance. Under no circumstances shall the County be out of pocket for any costs associated with this MOU.

Section 12. Notices. The County covenants and agrees to provide notice to the CSD, at the address shown on Exhibit B hereto, of all hearings and other proceedings related to the formation of the Assessment District, the approval or issuance of the CSD Bonds and the Project which the County may conduct during the term of this MOU. The CSD covenants and agrees to provide notice to the County, at the address shown on Exhibit B hereto, of all hearings and other proceedings related to the formation of the Assessment District, the approval or issuance of the CSD Bonds and the Project which the CSD may conduct during the term of this MOU. Either party may provide a different notice address to the other party, in which case, an amended Exhibit B will be provided to each party.

Section 13. Cooperation of Parties. The parties hereto recognize that it is essential to cooperate fully concerning the handling of data and information contemplated by this MOU. In connection herewith, the parties therefore agree to provide any data, information and documentation reasonably necessary in order to accomplish the goals of this MOU.

Section 14. Opinions and Determination: Good Faith. Where terms of this MOU provide for an action to be based upon opinion, judgment, approval, review or determination of either the CSD or the County hereto such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The County and the CSD shall each act in good faith in performing their respective obligations as set forth in this MOU.

Section 15. Term of Agreement; Survival of Obligations. This MOU shall automatically terminate (A) on the day which is 365 days following the Effective Date, (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 CSD's obligations under Sections 5 (Costs and Expenses), 9 (Indemnification) and 10 (County's Access to Information) shall survive the termination of this MOU, and shall remain in full force and effect until fully satisfied.

Section 16. No Guarantee of Assessment District Formation. The County and the CSD understand that there is no guarantee that an Assessment District will be formed by virtue of execution and delivery of this MOU or the efforts of either party during the Formation Phase. If a proposed assessment district is not approved by a sufficient number of property owner

ballots as required by applicable law, the County shall be under no obligation to conduct any further Assessment Proceedings under this MOU.

Section 17. Modification. No amendment to or variation of the terms of this MOU, excepting notice addresses, as described in Section 11, 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.

Section 18. 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 hereto.

Section 19. Review for Legal Adequacy. Each party to this MOU acknowledges and agrees that this MOU has been reviewed by legal counsel to such party for legal adequacy.

Section 20. No Waiver. No waiver of the breach of any of the covenants, agreements, restrictions or conditions of this MOU 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 MOU. 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 MOU.

Section 21. Severability. If any term or portion of this MOU 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.

Section 22. Governing Law. This MOU shall be governed by the provisions of the laws of the State of California applicable to contracts made and performed in such State.

Section 23. Counterparts. This MOU may be executed in counterparts, each of which shall, together, constitute an entire document.

IN WITNESS WHEREOF, the parties have each executed this MOU by their duly authorized representatives as set forth below:

COUNTY OF SAN LUIS OBISPO

By _____
Chairperson, Board of Supervisors

Dated: _____

ballots as required by applicable law, the County shall be under no obligation to conduct any further Assessment Proceedings under this MOU.

Section 17. Modification. No amendment to or variation of the terms of this MOU, excepting notice addresses, as described in Section 11, 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.

Section 18. 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 hereto.

Section 19. Review for Legal Adequacy. Each party to this MOU acknowledges and agrees that this MOU has been reviewed by legal counsel to such party for legal adequacy.

Section 20. No Waiver. No waiver of the breach of any of the covenants, agreements, restrictions or conditions of this MOU 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 MOU. 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 MOU.

Section 21. Severability. If any term or portion of this MOU 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.

Section 22. Governing Law. This MOU shall be governed by the provisions of the laws of the State of California applicable to contracts made and performed in such State.

Section 23. Counterparts. This MOU may be executed in counterparts, each of which shall, together, constitute an entire document.

IN WITNESS WHEREOF, the parties have each executed this MOU by their duly authorized representatives as set forth below:

COUNTY OF SAN LUIS OBISPO

By FRANK R. MECHAM
Chairperson, Board of Supervisors

Dated: SEP 21 2010

APPROVED AS TO FORM;
WARREN R. JENSEN,
COUNTY COUNSEL:

By *Warren R. Jensen*
Deputy County Counsel

ATTEST:
JULIE L. RODEWALD, COUNTY CLERK

By _____
Deputy County Clerk

NIPOMO COMMUNITY SERVICES DISTRICT

By *James Harrison*
Authorized Representative

Dated: *Aug 12 2010*

EXHIBIT A

ESTIMATED COSTS AND CASH CONTRIBUTIONS

(as of _____, 2010)

The Formation Phase costs to be paid or reimbursed by the CSD are estimated at \$60,000; upon execution of the MOU, the CSD shall deposit the sum of \$25,000 with the County as a credit towards the total Formation Phase costs.

This schedule will be amended following the successful conclusion of the Formation Phase and the further authorization of the parties.

EXHIBIT B

NOTICE ADDRESSES

If to the County :

The County of San Luis Obispo
c/o Public Works Director
County Government Center Room 207
San Luis Obispo, CA 93408

Copy to: County Counsel, County Government Center Room D320, San Luis Obispo,
CA 93408

If to the CSD:

General Manager
Nipomo Community Services District
148 South Wilson Street
Nipomo, CA 93444-0326

Copy to:

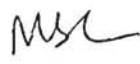
Jon S. Seitz
Shipsey & Seitz, Inc
1066 Palm Street
San Luis Obispo, CA 93401
Phone: (805) 543-7272
Email: Jon@shipseyandseitz.com

~~CONFIDENTIAL~~

E-5, A2
Pg 1/3
~~D1~~
Public
release
July 19, 2011

555 South Flower Street • Forty-First Floor • Los Angeles, California 90071
www.fulbright.com

MEMORANDUM

TO: Michael S. LeBrun, Interim General Manager 
Jon S. Seitz, Esq., General Counsel

FROM: Maryann L. Goodkind

DATE: April 18, 2011

RE: Alternative Approach for Assessment District Formation for Nipomo-Mesa
Water Intertie Project

It has been proposed that a portion of the Nipomo-Mesa Water Intertie Project will be funded utilizing the mechanism of an assessment district established pursuant to the Municipal Improvement Act of 1913¹ (the "1913 Act"), which will also include the issuance of bonds pursuant to the Improvement Bond Act of 1915² (the "1915 Act"). Since a portion of parcels to be assessed lie outside of the boundaries of the Nipomo Community Services District ("NCSD") it is currently proposed that the County of San Luis Obispo (the "County") be the entity to form the assessment district and issue the assessment bonds since all parcels of land to be benefitted by the facilities to be financed fall within the jurisdiction of the County.

This memorandum discusses an alternative approach to forming the assessment district that involves the NCSD as the entity to establish the assessment district and issue the bonds with the consent of the County.

Government Code Section 61129 of the Community Services District Law³ provides that a community services district may levy assessments to finance its authorized capital improvements using the 1913 Act and 1915 Act. Section 10103⁴ of the 1913 Act incorporates certain provisions of the Improvement Act of 1911⁵ (the "1911 Act") that sets forth a procedure

¹ California Streets and Highways Code Section 10000 et seq. (all Section references are to the California Streets and Highways Code unless otherwise noted).

² Section 8500 et seq.

³ California Government Code Section 61000 et seq.

⁴ Section 10103. "The provisions of Chapter 2 (commencing with Section 5115) of Part 3 of Division 7 of this code providing for the construction of work and the levy of an assessment by a city within a county or by a county within a city, are incorporated in this division as if fully set out herein. Upon obtaining the consent required in that chapter, a city may construct improvements and levy an assessment in a county or in another city, a county may construct improvements and levy an assessment within a city, and a public corporation may construct improvements and levy an assessment outside of its boundaries either within a city or within a county. ..."

⁵ Section 5000 et seq.

Michael S. LeBrun, Interim General Manager
Jon S. Seitz, Esq., General Counsel
April 18, 2011
Page 2

by which a city, county or public corporation may obtain consent to expand the boundaries of the assessment district and allow for work outside the jurisdiction of the forming entity. A community services district is considered a public corporation and therefore may utilize these provisions.⁶

The NCS D may wish to form the assessment district in lieu of the County. The procedure entails obtaining the consent of any city or county in which either (i) property to be assessed or (ii) work to be financed, lie outside the boundaries of the NCS D. Section 5115 provides that the Board of the NCS D find that the public interest or convenience requires that "the proposed work is of such a character that it directly and peculiarly affects property in two or more cities, or in one or more cities and counties, and that the purposes sought to be accomplished by the work can best be accomplished by a single, comprehensive scheme of work."

Before the NCS D may adopt a resolution of intention to form the assessment district it must first obtain consent of the County by submitting the proposed resolution of intention to the Board of the County. The County may then give its consent through the adoption of a resolution that consents to the work within its boundaries, the assumption of jurisdiction by the NCS D over the parcels to be assessed and the proposed resolution of intention.⁷ Should any of the work lie outside of the boundaries of the County, the NCS D must obtain the consent of those entities as well (i.e., the City of Santa Maria).

If the NCS D determines to form the assessment district then it would also be the issuer of the assessment bonds. All responsibility for the issuance, administration and monitoring of the

⁶ Section 10003. "'Municipality' and 'city' include every city, city and county, or county, or other entity, public corporation, or agency authorized to operate under this division [emphasis added], including any joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and any special district organized for the purpose of aiding in the development or improvement of navigation or commerce to, or within, the district."

⁷ Sections 5117 and 5118.

"Section 5117. The city may include within the boundaries of an assessment district created pursuant to this division lands lying within the boundaries of any one or more cities, or counties, when such lands, in the opinion of the legislative body conducting the proceeding, will be benefited by the proposed work if the consent of the legislative body of any territory proposed to be assessed shall first be obtained to the formation of the assessment district and, if any of the proposed work is to be done within such territory, to the work described in the resolution of intention and the assumption of jurisdiction thereover for the purposes aforesaid prior to the adoption thereof."

"Section 5118. The proposed resolution of intention shall be submitted to the legislative bodies which have jurisdiction over the territory into which the proposed work or the assessment district therefor may extend. When the resolution of intention is approved and the consent of the legislative bodies whose consent is necessary is obtained to the work and the formation of the assessment district described therein, the resolution of intention may be adopted. The consent if any shall, of itself, constitute assent to the assumption of jurisdiction thereover for all purposes of the proceeding and authorize the legislative body initiating the proceeding to take each and every step required for or suitable for the consummation of the work extending outside the limits of the city, and the levying, collecting and enforcement of the assessments to cover the expenses thereof and the issuance and enforcement of bonds to represent unpaid assessments."

Michael S. LeBrun, Interim General Manager
Jon S. Seitz, Esq., General Counsel
April 18, 2011
Page 3

assessment district and bond issue would lie with the NCSD, including fielding questions from property owners, accepting prepayments, placing the assessment roll on the tax roll, complying with continuing disclosure, etc.

We hope this discussion of an alternative approach to form the assessment district is helpful to the Board of the NCSD in moving forward with the proposed financing of the Nipomo-Mesa Water Intertie Project.

MLG

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: JULY 21, 2011

**AGENDA ITEM
E-6
JULY 27, 2011**

**APPROVE \$15,000 BUDGET AUGMENTATION WITH WAGNER &
BONSIGNORE CONSULTING ENGINEERS FOR GROUNDWATER
CONSULTING SERVICES**

ITEM

Approve budget \$15,000 budget augmentation with Wagner & Bonsignore Consulting Engineers to provide ongoing litigation support services [RECOMMEND BY MOTION AND ROLL CALL VOTE APPROVE \$15,000 BUDGET AUGMENTATION AND DIRECT STAFF TO ISSUE TASK ORDER TO WAGNER BONSIGNORE].

BACKGROUND

Brad E. Newton, Ph.D., P.G. has provided litigation support services to the District throughout the ongoing Santa Maria Groundwater Basin adjudication. Wagner & Bonsignore Consulting Engineers employ Dr. Newton. On December 15, 2010, your Board approved Task Order 200-11 with Wagner Bonsignore for \$80,000 for Litigation Support Services during calendar year 2011.

The focus of work under this Task Order is representation of the District at Nipomo Mesa Management Technical Group and associated tasks. The preparation of the 2010 NMMA TG Annual Report is complete, however the process required additional, out of scope, work by Dr. Newton.

This budget augmentation will provide for Dr. Newton's time in representing the District on the NMMA Technical Group through December 2011.

FISCAL IMPACT

Funds for Professional Services are included in the adopted 2011/2012 Budget.

RECOMMENDATION

Staff recommends your Board, by motion and roll call vote, approve \$15,000 budget augmentation and direct staff to issue a Task Order and revise the project Not to Exceed to \$95,000.

ATTACHMENTS

- Draft Task Order # 200-11A

ATTACHMENT #1 To EXHIBIT "A"

**to
AGREEMENT FOR PROFESSIONAL SERVICES**

**Between
NIPOMO COMMUNITY SERVICES DISTRICT
and
WAGNER & BONSIGNORE
CONSULTING ENGINEERS**

Dated July 5, 2011

"REQUEST FOR SERVICES – TASK ORDER # 200-11A"

AUTHORIZATION FOR SERVICES:

At the request of the Nipomo Community Services District, Engineer Consultant is to provide services as described herein. The terms and conditions of the Agreement for Professional Engineering Services, dated September 22, 2010 are incorporated herein by this reference. The scope of services requested along with the schedule and fees for said services are set forth below as follows:

SCOPE OF SERVICES REQUESTED (Additional information may be attached as an Exhibit.):

Litigation Support – Santa Maria Groundwater Adjudication: Wagner & Bonsignore conducted out-of-scope services in the amount of \$8,280 at the request of the NCSD's General Manager to prepare percolation calculations for the NMMA TG, as reported in the May 05, 2011 monthly letter accompanying invoice number 05-11-6001.1 In addition, Wagner & Bonsignore conducted out-of-scope services in the amount of approximately \$7,000 at the request of the NCSD's General Manager to evaluate monitoring well references points and monitoring well screened intervals for the NMMA TG.

Wagner & Bonsignore anticipates that funding these out-of-scope services will allow for the fulfillment of this year's remaining scope-of-services planned for the NMMA TG.

TIME FOR PERFORMANCE (Additional information may be attached as an Exhibit.):

Continuing

ENGINEERING FEES:

The Engineering fees for these services are not to exceed \$15,000, increasing TO200-11 from \$80,000 to \$95,000.

NIPOMO COMMUNITY SERVICES

ENGINEER-CONSULTANT

Approved By: Michael LeBrun
Title: Interim General Manager
Date:

Approved By: Robert Wagner
Title: President
Date:

S:\CLIENT FILES\NCS\6001\SA ADMINISTRATION\BUSINESS\CONTRACTS\2010\008 MSA\MSAVO 100-300 2011\CM001 TO 200 2011\TO200-11A.DOCX

TO: BOARD OF DIRECTORS
FROM: MICHAEL LEBRUN *ML*
GENERAL MANAGER
DATE: JULY 21, 2011

**AGENDA ITEM
E-7
JULY 27, 2011**

**LOCAL AREA FORMATION COMMISSION BALLOT FOR
ALTERNATE SPECIAL DISTRICT COMMISSIONER**

ITEM

Consider the individuals nominated to fill the Alternate Special District seat of the Local Agency Formation Commission [RECOMMEND BY MOTION AND ROLL CALL VOTE DIRECT STAFF TO CAST BALLOT FOR SELECTED SPECIAL DISTRICT REPRESENTATIVE IF ANY]

BACKGROUND

Four individuals are nominated to fill the Special District alternate seat vacancy to LAFCO. The seat expires December 2013.

FISCAL IMPACT

Minor staff time preparing these materials.

RECOMMENDATION

Consider LAFCO materials by motion and roll call vote direct staff to file completed ballot with LAFCO no later than August 12, 2011.

ATTACHMENTS

LAFCO Ballot Materials

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2011\110727 LAFCO BALLOT.DOCX



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

TO: EACH INDEPENDENT SPECIAL DISTRICT

FROM: DAVID CHURCH, EXECUTIVE OFFICER

DATE: JUNE 22, 2011 DUE DATE: August 12, 2011

SUBJECT: **BALLOT FOR LAFCO ALTERNATE SPECIAL DISTRICT MEMBER**

Four individuals have been nominated for the vacant Special District position. The term for this position would expire in December 2013. Please vote for one of the nominees:

- Rosie Flynn San Miguel Cemetery District
- Brian Kreowski Port San Luis Harbor District
- Marshall Ochylski Los Osos Community Services District
- Greg O'Sullivan Templeton Community Services District

Agenda Date of Action: _____

Name of Special District: _____

General Manager/President: _____

Ballot Instructions. The Government Code (56332 (c)(1)) states that "at the end of the nomination period, the Executive Officer shall prepare and deliver, or send by certified mail, to each independent special district one ballot and voting instructions." The Government Code also allows for the ballot and instructions to be sent electronically if the special district selection committee agrees and written evidence of receipt of the ballot and instructions is retained by the executive officer. The local California Special District Association (CSDA) chapter of Special Districts has agreed that completing the election electronically is appropriate because attaining a quorum is not possible.

Each Independent Special District may vote for one nominee. The vote by a District must be considered by the District's Board of Directors as an item on its agenda. Please schedule this matter for a vote at your Board of Directors meeting as soon as possible. The District's selection should be returned to the LAFCO office no later than **August 12, 2011** via one of the following ways:

1) An email indicating the date the item was on the Board of Directors agenda and the selected nominee,

COMMISSIONERS

RICHARD ROBERTS
Chair, Public Member

BRUCE GIBSON
Vice Chair,
County Member

MURIL CLIFT
Special District Member

ED EBY
Special District Member

JAMES R. PATTERSON
County Member

DUANE PICANCO
City Member

KRIS VARDAS
City Member

ALTERNATES

Roberta Fonzi
City Member

FRANK MECHAM
County Member

TOM MURRAY
Public Member

VACANT
Special District Member

STAFF

DAVID CHURCH
Executive Officer

RAYMOND A. BIERING
Legal Counsel

MIKE PRATER
Analyst

DONNA J. BLOYD
Commission Clerk

2) A scanned pdf of this ballot attached to an email with one of the nominees selected and the date it was considered on the Board's agenda, or

3) A fax with a cover memo sent to LAFCO with one of the nominees selected and the agenda date of the Board's decision. FAX number 805-788-2072.

Please contact me at 805-781-5795 or dchurch@slolafco.com if you have any questions.

cc: Members, Formation Commission

**Rosie Flynn
San Miguel Cemetery District
P.O. Box 237
San Miguel, CA 93451**

I was the office manager at the Paso Robles District Cemetery (PRDC) for 20 years, from 1987 to 2007. In 2001 I was certified as a Special District Administrator. After stepping down as office manager at PRDC I stayed on as an IT consultant. Currently I am a Trustee of the San Miguel Cemetery District. Our family has been the management company in charge of all aspects of the PRDC since 1986. I have lived in SLO County since 1979. I feel I have considerable experience with special districts and have a passion for San Luis Obispo County as a whole and would like to serve on LAFCO as a special district commissioner.

BOARD OF COMMISSIONERS

JIM BLECHA
BRIAN KREOWSKI
JACK SCARBROUGH
DREW BRANDY
CAROLYN MOFFATT

President
Vice President
Secretary
Commissioner
Commissioner



P.O. BOX 249 · AVILA BEACH
CALIFORNIA 93424
(805) 595-5400 · Fax 595-5404
www.portsanluis.com

STEPHEN A. McGRATH *Harbor Manager*
THOMAS D. GREEN *Legal Counsel*
PHILLIP J. SEXTON, CPA *Treasurer*

Commissioner Brian Kreowski, known to his family and friends by his middle name "Craig", is a graduate of Arroyo Grande High School and his family has resided in San Luis Obispo County for more than 30 years. In the 80's, while attending Cuesta College and Cal Poly, Commissioner Kreowski worked at Port San Luis as a Sport Launch Operator and Maintenance Worker for the District.

Brian is one of the founding members of the Central Coast Aquarium Society, and helped facilitate the establishment and continuation of a mobile, interactive sea life educational program *Tidepool Treasures*, which has served in educating countless children and adults about our Ocean environments. He has participated in fostering many collaborative activities and programs with other marine organizations and was instrumental in facilitating the initial discussions for the Cal Poly take over of the Unocal Pier at Port San Luis.

In 1996, Brian was appointed to the Dinosaur Caves Task Force for the City of Pismo Beach. He served for over one year as vice-chairperson and was instrumental in the formulation of the Task Force recommendation to establish the property as an "open space" park.

Following the dissolution of the Task Force, Brian, and three other members created the Dinosaur Caves Preservation Society (DCPS), a non-profit 501(c)(3) organization, dedicated to preserving the Dinosaur Caves Property. He continues to serve as vice president of the society. Together with the City of Pismo Beach, the society has raised close to \$900,000 to develop the park.

In addition to practicing law, Commissioner Kreowski has taught at Cuesta College for the past 15 years and was the first part-time professor to receive the prestigious M' may Diffley Teaching award.

In 2003, Brian was appointed as a Commissioner to the Port San Luis Harbor Commission, by his fellow Commissioners, and then subsequently affirmed in his position as a Commissioner by an election of the people of the District. Since becoming a Commissioner, Brian has traveled to Washington, DC to represent the District and assist in the lobbying effort to acquire Federal Funding for the District's breakwater, which suffered earthquake damage in 2003. In 2008, Brian became President of the San Luis Obispo County Historical Society, and currently serves in that capacity, as well as a Commissioner for the Port San Luis Harbor District, Professor of Political Science at Cuesta College and managing member of the Shell Beach Law Group.

Marshall Ochylski

President, Los Osos Community Services District

**President, California Special Districts Association
San Luis Obispo County Chapter**

Managing Attorney, The Ochylski Law Group

I am running for the Special District Alternate to LAFCO because I believe that I have the experience and ability to represent the residents of our Special Districts and their unique needs.

I have worked hard since being elected in 2008 as a Director of the Los Osos Community Services District to move my District forward by listening, learning, and leading on a variety of issues - skills that I will bring to LAFCO.

I have also worked diligently to serve all of our Special Districts as the elected President of the San Luis Obispo County Chapter of the California Special Districts Association. Our bi-monthly meetings are an opportunity for elected officials as well as staff members of our Special Districts to get together and discuss issues of common concern, hear from various governmental officials on matters that affect our Districts, as well as give valuable input into the governmental decision-making process.

I believe that I have the necessary background and experience to best represent our Special Districts in addressing the issues and their complexities that arise as a result of the split in jurisdiction over land use decisions and the provision of public services in the areas within and adjacent to our Special Districts. I will make decisions that promote the efficient use of our limited natural resources and infrastructure capacity, while providing for the interests and concerns of all of our Special Districts.

I sincerely appreciate the support that I have received from our various Special Districts and ask for your District's vote in this election.

Selected Career Highlights:

President of San Luis Obispo County Special Districts Association, 2010 - Present.

President of the Los Osos Community Services District, 2010 - Present.

Chair of the Los Osos Community Services District Financial Advisory Committee, 2010 - Present.

Member of the Executive Committee of the Morro Bay National Estuary Program, 2010 - Present.

Member of the Environmental Working Group, Technical Advisory Committee, Los Osos Waste Water Project, San Luis Obispo County, 2007 - 2008.

Chair of the San Luis Obispo Downtown Association Beautification Awards Committee, 1986 - Present.

Member of the South Bay (Los Osos) Advisory Council, 1983-1986.

Biography for Greg O'Sullivan
Candidate for Special District's representative for LAFCO

My wife and I Rose moved to Templeton in 1998 to raise our two daughters in a better environment. I worked 26 years in the Fire Service in the Los Angeles area before taking the position of the Templeton Fire Chief, retiring from the fire service after 38 years of public service in 2010.

After moving to Templeton both of us immediately became involved in the community; Rose volunteering in the classroom and in PTA and I began coaching in Templeton's recreational leagues in Basketball, Soccer and Softball (over 34 teams over a 10 year period) serving on each of the three sports' Boards. Rose and I were recognized by the Templeton Education Foundation in 2001 by being presented the organization's *Community Service Award*.

I was elected to the Templeton School Board in 2006, however had to resign when it was determined I could not serve both as Templeton's Fire Chief and on the School Board. However, I have continued my involvement in the School District, including attending all School Board meetings.

I serve as the Treasurer for the Templeton Eagles Athletic Boosters; Chair the 2011 THS Graduation Committee; and a member of the Historical Society's Board of Directors.

I hold a BA in Management from Azusa Pacific University and an Associates degree in Fire Science. I am past president of San Luis Obispo Fire Chiefs Association. I was a 14-year volunteer for the American Red Cross and was Vice Chairman of the Board for the Pasadena Chapter, receiving San Gabriel Valley Volunteer of the Year and the Reeve Award.

To the best of my abilities I will ensure the ideals identified in LAFCO's Mission and Purpose statements, first reflect the wishes of those we serve and then work toward their implementation in a professional and methodical manner, while ensuring budget expenditures are appropriate and within appropriations.

I would ask for your vote, but more importantly, for your District's involvement in those issues for which LAFCO is responsible by maintaining a communication link between your District and the appropriate LAFCO representative.

TO: BOARD OF DIRECTORS
FROM: MICHAEL LEBRUN *ML*
GENERAL MANAGER
DATE: JULY 21, 2011



**CALIFORNIA SPECIAL DISTRICT ASSOCIATION 2011 BOARD
ELECTION BALLOT**

ITEM

Consider the individuals nominated to fill the CSDA Board of Directors Seat C Region 4
[RECOMMEND BY MOTION AND ROLL CALL VOTE DIRECT STAFF TO CAST BALLOT
FOR SELECTED SPECIAL DISTRICT REPRESENTATIVE IF ANY]

BACKGROUND

Four individuals have been nominated to fill Seat C of Region 4 of the CSDA Board of Directors. Election materials are attached.

FISCAL IMPACT

Minor staff time preparing these materials.

RECOMMENDATION

Consider CSDA election materials by motion and roll call vote direct staff to file completed ballot with CSDA no later than August 5, 2011.

ATTACHMENTS

CSDA Ballot Materials

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2011\110727 CSDA BALLOT.DOCX



CALIFORNIA SPECIAL DISTRICTS ASSOCIATION

2011 BOARD ELECTIONS

MAIL BALLOT INFORMATION

Dear Member:

A mail ballot has been enclosed for your district's use in voting to elect a representative to the CSDA Board of Directors in your Region for Seat C. Each of CSDA's six (6) regional divisions has three seats on the Board. Each of the candidates is either a board member or management-level employee of a member district located in your geographic region. Each Regular Member (district) in good standing shall be entitled to vote for one (1) director to represent its region.

We have enclosed the candidate statements for each candidate who submitted one. Please vote for **only one** candidate to represent your region in Seat C and be sure to sign, date and fill in your member district information (*in some regions, there may only be one candidate*). If any part of the ballot is not complete, the ballot will not be valid and will not be counted.

Please utilize the enclosed return envelope to return the completed ballot. Ballots must be received at the CSDA office at 1112 I Street, Suite 200, Sacramento, CA 95814 by **5:00pm on Friday, August 5, 2011**.

If you do not use the enclosed envelope, please mail in your ballot to:

**California Special Districts Association
Attn: 2011 Board Elections
1112 I Street, Suite 200
Sacramento, CA 95814**

Please contact Charlotte Lowe toll-free at 877.924.CSDA or charlottel@csgda.net with any questions.

RECEIVED

JUN 22 2011

NIPOMO COMMUNITY
SERVICES DISTRICT



CSDA BOARD OF DIRECTORS ELECTION 2011

*All Fields Must Be Completed for ballot to be counted.
(Please vote for only one.)*

REGION FOUR

●
*Seat C - term
ends 2014*

Frank Galaviz
*Tevison Community Services
District*

Steve Esselman
*North of the River Municipal
Water District*

Jonathan Hall
*Tehachapi-Cummings County Water
District*

Steve Perez
*Rosamond Community Services
District*

Signature: _____ Date: _____

Member District: _____

Must be received by 5pm, August 5, 2011. CSDA, 1112 I Street, Suite 200, Sacramento, CA 95814



STEVE ESSELMAN

steveesselman@hotmail.com

(661) 717-5860

CANDIDATE STATEMENT – CSDA REGION 4 (CENTRAL VALLEY)

I currently serve as the Vice President on the North of the River Municipal Water District's Board of Directors and I would be honored to have your support in electing me to represent the Central Valley Special Districts on the California Special District Association's Board of Directors as one of your Region 4 representatives.

I thoroughly understand how a Board functions and have taken courses on ethics, Board management, and setting direction from CSDA. I have been recently recognized by the Special District Leadership Foundation because of my efforts to become educated on special district governance. I understand that it is a primary duty as a Board member to effectively and ethically serve my constituents and, in the case of the CSDA Board, to faithfully serve the local interests of the Special Districts within our region. I understand the important role of CSDA in advocating for local, independent special districts. I wholly support CSDA's mission to provide a range of services to California special districts, including education and training, insurance programs, and legal advice.

Personally, I am very involved in improving my community of Oildale as well as the greater Kern County area. My current positions of leadership include appointments on the Kern County Local Area Formation Commission, The Oildale Foundation Board, and the North of the River Chamber of Commerce Board. My work on behalf of Oildale has been formally recognized by the Kern County Board of Supervisors.

I believe that my actions point to my desire to be an excellent steward for my local community and greater Kern County, and I would appreciate the chance to put these same energies towards representing you and the other Special Districts in the Central Valley.

Thank you!

June 15, 2011

TO: CALIFORNIA SPECIAL DISTRICTS ASSOCIATION

**FROM: FRANK F. GALAVIZ
P.O. BOX 801
PIXLEY, CA 93256**

TO WHOM IT MAY CONCERN,

My name is Frank F. Galaviz, my age is 67. I'm self-employed and have served on the Tevison Community Service District as a Director and currently as President of the Board of Directors for TCSD.

The District was formed in 1956 and many of the requirements were not being met when I first served on the Board in 2003 thru 2005. I was appointed by the Tulare County Board of Supervisors in 2008 and re-appointed in 2009, in lieu of Election, as well as four other directors.

The majority of the Board has established transparency via regular meetings. Hiring an Auditor, a Certified Water Systems operator, and have hired Tulare County Bookkeeping to over see our daily transactions. We have full disclosure via our Monthly Financial Reports. In addition we hired a District Manager as required by law.

I would like to address the corruption and unethical practices of some of the districts in our areas, and help other districts that may be experiencing the same.

Thank you for your consideration

Frank F. Galaviz

**TCSD phon #(559)757-3539
home # (559) 757-3390
Bus. cell #(661)667-3659**

CSDA Board of Directors Candidate Statement
Steve A. Perez

My name is Steve Perez; I am General Manager of the Rosamond Community Services District.

I grew up in the Antelope Valley where I began my career in construction and moved briefly into aerospace and back to construction. I served as a Commissioned Deputy Sheriff of the Kern County Sheriff's Department where I served a combined total of 26 years.

In 1994 I ran and was elected to the Board of Supervisors of Kern County and was subsequently re-elected running unopposed for a second term. During my tenure as County Supervisor I became involved with the California State Association of Counties (CSAC) and was elected President in 2000.

My involvement gave me a great deal of insight of the political process in California and required me to be responsible for the 58 county legislative agenda.

I have testified before Assembly and Senate Committees in regard to issues that furthered the California County agenda. I have received Gubernatorial and Assembly appointments to State level committees.

My concern for Special Districts is focused on the belief that the best form of government is one closest to the people. I recognize that Special Districts do what most Municipal and County governments cannot do, or if they could do it, Special Districts do it better because they are in direct contact with the people.

I have experience that I'm willing to share with the California Special Districts Association.

Let's keep big government from consolidating Special Districts for fiscal considerations which are not in the best interest of the people we serve.

It would be an honor to serve you as a member of your Board of Directors.

May I have your vote?

Steve A. Perez