

TO: BOARD OF DIRECTORS

FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER

DATE: MAY 18, 2012

**AGENDA ITEM
E-2
MAY 23, 2012**

**WATER RESOURCES RELIABILITY REVIEW AND
DISCUSSION/REVIEW DISTRICT OPTIONS TO ADDRESS WATER
RESOURCE CONSTRAINTS**

ITEM

Discuss options for addressing water resource reliability concerns and supply constraints.

[CONSIDER INFORMATION AND DIRECT STAFF AND/OR APPOINT DIRECTORS TO STANDING COMMITTEE TO DEVELOP AND MAKE RECOMMENDATIONS FOR CHANGING DISTRICT POLICY TO ADDRESS WATER RESOURCE CONCERNS]

BACKGROUND

The Nipomo Community Services District (the "District" or "NCSD") relies solely 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 (San Luis Obispo County defined 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 assessing the status of groundwater resources underlying the Nipomo Mesa area have been conducted. 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. Commencing in June 2008, the Nipomo Mesa Management Area Technical Group has filed 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).

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. NCS D pumps water from the underlying Nipomo Mesa Water Conservation Area and is party 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 NCS D, 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 subsequently 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, NCSD agreed to lead a project to intertie water systems with and purchase water from the City of Santa Maria. The project is the subject of the 2004 MOU between NCSD and City of Santa Maria. 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, ConocoPhillips and an Agricultural representative formed the Nipomo Mesa Management Area (NMMA) 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. Since 2009, the Group's top recommendation to address water resource concerns in the NMMA is to implement the Nipomo Supplemental Water Project. Each Annual report since 2009 has included the following statement or something very similar:

"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".

SUPPLEMENTAL WATER PROJECT SUMMARY

After entering into the 2005 Stipulation, several additional studies were prepared by NCSD in order to further evaluate alternatives to an intertie with the City of Santa Maria, including:

1. 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 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 objectives of the Supplemental Water 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 seawater 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 and diversify the current water supplies available to the Mesa
4. Increase the reliability of District water supply by providing a diversity of water sources.

ASSESSMENT DISTRICT SUMMARY

The District explored various alternatives for financing the construction of the Supplemental Water Project, namely increasing bi-monthly water rates, the creation of an assessment district, creation of special benefit zones, creation of standby charges and the combination of various approaches. 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 within both the District and the service area of project partners.

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

1. Both developed and undeveloped properties will participate in paying for the construction of the Supplemental Water 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. Thirty-year bonds spread the costs to future customers who will benefit from the project.

On March 23, 2012, your Board gave preliminary approval to the Assessment Engineer's report and authorized a 45-day mail ballot proceedings. On May 9, 2012, your Board held a public hearing, took verbal protests and closed the ballot period. On May 10, 2012, your Board adopted a Resolution recognizing the outcome of the proceedings as a successful protest (measure failed).

It took the District twenty years to bring a supplemental water project back before District customers following the votes disapproving State Water project participation in 1991/1992. Three formal studies of supply alternatives led to the selection of the intertie pipeline project with the City of Santa Maria. Four million dollars is invested in development of the intertie pipeline to date.

The District must now explore and investigate options for addressing supply reliability and water resources concerns. Among the many questions that must be considered are:

- Should the intertie pipeline or some version of it be further pursued? What funding method(s), which if any partners?

- Is there any path forward that preserves the \$2.3M state grant for the project?
- Should the most recent review of alternatives be revisited or perhaps a fourth review of alternatives conducted by the District or others?
- Is there a 'regional' option the County or others are prepared to implement?
- In the absence of supplemental water, how are the water rights of District customers and long-term health of the District sole source of water best protected in the face of ongoing development on the Nipomo Mesa?

FISCAL IMPACT

Approximately \$4M has been invested by the District pursuing supplemental water via intertie with the City of Santa Maria. Historically, public works project development and construction and water commodity rates have increased over time at a rate that exceeds inflation.

STRATEGIC PLAN

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

Strategic Plan Goal 1.2 – Secure New Water Supplies

RECOMMENDATION

Consider information and by motion and roll call vote direct staff and/or appoint Directors to standing committee to develop and make recommendations for changing District policy to address water resources concerns.

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: MAY 18, 2012



CONSIDER FOR ADOPTION RESOLUTION 2012-XXX SUSPENDING PROCESSING OF APPLICATIONS FOR INTENT-TO-SERVE LETTERS FOR DISTRICT WATER SERVICE

ITEM

Consider Resolution suspending processing of applications for water service due to uncertain resources and review suspension every six months

[RECOMMENDATION – ADOPT RESOLUTION 2012-XXX SUSPENDING PROCESSING OF APPLICATIONS FOR INTENT-TO-SERVE LETTERS FOR DISTRICT WATER SERVICES AND PROVIDING FURTHER DIRECTION TO STAFF]

BACKGROUND

On May 10, 2012 there was a successful protest of the ballot measure to form Assessment District 2012-1. The assessment district would have raised the funds needed to build a 3000AFY intertie water line between Nipomo CSD and the City of Santa Maria and deliver supplemental water to the Nipomo Mesa.

In light of the ballot measure's defeat, the timeline for delivery of supplemental water to the Nipomo Mesa is unknown. Concern over the health and ever-diminishing reliability of the Nipomo Mesa Management Area of the Santa Maria Groundwater Basin is well documented. Over the years, studies by the CA Department of Water Resources, the County of San Luis Obispo, the groundwater court-recognized Nipomo Mesa Management Area Technical Group and others have consistently found cause for concern for basin health and sustainability under current pumping demands. Therefore, the District is currently unable to make the findings required by District Code §3.28.020, "that sufficient excess water" exists to serve new projects.

FISCAL IMPACT

The District's water capacity charge for a 1-inch water meter is \$17,898 of which \$14,605 put toward development of supplemental water projects. Suspension of new water service halts collection of capacity charges.

STRATEGIC PLAN

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

RECOMMENDATION

By motion and roll call vote, adopt Resolution suspending processing of applications for Intent to Serve letters for District Water Services, and

Provide additional direction to staff

ATTACHMENTS

Resolution 2012 – ITS SUSPEND

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

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SUSPENDING APPLICATIONS FOR
INTENT-TO-SERVE LETTERS FOR WATER SERVICE**

WHEREAS, the Nipomo Community Services District's ("District") current water supply is groundwater extracted from the Nipomo Mesa Management Area (NMMA) as established by the court in the Santa Maria Groundwater Litigation (also referred to as the Nipomo Mesa Water Conservation Area (NMWCA) by the County of San Luis Obispo, pursuant to County Ordinance 3090), of the Santa Maria Groundwater Basin; and

WHEREAS, the District is a party to a groundwater adjudication, Santa Maria Valley Water Conservation District v. City of Santa Maria, etc. et al., Case No. CV 770214 ("Groundwater Litigation"); and

WHEREAS, pursuant to Section VI D(1) of the June 2005 Stipulation as incorporated into the January 25, 2008, Final Judgment in the Groundwater Litigation, the Nipomo Mesa Management Area Technical Group has declared that a "Potentially Severe Water Shortage Condition" exists within the Nipomo Mesa Management Area; and

WHEREAS, the District is in receipt of the NMMA Technical Group's 4th Annual Report, Calendar Year 2011, that reflects a steady decline in the Key Wells Index as depicted in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the San Luis Obispo County Department of Planning and Building's 2004 Resource Capacity Study for the Water Supply in the Nipomo Mesa Area recommended a Level of Severity III (existing demand equals or exceeds dependable supply) be certified for the Nipomo Mesa Area and that measures be implemented to lessen adverse impacts of future development (said Study and referenced documents are incorporated herein by reference); and

WHEREAS, the San Luis Obispo County Board of Supervisors ("County") in June 2007, certified the Nipomo Mesa Water Conservation Area as a Severity Level III, meaning that existing water demand equals or exceeds the dependable supply; and

WHEREAS, the resource protection goals of the San Luis Obispo County South County Area Plan includes the following:

- Balance the capacity for growth allowed by the Land Use Element with the sustained availability of resources.
- Avoid the use of public resources, services and facilities beyond their renewable capacities, and monitor new development to ensure that its resource demands will not exceed existing and planned capacities or service levels; and

WHEREAS, District Code §3.28.020 provides:

"all intent-to-serve letters shall be based on findings that sufficient excess water and sewer capacity exists to serve the project"; and

WHEREAS, the District Board of Directors, at a public meeting, on May 23, 2012, considered the Staff Report, and public testimony regarding the suspension of Intent-to-Serve Letters; and

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A RESOLUTION OF THE BOARD OF DIRECTORS
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SUSPENDING APPLICATIONS FOR
INTENT-TO-SERVE LETTERS FOR WATER SERVICE

WHEREAS, based on the Staff Report, Staff presentation, the reports and studies referenced in this Resolution, and public comment, the District Board of Directors finds that, with the failure of the recent ballot proceedings to implement a Supplemental Water Supply to the NMMA, it is currently unable to make the findings required by District Code §3.28.020, "that sufficient excess water ---" exists to serve new projects, and

WHEREAS, based on the Staff Report, Staff presentation, and public comment, the District Board of Directors finds:

- A. That the purpose and intent of this Resolution is consistent with the purposes found in the Judgment and Stipulation in the Ground Water Litigation imposing a physical solution to assure long term sustainability of the groundwater basin and the San Luis Obispo County's certification of a Severity Level III for the waters underlying the NMWCA and;
- B. Suspending the Applications for Intent-to-Serve Letters for water service will provide greater assurance that there will be adequate groundwater to meet the present needs of District residents consistent with District Code §3.28.020 and the resource protection goals of the San Luis Obispo County South County Area Plan and;
- C. That adopting this Resolution will further conserve the water supply for the greater public benefit, with particular regards to domestic use, sanitation and fire protection and;

WHEREAS, by suspending the Applications for Intent-to-Serve Letters, the District does not intend to limit other means of managing, protecting and conserving the groundwater basin by the District. Further, the District intends to work cooperatively with the NMMA Technical Group and other agencies, such as the County of San Luis Obispo, to implement regional solutions such as groundwater management and the importation of Supplemental Water to the NMMA/NMWCA; and

WHEREAS, based on the Staff Report, Staff presentation, and public comment, the District Board of Directors further finds this Resolution is adopted for the protection of the health, safety and welfare of District water customers who depend on the underlying ground water basin as their source of water supply.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED, by the Board of Directors of the District as follows:

Section 1. Suspension of processing applications for Intent-to-Serve Letters for Water Service.

Applications for Intent-to-Serve letters for District water service are hereby suspended.

Section 2. Applications

Applications for Intent-to-Serve letters will be received and filed, without priority, by District Staff. Application fees are suspended until further order of the Board of Directors.

Section 3. Reconsideration

The District Board shall reconsider the suspension of Intent-to-Serve letters, as part of its

**RESOLUTION NO. 2012-XXX
A RESOLUTION OF THE BOARD OF DIRECTORS
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Regular or Special Meeting Agendas, during the months of October and May of this and each succeeding year.

Section 4. Further Actions

District Staff is directed to return to the Board with further resolutions and ordinances amending or repealing District policies consistent with this Resolution including the following:

- A. Ordinance No. 2009-112. An Ordinance Of The Board Of Directors Of The Nipomo Community Services District Amending Title 3 Of The Nipomo Community Services District Code To Establish New Procedures For Payment Of District Fees For Connection For Commercial Projects Developed On Two Or More Commercially Zoned Parcels.
- B. Ordinance No. 2009-114. An Ordinance Of The Nipomo Community Services District Amending Chapter 3.05 Of The District Code Water Service Limitations.
- C. Ordinance No. 2010-115. An Ordinance Of The Board Of Directors Of The Nipomo Community Services District Amending Title 3 Of The Nipomo Community Services District Code To Establish New Procedures For Payment Of District Fees For Connection For Residential Projects Creating Four Or More Parcels And Mixed Use Projects Under A Single Application For A Final Map That Require The Dedication Of Any Water And Sewer Improvements Pursuant To A District Plan Check And Inspection Agreement.
- D. Resolution 2010-1199. A Resolution of the Board of Directors of the Nipomo Community Services District Establishing Fees For Processing Applications For Deferral Of District Connection Charges.

Section 5. CEQA Findings

The Board of Directors of the District finds that the policies and procedures adopted by this Resolution are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15378 (b) (2) because such policies and procedures constitute general policy and procedure making. The Board of Directors further finds that the adoption of the rules and regulations established by this Resolution is not a project as defined in CEQA Guideline Section 15378, because it can be seen that the Suspension of Intent-To-Serve Letters will not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The District incorporates by reference the CEQA findings in support of San Luis Obispo County Ordinance 3090, the County of San Luis Obispo's certification of a Severity Level III for the NMWCA and the District's CEQA findings supporting the adoption of Chapter 3.05. The District General Manager is directed to prepare and file an appropriate notice of exemption.

Section 6. Severance Clause

If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Resolution. The Governing Board of the District hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the

RESOLUTION NO. 2012-XXX
A RESOLUTION OF THE BOARD OF DIRECTORS
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State of California.

Section 7. Effective Date

This Resolution shall take effect immediately and, without further order of the Board of Directors, and shall remain in effect until further order of the Board of Directors.

Section 8. Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference. The Recitals and referenced reports and studies contained therein constitute and support the findings of the District in support of this Resolution.

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

AYES:
NOES:
ABSENT:
CONFLICTS:

the foregoing Resolution is hereby adopted this 23rd day of May, 2012.

James Harrison, President
Nipomo Community Services District
Board of Directors

ATTEST:

APPROVED AS TO FORM

Michael S. LeBrun, District General Manager
and Secretary to the Board

Jon S. Seitz, District Legal Counsel

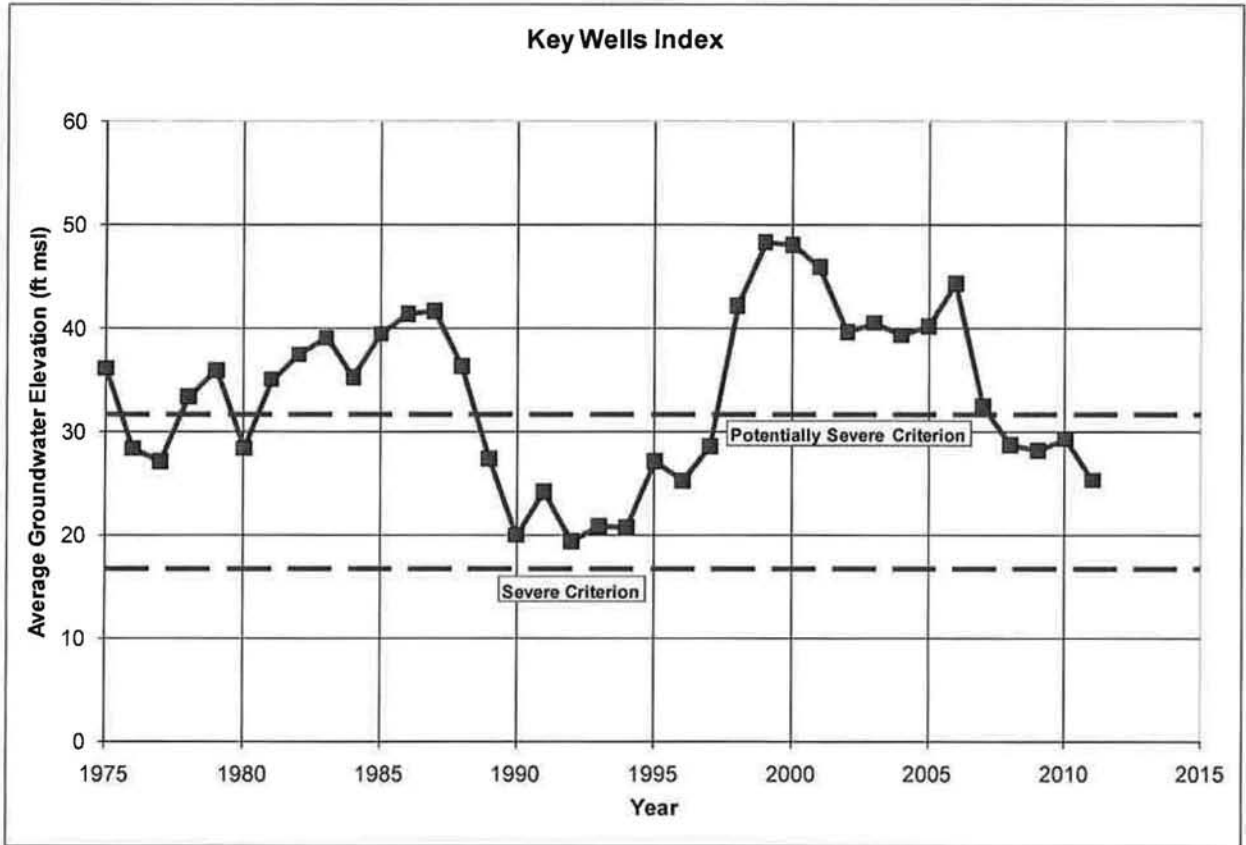


EXHIBIT A TO RESOLUTION 2012-