APPENDIX A

SAN LUIS OBISPO COASTKEEPER
CORRESPONDENCE

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San Luis Obispo **COASTKEEPER®**

Larry Lavignino, Mayor
City of Santa Maria
110 E. Cook Street
Santa Maria, CA 93454

November 30, 2009

VIA FACSIMILE: 805-349-0657

Subject: December 1, 2009 Council Agenda Item 9: Environmental Review of the Waterline Intertie Project and Approval of an Agreement with the Nipomo Community Services District on the Sale and Delivery of Supplemental Water.

Dear Mayor Lavignino and Honorable Council Members,

On December 1, 2009 your Council is scheduled to consider:

1. A resolution approving, as a Responsible Agency, the Environmental Impact Report and adopting related findings of fact; and
2. Approval of an agreement with NCSD on the sale and delivery of water.

San Luis Obispo **COASTKEEPER®**, a program of Environment in the Public Interest, is organized for the purpose of ensuring that the public has a voice with agencies and official responsible for enforcing water quality, watershed and coastal planning regulations on the California Central Coast. As such, the SLO Coastkeeper and our 800 central coast supporters are concerned that:

- The NCSD EIR fails to provide the City (Responsible Agency) and the public substantial evidence that the proposed delivery of water will have less than significant impact on flows in the Santa Maria River or that such impacts have been mitigated to a level of less than significant.

- The City's agreement to sell and deliver water to NCSD defines a separate project that requires its own CEQA review.

Our specific concerns include, but are not limited to the following:

NCSD EIR FAILS TO ADDRESS IMPACTS TO THE CITY WATER SUPPLY OR UNDERFLOW OF THE SANTA MARIA RIVER

The project considered in the NCSD EIR consists of the construction of a pipeline to convey potable water from the City's water system and connecting to the Nipomo Community Services water distribution system. 1

While the NCSD has certified the EIR as an adequate CEQA review of the activities under their jurisdiction, the City of Santa Maria as a Responsible agency must address direct, cumulative, and secondary impacts that fall within the City's discretion. In fact, Responsible Agencies are required to independently make the written findings required by CEQA regarding a project's impacts and available mitigation measures, explain the rationale for those findings, and support those findings with substantial evidence in the record. (CEQA Guidelines §§ 15091(a)-(b), 15096(h); see also *Resource Defense Fund v. LAFCO* (1987) 191 Cal.App.3d 886, 896-898). 2

In addition to responsibilities under CEQA, the City must consider potential water quality and quantity impacts to the waters supporting the beneficial uses of the Santa Maria River. The NCSD EIR identifies Class II impacts to surface and subsurface water quality and quantity. However, identified mitigation and monitoring measures only address issues related to construction and maintenance of the proposed pipeline and are inadequate to assure that cumulative impacts likely to degrade water resources will be avoided or reduced to a level of less than significant. 3

Attempting to overcome the deficiencies in the record, Staff asserts that the "City has adequate water to fulfill this obligation" to NCSD (Staff Report, p 1). This statement not only sidesteps the City's responsibilities under CEQA, Clean Water Act, and Porter-Cologne Act, but begs the question of why "the City is in discussions with the County of Santa Barbara, Central Coast Water Authority, and other local agencies in the attempt to acquire more high-quality State water" (Staff Report, p3 bullet 3)? 4

Currently, the Department of Fish and Game is conducting an Instream Flow Analysis on the River. The result of this analysis will provide significant data useful to inform the City on flow recommendations for the Santa Maria River and sustainable water withdrawal rates to serve the City and NCSD. If your Council approves the proposed resolution and findings without due regard for the cumulative impact on streamflow will likely have a serious and significant adverse effect on Santa Maria River resources. 5

SLO Coastkeeper urges your Council to continue adoption of the proposed Resolution No. 2009-179 until the DFG Instream Flow Analysis is concluded and additional environmental analysis fully addressing impacts under the City's jurisdiction can be completed (see PRC § 21153(c); Save San Francisco Bay Association v San Francisco Bay Conservation and Development

Commission (1st Dist. 1992) 10 Cal.App. 4th 908 [13 Cal. Rptr. 2d117]; and City of Redding v Shasta County Local Agency Formation Commission (3d Dist. 1989) 209 Cal.App. 3d 1169 [257 Cal. Rpt. 793].

THE WHOLESALE WATER SUPPLY AGREEMENT REQUIRES CEQA REVIEW

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The City's agreement to sell and deliver water to NCSD includes activities that will cause reasonably foreseeable changes in the environment and is therefore subject to review under CEQA [see County of Amador v. City of Plymouth (2007) 149 Cal.App.4th 1089].

SLO Coastkeeper urges your Council continue approval of Resolution No. 2009-180 and direct the preparation of an appropriate EIR.

Respectively Submitted,

Gordon Hensley,
San Luis Obispo **COASTKEEPER**®

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San Luis Obispo **COASTKEEPER®**

December 11, 2009

Larry Lavagnino, Mayor
City of Santa Maria
110 E. Cook Street
Santa Maria, CA 93454

VIA FACSIMILE: 805-349-0657

Subject: December 15, 2009 Council Agenda Item 3J: Environmental Review of the Waterline Intertie Project and Approval of an Agreement with the Nipomo Community Services District on the Sale and Delivery of Supplemental Water – Request for Continuance.

Dear Mayor Lavagnino and Honorable Council Members,

At your December 1, 2009 meeting Staff was granted a continuance to December 15 on consideration of Council action on:

1. Adopting a resolution, as a Responsible Agency, approving the Environmental Impact Report and related findings of fact for the proposed Water Intertie project to provide water to the Nipomo Community Services District; and
2. Approval of an agreement with NCSD for the sale and delivery of water.

For your December 15, 2009 meeting Staff is requesting a further continuance of this item to January 5, 2010 to provide additional time to prepare a response to the issues raised by our organization.

San Luis Obispo Coastkeeper has no objection to the requested continuance, however I wish to offer the additional input below for Staff consideration in their response.

- San Luis Obispo **COASTKEEPER®**, a program of Environment in the Public Interest, regularly comments on CEQA, California Clean Water Act, and endangered species issues throughout our patrol area which extends from the Santa Ynez River through northern Santa Barbara County and all of San Luis Obispo County. As such we have been active participants in issues impacting the Santa Maria River as well as the attempts by the Nipomo Community Services District to develop supplemental water sources (including comment on the Santa Maria Intertie pipeline project as early as 2006). 7

- Court Cases have clearly established that the proposed agreement for the sale and delivery of water defines a "project" under CEQA requiring a separate environmental determination of impacts on the public trust resources under the jurisdiction of the City. [see Riverwatch v Olivenhain Municipal Water District (2009) 170 Cal App 4th 186; and Save Tara v City of West Hollywood (2008) 45 Cal App 4th 116]. 8

- Coastkeeper comment submitted for the December 1 meeting expressed our concern that the City has committed itself to the Nipomo Water Intertie Project and effectively precluded consideration of alternatives or mitigation measures beneficial to the public trust resources under the City's authority as a "Responsible Agency". [see Save Tara v City of West Hollywood (2008) 45 Cal App 4th 116; and California Native Plant Society v City if Rancho Cordova (2009) 172 Cal App 4th 603] 9

Respectfully Submitted,

Gordon Hensley,
San Luis Obispo **COASTKEEPER®**