

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: JUNE 7, 2013



NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION

**AUTHORIZATION OF THE NIPOMO COMMUNITY SERVICES DISTRICT
REVENUE CERTIFICATES OF PARTICIPATION (SUPPLEMENTAL
WATER PROJECT) SERIES 2013**

ITEM

It is recommended that the Board of Directors:

1. Adopt the following resolution:

A Resolution of the Board of Directors of the Nipomo Community Services District Public Facilities Corporation Approving Certain Documents in connection with the Execution and Delivery of Not to Exceed \$10,500,000 Nipomo Community Services District Revenue Certificates of Participation (Supplemental Water Project) Series 2013 and Authorizing the Taking of Certain Actions in Connection Therewith

then

2. Reconvene to the Nipomo Community Services District.

BACKGROUND

Supplemental Water Project. The District has been pursuing a water source to supplement its groundwater only supply since the early 1990's. Since 2004, the District has spent considerable time, effort and resources to complete the design, permitting, and environmental review of a water pipeline to intertie the District's water system with that of the City of Santa Maria (the "City") for the purpose of delivering supplemental water to the District and community (the "Project"). The Project also responds to the groundwater lawsuit that commenced in 1997 which required the District to obtain supplemental water (the "Stipulation").

Phase 1 of the Project ("Phase 1") will interconnect the District's water distribution system with the water distribution system of the City and will be capable of initially delivering approximately 650 acre-feet per year ("AFY") on average of supplemental water to the District. Delivery of a potential of approximately 1,000 AFY of supplemental water is possible depending on flow control adjustments. Phase 1 will allow the District to reduce pumping from existing wells to slow the depletion of groundwater and reduce the potential for seawater intrusion on the Nipomo Mesa as required by the Stipulation. Phase 1 will significantly increase the reliability of the District water supply by providing an additional source of water other than groundwater.

Phase 1 consists of approximately 4,800 lineal feet of 18 inch diameter ductile iron pipe (DIP) waterline, 2,600 lineal feet of 24 inch nominal inside diameter high-density polyethylene (HDPE) pipe under the Santa Maria River, 2,700 lineal feet of 24 inch diameter DIP waterline, a flow meter and flow control station, a 400-gallon per minute (gpm) pump station with two (2) pumps, a chloramination system, and related power, back-up power, controls and instrumentation systems, a pressure reducing station, and chloramination systems at four (4)

existing District production wells. The District currently intends that the future Phase 2 and Phase 3 of the Project will be funded on a pay-as-you-go basis from the supplemental water capacity fees derived from future development within the District and the District has no plans to incur any additional bonded indebtedness for these future phases.

The final Environmental Impact Report ("EIR") for the Project was certified by the District in April 2009 as the lead agency. In January 2010, the City as a responsible agency, adopted a statement of overriding considerations and made findings of consistency regarding the Final EIR. A supplemental EIR was certified by the District in April 2012.

On February 13, 2013 the Board authorized circulating bid documents for Phase 1 and approved a Financing Plan based on the Engineer's estimate for Phase 1. The District received bids for Phase 1 the week of March 24. The total estimated project cost of Phase 1 is \$17,503,160.

The current financing plan for Phase 1 calls for the execution of new Revenue Certificates of Participation (the "2013 Certificates"), to finance a portion of Phase 1. Net proceeds of the 2013 Certificates in the amount of \$9,000,000, along with a \$2,200,000 grant from the California Department of Water Resources, \$2,400,000 in existing funds from Fund #600 - Property Tax Fund, \$1,403,160 in existing funds from Fund #700 - Water Capacity Fund, \$1,500,000 in existing funds Fund #125 - the Water Fund, and \$1,000,000 in existing funds from Fund #500 - Supplemental Water Capital Fee Fund, for a total amount of \$17,503,160 will be allocated to complete Phase I.

2013 Certificates. It is proposed to finance a portion of Phase 1 by executing and delivering the not to exceed \$10,500,000 Revenue Certificates of Participation (Supplemental Water Project) Series 2013 (the "2013 Certificates"). The 2013 Certificates will be secured on a parity basis with the recently issued \$2,845,000 Water Revenue Refunding Bonds, Series 2013A (the "Refunding Bonds").

The District and Public Facilities Corporation (PFC) will enter into a new Installment Sale Agreement whereby the District will agree to purchase the portion of the Water system to be funded by the 2013 Certificates from Property Tax Revenues first and then Net Revenues of the Water Enterprise. The Installment Payments will be structured to correspond to the debt service on the 2013 Certificates. The term of the debt is proposed to be 30 years and will be structured to assure that the annual payments will be level. Total annual debt payments are expected to be approximately \$575,000 per year until 2033 depending on final bond rating and market conditions at time of sale. This is in addition to the \$228,800 (maximum annual debt service) for the Refunding Bonds. Total Debt Service on both issues is estimated at \$803,800. The COPS will have the standard 10 years of call protection from early bond redemption and the COPS will have a special 3 year extraordinary call if the Phase I Improvement Project is abandoned or otherwise not undertaken. In that event the COPs will be repaid from the unspent construction money, interest earnings and other District funds.

A standard bond debt service reserve fund will also be funded from Certificate proceeds or surety bond. A reserve fund serves to enhance the bond rating, cover the last debt payment and satisfy investor concerns. The District has also created a rate stabilization fund in the amount of \$400,000 from existing funds of the Water Enterprise to manage the need for future rate increases.

A Bond Rating has been applied for from Standard and Poor's Corporation. The Rating is expected to be announced on June 13, 2013. It is currently expected that the Water Enterprise system rating will be in the "A" category but there is no assurance of this. Bond insurance may also be considered, if the District is approved, and if shown to be cost effective in lowering interest cost net of the premium. Certificates are proposed to be sold on or about June 19 with a bond closing following shortly. The true interest rate on the debt is expected to be under 4.75% depending on the final bond rating and marketing conditions at time of sale. Due to the complexity of parts of the financing, it is currently proposed to sell the 2013 Certificates by negotiated sale. Staff recommends Citigroup Global Markets Inc., as underwriter.

It is appropriate at this meeting to consider for adoption the resolutions authorizing the execution and delivery of the Certificates. Resolutions for the District and PFC are attached which would authorize the execution and delivery of not to exceed \$10,500,000 of revenue Certificates by the District. The Certificates will be sold on a negotiated basis at a true interest cost of not to exceed 5.0%. The resolutions also approve the various documents in connection with the execution and delivery of the Certificates. Fulbright & Jaworski L.L.P., has acted as special counsel and disclosure counsel, C.M. de Crinis & Co., as financial advisor, and The Bank of New York Mellon Trust Company, N.A., as trustee.

General Summary of Security: Certificates are secured by revenues received by the PFC from the District, namely the Installment Payments under the Installment Sale Agreement. Each owner of the Certificates will have a proportionate share of an undivided interest in the installment payments. The installment payments have an interest and principal component and will be payable semiannually. Under the Installment Sale Agreement, the District pledges its Net Revenues, including, first, the Property Tax Revenues, to the payment of the Installment Payments, on a parity basis with the debt service for the Refunding Bonds. Net Revenues also include gross revenues of the enterprise minus operating and maintenance costs. The District covenants to maintain its rates and charges at a specified level to have sufficient Net Revenue to make Installment Payments. There is also a reserve fund securing the Certificates.

Trust Agreement: The Trust Agreement is one of the key legal documents that lays out the legal structure and terms of the financing. It specifies payment dates, maturity dates of the Certificates; revenues and accounts specifically pledged to the repayment of the Certificates; flow of funds; default and remedy provisions; defeasance provisions in the event the Certificates are prepaid; and covenants of the PFC and the District. The Trust Agreement is drafted by Special Counsel and executed by the PFC, the District and Trustee.

Installment Sale Agreement: The Installment Sale Agreement is the other key legal document that contains the pledge of Net Revenues, including Property Tax Revenues, by the District to make installment payments. The installment payments are on a parity basis with the debt service for the Refunding Bonds. It specifies payment dates; revenues and accounts specifically pledged to the repayment of the Certificates; parity obligation tests; rate covenants and further covenants of the PFC and the District. It is drafted by Special Counsel and executed by the PFC and the District.

Official Statement: The Official Statement describes the security and discloses potential risks to prospective investors. It will generally describe the sources of payment for the Certificates, the nature of the improvement project, the financial condition of the District's water enterprise, the economic and demographic characteristics of the District, and inherent known risk factors associated with the security. It's important that this document not contain any material misstatements or omissions. The Preliminary Official Statement (often referred to as the

“POS”) is distributed by the underwriter to prospective investors prior to the bond sale so that they can make informed purchase decisions. The POS should be as close to final as possible with the actual terms of the pricing (interest rates and principal amounts) left necessarily blank. The Final Official Statement (FOS) will be prepared shortly after the bond sale and must be available in time for bond closing. The POS and FOS are drafted by Special Counsel, acting as disclosure counsel and is executed by the District.

Assignment Agreement. Under this agreement the PFC assigns the Installment Payments it receives from the District to the Trustee for payment as debt service to the Owners of the 2013 Certificates. This document is drafted by Special Counsel and executed by the PFC and the Trustee.

Agency Agreement: This agreement provides that the PFC appoints the District as its agent to construct the portion of Phase 1 financed by the Certificate proceeds. This document is drafted by Special Counsel and executed by the District and the PFC.

Continuing Disclosure Agreement: This agreement outlines the updated information related to the security that the District will agree to provide to the bond markets. Securities and Exchange Commission Rule 15c2-12 requires that certain disclosure be undertaken by the District. Disclosure is required annually, and on an exceptional basis for any major “material” event. This document is drafted by Special Counsel, acting as disclosure counsel, and executed by the District and the Trustee.

Bond Purchase Agreement: This agreement between the District and Citigroup Global Markets Inc., as the underwriter for the 2013 Certificates. The 2013 Certificates will be sold on a negotiated basis at a true interest rate of not to exceed 5.0% and with an underwriter’s discount of not to exceed 1.25% and a principal amount of not to exceed \$10,500,000. The sale of the 2013 Certificates is scheduled on or about June 19. The underwriter commits to purchase the 2013 Certificates at closing at the agreed upon prices and amounts subject to certain closing conditions. This document is drafted by Special Counsel and executed by the District and the Underwriter.

More specific details of the financing can be found in the drafts of the documents referenced above.

It is appropriate at this meeting to consider for adoption the resolutions of the District and PFC authorizing the execution and delivery of the Certificates.

FISCAL IMPACT

Total annual debt payments for the Certificates are expected to be approximately \$575,000 per year through 2032 and then \$803,300 for the remaining term. The total term is thirty years payable first from Property Tax Revenues and then from other net revenues of the Water Enterprise.

STRATEGIC PLAN

Strategic Plan Goal 1.2 – Secure New Water Supplies

Strategic Plan Goal 6.1 – Operate all enterprise funds to be financially sound

Strategic Plan Goal 6.3 – Ensure that decisions consider short and long term fiscal impacts

RECOMMENDATION

Staff recommends that the Board of Directors of the Nipomo Community Services District Public Facilities Corporation adopt Resolution 2013-07 approving:

- A TRUST AGREEMENT
- AN INSTALLMENT SALE AGREEMENT
- AN ASSIGNMENT AGREEMENT
- AN AGENCY AGREEMENT
- A PRELIMINARY OFFICIAL STATEMENT

then

Reconvene to Nipomo Community Services District.

ATTACHMENTS

- A. RESOLUTION 2013-07
- B. TRUST AGREEMENT*
- C. INSTALLMENT AGREEMENT*
- D. AGENCY AGREEMENT*
- E. ASSIGNMENT AGREEMENT*
- F. PRELIMINARY OFFICIAL STATEMENT*

*SEE ITEM E-1 OF NCSD PORTION OF AGENDA FOR ATTACHMENT

JUNE 12, 2013

ITEM B

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION
RESOLUTION NO. _____**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION APPROVING CERTAIN DOCUMENTS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF NOT TO EXCEED \$10,500,000 NIPOMO COMMUNITY SERVICES DISTRICT REVENUE CERTIFICATES OF PARTICIPATION (SUPPLEMENTAL WATER PROJECT) SERIES 2013 AND AUTHORIZING THE TAKING OF CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Nipomo Community Services District (the "District") owns and operates that certain Water System referred to herein as the "Enterprise"; and

WHEREAS, the District desires to undertake certain capital improvements, including the acquisition and construction of certain water improvements consisting of Phase 1 of a water pipeline project to intertie the District's water system with that of the City of Santa Maria (the "City") for the purpose of delivering supplemental water to the District and community (the "Project"); and

WHEREAS, the District has determined that in order to accomplish such financing it is necessary and desirable that the Nipomo Community Services District Public Facilities Corporation (the "Corporation") cause the Project to be constructed and the financed improvements sold to the District pursuant to the Installment Sale Agreement dated as of June 1, 2013 (the "Installment Sale Agreement"), by and between the Corporation, as seller, and the District, as purchaser; and

WHEREAS, the Corporation has agreed to assist the District; and the District proposes to cause the execution and delivery of the Revenue Certificates of Participation (Supplemental Water Project) Series 2013 (the "Certificates"); and

WHEREAS, the documents specified below have been filed with the Corporation and the members of the Board, with the aid of its staff, have reviewed said documents; and

WHEREAS, the Corporation has duly considered the execution and delivery of the Certificates, and wishes at this time to approve the execution and delivery of the Certificates.

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

Section 1. The Revenue Certificates of Participation (Supplemental Water Project) Series 2013 (the "Certificates") are hereby approved by the Corporation pursuant to and in accordance with the provisions of the Trust Agreement, as hereinafter defined.

Section 2. The below enumerated documents are hereby approved, and the Chairperson, or Executive Director, or the written designee of any such official (a "Responsible Officer"), is hereby authorized and directed to execute said documents, with such changes,

**Nipomo Community Services District
Public Facilities Corporation
Resolution No. 2013-_____**

**Resolution of the Board of Directors of the Nipomo Community
Services District Public Facilities Corporation Approving Certain
Documents in Connection with the Execution and Delivery of Not To
Exceed \$10,500,000 Nipomo Community Services District Revenue
Certificates of Participation (Supplemental Water Project) Series
2013 and Authorizing the Taking of Certain Actions in Connection
Therewith.**

insertions and omissions as may be approved by such officials, with the advice of counsel to the Corporation and Special Counsel, and the Secretary or Assistant Secretary is hereby authorized and directed to attest to such official's signature:

- (a) an Installment Sale Agreement, by and between the District, as purchaser, and the Corporation, as seller, (the "Installment Sale Agreement"), pursuant to which the District will purchase from the Corporation the improvements of the Enterprise financed by the Certificates; and
- (b) a Trust Agreement, by and among the Corporation, the District and The Bank of New York Mellon Trust Company, N. A., as trustee (the "Trustee"), relating to the execution and delivery of the Certificates, evidencing the direct, undivided, fractional interests of the owners thereof in installment payments to be made by the District under the Installment Sale Agreement (the "Trust Agreement"); and
- (c) an Assignment Agreement, by and between the Corporation and the District (the "Assignment Agreement"), and
- (d) an Agency Agreement, by and between the Corporation and the District (the "Agency Agreement").

Section 3. The Corporation hereby approves the Preliminary Official Statement relating to the Certificates, substantially in the form on file with the Secretary and presented to the Board at this meeting, with such revisions, amendments and completions as shall be approved by the District in order to make the Preliminary Official Statement final as of its date, except for the omission of certain information, as permitted by Section 240.15c2-12(b)(1) of Title 17 of the Code of Federal Regulations ("Rule 15c2-12").

Section 4. The Chairperson, the Executive Director, the Secretary, the Assistant Secretary and all other appropriate officials of the Corporation are hereby authorized and directed, for and in the name and on behalf of the Corporation, to do any and all things and take any and all other actions, including the publication of any notices necessary or desirable in connection with the sale, execution and delivery of the Certificates, procurement of municipal bond insurance and reserve fund surety bond, and execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, deem necessary or advisable in order to consummate the lawful sale, execution and delivery of the Certificates and the consummation of the transactions as described herein.

Section 5. This resolution shall take effect immediately.

**Nipomo Community Services District
Public Facilities Corporation
Resolution No. 2013-____**

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Services District Public Facilities Corporation Approving Certain
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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 _____, 2013.

JAMES HARRISON
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

MICHAEL W. SEITZ
District Legal Counsel