

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: MARCH 9, 2012

**AGENDA ITEM
E-2
MARCH 14, 2012**

CONSIDERATION OF RESOLUTIONS RELATING TO THE FORMATION OF ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT), INCLUDING DECLARATION OF INTENTION, REVIEW AND PRELIMINARY APPROVAL OF THE ASSESSMENT ENGINEER'S REPORT, AND ADOPTION OF BALLOT PROCEDURES FOR THE ASSESSMENT DISTRICT

ITEM

Consider the following resolutions:

- a. Resolution No. 2012-____ Declaring Its Intention to Order Improvements for Proposed Assessment District No. 2012-1 (Supplemental Water Project) Pursuant to the Municipal Improvement Act of 1913 and in Accordance with Article XIID of the California Constitution, and Taking Certain Other Actions in Connection Therewith ("Resolution of Intention") (attached pages 1-7)
- b. Resolution No. 2012-____ Preliminarily Approving the Engineer's Report in Connection with Proposed Assessment District No. 2012-1 (Supplemental Water Project) and Setting a Time and Place for Hearing Protests Pursuant to the Municipal Improvement Act of 1913 and in Accordance with Article XIID of the California Constitution ("Resolution Preliminarily Approving Engineer's Report") (attached pages 8-9)
- c. Resolution No. 2012-____ Adopting Procedures Applicable to the Completion, Return and Tabulation of Assessment Ballots for the Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project) ("Resolution Approving Ballot Procedures") (attached pages 10-16); and

[RECOMMEND ADOPT RESOLUTIONS DECLARING INTENT TO FORM ASSESSMENT DISTRICT, PRELIMINARILY APPROVING ASSESSMENT ENGINEER'S REPORT AND ADOPTING ASSESSMENT BALLOT PROCEDURES]

BACKGROUND

Since 2008, the District has been working with three water purveyors, Golden State Water Company, Rural Water Company and Woodlands Mutual Water Company, to respond to the Santa Clara County Superior Court-approved Stipulation and Final Judgment and satisfy the demand therein for a physical solution to certain water issues within the Nipomo Mesa and import an additional supply of water from the City of Santa Maria. The Nipomo Mesa Supplemental Water Project ("Project") has been designed to import a reliable source of fresh water to the Nipomo Mesa to relieve the single diminishing supply of groundwater. The Project will cause groundwater levels to rise, reduce the threat of seawater intrusion, and satisfy obligations of the water companies under the court-approved judgment. In order to fund a portion of the Project, the District is contemplating the formation of an assessment district covering the service areas of all four water purveyors. A grant in the amount of \$2.3M from the

State Department of Water Resources has been allocated to the Project as well as \$6M in water capacity charges to be used to reduce the assessments imposed on developed parcels within the Nipomo CSD boundaries.

District staff, along with The Wallace Group, as Assessment Engineer, Fulbright & Jaworski L.L.C., as Bond Counsel, and C.M. de Crinis & Co., a Financial Advisor, have been working to formulate a financing plan for the Project and it is now appropriate to consider the institution of the legal proceedings for the formation of the assessment district and the levy of assessments. The assessment team have determined the amount of funds needed from the assessment district, and the Assessment Engineer has determined the boundary area for the proposed district, the zones within the assessment district (a separate zone for each water purveyor's service area) and prepared the required Engineer's Report for the assessment district. The proposed assessment district is estimated to raise approximately \$18M for the Project net of financing costs.

The proposed assessment district would be formed in accordance with the Municipal Improvement Act of 1913 (the "Improvement Act"), Special Assessment Investigation, Limitation and Majority Protest Act of 1931, Article XIID of the California Constitution ("Article XIID") and the Proposition 218 Omnibus Implementation Act ("Proposition 218"). The Wallace Group has prepared an Engineer's Report which (a) describes the boundaries of the District and the zones within, (b) the cost of the Project, (c) the determination of the general versus special benefit, (d) the methodology utilized to spread the proposed assessments, and (e) the amount of the total proposed assessment for each parcel.

The proposed assessment district involves an assessment balloting process and is subject to Proposition 218 majority protest. Property owners will receive mailed assessment ballots to indicate their support for or against the assessment district. The ballots are weighted based on the total amount of the proposed assessment to be levied on such parcel. For example, a parcel with a proposed assessment of \$1,000 constitutes twice the weight as a parcel with a proposed assessment of \$500. If a majority of the weighted ballots cast do not oppose the assessment district, the assessment district may be formed and the assessments imposed.

Today's recommended action is to (a) initiate the assessment district proceedings by declaring its intention to form the assessment district and issue bonds, (b) approve the boundaries (c) preliminarily approve the Engineer's Report, (d) set May 9, 2012 as the date for a public hearing and to return assessment ballots, and (e) approve balloting procedures.

The Notice and ballots will be mailed following this meeting giving property owners at least 45 days notice of the public hearing. On May 9, 2012, the ballots which are returned will be opened and tallied following the close of the public hearing. If 50% of the returned weighted ballots are in favor of the proposed assessment district formation, the Board will have the opportunity at a later date to approve a resolution forming the assessment district and levying the assessments. Property owners will have an opportunity to pay their assessment during a 30-day cash collection period. Following this period, unpaid assessments will be amortized and payable over an estimated 30-year period in smaller level annual installments of principal plus interest. The Board will have the opportunity to authorize the issuance of bonds pursuant to the Improvement Bond Act of 1915. Final interest cost will be determined at the time bonds are sold. Each year, assessment installments will be placed on the County property tax bill and are payable semiannually with an owner's property tax bill. The assessment installments will secure the assessment bonds.

Over the past several months staff has conducted outreach efforts to educate property owners within the proposed assessment boundaries regarding the need for the project and proposed funding method. Specifically, in August and November 2011 town hall meetings were held to explain the severity of the existing water resources limitation, threat to supply reliability, and court order to obtain supplemental water. The evaluation of alternatives for obtaining supplemental water was also explained in these town hall meetings. In January and February 2012, four Workshops were conducted throughout the proposed assessment area. The need for the project and project selection process were reviewed and the method of financing (assessment district formation) was introduced and reviewed in detail.

FISCAL IMPACT

Staff time and professional consulting services related to the supplemental water project development are included in the 2011-12 budget. These costs are capitalized and included in the project cost and are recoverable if the assessment district is formed and bonds are sold. Should the assessment district not receive approval, additional sources of revenue for the Project would be needed.

STRATEGIC PLAN

Strategic Plan Goal 1.1 – Protect, Enhance and Assess available Water Supplies
Strategic Plan Goal 1.2 – Secure New Water Supplies

RECOMMENDATION

Staff recommends that your Honorable Board review the attached resolutions, the Engineer's Report, the Boundary Map, the Ballot Procedures, provide comment and consider, by motion and roll call vote, the adoption of the attached resolutions.

ATTACHMENTS

- RESOLUTION NO. 2012-___ RESOLUTION OF INTENTION (PAGES 1-7)
- RESOLUTION NO. 2012-___ RESOLUTION PRELIMINARILY APPROVING ENGINEER'S REPORT (PAGES 8-9)
- ENGINEER' REPORT (BOUND COPY)
- BOUNDARY MAP (BOUND COPY)
- ASSESSMENT ROLL (BOUND COPY)
- RESOLUTION NO. 2012-___ RESOLUTION APPROVING BALLOT PROCEDURES
- EXHIBIT A – BALLOT PROCEDURES (PAGES 10-16)

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2012-___**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION TO
ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT DISTRICT
NO. 2012-1 (SUPPLEMENTAL WATER PROJECT) PURSUANT TO THE
MUNICIPAL IMPROVEMENT ACT OF 1913 AND IN ACCORDANCE
WITH ARTICLE XIID OF THE CALIFORNIA CONSTITUTION, AND
TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH**

WHEREAS, the Board of Directors of the Nipomo Community Services District (“District”), desires to initiate proceedings for the formation of an assessment district (the “Assessment District”), pursuant to the provisions of the Municipal Improvement Act of 1913 (the “Improvement Act”), being Division 12 (commencing with Section 10000) of the Streets and Highways Code of the State of California, Article XIID of the Constitution of the State of California (“Article XIID”), the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, being Division 4 of the Streets and Highways Code of the State of California (commencing with Section 2800), and the Proposition 218 Omnibus Implementation Act (commencing with Section 53750) of the Government Code of the State of California, and for the issuance of bonds in the proceedings under the Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State of California (commencing with Section 8500) (the “Bond Act”), for the purpose of financing certain public capital water improvements (the “Improvements”), of benefit to the properties within the proposed Assessment District; and

WHEREAS, the territory proposed for inclusion in the proposed Assessment District includes parcels of land located within the District as well as certain other parcels of land located in whole or in part within the County of San Luis Obispo (“San Luis Obispo County”) that, in the opinion of the Board of Directors, will be specially benefited by the Improvements; and

WHEREAS, a portion of the Improvements are proposed to be located within San Luis Obispo County, and the City of Santa Maria (the “City of Santa Maria”); and

WHEREAS, pursuant to Section 10103 of the Improvement Act and Sections 5117 and 5118 of the Improvement Act of 1911, Division 7 (commencing with Section 5000) of the Streets and Highways Code, before the Board of Directors may adopt a resolution of intention initiating such proceedings, it must submit the proposed Resolution of Intention to and obtain the consent of (i) the Board of Supervisors of the San Luis Obispo County (the “San Luis Obispo County Board”), and (ii) the City Council of the City of Santa Maria (the “Santa Maria City Council”), to the formation of the proposed Assessment District and the approval of the Resolution of Intention and the proposed Improvements;

WHEREAS, the Board of Directors has received consent from San Luis Obispo County Board as to the inclusion of territory outside the boundaries of the District, and has received consent from the San Luis Obispo County Board and Santa Maria City Council for the proposed Improvements; and

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION
TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT
DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)
PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND
IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA
CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

WHEREAS, the public interest and convenience require the construction and acquisition of the Improvements.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Nipomo Community Services District:

Section 1. The above recitals are true and correct.

Section 2. The proposed improvements (the "Improvements") generally consist of the acquisition and financing of certain public capital water improvements as more particularly described on Exhibit A attached hereto.

Section 3. In the opinion of the Board of Directors, the Board of Directors hereby finds and determines that the public interest and convenience require that the proposed Improvements is of such a character that it directly and peculiarly affects property in one or more jurisdictions, and that the purposes sought to be accomplished by the proposed Improvements can best be accomplished by a single, comprehensive scheme of work, thereby requiring inclusion of Improvements and property that lie outside the territorial limits of the District.

Section 4. In the opinion of the Board of Directors, the Board of Directors hereby finds and determines that the public interest and convenience require that property within the boundaries of the Assessment District lying outside the jurisdiction of the District will be benefitted by the proposed Improvements, and that the consents of the legislative bodies having jurisdiction over any such property proposed to be assessed have been obtained to (i) the formation of the Assessment District and (ii) the assumption by the District of jurisdiction thereover. The consents of the legislative bodies which contain the proposed Improvements that lie outside of the boundaries of the District have been obtained to (y) the formation of the Assessment District and the proposed Improvements to be done within such territory, and (z) the assumption by the District of jurisdiction thereover.

Section 5. The District shall hold harmless and indemnify San Luis Obispo County, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the San Luis Obispo County Board in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.

Section 6. The District shall hold harmless and indemnify the City of Santa Maria, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the Santa Maria City Council in reviewing and

Nipomo Community Services District
Resolution No. 2012-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION
TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT
DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)
PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND
IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA
CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.

Section 7. The Board of Directors hereby (i) finds that the public interest, necessity and convenience require the acquisition, improvement, and financing of the Improvements, and (ii) declares its intention to order the Improvements and form an assessment district to be known as the “Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project)” pursuant to the Improvement Act. Unless otherwise specifically provided, all Improvements and work to be funded by the Assessment District shall be made and done pursuant to the Improvement Act.

Section 8. The Board of Directors hereby declares that the territory within the boundaries hereinafter specified and described as the Assessment District is the land benefitted by the Improvements to be made and to be assessed to pay the costs and expenses thereof; that the expense of the Improvements is hereby made chargeable upon the Assessment District; and that the exterior boundaries of the Assessment District are hereby specified and described to be shown on that certain map now on file in the office of the Secretary of the District entitled “Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project) Assessment Diagram/Boundary Map,” which map indicates by a boundary line the extent of the territory included in the proposed Assessment District. On the original and a copy of the map of the Assessment District on file in the Secretary’s office, the Secretary shall endorse the certificate evidencing the date and adoption of this Resolution of Intention. The Secretary shall file the original of such map in his or her office and, within fifteen (15) days after adoption of the resolution fixing the time and place of hearing on the formation and extent of the Assessment District, the Secretary shall file a copy of such map so endorsed in the records of the County Recorder, County of San Luis Obispo, State of California.

Section 9. The Board of Directors hereby appoints and designates the District Engineer to perform the duties and functions of the Superintendent of Streets in connection with such proceedings.

Section 10. The proposed Improvements are hereby referred to the Wallace Group, as Assessment Engineer, to make and file with the Secretary of the District a report in writing in accordance with Article XIID, Section 4 of the California Constitution and Section 10204 of the Improvement Act. The District intends to comply with the requirements of Part 7.5 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, and hereby directs the Assessment Engineer to include in the report all of the information required in Section 2961 of the California Streets and Highways Code. The Board of Directors hereby declares its

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
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DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)
PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND
IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA
CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

intention to authorize an annual assessment for administration and collection purpose pursuant to Section 10204(f) of the Improvement Act as shall be provided in the report.

Section 11. The Board of Directors hereby determines that it is in the public interest and more economical to do work on private property to eliminate any disparity in level or size between the proposed Improvements and private property than to adjust the work on public property to eliminate such disparity.

Section 12. The Board of Directors hereby declares its intention to enter into an agreement or agreements with the City of Santa Maria and any other public agency, regulated public utility or mutual water company pursuant to Chapter 2 of the 1913 Act (commencing with Section 10100) if any of the Improvements are to be owned, managed or controlled by any other public agency, regulated public utility or mutual water company.

Section 13. Pursuant to Section 4 of Article XIID of the Constitution of the State of California, parcels within the assessment district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment, unless the District can demonstrate by clear and convincing evidence that such publicly owned parcels in fact receive no special benefit.

Section 14. Notice is hereby given that bonds to represent unpaid assessments, and which bear interest at a fixed or variable interest rate of not to exceed twelve percent (12%) per annum, or such higher maximum interest rate as may be provided in the resolution of issuance, will be issued hereunder in the manner provided in the Bond Act, and the last installment of such bonds shall mature in not to exceed 39 years from the second of September next succeeding twelve (12) months from their date. The alternate procedure for collecting assessments and advance retirement of bonds as set forth in Part 11.1 of the Bond Act shall apply herein. Pursuant to Section 8650.1 of the Bond Act, the Board of Directors may determine that the principal amount of bonds maturing or becoming subject to mandatory prior redemption each year shall be other than the amount equal to an even annual proportion of the aggregate principal of the bonds.

Section 15. The Board of Directors hereby further declares that it is its intention to covenant that, upon default of any assessment payment due (except under certain circumstances to be specified in the fiscal agent agreement or trust indenture for the bonds) it will cause foreclosure proceedings to be brought within 150 days of such default, as permitted by Section 8830(b) of the Bond Act.

Nipomo Community Services District
Resolution No. 2012-___

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION
TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT
DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)
PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND
IN ACCORDANCE WITH ARTICLE XIII D OF THE CALIFORNIA
CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

Section 16. The Board of Directors hereby further declares that it is its intention to create a special reserve fund as permitted by Sections 8880-8886 of the Bond Act.

Section 17. The Board of Directors hereby finds and determines that if the assessment proposed herein results in a surplus in the improvement fund to be provided for in the proceedings hereafter taken pursuant to this Resolution of Intention, after the improvements are acquired or constructed, the surplus shall be used or allocated in accordance with the provisions of Sections 10427 to 10427.2, inclusive, of the Improvement Act.

Section 18. The Board of Directors hereby designates the General Manager and Secretary to the Board of Directors (General Manager or Secretary depending on the context), or the designated agent of the General Manager, to collect and receive the assessments.

Section 19. Pursuant to Streets and Highways Code Section 8769, the Board of Directors hereby determines and declares that the District will not obligate itself to advance available funds from the District treasury to cure any deficiency which may occur in the bond redemption fund; provided, however, this determination shall not prevent the District from, in its sole and unbridled discretion, advancing funds for such purpose as otherwise provided in the Bond Act.

Section 20. Pursuant to Section 10201 of the Improvement Act, the Board of Directors determines that a portion of the cost of the Improvements will be paid for by a grant from the State of California Department of Water Resources in the amount of \$2,300,000, and by certain water capital charges of the District in the amount of \$6,000,000.

Section 21. The Board of Directors hereby further declares that the bonds issued for Assessment District No. 2012-1 shall be refundable in accordance with the provisions of the "Refunding Act of 1984 for 1915 Improvement Act Bonds." The specific conditions under which said bonds may be refunded include the condition that there be a reduction in the interest cost to maturity by reason of the refunding of such bonds and the condition that the refunding bonds shall bear interest at a maximum rate, and shall have a maximum number of years to maturity, not in excess of the maximum rate and years to maturity, respectively, then permitted by law. Any adjustment to assessments resulting from any such refunding will be done on a pro rata basis.

Section 22. Whenever, in the Improvement Act or in the Bond Act a notice, resolution, order or other matter relative to said proceedings for the work, acquisitions and improvements in said assessment district is required to be published, the Secretary is hereby

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION
TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT
DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)
PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND
IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA
CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

ordered to publish such notice, resolution or other matter in the Santa Maria Times and/or the Tribune, which is hereby selected by the Board of Directors for that purpose.

Section 23. The Secretary shall transmit a certified copy of this Resolution of Intention and Boundary Map to the County Clerk of San Luis Obispo and the City Clerk of the City of Santa Maria.

Section 24. This resolution shall take effect immediately.

Upon a motion by Director _____, seconded by Director _____, on the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

the foregoing resolution is hereby passed and adopted on this ____ day of _____, 2012.

JAMES HARRISON
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

JON S. SEITZ
District Legal Counsel

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION
TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT
DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)
PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND
IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA
CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

EXHIBIT A

The improvements proposed to be funded through Assessment District No. 2012-1 (Supplemental Water Project) are briefly described as follows:

The design and construction of certain public capital water facilities, together with appurtenances and appurtenant work related thereto, including construction of a waterline to connect the City of Santa Maria water distribution system with the Nipomo Community Services District water distribution system, involving an underground pipeline with a nominal capacity of 3000 acre-feet to be installed under the Santa Maria river using horizontal directional drilling technique, the construction of a storage tank and booster station to deliver the water into the District's system, and all related permits, fees, bonds, construction management, and construction engineering (e.g. soils, survey, archeological), and incidental and administrative costs associated therewith.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2012-____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT PRELIMINARILY APPROVING
THE ENGINEER'S REPORT IN CONNECTION WITH PROPOSED
ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER
PROJECT) AND SETTING A TIME AND PLACE FOR HEARING
PROTESTS PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT
OF 1913 AND IN ACCORDANCE WITH ARTICLE XIID OF THE
CALIFORNIA CONSTITUTION**

WHEREAS, at the direction of the Board of Directors (the "Board of Directors") of the Nipomo Community Services District (the "District") by resolution adopted on March 14, 2012, The Wallace Group, as Assessment Engineer for improvement proceedings in the Assessment District No. 2012-1 (Supplemental Water Project) (the "Assessment District"), has filed with the Secretary the report (the "Engineer's Report") described in Section 10204 of the Municipal Improvement Act of 1913 (Division 12 of the Streets and Highways Code, commencing with Section 10000) (the "Improvement Act"), and containing the matters required by Article XIID of the California Constitution ("Article XIID"), and it is appropriate for the Board of Directors to preliminarily approve the Engineer's Reports and to schedule a public hearing of protests respecting the Engineer's Report.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Nipomo Community Services District:

Section 1. The Engineer's Report has been considered by the Board of Directors, and the Engineer's Report is hereby preliminarily approved as filed. The Engineer's Report shall stand as the report for the purpose of all subsequent proceedings under the Improvement Act and Article XIID, except that it may be confirmed, modified or corrected as provided in the Improvement Act.

Section 2. The Board of Directors hereby appoints May 9, 2012, at 1:00 p.m., or as soon thereafter as the matters may be heard, in the Board Chambers, 148 South Wilson Street, Nipomo, California 93444-0326, as the time and place for hearing protests to the proposed public improvements, the proposed levy of assessments, the amount of the individual assessments, and related matters as set forth in the Engineer's Report, and any interested person may appear and object to said public improvements, or to the extent of the Assessment District or to said proposed assessments.

Section 3. The Secretary is hereby directed to give notice of such hearing by mailing notices thereof, together with assessment ballots, in the time, form and manner provided by Section 53753 of the California Government Code, and upon the completion of the mailing of said notices and assessment ballots, the Secretary is hereby directed to file with the Board of Directors an affidavit setting forth the time and manner of the compliance with the requirements of law for mailing said notices and assessment ballots.

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO
COMMUNITY SERVICES DISTRICT PRELIMINARILY APPROVING
THE ENGINEER'S REPORT IN CONNECTION WITH PROPOSED
ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER
PROJECT) AND SETTING A TIME AND PLACE FOR HEARING
PROTESTS PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT
OF 1913 AND IN ACCORDANCE WITH ARTICLE XIID OF THE
CALIFORNIA CONSTITUTION**

Section 4. The Board of Directors hereby designates Kari Wagner of The Wallace Group, Assessment Engineer, (805) 929-0411 or kariw@wallacegroup.us, to answer inquiries regarding the assessment proceedings.

Section 5. This resolution shall take effect immediately.

Upon a motion by Director _____, seconded by Director _____, on the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

the foregoing resolution is hereby passed and adopted on this ____ day of _____, 2012.

JAMES HARRISON
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

JON S. SEITZ
District Legal Counsel

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2012-___**

A RESOLUTION OF THE NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING PROCEDURES APPLICABLE TO THE COMPLETION, RETURN AND TABULATION OF ASSESSMENT BALLOTS FOR THE NIPOMO COMMUNITY SERVICES DISTRICT ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT)

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIIC and XIID to the California Constitution; and

WHEREAS, Articles XIIC and XIID of the California Constitution impose certain procedural and substantive requirements relating to assessments (as defined therein); and

WHEREAS, the Nipomo Community Services District Board of Directors finds it to be in the interest of the community to record its decisions regarding the procedures for the completion, return and tabulation of Assessment Ballots for the Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project).

NOW, THEREFORE, the Board of Directors of the Nipomo Community Services District does hereby resolve, determine and order as follows:

SECTION 1. Statement of Legislative Intent. It is the Board of Director's intent in adopting this resolution, to adopt procedures applicable to the completion, return and tabulation of Assessment Ballots which are consistent with, and in compliance with, Articles XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act. It is not the intent of the Board of Directors to vary in any way from the requirements of Articles XIIC and XIID or the Proposition 218 Omnibus Implementation Act and the provisions of this Resolution shall be interpreted in accordance therewith.

SECTION 2. Assessment Procedures. The procedures applicable to the completion, return and tabulation of assessment ballots for the Nipomo Community Services District Assessment District No. 2012-1, attached hereto as Exhibit "A" (incorporated herein by this reference) are hereby approved and adopted.

SECTION 3. Severability. If any provisions of the guidelines and procedures referenced in Exhibit "A" or the application thereof to any person or circumstances is held invalid, the remainder of the guidelines and procedures or application of such provision to other persons or circumstances shall not be affected.

SECTION 4. Conflict with Existing Law. If any provision in the guidelines and procedures referenced in Exhibit "A" conflicts with the provisions of the California Constitution,

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE NIPOMO COMMUNITY SERVICES
DISTRICT ADOPTING PROCEDURES APPLICABLE TO THE
COMPLETION, RETURN AND TABULATION OF ASSESSMENT
BALLOTS FOR THE NIPOMO COMMUNITY SERVICES DISTRICT
ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER
PROJECT)**

Streets and Highways Code, Government Code, or other California Codes then such provision shall automatically be superseded by the provisions of said Constitution and/or Code until such time as the attached guidelines and procedures can be revised.

SECTION 5. Effectiveness. This resolution shall take effect immediately.

Upon a motion by Director _____, seconded by Director _____, on the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

the foregoing resolution is hereby passed and adopted on this ____ day of _____, 2012.

JAMES HARRISON
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

JON S. SEITZ
District Legal Counsel

Nipomo Community Services District
Resolution No. 2012-____

**A RESOLUTION OF THE NIPOMO COMMUNITY SERVICES
DISTRICT ADOPTING PROCEDURES APPLICABLE TO THE
COMPLETION, RETURN AND TABULATION OF
ASSESSMENT BALLOTS FOR THE NIPOMO COMMUNITY
SERVICES DISTRICT ASSESSMENT DISTRICT NO. 2012-1
(SUPPLEMENTAL WATER PROJECT)**

Exhibit "A"

**PROCEDURES APPLICABLE TO THE COMPLETION, RETURN AND
TABULATION OF ASSESSMENT BALLOTS
NIPOMO COMMUNITY SERVICES DISTRICT
ASSESSMENT DISTRICT NO. 2012-1
(SUPPLEMENTAL WATER PROJECT)**

SECTION 1. Intent. It is the Board of Directors' intent to adopt guidelines and procedures applicable to the completion, return and tabulation of assessment ballots that are in addition to, consistent with, and in compliance with Article XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act.

SECTION 2. Severability. If any provision of these guidelines and procedures or the application thereof to any person or circumstances is held invalid, the remainder of these guidelines and procedures or application of such provision to other persons or circumstances shall not be affected.

SECTION 3. Conflict with Existing Law. If any provision in these guidelines and procedures conflicts with the provisions of the California Constitution, Streets and Highways Code, Government Code, or other California Codes, then such provision shall automatically be superseded by the provisions of said Constitution and/or Code until such time as these guidelines and procedures can be revised.

SECTION 4. Procedures. The following guidelines and procedures are applicable to the completion, return and tabulation of assessment ballots required by Article XIID Section 4 of the California Constitution:

A. Notice. The following guidelines shall apply to giving notice of the assessment and hearing to property owners:

1. The record owner(s) of each parcel to be assessed shall be determined from the last equalized secured property tax assessment roll as of the date the District sets the assessment hearing. If the assessment roll indicates more than one owner, then each owner shall receive notice.
2. The notice shall be sent to the record owner(s), at the address that appears on the assessment roll, at least forty-five (45) days prior to the date set for the public hearing on the assessment. The notice shall be sent through a mailing, postage prepaid, deposited in the United States Postal Service and shall be deemed given when so deposited.

3. If the U.S. Postal Service returns any notice to the District as undeliverable and provides the District with a forwarding address, the District shall mail the notice to the forwarding address.
4. The notice provided by this section shall be in accordance with Government Code Section 53753(b) and (c) and shall supersede and be in lieu of any other statutes requiring notice to levy or increase an assessment, including but not limited to, the notice required by the state statute authorizing the assessment and Government Code Section 54954.6.
5. Failure of any person to receive notice shall not invalidate the proceedings.
6. The cost of providing notice may be included as a cost of the assessment district.
7. On the face of the envelope mailed to the record owner(s), in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED".

B. Assessment Ballot. The following guidelines shall apply to the assessment ballot:

1. The ballot required by Article XIID, Section 4(d) of the California Constitution shall be included in the forty-five (45) day notice referenced in Section 4A above. The ballot shall comply with the requirements of Government Code Section 53753(b) and (c).
2. All assessment ballots must be returned either by mail or by hand delivery prior to the conclusion of the public input portion of the public hearing. Regardless of the method of delivery, assessment ballots must be received either by mail or by hand delivery prior to the conclusion of the public input portion of the public hearing.
3. Each assessment ballot shall be in a form which conceals its contents once it is sealed by the person submitting the assessment ballot.
4. Each ballot must be signed under penalty of perjury. A ballot may be completed by the record owner of the parcel to be assessed. As used in these Procedures, the term "owner" includes the owner's authorized representative. If the owner of the parcel is a partnership, joint tenancy, or tenancy in common, an Assessment Ballot may be completed by any of the general partners, joint tenants, or tenants in common. Only one ballot may be completed for each parcel unless it is a "Proportional Ballot."
5. If a parcel has multiple owners, any owner may request the Assessment Engineer to provide Proportional Ballots to all of the owners of the parcel. Each Proportional Ballot will be assigned a dollar value, which will equal the total proposed assessment against the parcel multiplied by the respective owner's interest in the parcel. If any interest in the property is held in joint tenancy, the joint tenancy interest will be divided by the number of joint tenants. Such request must be in writing, must specify the names and mailing addresses of all of the owners, must include evidence, satisfactory to the Assessment Engineer, of each owner's proportional rights in the parcel (including percentages), and must be delivered to the Assessment Engineer at KARIW@wallacegroup.us or at the District's Offices.

Upon the receipt of such a request, an "official" Proportional Assessment Ballot will be provided to each owner. The Assessment Engineer will mail the Assessment Ballots to the listed property owners with the notice information. The Assessment Engineer shall keep records of Proportional Ballots issued to property owners.

6. To ensure that the Assessment Engineer has sufficient time to notify each owner prior to the public hearing, all requests for Proportional Ballots must be submitted to the Assessment Engineer no later than 14 calendar days prior to the date scheduled for the public hearing on the assessment.
7. Because assessments are levied on property and tenants are not directly liable to the District for payment of assessments, a tenant of real property shall not have the power or authority to submit an assessment ballot.
8. Only ballots with original signatures, not photocopies, will be accepted. Photocopies of ballots will not be accepted. Ballots is a form different from the form of the ballot provided by the District will not be accepted.
9. Ballots will not be accepted via e-mail or fax.
10. The Assessment Engineer shall issue a replacement ballot to any property owner whose original ballot was lost, destroyed, or who desires to withdraw a previously submitted ballot. The replacement ballot shall be issued upon presentation of adequate information to the satisfaction of the Assessment Engineer that the requesting party is an owner of record of the affected property. Such ballots shall be clearly marked as "Replacement Ballot" and shall include sufficient information for the impartial person to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity.
11. An assessment ballot proceeding is not an election.
12. Assessment ballots shall remain sealed until the tabulation of ballots commences at the conclusion of the public hearing. An assessment ballot may be submitted, or changed, or withdrawn by the record owner who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the public hearing.
13. Prior to the public hearing, neither the assessment ballot nor the envelope in which it is submitted shall be treated as a public record, pursuant to Government Code Section 6254(c) and any other applicable law, in order to prevent potential unwarranted invasions of the submitters' privacy and to protect the integrity of the balloting process.
14. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Government Code Section 6252, and equally available for inspection (e.g., by the proponents or the opponents of the proposed assessment), pursuant to Government Code Section 53750(e)(1).

C. Tabulating Ballots. The following guidelines shall apply to tabulating assessment ballots:

1. The District Secretary/Clerk (or an impartial person designated by the Board of Directors pursuant to paragraph 2 below) shall determine the validity of all ballots. All ballots shall be accepted as valid except those in the following categories:
 - a. A photocopy of a ballot;
 - b. An unsigned ballot or a ballot without an original signature (only one signature is required for properties owned by more than one individual);
 - c. A ballot which lacks an identifiable “yes” or “no” vote;
 - d. A ballot which appears to be tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
 - e. A ballot which is submitted on a form which is different than the form of ballot provided by the District;
 - f. A ballot submitted to the District via e-mail or fax;
 - g. A ballot not signed under penalty of perjury by a record owner or authorized representative;
 - h. Ballots received after the close of the public hearing on the assessment.

The District Secretary/Clerk’s decision (or that of a designated person), after consultation with District Legal Counsel that a ballot is invalid, shall be final and may not be appealed to the District Board of Directors.

2. An impartial person designated by the Board of Directors who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support or opposition to the proposed assessment. The impartial person may include the District Secretary/Clerk.
3. A property owner’s failure to receive an assessment ballot shall not invalidate the proceedings.
4. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies, the Assessment Engineer will make such determination from the official County Assessor records and any evidence of ownership submitted to the District prior to the conclusion of the public hearing. The Assessment Engineer will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.
5. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the District shall rely on the statement on the ballot, signed under penalty of perjury, that the person completing the ballot is

the owner's authorized representative and any evidence submitted to the District prior to the conclusion of the public hearing. The District shall be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner and the District's determination shall be final and conclusive.

6. A property owner who has submitted an assessment ballot may withdraw the ballot and submit a Replacement Ballot up until the conclusion of the public input portion of the public hearing on the assessment. Ballots may be withdrawn and Replacement Ballots submitted up until the conclusion of the public input portion of the public hearing on the assessment.
7. The Assessment Engineer will keep a record of each Proportional or Replacement Ballot provided to an owner (or to the owners in the case of Proportional Ballots) and will verify that only one ballot has been returned for the parcel. If an owner returns both the original Ballot and a Replacement Ballot, the District will count the Replacement Ballot and disregard the original ballot. If an owner returns both a non-proportional ballot and a Proportional Ballot, the District will count the Proportional Ballot and disregard the non-proportional ballot.

D. Public Hearing.

1. At the public hearing, the District Board of Directors shall hear all public testimony regarding the proposed assessment and accept ballots until the close of the public hearing, which hearing may be continued from time to time.
2. The Board of Directors may impose reasonable time limits on both the length of the entire hearing and, at the discretion of the presiding officer, the length of each speaker's testimony.
3. At the conclusion of the hearing the impartial person shall complete tabulation of the ballots, including those received during the public hearing.
4. If the District uses District personnel for ballot tabulation, or if the District contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the assessment, the ballots shall be unsealed and tabulated in public view at the conclusion of the hearing so as to permit all interested persons to meaningfully monitor the accuracy of the tabulation process.
5. The District may, if necessary, continue tabulation to a different time or location accessible to the public, provided the District Board announces the time and location at the hearing.
6. If according to the final tabulation of the ballots, ballots submitted against the assessment exceed the ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of each affected property, a "majority protest" exists and the District Board of Directors shall not impose or increase the assessment.