

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2013-_____

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**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT AUTHORIZING
USE OF FUNDS 700 AND 805 FOR FUNDING THE SUPPLEMENTAL
WATER PROJECT PHASE 1 AND MAKING FINDINGS THEREFORE**

WHEREAS, the Nipomo Community Services District ("District") is formed under the Community Services District Law (Govt. Code §61000 et seq.); and

WHEREAS, one of the powers of the District is to provide water for beneficial use for residents within District boundaries (Govt. Code §61100(a)); and

WHEREAS, the District was a stipulating party in the Santa Maria Groundwater litigation, lead case number CV770214, venue in the County of Santa Clara; and

WHEREAS, the litigation was settled by way of a stipulation. The stipulation provided that NCS D (District) is to deliver 2500 acre feet of supplemental water per year ("AFY") to the Nipomo Mesa Management Area (NMMA) of which the District is a part, and

WHEREAS, a Court has ordered the parties to comply with the stipulation; and

WHEREAS, the NMMA Technical Group, in its 2011 Annual Report, determined that the use of well water in the Nipomo Mesa Management Area is causing a depression creating conditions for sea water intrusion; and

WHEREAS, one purpose of the supplemental water project (the "Project") is to lessen the dependence upon wells for groundwater, which will become increasingly unreliable if the present trends continue; and

WHEREAS, the District contemplates development of Phase I of the Project, with a capacity of 650 AFY, by use of District funds and other means; and

WHEREAS, the District collects capacity charges from developers for appropriate purposes, including the development of water infrastructure capacity and supply, to support development of the District. Those funds are maintained in Fund 700; and

WHEREAS, the District Board of Directors finds that the use of these funds in connection with Phase 1 of the Project is consistent with the goals of Fund 700; and

WHEREAS, the District Board of Directors finds and determines that Phase 1 of the Project is the first of three phases that will provide 2500 AFY and when fully implemented will provide supplemental capacity in sufficient quantity for District residents and the Board finds and determines that the use of capacity charges from Fund 700 for the Phase 1 Project to provide supplemental water is consistent with the purpose of Fund 700 the use of capacity charges from Fund 700 for the Phase 1 Project provides supplemental water in sufficient capacity for District residents (see Paland: 179 Cal.App.4th 1358, 102 Cal.Rptr.3d 270 (2009); and

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WHEREAS, the District Board of Directors in its discretion has created Fund 805 titled Funded Replacement - Water; and

WHEREAS, under the purpose section for Fund 805, it states the following:

“The reserves can be used for short term and long term purposes. The objective of the Funded Replacement Fund is to provide monies for the current and future replacement of existing capital assets as they reach the end of their useful lives.”

WHEREAS, the NMMA Technical Group has determined that the water basin underneath the District and the Nipomo Mesa is in a potentially severe condition; and

WHEREAS, this condition affects long term reliance upon use of the wells drawing from the basin for the District's water supply; and

WHEREAS, the Project will in part replace the need for some wells that the District relies upon by bringing supplemental water onto the Nipomo Mesa; and

WHEREAS, the Project will reduce the District's need to refurbish and repair existing District wells; and

WHEREAS, The Board of Directors finds that the use of Fund 805 funds is consistent with the purpose of Fund 805 as it will aid in prolonging useful life of existing capital assets, delaying the need for future replacement and repair of existing capital assets and replacing those assets with supplemental water infrastructure; and

WHEREAS, to the extent that it is determined that portions of the Project are not within the scope of Fund 805 then, pursuant to Govt. Code §61112, the District Board of Directors make the following findings in regards to the use of funds from Fund 805:

- A. Fund 805 was created at the discretion of the District Board of Directors.
- B. Fund 805 contains approximately 5 million dollars.
- C. The Board of Directors determines that the amount of 4 million dollars is not needed for the purposes for which Fund 805 is designated and further finds that Fund 805 at the end of this fiscal year will have a balance of approximately 1 million dollars. Therefore the Board of Directors authorizes the re-designation and removal payment of 4 million dollars from this fund.
- D. The Board finds that the use of Fund 805 funds is consistent with the purpose of the Fund and removal of these funds from Fund 805 for the purposes of the Project is appropriate and that the remaining balance of Fund 805 of 1 million dollars is satisfactory for the District's current replacement needs.

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

1. The above recitation of facts and findings is true and correct and incorporated herein.
2. The District Board of Directors approves the use of Fund 700 capacity charges in the amount of \$1,744,000 for use for the Supplemental Water Project Phase 1.
3. The District Board of Directors approves the use of Fund 805 in the amount of \$4,000,000 for use for the Supplemental Water Project Phase 1.
4. The District Board of Directors authorizes the removal of \$4,000,000 from Fund 805 as the remaining balance is sufficient for current replacement needs.

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

AYES:
NOES:
ABSTAIN:
CONFLICTS:

the foregoing resolution is hereby passed and adopted this _____ day of April, 2013.

JAMES HARRISON
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

MICHAEL W. SEITZ
Deputy District Legal Counsel