

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *ML*
GENERAL MANAGER
DATE: MARCH 23, 2012

**AGENDA ITEM
D
MARCH 28, 2012**

CONSENT AGENDA

The following items are considered routine and non-controversial by staff and may be approved by one motion if no member of the Board wishes an item be removed. If discussion is desired, the item will be removed from the Consent Agenda and will be considered separately.

**Questions or clarification may be made by the Board members
without removal from the Consent Agenda.**

- D-1) WARRANTS [RECOMMEND APPROVAL]
- D-2) APPROVE MARCH 14, 2012 REGULAR BOARD MEETING MINUTES [RECOMMEND APPROVE]
- D-3) TENTATIVELY SET MAY 23, 2012, FOR HEARING TO ADOPT RESOLUTION OF NECESSITY FOR ACQUIRING EASEMENTS IN REAL PROPERTY IN SUPPORT OF THE NIPOMO MESA SUPPLEMENTAL WATER PROJECT, INSTRUCT STAFF TO PROVIDE NOTICE TO PROPERTY OWNERS OF THE HEARING DATE AS REQUIRED BY LAW, AND AUTHORIZE LEGAL COUNSEL TO RETAIN EMINENT DOMAIN COUNSEL TO ASSIST THE DISTRICT IN ACQUIRING THE EASEMENTS IN THE FOLLOWING PROPERTIES LOCATED WITHIN THE SANTA MARIA RIVER BED.
 - APN #: 090-341-019, #: 090-331-005, #: 006, #: 008
DURLEY & MCLANAHAN
 - APN #: 090-341-033
TROESH PROPERTIES & INVESTMENTS, LLC

[RECOMMEND APPROVAL]

TO: BOARD OF DIRECTORS
 FROM: MICHAEL S. LEBRUN
 GENERAL MANAGER
 DATE: MARCH 23, 2012

AGENDA ITEM
D-1
MARCH 28 2012
PAGE TWO

020517	03/28/12	NUT01	NU TECH PEST MGMT	265.00	.00	265.00	90195	PEST CONTROL
				75.00	.00	75.00	90196	RODENT CONTROL
			Check Total.....:	340.00	.00	340.00		
020518	03/28/12	RBA01	R BAKER, INC	277920.14	.00	277920.14	7	PROGRESS BILLING #7
				6110.00	.00	6110.00	0212-5578	SEWER PLANT AC PIPE REMOV
				1436.85	.00	1436.85	0212-5579	TEFFT/AVACADO 2 VALVES RA
			Check Total.....:	285466.99	.00	285466.99		
020519	03/28/12	SAN09	POOR RICHARD'S PRESS	189.84	.00	189.84	22684A	MAIL BILLS
				1089.26	.00	1089.26	226804B	POSTAGE BILLS
			Check Total.....:	1279.10	.00	1279.10		
020520	03/28/12	SEV01	SEVCIK, PETER	911.68	.00	911.68	B20321	REIMBURSEMENT TRAVEL-SCAD
020521	03/28/12	SHI01	SHIPSEY & SEITZ, INC	9725.80	.00	9725.80	02-29-12	LEGAL SERVICES
020522	03/28/12	SLO08	SAN LUIS OBISPO COUNTY	1440.08	.00	1440.08	3470	INSPECTION-SEWER
020523	03/28/12	SPE01	SPECIAL DISTRICT RISK	4942.00	.00	4942.00	38771	WORKER COMP APR-JUNE
020524	03/28/12	STA08	STAPLES	70.74	.00	70.74	922599347	OFFICE SUPPLIES
020525	03/28/12	TAF01	TAFT ELECTRIC	2358.76	.00	2358.76	30892	TEFFT ST L/S GEN-SET INST
				665.00	.00	665.00	30924-3	MAINT VIA CONCHA WELL
				285.00	.00	285.00	30924-4	PORTABLE GENERATOR SET-UP
			Check Total.....:	3308.76	.00	3308.76		
020526	03/28/12	TIT01	TITAN INDUSTRIAL & SAFETY	81.40	.00	81.40	1049289	ORANGE ELECT GLOVE
020527	03/28/12	USA01	USA BLUEBOOK	144.55	.00	144.55	612663	3-RAIL MARKING POST-BLUE
				478.64	.00	478.64	620399	TUBE HOUSING/STENNER VARI
			Check Total.....:	623.19	.00	623.19		
020528	03/28/12	WAG01	WAGNER & BONSIGNORE	11483.24	.00	11483.24	03-12-1	GENERAL CONSULTATION
020529	03/28/12	WO001	DOUGLAS WOOD & ASSOCIATES	2905.00	.00	2905.00	SWP 1	SWP ADDENDUM EIR
020530	03/28/12	WSC01	WSC	3709.13	.00	3709.13	405	CUWCC SUPPORT SERVICES
020531	03/28/12	\D004	LENNY JONES REALTOR,	261.62	.00	261.62	000B20301	MQ CUSTOMER REFUND FOR DA

NIPOMO COMMUNITY SERVICES DISTRICT

Serving the Community Since 1965

D2

REGULAR MINUTES

MARCH 14, 2012, AT 9:00 A.M.

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

JAMES HARRISON, PRESIDENT
LARRY VIERHEILIG, VICE PRESIDENT
MICHAEL WINN, DIRECTOR
ED EBY, DIRECTOR
DAN A. GADDIS, DIRECTOR

PRINCIPAL STAFF

MICHAEL S. LEBRUN, GENERAL MANAGER
LISA BOGNUDA, ASSISTANT GENERAL MANAGER
MERRIE WALLRAVIN, SECRETARY/CLERK
JON SEITZ, GENERAL COUNSEL
PETER SEVCIK, DISTRICT ENGINEER

Mission Statement: The Nipomo Community Services District's mission is to provide its customers with reliable, quality, and cost-effective services now and in the future.

A. CALL TO ORDER AND FLAG SALUTE

President Harrison called the Regular Meeting of March 14, 2012, to order at 9:00 a.m. and led the flag salute.

B. ROLL CALL AND PUBLIC COMMENT ON ITEMS NOT ON AGENDA

At Roll Call, all Board members were present.

There was no public comment.

Michael LeBrun, General Manager, announced that Sheriff Commander James Taylor will be presenting the new K-9 dog, Gonzo, as the first presentation.

C. PRESENTATIONS AND PUBLIC COMMENT

Sheriff Commander James Taylor introduced Gonzo, the K-9 dog, and his trainer Deputy Marc Souza. Commander Taylor and Deputy Souza answered questions from the Board. The Board thanked Commander Taylor and Deputy Souza for their presentation.

Michael LeBrun, General Manager, announced that the District received an Automated External Defibrillator and it is located on the wall, in the hallway, just outside the Board Room.

C-1) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST AND REPORTS ON ATTENDANCE AT PUBLIC MEETINGS, TRAINING PROGRAMS, CONFERENCES, AND SEMINARS.

Director Gaddis

- ◇ March 5, 2012 – SCAC held a Town Hall meeting for the public to meet SCAC candidates who submitted applications for the 2012 Fiscal Year.
- ◇ March 19, 2012 – SCAC Elections will be held from 6:00 to 8:00 p.m. at NCSD.

Director Vierheilig

- ◇ March 15, 2012 – Finance and Audit Committee Meeting at 9:00 a.m.
- ◇ March 16th, 17th, and 18th – Santa Barbara Orchid Show at the Earl Warren Fairgrounds.

Director Eby

- ◇ The Nipomo Community Park's Draft EIR comments are due by April 30, 2012. The Final Master Plan will be in August and then it will go to the Board of Supervisors.
- ◇ March 13, 2012 – SLO County Board of Supervisors met and approved a limited irrigated acreage in the park if the Assessment District is formed.
- ◇ March 15, 2012 – LAFCO will vote on the annexation of Los Robles Del Mar.

Copy of document found at www.NoNewWipTax.com

SUBJECT TO BOARD APPROVAL

Nipomo Community Services District
REGULAR MEETING
MINUTES

- C-1) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST (Cont.)
Receive Announcements from Directors Items of District & Community Interest

Director Winn

- ◇ March 29, 2012 – SLO County Chapter of CSDA will hold its biannual meeting on Thursday at 11:00 a.m. at the Wallace Group.
- ◇ April 4, 2012 – The WRAC will hold its regular monthly meeting in the afternoon at SLO Library.

- C-2) RECEIVE PUBLIC COMMENT ON PRESENTATIONS AND REPORTS PRESENTED UNDER ITEM C AND BY MOTION RECEIVE and FILE PRESENTATIONS AND REPORTS

There was no public comment.

D. CONSENT AGENDA

- D-1) WARRANTS [RECOMMEND APPROVAL]
- D-2) APPROVE FEBRUARY 29, 2012 REGULAR BOARD MEETING MINUTES
- D-3) APPROVE CONTRACT FOR OTHER POST-EMPLOYMENT BENEFIT (OPEB) VALUATION
- D-4) APPROVE SURPLUS OF OBSOLETE DISTRICT EQUIPMENT

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mr. LeBrun answered questions from the Board.

President Harrison pulled item D-3 for further discussion.

There was no public comment.

Upon the motion of Director Vierheilg and seconded by Director Winn, the Board approved Items D-1, D-2, and D-4 as submitted.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilg, Winn, Eby, Gaddis, and Harrison	None	None

Item D-3

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mr. LeBrun answered questions from the Board.

There was no public comment.

Upon the motion of Director Vierheilg and seconded by Director Winn, the Board directed staff to retain James Marta & Company to prepare the AMM OPEB valuation.

Vote 4-1.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilg, Winn, Eby, and Gaddis	Director Harrison	None

Nipomo Community Services District
REGULAR MEETING
MINUTES

E. ADMINISTRATIVE ITEMS

E-1) CONSIDERATION OF BENEFIT ASSIGNMENT CHANGES REQUESTED BY PROPERTY OWNERS FOR PROPOSED SUPPLEMENTAL WATER PROJECT ASSESSMENT DISTRICT

Michael LeBrun, General Manager, gave an overview of the report presented in the Board packet.

Jon Seitz, District Legal Counsel, answered questions from the Board and suggested each Board member declare any conflict of interests.

Director Winn
None

Director Eby
Parcel 092 121 085, (Native Gardens), live within close proximity.
Parcel 092 121 086, (Nipomo Community Park), live within close proximity.

Director Vierheilig
Parcel 092 121 085, (Native Gardens), past President of Nipomo Native Gardens and sat on the Board of Directors.

Director Gaddis
Parcel 092 121 086, (Nipomo Community Park), live within close proximity.

Director Harrison
None

President Harrison announced that the Board will consider Parcels 092 121 085 (Native Garden) and 092 121 086 (Nipomo Community Park) as item E-1-2 immediately following item E-1.

Kari Wagner, Assessment Engineer, reviewed the two memoranda as presented in the Board packet. Ms. Wagner added parcel 090-383-007 (Vitaz) and parcel 090-123-019 (Bower) to the waiver, which increased the benefit unit assignment memorandum. Jon Seitz, District Legal Counsel, Mr. LeBrun, and Ms. Wagner answered questions from the Board.

The following members of the public spoke:
John Snyder, Nipomo resident, but not an NCSD customer, had comments and concerns about the benefit unit assignment changes.

Pat Eby, Nipomo resident, but not an NCSD customer, concurs with Mr. Snyder's comments, questioned the totals in the listed roll.

Jude Egan, representing the Hernandez Family, had concerns about the costs of benefit units, the uncertainty of being able to develop the properties, and asked the Board for a time extension.

Mr. Egan provided the Board a written letter. (Attachment 1)

Nipomo Community Services District
REGULAR MEETING
MINUTES

Ruth Brackett, NCSC customer, had questions and concerns about deed restriction and benefit units.

Pat Eby, Nipomo resident, but not an NCSD customer, commented on the Supplemental Water Capacity fees.

Jon Seitz, District Legal Counsel, responded to Ms. Brackett's comments.

Director Eby also responded to Ms. Brackett's comments.

Upon the motion of Director Eby and seconded by Director Gaddis, the Board authorized the Assessment Engineer to accept notarized deed restrictions and wavier forms until 5:00 p.m. on Tuesday, March 20, 2012. And, only for the parties that are listed on the memoranda and the two parcels 090-383-007 (Vitaz) and 090-123-019 (Bower) by the Assessment Engineer.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Gaddis, Winn, Vierheilig, and Harrison	None	None

Kari Wagner, Assessment Engineer, answered questions from the public's comments.

Upon the motion of Director Eby and seconded by Director Winn, the Board approved all requested benefit unit changes, with the time extension, excluding parcels 092-121-085 and 092-121-086.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Winn, Gaddis, Vierheilig, and Harrison	None	None

The Board to a break from 10:55 to 11:05 a.m.

ITEM E-1-2a PARCEL 091-121-085 (Native Gardens)

Director Vierheilig recused himself and left the Board Room.

Director Eby recused himself and left the Board Room.

Kari Wagner, Assessment Engineer, reviewed the report as presented in the Board packet. Ms Wagner answered questions from the Board.

The following members of the public spoke:

John Snyder, Nipomo resident, but not an NCSD customer, had concerns about the public not having adequate input on making this decision.

Upon the motion of Director Winn and seconded by Director Gaddis, the Board approved the deed restriction for parcel 091-121-085, to be modified no later than the close of business on Tuesday, March 20, 2012.

Vote 3-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Gaddis, and Harrison	None	Directors Vierheilig and Eby

Nipomo Community Services District
REGULAR MEETING
MINUTES

Item E-1-2b PARCEL 092-121-086 (Nipomo Community Park)

Director Vierheilig returned to the Board Room.
Director Gaddis recused himself and left the Board Room.

Kari Wagner, Assessment Engineer, reviewed the report as presented in the Board packet. Ms Wagner answered questions from the Board.

The following members of the public spoke:
John Snyder, Nipomo resident, but not an NCSD customer, had concerns about the public not having adequate input on making this decision.

Upon the motion of Director Winn and seconded by Director Vierheilig, the Board approved the deed restriction for parcel 091-121-085, to be modified, to be amended no later than the close of business Tuesday, March 20, 2012.

Vote 3-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Vierheilig, and Harrison	None	Directors Gaddis and Eby

Directors Gaddis and Eby returned to the Board Room.

E-2) REVIEW DRAFT ASSESSMENT ENGINEER'S REPORT AND DRAFT BALLOT FOR SUPPLEMENTAL WATER PROJECT ASSESSMENT DISTRICT FORMATION

Maryann Goodkind, Esq., Fulbright & Jaworski, reviewed the report as presented in the Board packet. Ms. Goodkind answered questions from the Board.

The following members of the public spoke:
John Snyder, Nipomo resident, but not an NCSD customer, had questions and concerns on the Supplemental Water fees, Golden State Water Company's boundary maps, and the ballots.

Pat Eby, Nipomo resident, but not an NCSD customer, questioned who counts the ballots.

Ruth Brackett, NCSD customer, questioned the formula of the benefits units and concerns about rate increases.

Directors Eby and Winn commented on the public's questions and concerns.

Kari Wagner, Assessment Engineer, Michael LeBrun, General Manager, and Ms. Goodkind answered the public's questions.

Upon the motion of Director Eby and seconded by Director Winn, the Board unanimously adopted Resolution 2012-1249. The 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.

Vote 5-0.

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

E-2) REVIEW DRAFT ASSESSMENT ENGINEER'S REPORT AND DRAFT BALLOT FOR SUPPLEMENTAL WATER PROJECT ASSESSMENT DISTRICT FORMATION (Cont.)

YES VOTES	NO VOTES	ABSENT
Directors Eby, Winn, Vierheilig, Gaddis, and Harrison	None	None

RESOLUTION NO. 2012-1249

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 CONNECTIONS THEREWITH

Upon the motion of Director Eby and seconded by Director Gaddis, the Board unanimously adopted Resolution 2012-1250. The 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.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Gaddis, Winn, Vierheilig, and Harrison	None	None

RESOLUTION NO. 2012-1250

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 XIII D OF THE CALIFORNIA CONSTITUTION

Upon the motion of Director Eby and seconded by Director Gaddis, the Board unanimously adopted Resolution 2012-1251. 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).

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Gaddis, Winn, Vierheilig, and Harrison	None	None

RESOLUTION NO. 2012-1251

A RESOLUTION OF THE BOARD OF DIRECTORS 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).

Director Eby informed the public about the Fair Political Practices Commission, Chapter 1 of Campaign Manual 3, pages 1-5 and 1-6. (The attached notice was handed out to the public.) (Attachment 2)

Nipomo Community Services District
REGULAR MEETING
MINUTES

E-3) REVIEW FORM OF NOTICE OF PUBLIC HEARING AND PROPOSED ASSESSMENT AND FORM OF BALLOT RELATED TO PROPOSED ASSESSMENT DISTRICT 2012-1

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Maryann Goodkind, Esq., Fulbright & Jaworski, and Mr. LeBrun answered questions from the Board.

The following members of the public spoke:

John Snyder, Nipomo resident, but not an NCSD customer, commented on the Supplemental Water fees, the amount of water in the agreement, and the agreements with other water purveyors.

Director Winn responded to Mr. Snyder's comments.

Upon the motion of Director Eby and seconded by Director Vierheilg, the Board unanimously accepted the Notice of Public Hearing, as amended, and accepted the ballot presented to the Board for publication and distribution.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Vierheilg, Winn, Gaddis, and Harrison	None	None

I. CLOSED SESSION ANNOUNCEMENTS

1. CONFERENCE WITH DISTRICT LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC §54956.9 SMVWCD VS. NCSD (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
2. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC SECTION 54956.9; NCSD VS. COUNTY SLO, ET AL. (CASE #CV090010)
3. CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION PURSUANT to GC 54956.9(c) No. of cases: two. Related to the District's acquisition of two easements in real property through eminent domain: one owned by Durley/McLanahan AP# 090-341-019, 090-331-005, 06 & 08 and one owned by Troesh Properties & Investments, LCC AP# 090-341-003.

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

K. ADJOURN TO CLOSED SESSION

President Harrison adjourned to closed session at 12:30 p.m.

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 1:40 p.m.

Jon Seitz, District Legal Counsel, announced that the Board discussed items 1 and 3 listed above for closed session, but took no reportable action. On item 2 listed above for closed session, the Board gave directions to staff, but took no reportable action.

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

F. MANAGER'S REPORT

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Jon Seitz, District Legal Counsel, and Mr. LeBrun answered questions from the Board. There was no public comment.

H. DIRECTOR'S REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Vierheilig

- ◇ Requested the agenda be copied single sided.
- ◇ Questioned who maintains the lights on Tefft Street.

Director Winn

- ◇ Commended the General Manager for the pressures he has been handling.
- ◇ Commended staff on the employment process.
- ◇ Questioned staff on the proposal for the office counter enclosure.
- ◇ Requested staff to look at the Supplemental Water Project expenditures.

Director Harrison

- ◇ Confirmed that the District does not have a joint meeting with SCAC on March 26, 2012.
- ◇ Confirmed the next agenda setting meeting.

G. COMMITTEE REPORT

Ad Hoc Committee for Education and Outreach.
Ad Hoc Committee to review the Nipomo Park EIR.

There was no public comment.

ADJOURN

President Harrison adjourned the meeting at 2:40 p.m.

MEETING SUMMARY	HOURS
Regular Meeting	4.40
Closed Session	1.00
TOTAL HOURS	5.40

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jude@judeeganlaw.com

James Harrison
President, Nipomo Community Services District
148 South Wilson Street
Nipomo CA 93444

3/13/2012

Re: Hernandez Aurelio and Rose Family Trust Properties

APN: 092141037; APN: 091294038; APN: 092141015; APN: 092141036; APN: 090161018; APN:
092141033; APN: 092141034; APN: 091294037

Dear Mr. Wilson and Members of the NCSD Board:

My office represents the Hernandez Family Trust, Aurelio and Rose Hernandez, Anita Hernandez, Raul Hernandez, Rudy Hernandez and Fernando Hernandez in regard to the Nipomo Community Services District proposed assessment for water Benefit Units on developed and undeveloped parcels on the Nipomo Mesa.

My clients respectfully request an extension on the time required for compliance with the certification and execution of Deed Restrictions on the above referenced properties. The Trustee, Mr. Aurelio Hernandez, is not well enough to understand the complexities of Benefit Units and the proposed assessments and there is no second signatory authorized to sign on behalf of the Family Trust without two doctors making a medical diagnosis.

The Hernandez Family Trust and the Hernandez family members have been landowners on the Nipomo Mesa for more than forty years. As currently assessed, they own developed and undeveloped properties

with the potential for approximately 140 Benefit Units of water. At the current proposed assessment levels purchasing all the available Benefit Units of water would create a \$400,000 assessment burden on the family, the majority of it for assessments on undeveloped property. The proposed assessment places the Family Trust and the family members in a precarious situation – if they choose to purchase Benefit Units now on their undeveloped property they will not be able to pay for them and will possibly end up losing their land. If they do not purchase Benefit Units available to them, their land values will be drastically reduced and any future development plans will be tabled.

Mr. President, you are no doubt aware of the difficult economic times facing this region. Even the approximately 14 Benefit Units they will be assessed for their developed properties will pose a substantial hardship on the family at a time when property values are depressed, future development is uncertain and the question of the availability of future water is unclear.

Aside from the immediate exigencies facing the Hernandez family with regard to the proposed assessment, the Family Trust also raises a number of legal issues and challenges to the proposed assessment.

First, there is the question of the proportionality of the assessment to the special benefit being conferred on individual property owners in this assessment pursuant to California Constitution article XIII. For undeveloped properties the cost of each Benefit Unit is higher than the cost of each Benefit Unit for existing development. As the County has not guaranteed “will serve” letters for future development on undeveloped properties with purchased Benefit Units, owners of undeveloped properties are being asked to pay more than their proportional share of the costs of the pipeline development project without being guaranteed that the Benefit Units they are purchasing will translate into future water delivered to their development sites. NCS D and its contractors have not adequately addressed the justification for assessing potential future development – which may or may not ever be realized – a larger proportional share than existing development. Indeed the May 15, 2009 “Basis of Assessment for Funding WIP Capital Cost” memorandum points to an equal cost assessment measure as one of six alternatives but no justification for staff recommendations is given.

Second, the Hernandez family raises issues with respect to voting rights in this process. The NCS D has required that property owners declare the number of Benefit Units they intend to “purchase” before they can cast their weighted votes. This effectively requires them to make a choice regarding future development at present or lose their right to cast their full votes. Such a denial of voting power violates Article XIII of the California Constitution – property owners are entitled to cast weighted votes in proportion to their share of the proposed assessment. By requiring them to make an election before the vote, the NCS D is forcing property owners who would elect to vote no with the entirety of their weighted votes to either restrict their deeds, and therefore take a loss in their property values, or elect to take all of their allotted Benefit Units and take their chances on a no vote.

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Third, my clients object to the assessment because they do not have adequate information available to them to understand potential future procedures and costs if they opt to develop in the future. Will the County or the NCSD guarantee that water for development will be available to them if they purchase Benefit Units now? What will happen if they restrict their deeds now but want to develop their properties in the future?

Neither the NCSD nor the Wallace Group has communicated whether future boards will allow a connection, whether water capacity will exist, whether property owners who choose to opt to restrict their deeds now will be required to pay in-lieu fees, penalties and interest, or what the tax consequences of such a decision would be in the future. This uncertainty creates an environment in which property owners with undeveloped property are required to gamble on future growth on the Nipomo Mesa and ends up effectively re-zoning the Nipomo Mesa to comport with Benefit Units rather than the County's growth plans.

Finally, my clients are concerned that the "very conservative" high end calculations on water usage and cost undertaken by Wallace Group and the NCSD represent an overbroad assessment of the value of BUs on property owners on the Nipomo Mesa on the one hand and an underestimation of true costs on the other. Proposition 218 requires that all assessments levied on individual parcels be limited to the "reasonable cost of the proportional special benefit conferred on that parcel." If the estimate is "very conservative," double the amount that might have been raised in a water bond, as the NCSD documents suggest, there is a real concern that the assessment exceeds the reasonable amount of proportional benefit conferred upon the property. On the other hand, if the cost of the project has been underestimated, there will be a need for a future assessment to complete the project.

The proper way to conduct development procedures is through the County permit and "will serve" process as the County has been doing on Hernandez family land and throughout the County for decades. With these issues in mind, my clients, first, request an extension on the opt-in/opt-out decision so that Mr. Hernandez can properly weigh the decision. Second, they seek to be permitted to vote the full weight of their future potential BUs without being forced to opt-in or opt-out of the assessment. As there are approximately 140 BUs assessed on their developed and undeveloped parcels, they vote No on the proposed assessment with each of these weighted votes. Finally, my clients wish to raise their concern that the BU assessment is unreasonable given the proportional special benefit conferred upon their property.

Very Truly Yours,



M. Jude Egan, Esq.

Senator O'Leary supports Proposition 114, a measure that would fund state museums, and contributes \$100,000 from his reelection committee to the committee primarily formed to support the measure. The committee has also received a contribution of \$75,000 from the California Museum Curators Association. No contributor qualifies as a sponsor and no other contribution was received of \$50,000 or more.

The committee name must include the senator's name, the economic interest, goal or purpose of the California Museum Curators, and whether the committee supports or opposes the measure.

Examples of acceptable names would include: "Increase Funding for State Museums, Yes on Proposition 114, Supported by Senator O'Leary and Curators for Improving Museums" or "Yes on Proposition 114, a Measure to Fund State Museums, Supported by Senator O'Leary and Advocates for Museum Funding."

QuickTIP It may be necessary to change the name of the committee during the course of the campaign. For example, as new contributions are received, the sponsor(s) of the committee may change, or the economic or other special interest of the committee's major donors may change. See Chapter 5 for more information about amending the committee name.

Reporting

A person or group must file a statement of organization (Form 410) within 10 calendar days of becoming a committee by receiving contributions of \$1,000 or more in a calendar year. In addition, a committee supporting or opposing a statewide measure is subject to electronic filing requirements upon receiving contributions or making expenditures of \$50,000 or more. Generally the first electronic disclosure reports for such committees are due within 10 business days

and must identify contributors of \$5,000 or more.

The obligation to begin counting contributions arises when a proposal becomes a measure. If the proposal is an initiative, referendum, or recall, it becomes a measure when proponents begin circulating petitions to qualify the proposal for the ballot. If the proposal is not an initiative, referendum, or recall, it becomes a measure when the legislative body takes the action necessary to submit the proposal to a popular vote.

Once a proposal becomes a measure, contributions received and expenditures made count toward the \$1,000 threshold for becoming a committee and are reportable, even if the contributions or expenditures took place before the proposal became a measure. If the person or group raises \$1,000 or more before a proposal becomes a measure, the 10-day period for filing Form 410, as well as electronic reports, begins the first day proponents begin to circulate petitions or when the legislative body acts to place the proposal on the ballot. If a group begins to raise contributions after the proposal becomes a measure, the 10-day period begins on the day the group raises \$1,000 or more.

QuickTIP Committees formed to oppose the qualification of a measure must file disclosure reports once the proponents begin to circulate petitions. Because the actual date that petition circulation begins can vary, opposing committees often begin filing as soon as \$1,000 or more is received or as soon as they know the date of "proof of publication" for local measures or the date of "issuance of title and summary" for state measures.

If the committee received contributions before the proposal became a measure, the committee must report the names of

contributors who had a reason to know their contributions were for use in supporting or opposing the qualification of the measure, or in supporting or opposing the measure's passage. The contributors would have reason to know if, for example, the committee sent out a solicitation or placed an advertisement asking for contributions for petition circulation or to support or oppose the measure. This manual cannot address all of the situations when a contributor may have "reason to know" his or her contributions will be used for a measure. Committees may contact the FPPC for specific guidance.

(Example) *A statewide initiative is being drafted. In anticipation of the initiative qualifying for the ballot, a group sends solicitation requests to oppose the proposal and raises \$75,000. The group is not required to file disclosure reports listing the sources of the \$75,000 until the proponents sponsoring the initiative begin to circulate petitions. On the first day the petition circulation begins, the group opposing the measure qualifies as a committee and is subject to reporting obligations. The committee must file a Statement of Organization, Form 410, within 10 calendar days, and because the committee raised more than \$50,000, it must file a \$5,000 electronic report within 10 business days listing any single contributor of \$5,000 or more. The committee is required to file quarterly, semi-annual, and pre-election statements as well as special reports as discussed in this manual.*

A primarily formed ballot measure committee must report expenditures made to support or oppose qualification or passage of a measure, including expenditures that occurred before the proposal became a measure.

Reportable expenditures may include:

- cost of a poll or survey, if used in a communication to influence voters

regarding the qualification or passage of a measure;

- payments to defray the costs of conducting an election;
- filing fees;
- legal costs relating to gaining or retaining a place on the ballot, or keeping a measure off the ballot.

Common expenditures that are not reportable include:

- expenditures in connection with a petition to be submitted to LAFCO;
- cost of a poll or survey to determine the feasibility of drafting a measure, if not used in a communication to influence voters; and
- certain legal costs incurred prior to the circulation of petitions, including legal costs related to drafting the proposed measure.

Quick TIP If a measure is passed and a person raises money to challenge the constitutionality or legality of the newly-enacted law, such donations and payments do not count toward the group qualifying as a ballot measure committee.

Detailed instructions on filing the Form 410 are provided in Chapter 5. Detailed instructions for reporting contributions and expenditures are provided in Chapter 7.

Litigation Issues

When a group receives money for the purpose of challenging a ballot measure's placement on a ballot, whether the group qualifies as a recipient committee will depend upon the facts of each case. Some common issues related to litigation are noted below but advice relating to litigation is specific to facts, so it is best to contact the FPPC.

- A person raises money to challenge the wording of a measure's description in the

TO: BOARD OF DIRECTORS

FROM: MICHAEL S. LEBRUN *msl*
GENERAL MANAGER

DATE: MARCH 23, 2012

AGENDA ITEM
D-3
MARCH 28, 2012

**SET TENTATIVE DATE FOR HEARING TO ADOPT RESOLUTION OF
NECESSITY FOR ACQUIRING EASEMENTS**

ITEM

Tentatively set May 23, 2012 for hearing to adopt Resolution of Necessity for acquiring easements in support of Nipomo Supplemental Water Project, instruct staff to provide notice to property owners of the hearing dates as require by law, authorize District Legal Counsel to retain eminent domain counsel to assist the District in acquiring the easements [RECOMMEND APPROVAL]

BACKGROUND

The District is working with numerous property owners over the past eighteen months to acquire the right-of-way necessary to construct the Nipomo Supplemental Water Project. Government Code Section 61060(e) provides the District with the authority to acquire by eminent domain real or personal property within or outside the the District. The District cannot exercise the power of eminent domain until it has adopted a resolution of necessity. The requested action authorizes staff to draft a resolution of necessity and set a hearing dated and to give the property owners notice as required by law.

FISCAL IMPACT

Staff time and professional consulting services related to supplemental water project development are included in the 2011-2012 budget. These costs are capitalized and included in the project cost and are recoverable following a successful financing vote.

STRATEGIC PLAN

Strategic Plan Goal 1.2 – Secure New Water Supplies

RECOMMENDATION

Staff recommends that your Honorable Board;

TENTATIVELY SET MAY 23, 2012, FOR HEARING TO ADOPT RESOLUTION OF NECESSITY FOR ACQUIRING EASEMENTS IN REAL PROPERTY IN SUPPORT OF THE NIPOMO MESA SUPPLEMENTAL WATER PROJECT, INSTRUCT STAFF TO PROVIDE NOTICE TO PROPERTY OWNERS OF THE HEARING DATE AS REQUIRED BY LAW, AND AUTHORIZE LEGAL COUNSEL TO RETAIN EMINENT DOMAIN COUNSEL TO ASSIST THE DISTRICT IN ACQUIRING THE EASEMENTS IN THE FOLLOWING PROPERTIES LOCATED WITHIN THE SANTA MARIA RIVER BED.

● APN #: 090-341-019, #: 090-331-005, #: 006, #: 008
DURLEY & MCLANAHAN

● APN #: 090-341-033
TROESH PROPERTIES & INVESTMENTS, LLC