NIPOMO COMMUNITY SERVICES DISTRICT

AGENDA

OCTOBER 15, 1997 7:00 P.M.

BOARD ROOM 148 S. WILSON STREET NIPOMO, CA

BOARD MEMBERS
KATHLEEN FAIRBANKS, **PRESIDENT**
ALEX MENDOZA, **VICE PRESIDENT**
AL SIMON, **DIRECTOR**
ROBERT BLAIR, **DIRECTOR**
GENE KAYE, **DIRECTOR**

STAFF
DOUGLAS JONES, **General Manager**
DONNA JOHNSON, **Secretary to the Board**
JON SEITZ, **General Counsel**

CALL TO ORDER AND FLAG SALUTE

ROLL CALL

APPROVAL OF MINUTES

1. REGULAR MEETING OF OCTOBER 1, 1997

PUBLIC COMMENTS PERIOD

2. PUBLIC COMMENTS
   Public comments on matters other than scheduled items. Presentations limited to three (3) minutes

BOARD ADMINISTRATION (The following may be discussed and action may be taken by the Board.)

3. PUBLIC HEARING – ENVIRONMENTAL REVIEW OAKGLEN/MALLAGH WATER LINE
   Review environmental Negative Declaration/proposed water line between Oakglen and Mallagh Ave.

4. COUNTY WATER RESOURCES ADVISORY COMMITTEE GROUNDWATER PROPOSAL
   Review WRAC proposed policy on groundwater transfers

5. NEW BUILDING JANITORIAL SERVICE
   Review proposals for janitorial service for new office building

6. APPROVAL OF APPRAISAL SERVICE
   Review service for appraising water line and tank site easements

6a. OVERPAYMENT OF NIPOMO SEWER PROJECT CLEAN WATER GRANT
   Review correspondence from State on sewer grant

FINANCIAL REPORT

7. APPROVAL OF WARRANTS
8. THIRD QUARTER INVESTMENT REPORT
   Review District's third quarter investment Report

OTHER BUSINESS

9. MANAGER'S REPORT
   1. Senator O'Connell correspondence on taxes
   2. Cal Water Journal and US Water News articles on El Niño
   3. Special District Law Briefs
   4. Letter commending District employees

10. DIRECTORS COMMENTS
11. PUBLIC COMMENTS

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL

Existing litigation GC§ 54956.9
1. NCSD vs. Shell Oil, et. al. Case No. CV 077387
Conference with real property negotiator, Dana-Doty water line easement, GC§54956.8
*GC§ refers to Government Code Sections

ADJOURN

NIPOMO COMMUNITY SERVICES DISTRICT

MINUTES

OCTOBER 1, 1997 7:00 P.M.

BOARD ROOM 148 S. WILSON STREET NIPOMO, CA

BOARD MEMBERS
KATHLEEN FAIRBANKS, **PRESIDENT**
ALEX MENDOZA, **VICE PRESIDENT**
AL SIMON, **DIRECTOR**
ROBERT BLAIR, **DIRECTOR**
GENE KAYE, **DIRECTOR**

STAFF
DOUGLAS JONES, **General Manager**
DONNA JOHNSON, **Secretary to the Board**
JON SEITZ, **General Counsel**

CALL TO ORDER AND FLAG SALUTE

President Fairbanks called the October 1, 1997 Regular Meeting to order at 7:04 p.m. and led the flag salute.

ROLL CALL

Upon Roll Call Director Blair was absent but arrived at 7:12 p.m. All other Board members were present.

APPROVAL OF MINUTES

1. REGULAR MEETING OF SEPTEMBER 17, 1997

Upon motion of Director Simon and seconded by Director Mendoza, the Board unanimously approved the minutes of the September 17, 1997 Regular Meeting.

PUBLIC COMMENTS PERIOD

2. PUBLIC COMMENTS
Public comments on matters other than scheduled items. Presentations limited to three (3) minutes

There were no Public Comments.

BOARD ADMINISTRATION (The following may be discussed and acted on by the Board.)

3. DISTRICT 96-97 FY AUDIT REPORT
Mr. Carlos J. Reynoso, CPA, will present the Audit Report for the Fiscal year June 30, 1997.

Mr. Carlos Reynoso presented the Audit Report for Nipomo Community Services District for the Fiscal Year ending June 30, 1997. Upon motion of Director Kaye and seconded by Director Blair, the Board unanimously accepted the audit report. Director Blair added to commend staff for a job well done.

4. NEW OFFICE BUILDING
Mr. Barry Williams, Architect, will make a report on the status of the new office building.

Mr. Barry Williams, architect and construction consultant for the new office building, reported to the Board that the building was substantially complete. There is still a punchlist of items needing completion. Meetings are tentatively scheduled to complete the punchlist items. Director Mendoza does not like the landscaping and will work toward a plan for some changes.

5. STANDARD IMPROVEMENT SPECIFICATIONS AND DRAWINGS
Consider adoption of District's own Standard Improvement Specifications & Drawings
Mr. Jones explained that the Standard Improvement Specifications & Drawings are now complete. Developers and engineers will be required to follow these standards when designing and constructing improvements in the District. There were no public comments. Upon motion of Director Kaye and seconded by Director Mendoza, the Board unanimously approved the Standard Improvement Specifications & Drawings as Resolution 97-624.

RESOLUTION NO. 97- 624
RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING STANDARDS AND SPECIFICATIONS FOR THE DISTRICT

FINANCIAL REPORT

6. APPROVAL OF WARRANTS

Upon motion of Director Kaye and seconded by Director Blair, the Board unanimously approved the Warrants presented at the October 1, 1997 meeting.

OTHER BUSINESS

7. MANAGER'S REPORT

Manager Doug Jones presented information of the following items.

1. Article on the Endangered Species Act
2. Annexation No. 15 (Newdoll) is now complete.

8. DIRECTORS COMMENTS

Director Blair attended the CSDA meeting on September 24-26 in Anahiem.
Kit Carter was elected to the CSDA Board of Directors.
Director Fairbanks asked what projects were current.

9. PUBLIC COMMENTS

Open House for the new building will be October 21, 1997, 4:00 p.m. to 7:00 p.m.

At 8:35 p.m. Jon Seitz, District Legal Counsel, explained the need to adjourn to Closed Session.

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL

Existing litigation GC§ 54956.9
1. NCSD vs. Shell Oil, et. al. Case No. CV 077387
Conference with real property negotiator, Dana-Doty water line easement, GC§54956.8
*GC§ refers to Government Code Sections

The Board came back into Open Session and had no reportable action.

ADJOURN

President Fairbanks adjourned the meeting at 9:17 p.m.

AGENDA ITEM 3
OCT 15 1997

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

OAKGLEN-MALLAGH
WATER LINE IMPROVEMENT

The Oakglen-Mallagh water line project consists of a new water line beginning at the intersection of Oakglen and Pioneer Avenues and extending easterly to Mallagh Ave. This project is part of the District's Water Master Plan developed by Boyle Engineers. This will improve the water transmission on an easterly/westerly direction of the District. Negotiations for Right-of-Way easements for the waterline are currently being pursued. The engineering plans and specifications are being completed. Construction of this project is planned for August 1998.

In compliance with the environmental considerations, staff has determined that there will be no significant effect on the environment for this project. A Draft Negative Declaration has been prepared and approved by the Board on July 10, 1997 and as been sent to agencies for their comments. A Public Hearing has been scheduled for the Board meeting of October 15, 1997, to take public testimony in regards to this project. Attached is the Environmental Report for this project prepared by Cannon Associates. The District is in receipt of the State Clearinghouse No. 97071060 for this project.

After taking Public comments and the Hearing closed, the Board may consider adopting Resolution No. 97-OM-Neg Dec.

Approving the Resolution does the following:

1. Adopts the negative Declaration for the Oakglen-Mallagh water line project.
2. Authorize the General Manager to file the Notice of Determination
3. Approve the State's Fish & Garnes Certificate of Fee Exemption

The above items are presented to your Honorable Board for review & approval.

Attached are excerpts from the red-legged frog, biological and heritage reports. The full reports are in the District office for review.

C:W:\board2\h20line.DOC

RESOLUTION NO. 97- neg dec

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING AN ENVIRONMENTAL NEGATIVE DECLARATION AND AUTHORIZING THE GENERAL MANAGER TO FILE A NOTICE OF DETERMINATION FOR THE OAKGLEN-MALLAGH WATERLINE PROJECT

WHEREAS, the Nipomo Community Services District is in the process of implementing its water Master Plan by installing the Oakglen-Mallagh water line, and

WHEREAS, the California Environmental Quality Act (CEQA) requires the District to assess the impact of such development on the environment, circulate such assessment to interested agencies and the public at large and hold a public hearing on the findings thereof, and

WHEREAS, a hearing for this project has been appropriately noticed under the Brown Act and the California Environmental Quality Act, and

WHEREAS, the Nipomo Community Services District has determined, based on its independent judgement and review, that there is no substantial evidence that the Project may have a significant effect on the environment, and

WHEREAS, on Wednesday, October 15, 1997, the District held a Public Hearing on the proposed Environmental Declaration for the Project and there were no comments or comments that could not be mitigated.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED THAT THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT does hereby adopt the Negative Declaration for the Oakglen-Mallagh Waterline Project and authorize the General Manager to file a Notice of Determination in compliance with Section 21108 or 21152 of the Public Resource Code and the State Department of Fish & Game, Certificate of Fee Exemption.

PASSED AND ADOPTED by the Board of Directors of the Nipomo Community Services District this 15th day of October, 1997, on the following roll call vote:

AYES: Directors _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

_____
Kathleen Fairbanks, Vice President
Nipomo Community Services District

ATTEST:

_____
Donna K. Johnson
Secretary to the Board

APPROVED AS TO FORM:

_____
Jon S. Seitz
District Legal Counsel

C:W:RES\97-negdec

Notice of Determination

TO: County Clerk
San Luis Obispo County
Government Center Room 385
San Luis Obispo, CA 93408

FROM: Nipomo Community
Services District
P O Box 326
Nipomo, CA 93444-0326

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

PROJECT TITLE: Oakglen-Mallagh Waterline Project
STATE CLEARINGHOUSE NUMBER: 97071060

CONTACT PERSON: Doug Jones **TELEPHONE:** (805) 929-1133

PROJECT LOCATION: Nipomo

PROJECT DESCRIPTION: Construct a water line between Oakglen and Mallagh Streets

This is to advise that the **NIPOMO COMMUNITY SERVICES DISTRICT** has approved the above described project and has made the following determinations regarding the above described project on October 15, 1997.

1. The Project will not have a significant effect on the environment.

2. An Environmental Impact Report (EIR) was prepared for this project pursuant to the provisions of CEQA.

   A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

   The EIR or Negative Declaration and record of project approval may be examined at:

   Nipomo Community Services District Office
   148 S. Wilson Street
   Nipomo, CA 93444

3. A Statement of Overriding Considerations was not adopted for this project.

Date Rec'd for Filing: _____ Signature: _____
General Manager

C:\W\SOUTHLAND\DETERMIN

CALIFORNIA DEPARTMENT OF FISH AND GAME

CERTIFICATE OF FEE EXEMPTION

De Minimis Impact Finding

Project Title/Location

Nipomo Community Services District
Oakglen-Mallagh Water Line Project
Post Office Box 326
Nipomo, California 93444-0326

State Clearinghouse No. 97-071060

Project Description: Construct a waterline between Oakglen and Mallagh Streets

Findings of Exemption:

Based upon the evidence in the initial environmental study, which has been completed on the proposed improvement, the Board of Directors of the Nipomo Community Services District have found no evidence that this project will have an adverse effect on wildlife resources or the habitat upon which wildlife depends.

Certification:

I hereby certify that the lead agency has made the above findings of fact and that based upon the initial study and hearing record the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

_____

Doug Jones
General Manager
Nipomo Community Services Dist

Date _____

C:W\WATER\CLEARHOS.DOC

A. INTRODUCTION

1. Scope

Nipomo Community Services District (NCSD) has retained the Morro Group to conduct a presence/absence survey for California red-legged frogs (*Rana aurora draytonii*) at the proposed NCSD waterline project location shown on Figure 1. The U.S. Fish and Wildlife Service (USFWS) *Guidance on Site Assessment and Field Surveys for California Red-legged Frogs* (USFWS 1997) protocol was performed in and around the proposed project site.

2. Project Description

The Nipomo Community Services District (NCSD) has proposed construction of an additional waterline in order to meet increasing demands. A portion of this waterline would require two stream crossings at Nipomo Creek and the other Deleissigues Creek, a tributary to Nipomo Creek.

The crossing at Nipomo Creek requires a 40-foot long crossing and Deleissigues Creek requires a 20-foot crossing. In addition, a small depressional area located within the annual grassland which separates the two streams contains an area which meets the United States Army Corps of Engineers (USACE) parameters of Waters of the United States. The total disturbed area of potential Waters of the U.S. resulting in construction of the proposed pipeline is approximately 0.185 acres. The approximate volume from trenching is 25 cubic yards. Due to the steep banks, grading will be required for construction access into Deleissigues Creek to enable equipment to cross the creek within the construction area. The grading volume required to gain access has yet to be determined.

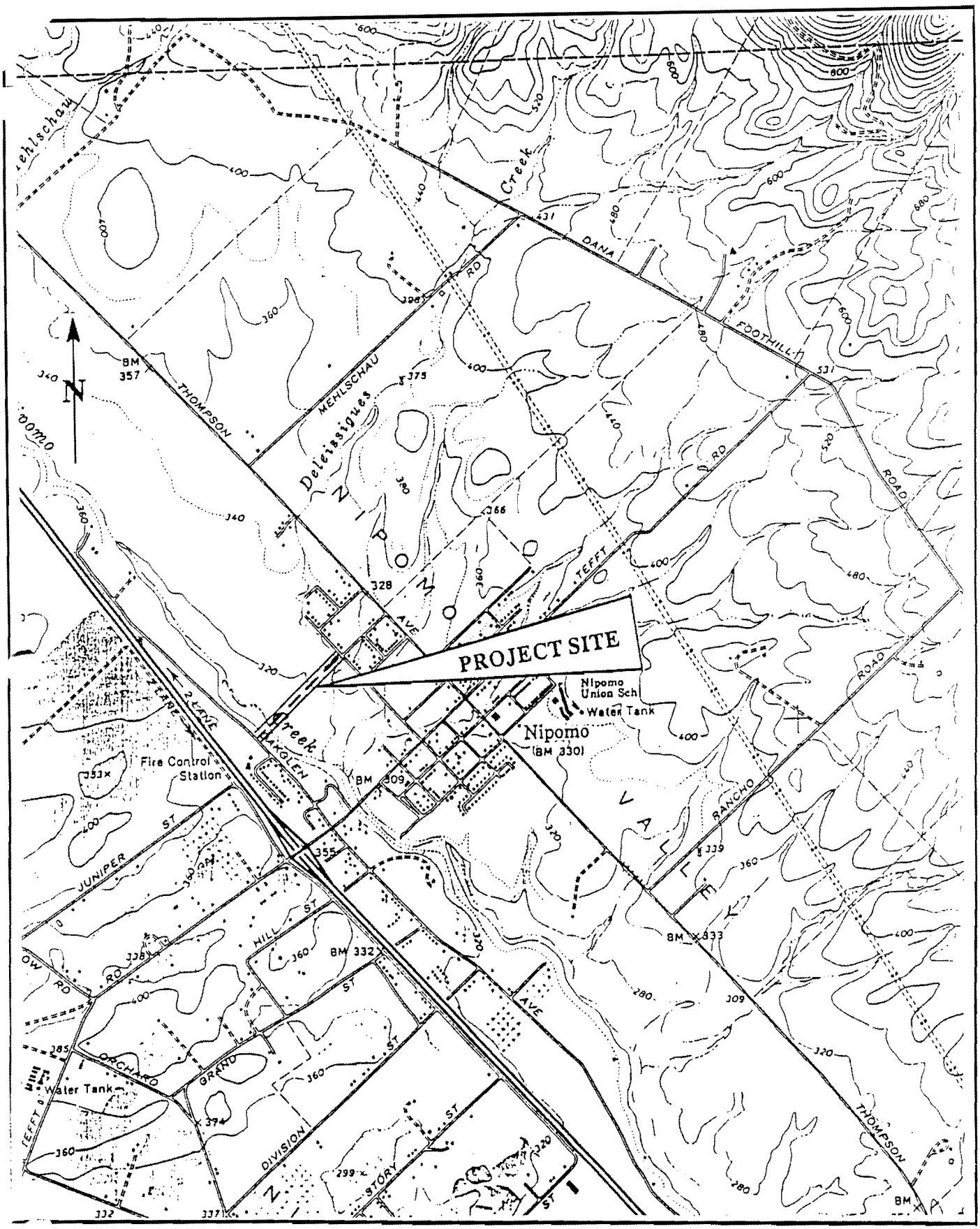
Construction of the pipeline is anticipated to require the removal of a maximum of a fifty foot wide area using equipment such as small bulldozers, rubber-tire front-end loaders and chainsaws. A backhoe and laborers will lay a 12-inch waterline pipe into the trench. The trench will be backfilled with imported sand and native soil, then mechanically tamped to match the original grade. A front-end loader will load any remaining spoils into trucks to be hauled away. The stream crossing at Deleissigues Creek may warrant approximately 100 linear feet of slope stabilization due to the bank erosion caused by the creek. The existing left bank is nearly vertical, stabilization would entail construction of a 2:1 slope and placement of rock slope protection two feet wide by five feet high on the slope with a rock filled key, approximately tow feet wide by four feet deep along the toe of slope. It is anticipated that the total volume due to slope stabilization would be less than one cubic yard per linear foot below the ordinary high water mark.

The proposed project route is located within the community of Nipomo between Oakglen Avenue and Mallagh Avenue (see Figure 1). Prior to the pipeline reach which crosses Nipomo and Deleissigues Creeks, the pipeline would parallel Oakglen Avenue trending northwest. Approximately 450 feet northwest of the intersection of Pioneer Street and Oakglen Avenue, the pipeline would veer northeast.

B. SURVEY METHODOLOGY

1. Literature Survey

Special-status species are plants and animals that are either listed as endangered or threatened under the Federal or California Endangered Species Act, or considered rare (but not legally listed) by resource agencies, professional organizations, and the scientific community. Special status wildlife species include:



Morro Group, Inc. Environmental Services • Monitoring • Planning	**NIPOMO COMMUNITY SEVICES DISTRICT** Project Location Map; USGS, Nipomo Quadrangle	**Figure 1**

- Animals listed or proposed for listing as threatened or endangered under the Federal Endangered Species Act
- Animals listed or proposed of rlisting as threatened or endangered under the Califonria Endangered Species Act
- Animals of special concern to the Califonria Department of Fish and Game

The Federal Endangered Species Act (ESA) of 1973 (50 CFR 17) provides legal protection for plant and animal taxa that are classified as either threatened or endangered under the ESA. The ESA requires Federal agencies to make a finding on Federal actions, as to the potential the proposed action has to jeopardize the continued existence of any listed species. Section 9 of the ESA prohibits "take" of any species listed as threatened or endangered.

A search of the California Department of Fish and Game Natural Diversity Data Base (CNDDB) was conducted to identify known and reported occurrences of special-status wildlife species which might occur in the vicinity of the proposed project.

2. Survey Protocol

California red-legged frogs historically occurred from Marin County, California to Baja California. Mexico. Due to a decline in their range, the California red-legged frog was federally listed as threatened, under the Endangered Species Act of 1973, on June 24, 1996 (*Federal Register* 25813). The California red-legged frog is a large (85-138 mm) reddish/brown frog with variable red pigment on the ventral surfaces (Jennings & Hayes 1994). They occur in varied habitats during their life cycle (Jennings & Hayes 1994). California red-legged frog eggs are usually laid on emergent vegetation (Jennings & Hayes 1994). The breeding areas include lagoons, streams. ponds, and even siltation or irrigation ponds (USFWS 1997). Tadpoles usually stay in these areas until metamorphosis (USFWS 1997). Subadults and adult California red-legged frogs may travel 1.6 km upstream or downstream or dozens of meters away from water (USFWS 1997). California red-legged frogs are nocturnal although subadults are sometimes active during the day (Jennings & Hayes 1994). Therefore, the USFWS (1997) California red-legged frog protocol suggests two night-surveys and two day-surveys and a habitat assessment in and around the project site.

3. Field Survey

Two day and three night-surveys, approximately 4 fours long for each survey, were conducted for the California red-legged frog, according to USFWS (1997) protocol. The day-surveys included walking on the shore or in the water, and visually scanning all aquatic habitats. General site conditions and presence of special-status wildlife species were noted. The night-surveys covered potential California red-legged frog habitat, identified during the day-surveys, using flashlights or headlamps to spot California red-legged frogs through eyeshine.

C. SURVEY RESULTS

1. Literature Survey

A CNDDB literature search identified several special-status wildlife species known to occur within the Nipomo quadrangle area and areas located in the vicinity of the project site. The species identified are shown in Table 1.

2. Field Surveys

Day-surveys of the project site were conducted on August 9 and 11, 1997 and night-surveys were conducted on August 11, 25, and 28, 1997. The area around the project site is a meandering, heavily shaded, perennial creek surrounded by agricultural fields and private homes. The riparian corridor is approximately 5 meters on each side of the stream. The tree layer is approximately 90 percent in cover, consisting mainly of willows (*Salix* spp.) with some coast live oaks (*Quercus agrifolia*) and California sycamores (*Platanus racemosa*). The shrub layer cover is approximately 80 percent, consisting mainly of willows (*Salix* spp.), castor bean (*Ricinus communis*), and poison hemlock (*Conium maculatum*). The herbaceous layer is approximately 60 percent, consisting mainly of German ivy (*Senecio mikanioides*), stinging nettles (*Urtica holosericea*), monkey flower (*Mimulus* spp.), poison oak (*Toxicodendron diversilobum*), and bulrush (*Scirpus microcarpus*). There are abundant aquatic invertebrates present, including mosquito larvae (*Aedes* spp.), and water striders (*Gerris remigis*). Example photos are shown in Appendix B.

The streams average water depth was 0.3 meters with a maximum depth of 1 meter. Observed high water marks indicate that high flows do occur in the watershed. The stream habitat is mostly runs with very few pools. Stream substrates were mostly boulders with some cobble. The banks were very steep (in some places 90 percent slope) and unstable.

No special-status species were seen during day or night-surveys. The only amphibian species observed was the Pacific tree frog (*Hyla regilla*). Fishes observed include, possible threespined stickleback (*Gasterosteus aculeatus*).

Table 1

Special-Status Wildlife Species Which May Occur in the Vicinity of the Nipomo Community Services Project

Common Name	Scientific Name	Federal Status	State Status
Cooper's hawk	*Accipiter cooperii*	NS	Special Concern
Prairie Falcon	*Falco mexicanus*	NS	Special Concern
Southwestern pond turtle	*Clemmys marmorata pallida*	NS	Special Concern
Two-stripped garter snake	*Thamnophis hammondii*	NS	Special Concern
California red-legged frog	*Rana aurora draytonii*	Threatened	NS

NS = no status

3. Habitat Assessment

Jennings and Hayes (1994) indicate that California red-legged frog habitat has dense riparian vegetation with deep slow-moving or still water. Ephemeral streams can contain California red-legged frogs, although populations usually disappear once the water disappears (Jennings and Hayes 1994). The riparian vegetation is mostly willows, cattails, or bulrushes some of which may be submerged (Jennings and Hayes 1994).

Nipomo Creek does contain some habitat to support a California red-legged frog population. The project area has a dense riparian vegetation of willows with some bulrushes, and flows perennially; however, the water depth may not be deep enough or there may not be enough emergent vegetation to support a population. Jennings and Hayes (1994) also indicate that California red-legged frogs may be sensitive to water quality changes caused by herbicides and pesticides. Water quality may be jeopardized in Nipomo Creek due to the surrounding agricultural fields.

D. RECOMMENDED MITIGATION MEASURES

Preconstruction surveys did not find any California red-legged frogs even though the project area does contain some California red-legged frog habitat. Because of the potential for California red-legged frogs, presence should be assumed during construction. Mitigation measures are recommended as follows:

1. A night-survey for California red-legged frogs should be conducted the evening before construction commences.
2. Prior to project start-up a worker education program should be conducted on California red-legged frogs and the Endangered Species Act. This program can be combined with the initial start-up meeting or tailgate meeting.
3. No pets should be allowed at the construction site.
4. Erosion control measures should be implemented during construction and construction activities should be limited to dry weather to avoid impacts to wetland habitats related to increased runoff and sedimentation at the project site.
5. During construction, all cleaning and refueling of equipment and vehicles should be avoided within the vicinities of the existing drainage and associated wetland habitat.
6. Following completion of construction-related activities, all disturbed and barren areas should be revegetated with appropriate native vegetation to reduce the risk of erosion and sedimentation in adjacent drainage areas.

A. BACKGROUND AND PHYSICAL SETTING

1. Background

The Nipomo Community Services District (NCSD) has proposed construction of an additional waterline in order to meet increasing demands. A portion of this waterline would require two stream crossings at Nipomo Creek and the other Deleissigues Creek, a tributary to Nipomo Creek.

The crossing at Nipomo Creek requires a 40-foot long crossing and Deleissigues Creek requires a 20-foot crossing. In addition, a small depressional area located within the annual grassland which separates the two streams contains an area which meets the United States Army Corps of Engineers (USACE) parameters of Waters of the United States. The total disturbed area of potential Waters of the U.S. resulting in construction of the proposed pipeline is approximately 0.185 acres. The approximate volume from trenching is 25 cubic yards. Due to the steep banks, grading will be required for construction access into Deleissigues Creek to enable equipment to cross the creek within the construction area. The grading volume required to gain access has yet to be determined.

Construction of the pipeline is anticipated to require the removal of a maximum of a fifty foot wide area using equipment such as small bulldozers, rubber-tire front-end loaders and chainsaws. A backhoe and laborers will lay a 12-inch waterline pipe into the trench. The trench will be backfilled with imported sand and native soil, then mechanically tamped to match the original grade. A front-end loader will load any remaining spoils into trucks to be hauled away. The stream crossing at Deleissigues Creek may warrant approximately 100 linear feet of slope stabilization due to the bank erosion caused by the creek. The existing left bank is nearly vertical, stabilization would entail construction of a 2:1 slope and placement of rock slope protection two feet wide by five feet high on the slope with a rock filled key, approximately tow feet wide by four feet deep along the toe of slope. It is anticipated that the total volume due to slope stabilization would be less than one cubic yard per linear foot below the ordinary high water mark.

2. Physical Setting

The proposed project route is located within the community of Nipomo between Oakglen Avenue and Mallagh Avenue. Prior to the pipeline reach which crosses Nipomo and Deleissigues Creeks, the pipeline would parallel Oakglen Avenue trending northwest. Approximately 450 feet northwest of the intersection of Pioneer Street and Oakglen Avenue, the pipeline would veer northeast.

The pipeline would pass through three separate vegetative communities along this alignment, beginning at Oakglen Avenue trough Mallagh Street these communities occur as follows: coastal scrub; riparian woodland (Nipomo Creek); annual grassland; riparian woodland (Deleissigues Creek) and annual grassland (refer to Figure 1). Four soil types are found within the study area; from Oakglen Avenue to Mallagh Avenue along the pipeline alignment and are as follows from west to east: Oceano sand, 9 to 30 percent slopes; Marimel silty clay loam; drained; Cropley clay, 0 to 2 percent slopes; and, Cropley clay 2 to 9 percent slopes.

B. METHODS

1. Literature Survey

A search of the California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDB) was conducted to identify known and reported occurrences of special-status species and sensitive habitats within the Nipomo U.S. Geological Survey (USGS) 7.5-minute quadrangle area. The Soil Survey of San Luis Obispo County California, Coastal Part was examined to identify area of potential hydric soils.

2. Field Survey

As part of the biological resources assessment, a daylight field survey of the subject property was conducted on July 8, 1997. The survey covered the proposed project area to determine vegetative communities, potential habitat for the presence of special-status wildlife species, and sensitive habitats.

C. EXISTING RESOURCES

1. Vegetative Communities

The vascular plant flora consists of native, introduced and planted herbs, grasses, shrubs and trees found throughout the project site. Currently, within the area surveyed three vegetative communities exist as follows: riparian woodland, annual grassland and coastal scrub. These vegetative communities are illustrated in Figure 3 and described below.

Coastal scrub is found in the area adjacent to Oakglen Avenue and extends approximately 175 feet to the northeast. Coastal scrub is dominated by small to medium sized shrubs and contains and herbaceous understory. Within the study area coastal scrub intergrades with the adjacent riparian woodland. The shrub layer is composed of an assemblage of the following species: California sagebrush (*Artemisia californica*), coyote bush (*Baccharis pilularis*), mock heather (*Ericameria ericoides*), yellow bush lupine (*Lupinus arboreus*), and sticky monkeyflower (*Mimulus aurantiacus*). The herbaceous layer is composed primarily of veldt grass (*Erharta calycina*) and contains sporadic occurrences of croton (*Croton calfornica*) and deerweed (*Lotus scoparius*).

Riparian woodland is found within creekbanks and the margins of both Nipomo Creek and Deleissigues Creek. Though similar in structure, the vegetation associated with these creeks is different in composition and density due to the distinctive hydrologic regime and hydraulic process of each.

Riparian woodland associated with Nipomo Creek is comprised of and extremely dense, nearly impenetrable stand of arroyo willows (*Salix lasiolepis*), with a few scattered coast live oak trees (*Quercus agrifolia*) near the community margins. The understory is composed of poison oak (*Toxicodendron diversilobium*), blackberry (*Rubus ursinus*) and stinging nettle (*Urtica dioica*). Due to the extreme density and composition of plant species found within the Nipomo Creek riparian corridor, assessment of the stream channel and margins within the study area was impractical. Therefore, a similar section of Nipomo Creek downstream from the project site was observed in order to determine expected species composition of the stream channel margins. Within this area approximately 500 feet downstream, near the intersection of the Nipomo Creek and Teft Street, water was observed to be flowing and would be expected to, at a minimum provide for a series of small pools along the length of the stream channel during the driest months (e.g., August through October). Plant species found in the herbaceous layer, in the area downstream, contain an assemblage of emergent plant species including; cattails (*Typha latifolia*), streamside monkeyflower (*Mimulus guttatus*), watercress (*Rorripa nasturtium-aqauticum*), mugwort (*Artemisia douglasiana*), curly dock (*Rumex crispus*) and umbrella sedge (*Cyperus eragrostis*) a very similar assemblage of species would be expected in the study area.

The Deleissigues Creek watershed covers a smaller area and therefore receives less overall waterflow than Nipomo Creek. At the time of the survey, running or ponded water was completely absent from the Creek channel within the surveyed area. Vegetation in the vicinity of the Creek consists of patchy riparian woodland along the right bank consisting of a canopy layer of arroyo willows and box elder (*Acer negundo*). In the area of the pipeline crossing, the left bank has been subject to recent erosion and is nearly vertical, supporting no overstory or shrub

vegetation. A few shrubby arroyos willow exist along the left bank in the area just downstream from the pipeline alignment. Forbs found within the channel, banks and top of bank area represent a variety of primarily naturalized, exotic plant species and a few native species including; black mustard (*Brassica nigra*), Italian thistle (*Carduus pycnocephalus*), goosefoot (*Chenopodium berlandieri*), Bermuda grass (*Cyondon dactylon*), willow herb (*Eplilobium watsonii*), sweet fennel (*Foeniculum vulgare*), summer mustard (*Hirshfeldia incana*), foxtail barley (*Hordeum lepronum*), prickly lettuce (*Lactuca serriola*), sweet alyssum (*Lobularia maritima*), cheeseweed (*Malva nicaeensis*), bur-clover (*Medicago polymorpha*), bristly ox-tongue (*Picris echioides*), annual bluegrass (*Poa annua*), knotweed (*Polygonom aviculare*), annual beardgrass (*Polypogon monspeliensis*), wild radish (*Raphanus sativus*), sow thistle (*Sonchus oleraceus*), periwinkle (*Vinca major*) and cockelbur (*Xanthium strumarium*).

Annual grassland occurs within the area between the riparian woodland of Nipomo and Deleissigues Creeks and to the east of Deleissigues Creek. This habitat consists of open grasslands composed primarily of annual plant species. Structure in Annual Grassland varies according to climatic and land use influences. Dramatic differences in physiognomy, both seasonally and yearly, are characteristic of this habitat. Within the project site annual grassland is currently comprised of an assemblage of introduced grasses and herbs which include but are not limited to wild oats (*Avena fatua*), Italian ryegrass (*Lolium multiflorum*), foxtail barley, tocalote (*Centaurea melitensis*), English plantain (*Plantago lanceolata*), California bur-clover, loosestrife (*Lythrum hyssopifolia*), tarweed (*Hemizonia* sp.), and foxtail (*Alopercus* sp.).

2. Special-Status Species

Special-status species are plants and animals that are either listed as endangered or threatened under the Federal or California Endangered Species Act, or considered rare (but not legally listed) by resource agencies, professional organizations, and the scientific community (Table 1).

The Federal Endangered Species Act (ESA) of 1973 (50 CFR 17) provides legal protection for plant and animal taxa that are classified as either threatened or endangered under the ESA. The ESA requires Federal agencies to make a finding on Federal actions, as to the potential the proposed action has to jeopardize the continued existence of any listed species. Section 9 of the ESA prohibits "take" of any species listed as threatened or endangered.

Table 1

Special-Status Wildlife Species

- Animals listed or proposed for listing as threatened or endangered under the Federal Endangered Species Act
- Animals listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act
- Animals of special concern to the California Department of Fish and Game

A CNDDB literature search identified several special-status species known to occur within the Nipomo area and areas located in the vicinity of the proposed project. Field survey of the study area resulted in no known listed endangered or threatened species. However, field survey also characterized the proposed project area as having natural communities which could provide habitat for the California red-legged frog and the southwestern pond turtle.

c. Critical habitats/Waters of the U.S.

Potential waters of the U.S. found within the project site include Nipomo and Deleissigues Creeks and the depressional area of seasonally wet annual grassland located almost directly between the two creeks, along the pipeline alignment. Loss or reduction in area of either of these habitat types would result in an adverse impact. Impacts to Waters of the U.S., including wetland habitats, would require a permit from the USACE prior to implementing the project.

Depending on the extent and configuration of the pipeline and construction activities, project implementation could result in the filling and/or disturbance of riparian and seasonally wet grassland communities and an associated loss of wetland habitat. Activities including trenching and grading could also result in detrimental effects on the quality of wetland habitats located downstream of the project site and associated with Nipomo and Deleissigues Creeks, through increased sedimentation and changes in associated hydrology. Direct disturbance of seasonally wet grassland communities or degradation of the quality of wetland habitats located downstream and associated with the Creeks could result in adverse impacts.

D. RECOMMENDED MITIGATION

To avoid or minimize potential impacts to identified sensitive resources of the subject area property resulting from project implementation, a variety of mitigation measures have been identified and are recommended for implementation as part of construction and operation of the proposed facilities.

1. Waters of the U.S.

To avoid or minimize indirect impacts to Waters of the U.S., including wetland habitats, implement the following measures:

1) Implement erosion control measures during construction and limit construction activities to dry weather to avoid impacts to wetland habitats related to increased runoff and sedimentation at the project site.

2) Prior to commencement of construction, place highly visible temporary fencing around the perimeters of identified construction areas within wetlands and other Waters of the U.S. and limit all construction activities to areas located within the fenced areas.

3) During construction, avoid all cleaning and refueling of equipment and vehicles within the vicinities of the existing drainage and associated wetland habitat.

4) Following completion of construction-related activities, revegetate all disturbed and barren areas with appropriate native vegetation to reduce the risk of erosion and sedimentation in adjacent drainage areas.

2. Special Status Species

1) Prior to construction, retain a qualified wildlife biologist to perform preconstruction surveys according to USFWS protocol for California red-legged frog, southwestern pond turtle and two striped garter snake in order to determine presence or absence. Provide a report of the preconstruction survey to the appropriate representatives of the USACE, USFWS and CDFG for further guidance.

Avoidance Of Heritage Resources

Avoidance of heritage resources is a common method for mitigating the effects of development on archaeological sites. Avoidance can be achieved by leaving the sites as undeveloped areas, or by the introduction of a layer of fill. The use of fill materials limits most impacts to the fill layer. However, preparation of a site surface to receive fill does cause some impact.

Areas chosen for filling may require mechanical removal of vegetation which will affect at least the upper ten to twenty centimeters of a site. Scarification, discing or similar methods used to create an interface between the native soils and the fill material also causes impacts to archaeological sites. The use of fill creates a much lower amount of impact than direct development into native soils.

Recommendation—Avoidance is not possible, since the site extends along the west side of Nipomo Creek for at least one–half mile of the study area.

Limiting Impacts

Redesigning development plans to accommodate archaeological site management is one method of limiting impacts. Re–designing does not necessarily mean removing development from archaeological sites—design changes can modify or lessen impacts to a level where archaeological mitigation is financially feasible.

Evaluation Of Resource

Surface survey documentation of archaeological resources requires follow–up Phase 2 sub–surface testing to evaluate the depth, complexity, data potential and significance of the resource. Full planning recommendations can not be generated until sub–surface evaluations are completed.

Recommendation—It is recommended that the surface indications of archaeological site CA–SLO–804 in the study area between Oak Glen Avenue and Nipomo Creek, and the portion of the study area along Oak Glen Avenue to Pioneer Avenue, have Phase 2 archaeological sub–surface testing. Testing would include a series of shovel test pits.

Archaeological Monitoring

At most low density archaeological sites, monitoring by a professional archaeologist and Native American monitor during construction can be used successfully in place of mitigation excavations.

Recommendation—Monitoring needs to be done during construction with provisions for salvage excavations if significant cultural features or data are discovered during construction.

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

WATER RESOURCES ADVISORY COMMITTEE
PROPOSAL FOR CHANGES IN POLICY

The Water Resources Advisory Committee (WRAC) has reviewed the proposed groundwater exchange between the City of Santa Maria and the proposed Woodland project on the Nipomo mesa. This proposed inter-basin groundwater exchange has precipitated the San Luis Obispo County WRAC to develop a groundwater transfer policy for consideration for the County Board of Supervisors. The groundwater exchange policy, dated May 9, 1997, is attached for the Board's review. Any comments that the Board wishes to add to the committee's proposed regulation will be forwarded to the WRAC committee secretary.

C:W:\WRACpolicy.DOC

SAN LUIS OBISPO COUNTY ENGINEERING DEPARTMENT

COUNTY GOVERNMENT CENTER • ROOM 207 • SAN LUIS OBISPO, CALIFORNIA 93408

PHONE (805) 781-5252 • FAX (805) 781-1229

TIMOTHY P. NANSON
COUNTY ENGINEER
GLEN L. PRIDDY
DEPUTY COUNTY ENGINEER
ENGINEERING SERVICES
NOEL KING
DEPUTY COUNTY ENGINEER
ADMINISTRATION

ROADS
SOLID WASTE
FRANCHISE ADMINISTRATION
WATER RESOURCES
COUNTY SURVEYOR
SPECIAL DISTRICTS

September 22, 1997

Water Resources
Advisory Committee Participant

Subject: Groundwater Exchanges

Dear Water Resources Advisory Committee Participant:

Last Spring the Water Resources Advisory Committee (WRAC) reviewed the proposed groundwater exchange between the Woodland's project and the City of Santa Maria. After extensive discussion, the WRAC developed a list of criteria for the Board of Supervisors to use when reviewing any groundwater exchange proposals that are submitted for formal approval. These proposed criteria were submitted individually to the Board members. Supervisor Ovitt requested that these criteria be reviewed by all contractors and service providers before they are presented for formal action to the Board of Supervisors. I have attached a copy of Supervisor Ovitt's letter for your reference.

Please review the attached criteria and determine if they address all of your significant concerns relative to any proposed groundwater exchange. This review can be made by both technical and political representatives of your agency.

I will be compiling all comments and submitting them to the WRAC for discussion at their November 5, 1997 meeting. Please return any comments to me by October 22, 1997. They can be faxed to 781-1330 or you may call me at 781-5269. On behalf of the WRAC, thank you for your time in reviewing these criteria.

Sincerely,

SUSAN LITTERAL
WRAC Secretary

Attachment

cc: Steve Sinton, WRAC Chairman
Harry Ovitt, Supervisor District 1

File: WRAC - General

v:\hyd_plan\susan\wrac\grdwtr.ltr.lb

BOARD OF SUPERVISORS

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • 805-781-5450

HARRY OVITT
DISTRICT ONE

July 7, 1997

Steve Sinton, Chair
Water Resources Advisory Committee
P. O. Box 112
Shandon, CA 93461

Dear Steve:

I must apologize for my late response to your criteria for recapturing and selling additional water. The first reading impressed me with the need to establish the standards necessary for the appropriateness of such actions. You are correct that specific proposals can and will raise additional issues. However, your proposed standards are a good beginning.

I would assume that your Water Resources Advisory Committee would 1) survey current contractors or service providers for their comments, and 2) you would forward these comments to the Board of Supervisors for approval via resolution or appropriate action.

Thank you for your involvement and patience.

Respectfully,

HARRY L. OVITT
Supervisor, District One

HO/ml

c:\wpwin\wpdocs\ho\sinton.ltr

San Luis Obispo County
Water Resources Advisory Committee

Members, County Board of Supervisors
San Luis Obispo County Flood Control
and Water Conservation District
County Government Center, Room 360
San Luis Obispo, CA 93408

Re: Groundwater exchanges

Date: May 9, 1997

Dear Honorable Board:

As a result of recent news articles regarding the possible exchange of groundwater (or use of new discharges as mitigation of groundwater extractions) between the City of Santa Maria and a development project in San Luis Obispo County, the Water Resources Advisory Committee decided to develop general guidelines for evaluating such proposals. With the high cost of State Water Project water, it may be anticipated that contractors will seek many different ways to reduce costs to their water users, including the Santa Maria concept of recapturing and selling the additional waste water. It is our intention to establish criteria for your consideration that would provide you with useful standards for determining whether such proposals are appropriate.

The following are our recommended minimum criteria:

(1) If groundwater is to be exchanged, or recharge used as mitigation, it must be demonstrated that the water can actually move from the point of recharge to the point of extraction. This can only be established if the hydrology and geology is reasonably well defined.

(2) The amount of water sold may be no more than the net amount added to the system by the seller.

(a) The amount of recharge must be accurately defined. If calculated from the amount diverted, less projected consumption, the resulting net supply must account for drought conditions, including curtailed supplies and consumer conservation.

(b) Any extraction of water which is remote from the recharge site must account for losses in transmission, including outflow from the basin (eg. to the sea), and evaporation at the recharge site. The amount of water which is actually recoverable must be determined.

(c) Water quality impacts need to be considered. Is the water extracted of similar quality to the recharge water? If not, the overall salinity of the basin may increase.

the water extraction is to be an exchange, or used as mitigation, it should not create any al impacts on water supply. In particular, the potential impacts on local groundwater management efforts must be assessed.

(a) The extraction must be shown to not create new, unacceptable impacts, such as groundwater depressions, which may cause seawater intrusion, or damage adjoining wells.

(b) Water exchanged at a distant location may require years to travel from the point of recharge to the point of extraction. Any impacts that may arise as a result of the delay between the recharge and the time the water reaches the area of extraction must be addressed.

(c) The water acquired must be truly additive. Groundwater basins may draw down in dry years and refill to overflowing in wet years. If acquired water is placed in the zone that refills naturally in wet years, it is not truly additive.

(d) Exchanges should not impair the planning and implementation of AB3030 districts, groundwater recycling efforts, or existing arrangements which successfully allocate waters within a watershed.

(e) The policy implications of cross-jurisdictional movement of water needs to be considered.

(4) The permanency of the transfer should be considered.

(a) If the supply is being exchanged only for a fixed period, then the project must include verifiable plans for future supplies.

(b) The seller should be able to show that the transfer will have no adverse implications for the source area.

(c) Where the seller is selling water that it must first purchase:

(i) the financial reliability of the seller and the seller's continued commitment to receive the purchased water must be assured; and

(ii) the permanency and reliability of the original supply must be assured.

(5) The legal right to sell, exchange, or provide mitigation water must be demonstrated (eg. for purposes of recapture, establish whether state water belongs to the contractor, the Central Coast Water Authority, or the state).

The foregoing are matters which we believe will require answers for all groundwater exchanges. Specific proposals will probably raise additional issues. While these criteria were prepared for your consideration, your recognition of them would also allow those contemplating such a transfer to anticipate what information will be required of them in order to have a chance to receive your support.

Respectfully,

Steve Sinton, Chair
Water Resources Advisory Committee

cc: Planning Commission, Tim Nanson, Alex Hinds, Ellen Carroll

AGENDA ITEM 5
OCT 15 1997

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

NEW BUILDING JANITORIAL SERVICE

The District requested proposals from a number of janitorial services to provide such services for the new office building at 148 S. Wilson Street. The proposals had two options. One was to clean the outside area with a leaf blower and the other to use a broom. The District received eight proposals which are summarized below.

It is staff's recommendation that the proposal from Precision Janitorial Service be accepted to provide janitorial service to the District's new office building.

	OPTION 1 (Utilizing a leaf blower)		OPTION 2 (Utilizing a broom)	
	Standard Service	Additional Day	Standard Service	Additional Day
Precision Janitorial Service	$135.00	$45.00	$140.00	$50.00
The Dustbusters	$155.00	$60.00	$165.00	$60.00
Mr. Clean Janitorial	$165.00	$70.00	$165.00	$70.00
Alpha Omega Services	$175.00	$30.00	$175.00	$30.00
Service Master	$178.00	$35.00	$197.00	$35.00
Mr. Kleen-All	$180.00	$90.00	$225.00	$100.00
Pro-Clean	$220.00	$90.00	$230.00	$95.00
G & M Janitorial	$1,575.00	$1,575.00	$1,575.00	$1,575.00

AGENDA ITEM 6
OCT 15 1997

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

APPROVAL OF APPRAISAL SERVICE

The District has been negotiating an easement with property owners for:

1. A new water line between Oakglen and Mallagh Avenues.
2. A future tank site.

To determine the fair market value of these easements, a consultant such as Reeder, Gilman and Associates should be hired.

It is recommended that your Honorable Board authorize the General Manager to approve the services of Reeder, Gilman and Associates to perform the appraisal work, as outlined in their proposals.

C:W:\bd\appraisal.DOC

REEDER, GILMAN & ASSOCIATES

Appraisers and Consultants • Real and Personal Property

1101 South Broadway, Suite C, Santa Maria, California 93454

P. O. Box 726, Santa Maria, California 93456

Telephone: (805) 925-2603

Fax: (805) 925-0840

Federal Tax ID # 95-3241465

WARREN REEDER • MAI, SR/WA
Certified General Real Estate Appraiser, CA # AG006521
MEMBER – APPRAISAL INSTITUTE
INTERNATIONAL RIGHT OF WAY ASSOCIATION
LESLIE J. GILMAN • MBA, SR/WA
Certified General Real Estate Appraiser, CA # AG014980
MEMBER – INTERNATIONAL RIGHT OF WAY ASSOCIATION

July 9, 1997

Mr. Douglas Jones, General Manager
Nipomo Community Services District
P. O. Box 326
Nipomo, CA 93444

RE: Appraisal Proposal - Pipeline Project, Oakglen Avenue to Mallagh St., Community of Nipomo, San Luis Obispo County, California

Dear Mr. Jones:

As you requested we are submitting this proposal for an appraisal of the subject real property affected by a proposed underground pipeline project affecting the Dana family owned property generally between Oakglen Avenue and Mallagh Street, east of the 101 Freeway in Nipomo. The proposed project consists of a 20-foot easement, approximately 1,700 feet long with an adjacent 50-foot temporary easement.

We understand that the purpose of the appraisal is to estimate just compensation for the acquisition of underground pipeline easement rights from the subject property. The function of the appraisal will be its use as a guide to value during negotiations for the acquisition for the subject easement rights.

We can provide a summary narrative appraisal report considering the pertinent factors of real estate valuation as they apply to the subject property for a fee of $3,800. The above fee does not include charges for any additional work, if such should be required. The fee for such services as consultation, court preparation time, attendance at depositions, and appearances before a court or administrative agency shall be billed at our current rate at the time the services are performed.

If the scope of our assignment should be expanded at your request, the additional work will be billed at our current rate and added to the initial appraisal fee.

Due to our present workload, we anticipate that the preparation of the appraisal report will take between four and six weeks after receipt of your authorization to proceed. Due to the need to schedule appraisal assignments in advance, this estimate is subject to revision upon changes in our work load. It is important to note that the above time frame is our best estimate at this time, but is not a guarantee. However, we will make every effort to complete the report as indicated above. By replying promptly, you will be assured that your project will receive our earliest attention.

This appraisal report will be made in conformity with and subject to the requirements of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice of the Appraisal Institute.

We thank you for your interest in our firm's services and for giving us the opportunity to be of service to you. If this proposal meets with your approval, please send written authorization to proceed with the appraisal. We have enclosed a copy of our Professional Qualifications for your review.

Very truly yours,

REEDER, GILMAN & ASSOCIATES
REAL ESTATE APPRAISERS

Warren Reeder, MAI, SRWA
Certified General Real Estate Appraiser, CA#AG006521

WR:cjm

B-JONES.DOC:CJM

REEDER, GILMAN & ASSOCIATES

Appraisers and Consultants • Real and Personal Property

1101 South Broadway, Suite C, Santa Maria, California 93454

P. O. Box 726, Santa Maria, California 93456

WARREN REEDER • MAI, SR/WA
Certified General Real Estate Appraiser, CA # AG006521
MEMBER – APPRAISAL INSTITUTE
INTERNATIONAL RIGHT OF WAY ASSOCIATION
LESLIE J. GILMAN • MBA, SR/WA
Certified General Real Estate Appraiser, CA # AG014980
MEMBER – INTERNATIONAL RIGHT OF WAY ASSOCIATION

Telephone: (805) 925-2603

Fax: (805) 925-0840

Federal Tax ID # 95-3241465

October 6, 1997

Mr. Douglas Jones
General Manager
Nipomo Community Services District
P. O. Box 326
Nipomo, CA 93444

RE: Appraisal Proposal - Two Tank Sites, Dana Property, Northwest of the Intersection of Tefft Street and Foothill Road, California

Dear Mr. Jones:

As you requested we are submitting this proposal for an appraisal of two 200 by 200 foot tank sites adjacent Foothill Road, just west of Tefft Street, on property owned by the Dana Family. The existing tank site is being leased to your District. We are to appraise this site as a permanent easement. The proposed site which is adjacent the existing site is also 200 by 200 feet square. We are to appraise this site also as a permanent easement. This property is a portion of the Dana Family holdings consisting of 870.10 acres. The property appears to be vacant and consists of undulating to steep hill terrain features. The larger parcel, which the two tank sites will effect, is more specifically described as assessor's parcel 90-031-03, 04.

We understand that the purpose of the appraisal is to estimate just compensation for the acquisition of the two tank sites as a permanent easement. The appraisal is to consider the real property only. Items of personal property such as growing crops, livestock, vehicles, etc., are not to be part of the analysis. The function of the appraisal will be its use as a guide to value during negotiations for the acquisition of the two subject sites.

We can provide a summary narrative appraisal report considering the pertinent factors of real estate valuation as they apply to this project for a fee of $2,000. The above fee does not include charges for any additional work, if such should be required. The fee for such services as consultation, court preparation time, attendance at depositions, and appearances before a court or administrative agency shall be billed at our current rate at the time the services are performed.

If the scope of our assignment should be expanded at your request, the additional work will be billed at our current rate and added to the initial appraisal fee.

Due to our present workload, we anticipate that the preparation of the appraisal report will take between four and six weeks after receipt of your authorization to proceed. Due to the need to schedule appraisal assignments in advance, this estimate is subject to revision upon changes in our workload. It is important to note that the above time frame is our best estimate at this time, but is not a guarantee. However, we will make every effort to complete the report as indicated above. By replying promptly, you will be assured that your project will receive our earliest attention.

This appraisal report will be made in conformity with and subject to the requirements of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice of the Appraisal Institute.

We thank you for your interest in our firm's services and for giving us the opportunity to be of service to you. If this proposal meets with your approval, please send written authorization to proceed with the appraisal. We have enclosed a copy of our Professional Qualifications for your review.

Very truly yours,

REEDER, GILMAN & ASSOCIATES
REAL ESTATE APPRAISERS

Warren Reeder, MAI, SRWA
Certified General Real Estate Appraiser, CA #AG006521

WR:bg

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

AGENDA ITEM 6A

OCT 1 [illegible]

OVERPAYMENT OF NIPOMO SEWER PROJECT CLEAN WATER GRANT

Friday, October 10, 1997 the District received a notice from the State Water Resources Control Board (Cal EPA) of an overpayment per Audit Report No. E2cWMO-09-0291-3200028, Clean Water Grants C-06-1225-100 and C-06-1255-110. Staff will review the numbers and report to the Board by October 15. The District must respond by October 27, 1997 on this matter.

Attached is the correspondence from the State.

C:W:\bd\calepa.DOC

/EPA

State Water Resources Control Board

Division of Clean Water Programs

Mailing Address:
PO Box 944212
Sacramento, CA
94244-2120

2014 T Street,
Suite 130
Sacramento, CA
95814
(916) 227-4400
FAX (916) 227-4349

www.swrcb.ca.gov

AGENDA ITEM 6

Pete Wilson
Governor

OCT 7 1997

RECEIVED
OCT 10 1997
NIPOMO COMMUNITY SERVICES DISTRICT

CERTIFIED MAIL NO. Z 080 553 989
Return Receipt Requested

Mr. Douglas Jones, General Manager
Nipomo Community Services District
261 West Dana, Suite 101
Post Office Box 326
Nipomo, CA 93444-0326

Dear Mr. Jones:

OVERPAYMENT PER AUDIT REPORT NO. E2cWMO-09-0291-3200028, CLEAN WATER GRANTS C-06-1255-100 AND C-06-1255-110, NIPOMO COMMUNITY SERVICES DISTRICT, ACCOUNT RECEIVABLE NO. 97-03

On November 17, 1993, the U.S. Environmental Protection Agency, Region 9, Assistant Regional Administrator issued the enclosed Final Determination Letter (FDL) on the above grants. Based on that determination, overpayments of State Clean Water Bond Funds had been made on C-06-1255-100 and C-06-1255-110.

C-06-1255-100

Amount Paid	$ 39,500
Eligible Cost Per FDL	36,406
Overpayment	$ 3,094

Subsequently, in reviewing the accounting records for C-06-1255-110, we noted an additional overpayment not discussed in the FDL. While the FDL lists a paid-to-date amount of $608,000, this is in error. On December 17, 1985, we processed the first payment for C-06-1255-110. This payment of $659,400 represented a 90 percent advance of state funds and was based on an estimated total eligible cost of $5,862,000. A copy of the 1985 payment request is enclosed along with a copy of your last payment request processed on March 3, 1988. In the FDL, final total eligible costs for C-06-1255-110 were set at $4,853,609 with $606,701 as the State share.

C-06-1255-110

State Advance	$659,400
Eligible Cost Per FDL	606,701
Overpayment	$ 52,699

Total Amount Due State

C-06-1255-100	$ 3,094
C-06-1255-110	52,699
Total Due State	$ 55,793

California Government Code Subsection 12419 sets forth a specific system for recovering money belonging to the State. The total amount is due within twenty (20) calendar days from receipt of this correspondence. A penalty of 25 percent and interest at 10 percent annually will accrue if payment is delinquent. Only full payment within twenty days will prevent penalty assessment and accrual of interest. When making payment, please refer to Account Receivable No. 97-03 and make the check payable to the California Water Resources Control Board. Please send the remittance to the following address:

Ms. Sandra L. Malos, Chief
Project Closeout Unit
Division of Clean Water Programs
California Water Resources Control Board
Post Office Box 944212
Sacramento, CA 94244-2120

If you have any questions, please call Ms. Malos at (916) 227-4457.

Sincerely,

Fred Johansen, Chief
Reimbursement Section

Enclosures

AGENDA ITEM 8

OCT 15 1997

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

INVESTMENT POLICY - QUARTERLY REPORT

The Board of Directors adopted the 1997 Investment Policy for NCSD on January 8, 1997. The Policy states that the Finance Officer shall file a quarterly report that identifies the District's investments and their compliance with the District's Investment Policy. The quarterly report must be filed with the District's auditor and considered by the Board of Directors within thirty (30) days after the end of each quarter (i.e., by May 1, August 1, November 1, and February 1) (California Government Code Section 53646).

Attached is the September 30, 1997 Quarterly Report for your review. The Finance Officer is pleased to report to the Board of Directors that the District is in compliance with the 1997 Investment Policy.

After Board consideration and public comment, it is recommended that your Honorable Board accept the quarterly report by motion and minute order.

NIPOMO COMMUNITY SERVICES DISTRICT
INVESTMENT POLICY - QUARTERLY REPORT 9/30/97

The District's investments are as follows:

TYPE OF INVESTMENT	INSTITUTION	DATE OF MATURITY	AMOUNT OF DEPOSIT 9/30/97	RATE OF INTEREST	ACCRUED INTEREST 9/30/97
Money Market Checking	Mid-State Bank	n/a	$5,701.03	100.00%	$0.00
Savings	Mid-State Bank	n/a	$16,384.05	254.00%	$0.00
Certificate of Deposit	Mid-State Bank	12/11/97	$22,000.00	5.10%	$63.40
Pooled Money Investment	Local Agency Investment Fund	n/a	$4,703,610.58	5.69%	$67,038.19

n/a = not applicable

As District Finance Officer and Treasurer, I am pleased to inform the Board of Directors that the District is in compliance with the 1997 Investment Policy and that the objectives of safety, liquidity, and yield have been met. The District has the ability to meet cash flow requirements for the next six months.

Respectfully submitted,

Doug Jones
General Manager and
Finance Officer/Treasurer

AGENDA ITEM 9

OCT 15 1997

TO: BOARD OF DIRECTORS

FROM: DOUG JONES

DATE: OCTOBER 15, 1997

MANAGER'S REPORT

1. Senator O'Connell correspondence on taxes

   Enclosed is correspondence from Senator Jack O'Connell associated with sales tax legislation.

2. Cal Water Journal and US Water News articles on El Niño

   Enclosed are articles from Cal Water Journal and US Water News with respect to El Niño and the accuracy of the Farmers' Almanac.

3. Special District Law Briefs enclosed.

4. Letter from Dennis Shaleen commending District employees

C:W:board2\mgr101597.DOC

STO OFFICE
'OL. ROOM 5035
ENTO CA 95814
916) 445-5405

SAN LUIS OBISPO OFFICE
50 CHORRO STREET, SUITE A
SAN LUIS OBISPO, CA 93401
(805) 547-1800

SANTA BARBARA OFFICE
3 WEST CARRILLO, SUITE F
ANTA BARBARA CA 93101
(805) 966-2296

VENTURA OFFICE
89 S CALIFORNIA STREET SUITE E
VENTURA CA 93001
(805) 641-1500

California State Senate

SENATOR
JACK O'CONNELL
EIGHTEENTH SENATORIAL DISTRICT

CHAIR
BUDGET & FISCAL REVIEW
SUBCOMMITTEE ON EDUCATION
COASTAL CAUCUS
MAJORITY CAUCUS
MEMBER
BUDGET AND FISCAL REVIEW
BUSINESS AND PROFESSIONS
CONSTITUTIONAL AMENDMENTS
EDUCATION
ENVIRONMENTAL QUALITY
JUDICIARY
NATURAL RESOURCES

September 25, 1997

Douglas Jones, General Manager
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

Dear Mr. Jones:

As you are aware, on September 28, 1995, the California Supreme Court invalidated a 1/2 cent sales tax imposed in 1986 by 54 percent of Santa Clara County's voters to fund local transportation projects (*Santa Clara County Local Transportation Authority v. Guardino*). The Court determined that the sales tax was a "special tax" because the proceeds were dedicated to a specific activity and required 2/3 voter approval to impose this special tax.

Unforeseen, however, was the Court's reliance on Proposition 62 to invalidate the county tax. Under the *City of Woodlake v. Logan,* the requirement of Proposition 62 to receive majority voter approval for general taxes was deemed unconstitutional several years ago. Consequently, cities and counties throughout the state instituted utility, business, bed and sales taxes without voter approval. I believe that these local governments acted in good faith, and in accordance with the law as they knew it to exist.

Consequently, the *Guardino* decision has left many local governments in a state of limbo. Because the ruling does not explicitly advise whether local agencies should implement the decision prospectively, or whether retroactive refunds are in order, all general taxes levied before the decision are in question.

As you may recall, during the 1995-96 Legislative Session, I introduced Senate Bill 1590 to address this question. I do not believe that taxes imposed in accordance with the law at the time they were levied should be affected by the *Guardino* decision. SB 1590 would have clarified that the *Guardino* decision applies prospectively and that cities and counties that imposed taxes prior to the Court's ruling should be held harmless for those actions. Senate Bill 1590 passed the Senate, however, it was held in the Assembly Revenue and Taxation Committee and, therefore, died from lack of action.

This year, I agreed to co-author Assembly Bill 1362, by Assemblymember Kerry Mazzoni, a measure nearly identical to my SB 1590. Fortunately, this measure gained passage in both the Senate and the Assembly and is now before Governor Pete Wilson. Governor Wilson will have until October 12, 1997, to sign or veto the measure.

I hope this information is helpful. As always Douglas, do not hesitate to contact me if you have questions about AB 1362 or any other state matter of concern to you or the Nipomo Community Services District.

Sincerely,

Jack O'Connell

JACK O'CONNELL

JO:ks/kjt
A9

California Water Journal

August 1997 Vol. 7 No. 8 The News of California Water

World Climate

El Nino Could Be the Big One

Experts say the 1997-98 El Nino will be even bigger than 1983.

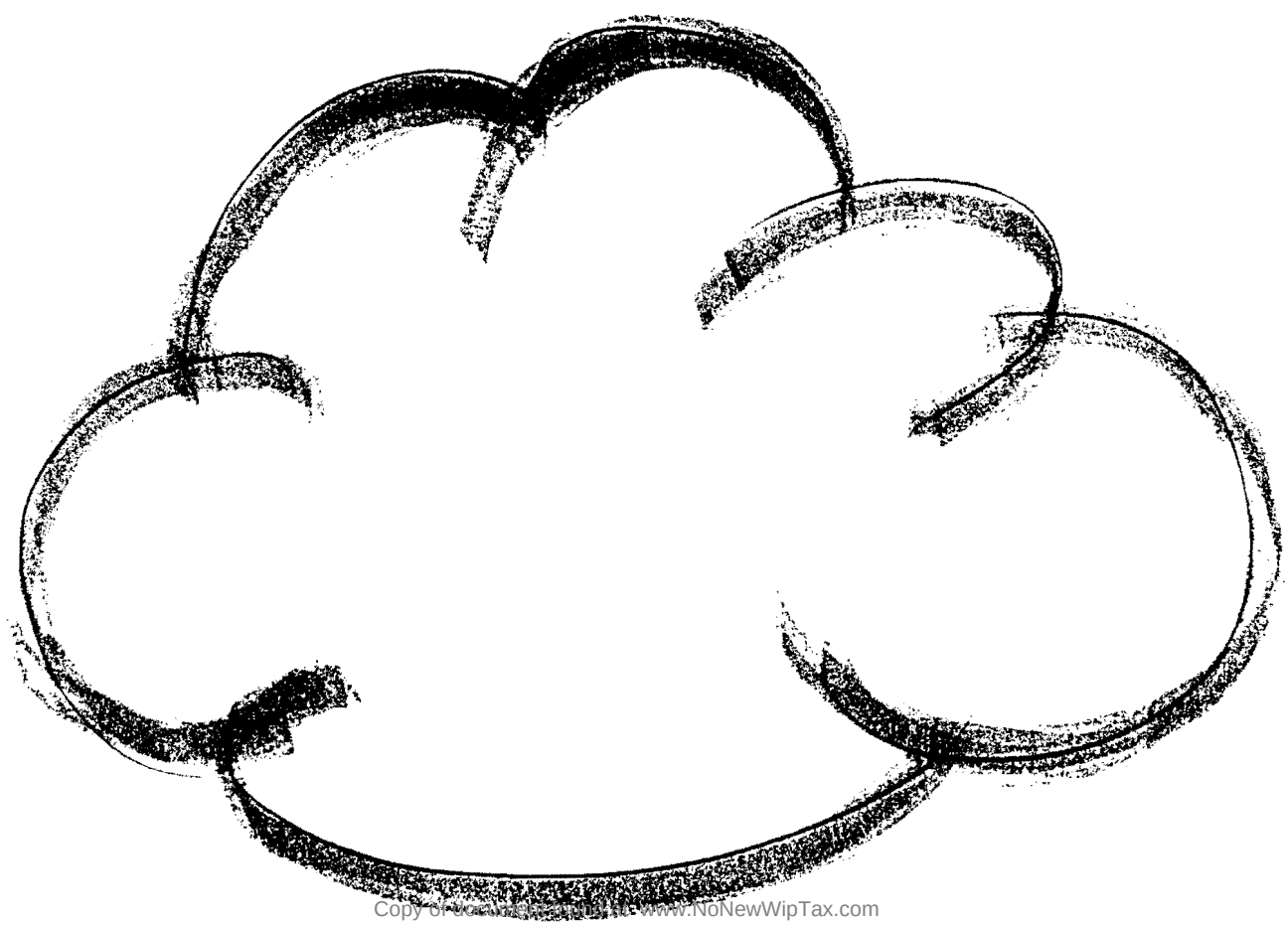
It has already been dubbed the climate event of the century, unleashing drought, floods and snowstorms in areas around the Pacific Ocean, and scientists say it is likely to get worse over the next few months.

If the 1997-98 El Nino comes only close to living up to the hype that's preceding it, the world, the U.S., and especially California, could be in for some extreme, unpredictable weather events this winter. In its worst scenario, El Nino can turn the world's weather upside down — causing natural disasters around the world, damaging crops and creating unimaginable turmoil in world commodity markets. Fortunes have been made and lost in past El Nino events.

The last strong one, in 1982-83, which was the biggest in 100 years, brought with it freak weather that caused damage in 15 countries estimated at $13 billion and killed 2,000 people. In California, water-year 1983 still stands as the wettest ever on record.

This year the phenomenon is back with a vengeance and scientists say it is shaping up to be the strongest on record and likely to bring more disasters in its wake.

see **El Nino** *page 8*



El Nino - *from page 1*

Already drought, believed to be caused by El Nino is blighting wheat crops in Australia, threatening the coffee crop in Indonesia and rice, corn and coconut crops in the Philippines. A drought in Ivory Coast, as in past El Ninos, could seriously reduce Cocoa production there, the world's top producer.

On the other side of the Pacific, flowers are blooming in the Chilean desert after downpours that soaked the country and unexpected snowfalls have stopped travelers in Andean passes. Ecuadorian cocoa producers estimate that the current El Nino could lower crop yields by as much as 60%.

El Nino - The Peruvian Visitor

Until recently, scientists paid little attention to the periodic episodes of warm water that for countless centuries have appeared off the coast of Peru. Its effects typically peaked in December disrupting Peru's lucrative anchovy fishery, which is why Peruvian fishermen long ago gave the Christmas time weather phenomenon its name that in Spanish means "Christ Child."

Not until the early 1970s, when the fishery collapsed and was accompanied by drought and crop failures around the world did the global reach of El Nino become clear. However, it was the extent of the 1982-83 El Nino that got scientists serious about watching it.

As a result, this El Nino will be the most closely observed in history. In the tropical Pacific, ships and satellites are providing a continuous stream of data to countries as far away as Europe. Also, the National Oceanic and Atmospheric Administration is operating a network of stationary buoys across the Pacific. Mountains of the gathered data on sea-surface temperatures, wind speeds and directions, and ocean currents are being fed into university and government super-computers in hopes of creating a model of the climate system as it evolves.

But already scientists have detected something funny going on. Until recently, El Ninos came more or less periodically every two to seven years. But in the early 1990s several appeared in a row, one right after another. Now after dying down in 1995 and '96, El Nino is back.

Not only is it back but it appears to dwarf just about any other seen in this century. Data show that a blotch of warm water extending nearly 6,000 miles, a quarter if the globe's circumference, is headed across the ocean to South America. Temperatures at the surface are rising rapidly and already exceed those of the 1982-83 event.

Scientists say if the trend continues this El Nino could pump so much heat into the ocean that average sea-surface temperatures might rise 7°F — and if this happens, the effects would be felt far into the new year. Among the disasters that would be likely are landslides, flash floods, droughts and crop failures.

In the U.S., the warming will bring wetter, cooler weather for the southern half of the country from November through March, while the northern part from Washington east to the western Great Lakes will experience warmer than normal temperatures. California, especially the central and southern parts of the state, can expect heavier than normal rainfall December through February.

Vivid Description of El Nino

Scientists now know El Nino is a world-class weather event rather than just a sudden warming current off Peru. And except for a meteor collision from outer space or a major volcanic eruption, no other natural force has the ability to so alter weather on a worldwide scale.

So far, the origins of an El Nino are unknown but scientists know how to recognize one once it's underway. They first notice there is a rise in sea-surface temperatures over much of the equatorial Pacific as well as a change in winds and ocean currents. The Pacific undergoes a sort of climatic flip-flop, with a reversal of conditions across a wide stretch of ocean. Consequently, it's no longer referred to as an El Nino but an El Nino Southern Oscillation (ENSO).

Like a pendulum, the ENSO cycle swings between an El Nino state and its opposite, a cold-water state known as La Nina (the girl). Taken as a whole, ENSO is a powerful driver of global weather patterns. In fact, it is besides seasonal variations caused by the earth's travels around the sun, the major cause of the month-to-month variation in climate.

To visualize how the ENSO cycle works, think of the Pacific Ocean as a big bathtub, with a fan, representing the trade winds, stirring up the air. La Nina, or the cold phase, is its natural state. Under these conditions, winds blow east to west pushing water away from the South American coast, so that the ocean's surface is a couple of feet lower off Peru than it is off Indonesia. The difference, although seemingly small, has important consequences to weather and marine life.

To replace the water the winds have swept away, cold, nutrient-rich water wells up from below and Peru's waters are loaded with fish. But when an El Nino gets started, the pattern reverses. The trade winds dwindle, and may even start blowing west to east — towards South America. The upwelling of cold water off Peru stops, and anchovies and other fish move to different feeding grounds.

Coastal Peru is not the only area affected — the entire equatorial Pacific Ocean undergoes dramatic change and the effects are felt all along the west coasts of South America, Central America, Mexico, and the United States.

As the trade winds slacken not only does the upwelling of cold water cease but, with the Pacific Ocean acting like a giant bathtub, warm waters from Indonesian slosh across the ocean, raising the water level near South America and lowering it in Indonesia.

As the slow moving waves surge from west to east the increased water level exerts downward pressure on the thermocline. This is the boundary layer of chilly water that separates the much colder water in the ocean depths from the sun-warmed water near the surface. Normally, the east-

Pacific's thermocline lies at a shallow depth and thus mixes with water near the surface, cooling it. But in El Nino years, the thermocline sinks too deep, and water temperatures at the surface rise noticeably.

El Nino Effects on Worldwide Weather

Scientists say the reason the regional phenomenon of El Nino affects weather around the globe is the extra heat. Like fresh coal tossed on a fire, it creates more and larger storms. And as the warm water stretches into the central and eastern Pacific, these storms follow in its path, moving the tropical storm belt from one part of the Pacific to another.

The rearrangement has reverberations throughout the atmosphere, causing droughts in places as far-flung as northeastern Brazil, southern Africa and Australia, while other regions, from California to Cuba, can be hit by torrential rains. These effects are variable. El Nino may weaken the Indian monsoon — or barely affect it at all.

El Nino Effects on California Salmon

Just as it does off Peru, El Nino can substantially reduce the upwelling of cool water along the California coast. Salmon experts have long recognized that in certain years, warm waters appear off the California coast causing a reduction in upwelling of nutrients and plankton needed by young salmon migrated from California's rivers and streams.

California chinook salmon generally spend about a year growing into smolts before they migrate to the ocean. There, they will spend 3 to 5 years growing into adults.

Biologists claim, and historic data confirms, that ocean conditions far outweigh all other factors in the reduction of California salmon populations, including regulated commercial harvesting.

The loss of cool water and its nutrients from below during an El Nino is especially hard on salmon. Young salmon become prey for warm water fish that normally don't inhabit their feeding grounds. More mature salmon, because of their larger size, must forage farther out to sea than normal. There they are preyed upon by large, deep-ocean predators and even ocean-going fishing fleets.

Each year, the Pacific Fishery Management Council estimates the size of the California salmon fishery and issues fishing regulations based on its estimate. El Nino can have a significant effect on these estimates.

El Nino Effects on California Water

In El Nino years, Californians can expect to get wet, especially in the months December thru February. A study of rainfall in California in El Nino years was conducted by the National Weather Service Forecast Office in San Francisco. Their report listed ENSO events since 1940 and classified each as Type 1, 2 or 3. The ratings are based on positive sea surface temperature (SST) and the extent of the Pacific Ocean affected by the temperature change — Type 1 events were the strongest El Ninos and Types 2 and 3 weaker, respectively.

Type 1 El Nino Rainfall

California City	Sep - Nov	Dec - Feb	Mar - Apr
Eureka	3	4	1
Red Bluff	4	6	3
Sacramento	3	6	4
San Francisco	3	5	4
Fresno	4	7	4
Bakersfield	3	7	4
Santa Barbara	3	7	6
Los Angeles	3	7	6
San Diego	4	6	5

Occurrences of Above Normal Rainfall at Selected California Sites Out of 8 Type 1 El Nino Seasons

During the period 1949-1993 there were eight Type 1 ENSO events: 1951-52, 1957-58, 1965-66, 1968-69, 1972-73, 1977-78, 1982-83 and 1991-92; three Type 2: 1963-64, 1969-70 and 1986-87; and one Type 3: 1976-77. Note that California recorded the wettest water-year of record in 1983 and the driest of record in 1977.

The data showed that Type 1 events had the most impacts on California precipitation with no identifiable trends for Type 2 and 3 events.

During seasons with Type 1 events, southern California had the most instances of above normal rainfall, with decreasing occurrences to the north. Specifically, San Diego had above normal rainfall all eight years, while Eureka had only four seasons that were above normal. Intermediate locations having amounts in between.

Tracking El Nino

Scientists are only now beginning to trace the web of long-distance climatologic connections that links the ENSO cycle to major weather changes around the globe. A major concern is how the cycle affects the jet streams. These are the high-altitude winds that serve as weather tracks in both the northern and southern hemispheres.

A dip in the northern hemisphere's jet stream, for instance, can be expected to direct moisture-laden storms on a more southerly route over the U.S. A nudge in the opposite direction will result in snow and rain farther north. But figuring out exactly how a particular El Nino will affect North America is no easy matter because the effects can be amplified or reduced by other phenomena that are less understood.

Numerous government agencies and universities in the U.S. and abroad have established panels and work groups to study the ENSO phenomenon. Major programs are underway at Scripps Institute of Oceanography in La Jolla, Calif., Columbia University and Florida State University. NOAA maintains an extensive WEB site on El Nino (http://www.pmel.noaa.gov/toga-tao/el-nino).

Climatologists hope they will eventually be able to provide predictions of weather patterns based on the data gathered from the satellites, buoys and ships. However, they warn that people most affected by the ENSO cycle — farmers, fishermen, commodities traders, water-resource managers and insurance underwriters — should look at their predictions as educated guesses based on statistical data rather than scientific certainties.

US Water News

'Almanac' says change in sun will mean warmer drought year ahead

The Weather Observer

By Cliff Nielsen

The *1998 Old Farmer's Almanac*, available now on newsstands, predicts that the coming year may be the warmest on record. Is it the result of global warming? Probably not according to the *Almanac* forecaster Michael Steinberg of Accuweather in State College, Pennsylvania. "The more likely cause," he argues, "is a change in the sun, and with this a change in circulation that will likely result in drought in much of the nation during the coming summer."

But before the summer warming comes, certain sections of the country can expect a fairly cold early winter. This applies particularly to the northwestern quadrant of the U.S. from Kansas and the Dakotas to the Pacific Coast. Much of the rest of the nation, after a cool start during the late fall, will experience a relatively mild winter, except for New York and New England where precipitation is expected to be above normal.

The big news, however, is the onset of drought beginning during the coming summer.

Any number of weather watchers have been expecting the onset of a drought in the U.S West and the grain basket because there is a very strong historical precedent. It comes in a 1979 study by J. Murray Mitchell Jr. who was then head of the NOAA data and Information services. Using tree-ring study data from 40 sites west of the Mississippi River made by Charles Stockton and David Meko at the University of Arizona, Mitchell was able to isolate what has since come to be known as the 22-year drought cycle in the U.S. West.

Both historically and based on the tree-ring evidence, the cycle has remained fairly consistent since 1700. Not all droughts have been equally severe. The two major droughts of the twentieth century, those of the mid-1930s and the mid-1950s, have been among the most severe. Nevertheless, some degree of drought is shown on the record every 22 years in close conjunction with the onset of what is known as a "major sunspot maximum," a phenomenon that is now building. So Steinberg has a strong historical pattern to back the *Almanac* forecast and with some luck, reach what the publication has been aiming at for a long time, 80 percent forecasting accuracy.

Those who follow the *Almanac* may not be surprised by such accuracy, figures close to 80 percent have been posted for certain sections of the country in the past.

The University of Illinois studied 10 years of *Almanac* forecasts in 1981. The conclusion of the study was that the results were much better than climatological averages, which were, at the time, the basis of 90-day forecasts made by the U.S. Weather Service. Predictably, the *Almanac* forecasts were more accurate during the period than those of the national agency.

In another study, a member of the Sacramento office of the U.S. Army Corps of Engineers compared *Almanac* forecasts for California with observed records for the 1970s. The conclusion was that the reliability of the forecasts for that region was better than 75 percent. This led the Corps to abandon the forecast of its sister agency, the U.S. Weather Service, in favor of the forecasts for the planning of flood control releases in California.

Last year, according to Steinberg, the forecast did not achieve a similar degree of accuracy. "Still," he commented, "it was accurate enough in many sections of the country to be much better than chance; we were correct approximately two-thirds of the time on a monthly basis. And we were correct in predicting the winter would be much milder than the previous winter in the East and milder than normal in the Southwest."

The culprit in lessening the forecast's accuracy was the positioning of the storm track. "The weather pattern in the winter of 1996-97 developed a bit later than usual," Steinberg commented. "The result was that the winter was milder than predicted in much of the East and much colder in the Northern Great Plains."

Moreover, had Steinberg been able to modify the forecast in the late autumn of 1997, it would have been more accurate still. The forecast is finalized in late June, a full four months before the first forecast date and 16 months before the last. Nevertheless, by his own admission he would not go back and change it. That decision is based on an attempt to realize the full potential of long-range forecasting and eventually realizing the ultimate goal of 80 to 90 percent accuracy. "Every forecast is a lesson and in looking back on the failures, I can only comment that I should have known that" is his assessment of the 1997 forecast.

There might also be a glitch that will affect the 1998 forecast. It is the apparent onset of a new El Nino event. Steinberg's response is identical to his evaluation of the 1997 forecast. "If it is to be an important factor in altering the pattern of weather in the next year, I should have known that."

But by and large like many atmospheric researchers, he sees the El Nino as a symptom of atmospheric change not a cause, despite what has recently become a media frenzy of predicting apocalyptic weather, particularly in California, as a result of a new El Nino. William Gray of Colorado State University who has had signal success in hurricane forecasting, still believes the El Nino will not materialize. "Should a major El Nino event emerge," says Gray, "God is violating God's laws." So even with the news of a possible El Nino emerging in December, Steinberg stands by the forecast as published in the *Almanac*.

Cliff Nielsen's article, "Predicting the Weather for the 21st Century," appears in the 1998 version of the Old Farmer's Almanac *now available on newsstands.*

LAW OFFICES OF
THOMAS F. STONE

LOCAL GOVERNMENT, BUSINESS &
REAL ESTATE LAW • MEDIATION

100 EAST DE LA GUERRA STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 963-1994
FACSIMILE (805) 963-1997

October 1, 1997

Dear Special District manager,

So many board members and managers have told us they find Lawbriefs articles useful in the day to day work of their special districts and many have asked when our next issue will be published. In the past, the newsletter has been an occasional publication, with no regular schedule

In the future, Lawbriefs will be published quarterly. We will continue to emphasise developments in the law that affect your operations, both from the courts and the legislature. Other topics of interest to special districts will occasionally be featured, and opportunities for continuing education will be highlighted from time to time.

This mailing includes 6 copies so the board and district management can have access to this current legal information. Please feel free to copy the newsletter for your use, or call us for more printed copies.

Also, let us know if there is a particular topic you would like to be included, or if you have any questions about articles.

Very truly yours,

Thomas F. Stone for the
Law Offices of Thomas F. Stone

Law Offices of
Thomas F.
Stone

Local Government Lawyers

Special District LAWBRIEFS

Legal Developments for Board Members and Managers

Bulletin No. 11 *Fall, 1997*

References for Employees May Cause Costly Liability Claims for Districts

References for former employees have been the source of costly liability suits in recent years. As a result, many attorneys are advising clients that they should not provide evaluations of former employees, either favorable or unfavorable.

Theories of Liability

These lawsuits have been based on a number of theories including:

1. Libel or slander claims by the former employee alleging damage to reputation because of a false negative recommendation;

2. Psychological and financial damage from negligent or intentional infliction of emotional distress resulting from a negative recommendation allegedly motivated by the employer's ill will toward the former employee;

3. That an unfavorable reference was motivated by discrimination based on illegal factors such as race, religion, sex, or age; or

4. Providing a favorable evaluation (possibly as part of a termination agreement) when the employee's performance demonstrated dangerous conduct.

Danger of False References

The "false reference" cases are illustrated by the recent California Supreme Court holding in *Randy W. v. Muroc Joint Unified School District*. Randy W. was a thirteen year old student in the Livingston Unified School District where Robert Gadams served as a vice-principal. Randy claimed that she was offensively and sexually touched and molested by Gadams.

Gadams had been employed previously in administrative positions by several other school districts. Administrators at those school districts had written letters of recommendation containing "unreserved and unconditional praise" for Gadams although the letter writers each allegedly knew of complaints or charges regarding his sexual misconduct with students.

The Court held that under the facts, the former employers were guilty of negligent representation and fraud. The Court said that although "...ordinarily a recommending employer should not be held accountable for failing to disclose negative information regarding a former employee, nonetheless liability may be imposed if, as alleged here, the recommendation letter amounts to an *affirmative misrepresentation* presenting a foreseeable and substantial risk of physical harm to a prospective employer or third person." The Court seems to be saying that failure to disclose unfavorable information in an otherwise glowing reference can create liability if injury results.

The Court said that Gadams' alleged assault on the girl was a foreseeable result of the false letters, since the former employers could easily foresee that Livingston's hiring officers would read and rely on the letters, and that, with Gadams' past record, it was likely that he would molest or injure a Livingston student.

Policy on References

Employers take a number of approaches to this problem:

1. Make full and honest evaluations of former employees to new employers. This policy encourages a

10-4-97

DEAR NCSD

TO DAY - SATURDAY - AT 3:30 P.M MY WATER LINE, COMING OFF THE MAIN LINE, SPROUTED A LARGE RUMBLEING LEAK. YOUR MEN BUTCH + EARNIE WERE ON THE SPOT WITHIN MINUTES. MY HAT IS OFF TO THEM! THEY JACK HAMMED + DUG UP THE STREET - REPAIRING MY WATER LINE WITHIN THE HOUR. YOU HAVE SOME FINE EMPLOYEES WORKING YOU - OR US - I SHOULD SAY.

Thanks!

Dennis Shaleen
749 GLENHAVEN PL.

AGENDA ITEM 7
OCT 15 1997

WARRANTS OCTOBER 15, 1997

HAND WRITTEN CHECKS

17937	Walsh, H. Jr.	$465.00
17938	Shiffrar Trust	465.00
17939	Barragan, S.	20.00
17940	Bantz, J.	364.25

VOIDS
9424 & 9425
2312

NET PAYROLL
CK# 2313-2321 $12,910.43

C:W\WARRANTS\W101597.doc

COMPUTER GENERATED CHECKS

9426	10/06/97	AVILA SIGN & DESIGN	$804.37
9427	10/06/97	BOGNUDA, LISA	$225.63
9428	10/06/97	CHEVRON	$622.56
9429	10/06/97	EASTER RENTS	$107.25
9430	10/06/97	FGL ENVIRONMENTAL ANALYTICAL CHEMIST	$39.00
9431	10/06/97	FARM SUPPLY COMPANY	$62.32
9432	10/06/97	GARING, TAYLOR & ASSOCIATE, INC.	$3,711.62
9433	10/06/97	McKESSON WATER PRODUCTS	$23.80
9434	10/06/97	MISSION UNIFORM SERVICE	$166.81
9435	10/06/97	NIPOMO ACE HARDWARE	$258.00
9436	10/06/97	NIPOMO CHAMBER OF COMMERCE	$75.00
9437	10/06/97	NIPOMO GARBAGE COMPANY	$54.30
9438	10/06/97	NIPOMO REXALL DRUG	$10.28
9439	10/06/97	SANTA MARIA TIMES	$34.00
9440	10/06/97	STATE WATER RESOURCES CONTROL BOARD	$1,200.00
9441	10/06/97	WYATT & BAKER, Lawyers	$3,802.77
9442	10/15/97	ROBERT BLAIR	$100.00
9443	10/15/97	BOGNUDA, LISA	$13.86
9444	10/15/97	FGL ENVIRONMENTAL ANALYTICAL CHEMIST	$1,489.00
9445	10/15/97	KATHLEEN FAIRBANKS	$100.00
9446	10/15/97	GTE CALIFORNIA INCORPORATED	$25.90
9447	10/15/97	IKON	$56.68
9448	10/15/97	GENE KAYE	$100.00
9449	10/15/97	ALEX MENDOZA	$100.00
9450	10/15/97	MILLS-KOEHLER	$50.00
9451	10/15/97	NIPOMO CHEVRON	$163.15
9452	10/15/97	P G & E	$276.12
9453	10/15/97	POSTMASTER	$500.00
9454	10/15/97	CARLOS J. REYNOSO, CPA	$25.00
9455	10/15/97	RUSSCO	$187.20
9456	10/15/97	SANTA MARIA TIRE, INC.	$271.30
9457	10/15/97	ALBERT SIMON	$100.00
9458	10/15/97	TERMINIX INTERNATIONAL	$84.00
9459	10/15/97	TIMES PRESS RECORDER	$31.15
9460	10/15/97	USA BLUE BOOK	$1,449.73
9461	10/15/97	WILLIAMS, BARRY LORENZ ASSOCIATES	$550.00