

## COUNCIL AGENDA REPORT

January 5, 2010

**TO:** City Council

**FROM:** City Manager

Prepared by Senior Assistant City Attorney/Utilities Counsel  
and Director of Utilities

*SBK*

**SUBJECT: ENVIRONMENTAL REVIEW OF AN ENVIRONMENTAL IMPACT REPORT AND ADDENDUM AND APPROVAL OF TWO AGREEMENTS PERTAINING TO THE WATERLINE INTERTIE PROJECT BY THE NIPOMO COMMUNITY SERVICES DISTRICT FOR THE SALE AND DELIVERY OF SUPPLEMENTAL WATER.**

### RECOMMENDATION:

That the City Council approve the following documents related to the Nipomo Community Services District Waterline Intertie Project and associated Agreements:

1. A resolution considering an Environmental Impact Report and Addendum, and making findings and a Statement of Overriding Considerations under the California Environmental Quality Act; and
2. A resolution approving the Wholesale Water Supply Agreement and the Waterline Intertie Consistency Review Agreement.

### SUMMARY:

The Nipomo Community Services District (NCSD) needs to purchase supplemental water to offset groundwater overdraft. The Santa Maria Groundwater Litigation Stipulation requires the City of Santa Maria (City) provide the Nipomo Management Area with supplemental water annually. The NCSD and the City signed a Memorandum of Understanding (MOU) in 2004 to begin negotiations for a supplemental water sales agreement.

The NCSD completed the preliminary design and certified an Environmental Impact Report (EIR) for the Waterline Intertie Project to deliver the supplemental water to the Nipomo community. The City and NCSD have completed negotiations for the supplemental water sale and NCSD approved the Wholesale Water Supply Agreement in October.

The City received two letters from the San Luis Obispo Coastkeeper expressing concerns about the Project and the environmental study. The City chose to produce an Addendum to the EIR to provide clarifications and address comments made by the San Luis Obispo Coastkeeper.

A question arose during the City Council Meeting on December 1, 2009, as to the City's ability to review the aesthetics of the potential pump house within the City. An

agreement has been prepared and approved by NCSD to address this concern. The sale of supplemental water to Nipomo is a judicious use of a fiscal asset and will contribute toward groundwater restoration and preservation while providing balance of the inflow and outflow of water and its storage within the groundwater basin.

Accordingly, the City Council is asked to consider the finding of the EIR and approval of the Agreements.

### **BACKGROUND:**

The NCSD provides water, sewer, and solid waste services within its boundaries to the community of Nipomo. The NCSD needs to secure a supplemental water supply to offset overdraft of the groundwater basin in the Nipomo Mesa Management Area. The City has sufficient water resources to meet the demands of its retail customers and the NCSD's water supply needs. Attachment "A" is Table 3-6 from the City's 2005 Urban Water Management Plan, which identified the City's water resources at 49,910 acre feet (AF) in both normal and dry water years. This quantity of water greatly exceeds the City's present usage of 14,700 AF annually. It also far exceeds the projected City water use of approximately 19,000 AF to support a population of 120,900 in the projected build-out year of 2022.

The City Council entered into an MOU with the NCSD on September 7, 2004, (Appendix B of the Addendum to the EIR [Attachment D]). The MOU set the basic terms under which the City and the NCSD would negotiate for the NCSD to purchase supplemental water, of certain quality and quantity, from the City. The MOU details the following key points:

- NCSD would be the lead agency for preparation of the environmental study for the Project.
- An intertie between the two water systems would be designed, constructed and financed by the NCSD.
- City would deliver to the NCSD supplemental water of the same pressure and quality as the City delivers to its retail customers.
- City would deliver to the NCSD 600 AF of supplemental water annually when the intertie is completed increasing to 1,260 AF annually in 2035.

The City and the NCSD are parties to a certain groundwater adjudication lawsuit commonly referred to as the Santa Maria Groundwater Litigation (Litigation). On June 30, 2005, the court-ordered Settlement Stipulation was issued. The purpose of the Stipulation is to impose a physical solution establishing a legal and practical means for ensuring the Basin's long-term sustainability. The Stipulation provides that "the NCSD and the City shall employ their best efforts to timely implement the Nipomo Supplemental Water Project." The stipulation recognized the MOU between the City and the NCSD and requires a minimum of 2,500 AF of supplemental water be brought to the Nipomo Basin.

In order for the City to deliver water to the NCSD, a water delivery system must be constructed between the two existing water systems. The Nipomo Waterline Intertie Project (Project) is made up of water lines, pump stations, and the necessary

infrastructure to deliver water from one location to another. NCSD has completed an alternatives analysis to select the most cost effective and environmentally prudent engineering design to meet the Project goals. The City of Santa Maria has also completed its own alternatives analysis and review of the Project. Design of that Project is started and is 60% complete.

Environmental review of the Project is required under the California Environmental Quality Act (CEQA). The City received a Notice of Preparation of an EIR for the Project in June 2008 and Notice of a Public Scoping Meeting in July 2008 from NCSD. The NCSD certified the Final EIR on April 22, 2009.

The location for joining the two water systems in Santa Maria is proposed to be near the intersection of West Taylor Street and North Blosser Road. A pipeline extension would run north on Blosser Road to the levee, under the levee and the Santa Maria River and eventually to a connection in Nipomo (Attachment "B"). If the NCSD receives the necessary financing for the Project, the delivery system is scheduled to be completed by the NCSD in January 2012.

## **DISCUSSION:**

### **Environmental**

#### ***Santa Maria Considering the Environmental Impact Report***

The City acts as a "responsible agency" for the Project under CEQA since the City is delivering supplemental water to the NCSD and a portion of the water infrastructure is being built in the City. A responsible agency complies with CEQA by considering the EIR and reaching its own conclusions as to whether and how to approve the Project involved. Listed below are the steps required by CEQA for the City to consider the EIR:

- The City is to respond to the lead agency's request for consultation. *The City participated in the study session and scoping meeting for the Project. The Director of Utilities reviewed and commented on specific sections of the administrative draft pertaining to City water supply, water quality impacts, and groundwater impacts. The City also provided assistance in responding to comments submitted by area residents.*
- The City is to designate representatives to attend meetings requested by the lead agency to discuss the scope and content of the environmental document. *A City representative attended initial scoping-type meetings for the intertie environmental impact report and reviewed specific sections of the document.*
- The City is to comment on draft environmental documents, focusing on any shortcomings within its area of expertise, or which pertain to parts of the Project it will carryout. *The City reviewed the draft EIR and commented on the delivery of water and the construction of water delivery infrastructure in the City.*
- The City is to consider the environmental impact report before reaching a decision on the Project. *The City Council is now requested to consider the Final EIR for the Nipomo Waterline Intertie Project as approved by the NCSD. The City Council is also requested to consider the addendum and other evidence submitted regarding the effects of the Project.*

- The City is to examine and adopt alternatives and to mitigate or avoid significant environmental effects, if feasible, for the aspects of the project it will carry out. *The City does not incur any significant environmental effects from the Project. Based on the EIR, the Addendum, the Santa Maria Groundwater Litigation Stipulation and the Urban Water Management Plan there is sufficient water quantity and quality to allow the sale of supplemental water to the NCS D without having a negative environmental effect on the City's water supply. In the addendum, the City examined three project alternatives within its power. However, none of the alternatives would both attain the Projects goals and substantially lessen or avoid its environmental effects.*
- The City is to make findings and a statement of overriding consideration as legally required for each significant effect of the Project. *A resolution containing recommended findings and a statement of overriding considerations accompanies this staff report.*

### *San Luis Obispo Coastkeeper Letters*

The City received two letters dated November 30, 2009 and December 11, 2009, respectively, from the San Luis Obispo Coastkeeper (Attachment "C"). As stated in the letters, "The San Luis Obispo Coastkeeper is a program of environment in the public interest." The letters expressed concerns about the Project and the City's role in the environmental review as a responsible agency.

It should be noted, San Luis Obispo Coastkeeper did not respond to either the Notice of Preparation or the Draft EIR prior to its certification by the NCS D. San Luis Obispo Coastkeeper did not attend or provide testimony at the Scoping Meeting or during any of the public hearings on the Draft or Final EIR. The first comments on the Project from the SLO Coastkeeper were received by the City on the day of the Council Meeting, December 1, 2009.

### *Addendum to the EIR*

The City chose to produce an Addendum to the EIR (Attachment "D") to provide clarifications and address comments made in the San Luis Obispo Coastkeeper letters. These clarifications are designed to facilitate the City's review and consideration of the Final EIR as a Responsible Agency according to CEQA.

Following is a brief summary of the points noted in the Coastkeeper Letter and the responses in the Addendum:

1. The Project considered in the NCS D 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.

Response: This comment does not accurately describe the Project reviewed by the FEIR. The proposed Project actually reviewed is the delivery of up to 6,200 acre feet per year of supplemental water to the District. The proposed Project description includes all of the discretionary approvals and physical impacts needed to bring the proposed Project to fruition. Many of those discretionary approvals, including approval of the water supply agreement, are listed in Section III.E. of the FEIR.

2. The NCSD EIR fails to address impacts to the City Water Supply or Underflow of the Santa Maria River. The City of Santa Maria as a Responsible Agency must address direct, cumulative and secondary impacts that fall within the City's discretion.

Response: The Coastkeeper correspondence incorrectly contends that the EIR does not adequately address water supply and "underflow" (i.e. groundwater) impacts of the Project. Pages V-23 through V-53 of the Final EIR provides a detailed discussion of the potential water supply and groundwater impacts of the proposed Project. Specifically, pages V-33 through V-39 provide a detailed overview of the current and future projected water supply totals available to the City through the year 2030. Pages V-48 through V-49 assess the potential impacts of the proposed sale of water upon the Santa Maria Groundwater Basin. These conclusions are based upon the City's adopted Urban Water Management Plan.

The City received correspondence from Dr. Bradley E. Newton on December 1, 2009. Dr. Newton is a professional geologist and a Senior Program Manager at the firm of Science Applications International Corporation (SAIC). Dr. Newton possesses over 20 years of experience in private consulting including the analysis of groundwater basins within San Luis Obispo and Santa Barbara Counties, with expertise in watershed hydrology and hydrologic monitoring. Under his supervision, his firm conducted extensive technical evaluations of the condition of groundwater within the Santa Maria Groundwater Basin and has been a participant to the preparation of the 1<sup>st</sup> Annual Report – Calendar Year 2008 on behalf of the Nipomo Mesa Management Area.

Within his correspondence Dr. Newton has stated:

"In my opinion, the current circumstance of the groundwater contours suggests that groundwater flows from the south to the north; originating in the Santa Maria Valley Management Area and flowing to the Nipomo Mesa Management Area. Producing groundwater from the area of the City of Santa Maria and conveying this water through the Project for delivery on the Nipomo Mesa: 1) does not change the water balance of the Santa Maria Groundwater Basin; 2) mitigates the circumstance of localized groundwater depression existing on the Nipomo Mesa; and 3) provides an opportunity to mitigate the northerly flow of groundwater."

Dr. Newton's points are very important in explaining how the entire Santa Maria Groundwater Basin works. The basin, including Nipomo, is like a large body of water. Localized ground water pumping in Nipomo has caused a depression in the groundwater surface and groundwater travels north in the basin to fill in the depression. Delivering Project water to Nipomo through a pipeline will decrease the amount of pumping, reduce the depression and decrease the flow of groundwater to the north. Delivering Project water to Nipomo is like moving water from one part of a water body to another area within that same water body.

3. The City of Santa Maria must consider potential water quality and quantity impacts to the waters supporting the beneficial uses of the Santa Maria River. Mitigation measures in the NCSD EIR only address issues related to pipeline construction and

*maintenance and do not assure that cumulative impacts to water resources will be avoided or reduced to an insignificant level.*

Response: Pages V-23 through V-53 of the EIR provide a detailed discussion of potential water quality and quantity impacts of the Waterline Intertie Project. The EIR also provides a discussion of potential cumulative impacts related to both water supply and water quality. This analysis concludes that cumulative or regional water quality and cumulative water supply impacts within the Santa Maria Groundwater Basin are less than significant. It further notes that replenishment of the groundwater supplies within the Nipomo Mesa Management Area represent a beneficial cumulative impact.

*4. Why is the City of Santa Maria involved with discussions with the County of Santa Barbara, Central Coast Water Authority and other local agencies in an attempt to acquire more high quality State Water?*

Response: This comment does not assert that the Project results in an environmental impact. Instead, it asks a policy question. As noted in the response to Comment 1 above, "the City of Santa Maria expects to have available water supply in excess of projected water demands through the year 2030" including water available for sale to the NCSD. In accordance with the Court adjudication, "groundwater extractions would be limited to maintain a safe yield" and would not be allowed to overdraft the basin.

As a water purveyor, the City is constantly pursuing the availability of additional water supply sources. Pursuing additional water supplies is a common practice for most water purveyors throughout the State. Regardless of the current availability of water, this strategy is considered to be a wise and viable long-term water management practice.

*5. The California Department of Fish and Game is conducting an Instream Flow Analysis on the Santa Maria River. The results of this analysis will provide significant data which may be used by the City on flow recommendations on the River and sustainable water withdrawal rates. The City must analyze the cumulative effects of the proposed Project on Santa Maria River flow rates as the Project will likely have a serious and significant adverse effect on Santa Maria River resources.*

Response: Coastkeeper's comment is inaccurate and unsupported by evidence. The California Department of Fish and Game's Instream Flow Analysis is part of the larger U.S. Fish and Wildlife Service's Southern California Steelhead Recovery Plan. The Santa Maria River is included within this Plan, which focuses on the nature and extent of surface flows in the River in order to maximize species recovery. This comment implies that the City diverts flows from the Santa Maria River in order to augment their water supplies. The City does not divert surface flows from the river as a water supply source.

No link has been established between the City's groundwater pumping activities and the amount of water flowing in the River. The groundwater recharge from the Santa Maria River into the groundwater basin will continue to occur at its current rate regardless of groundwater levels. As such, groundwater pumping by the City has little impact upon and relevance to surface flows in the Santa Maria River.

6. The City's agreement to sell and deliver water to the NCSD involves activities that will cause reasonably foreseeable changes in the environment and is subject to review under CEQA.

Response: The comment suggests that CEQA review has not been performed for the proposed Water Supply Agreement. However, the Agreement was described as part of the Project on page III-31 of the certified EIR under item # 4. In addition, the agreement does not generate any additional environmental effects not already addressed in the certified EIR, as discussed above and in the Addendum.

Coastkeeper wrote a second letter to Mayor Larry Lavagnino on December 11, 2009. The City responds to this letter in the following paragraphs.

7. Coastkeeper states that it regularly comments on environmental issues including those impacting the Santa Maria River and the District's supplemental water development efforts.

Response: The comment is noted; it is also noted that Coastkeeper did not participate in the District's environmental review process culminating in the certified FEIR.

8. Coastkeeper states legal cases have "clearly established" that a "separate environmental determination" must precede approval of an agreement for sale and delivery of water.

Response: The cases Coastkeeper cites actually say:

- a. A responsible agency must wait until a legally adequate environmental document is prepared, and then must consider that environmental document, before entering into a contract to truck recycled water to a landfill. [Riverwatch v. Olivenhain Municipal Water District, 170 Cal.App.4th 1186 (4th Dist. 2009).]
- b. A lead agency may not make an agreement with a corporation to build low-income senior housing in a specified location, announce that it intends to proceed, prepare to relocate tenants, make a substantial financial contribution to the Project, and enter into a draft agreement to convey property provided the developer, satisfied environmental requirements—all before preparing an environmental document. [Save Tara v. City of West Hollywood, 45 Cal.4th 116 (2008).]

The EIR properly studied the whole Project, including the proposed water supply agreement. The City will consider the FEIR, this addendum, and all other appropriate evidence in making findings before acting on the water supply agreement.

9. Coastkeeper identifies a "concern that the City has committed itself" to the Project and precluded consideration of mitigation measures or alternatives "beneficial to the public trust resources."

Response: In 2004, the City and the District committed themselves to negotiate toward agreement concerning water sales. A prominent part of that agreement was to

assign to the District lead agency status to prepare environmental documentation. All environmental review will be completed before the City acts on the Water Supply Agreement.

### Water Supply Agreement

In order for the City to comply with the MOU and Stipulation, an agreement is needed to formalize the terms and conditions by which the City will provide supplemental water to the NCSD. The City and the NCSD have worked out these terms and conditions in a Wholesale Water Supply Agreement (Agreement). The Agreement was approved by the NCSD Board on October 28, 2009. Key points of the Agreement are as follows:

#### Terms:

The Agreement terms are from the effective date until June 30, 2085. After June 30, 2035, the Agreement is subject to the renewal of the contract between the City and Central Coast Water Authority for the State Water Project. The City is not required to deliver supplemental water if the costs for delivery are higher than the purchase price after June 30, 2035. If this were to occur, both parties are required to meet to renegotiate the Agreement in good faith. The parties will meet in good faith in 2085 to determine whether to extend the terms of the Agreement.

#### Quantity:

The Agreement details the minimum amount of supplemental water that the City must deliver and the NCSD must purchase, as follows:

Years 1 through 10	- 2,000 AF per year
Years 11 through 19	- 2,500 AF per year
Years 20 through end of Term	- 3,000 AF per year

The NCSD may request up to an additional 3,200 AF per year per the Agreement.

#### Quality:

The City must deliver supplemental water to the NCSD from the sources used to provide water to the City's retail customers per the Agreement. Currently, there are two sources of water for Santa Maria; high-quality State water and groundwater. State water is blended with groundwater supplies to provide a relatively consistent water quality throughout the service area.

#### Purchase Price:

The purchase price for the supplemental water delivered to the NCSD is to be based on Tier 1 of the City's Water Consumption Rate. This is the rate the City charges retail customers for water. In fiscal year 2008-2009, the Tier 1 Rate was \$1,063.37 per AF or \$2.441 per hundred cubic feet. The Tier 1 Rate is scheduled to increase five percent on July 1, 2010, and July 1, 2011, to keep up with inflation in the operation of the water system, retire bonds, and implement capital improvements.



## Pump House Aesthetic Review Consistency Agreement

The Project is divided into three phases. There is a possibility that the third phase of the Project could require the construction of a pump house at Blosser Road. A question arose during the City Council Meeting on December 1, 2009, as to the City's ability to review the aesthetics of the potential pump house within the City.

To address this concern, an agreement has been prepared and approved by NCSD, which requires that any pump house for this Project within City limits shall be found consistent with the aesthetic standards of the General Plan by the Planning Commission. This will give the Planning Commission the opportunity to review the aesthetics of a pump house to ensure it meets Santa Maria architecture standards as provided in the General Plan.

### Alternatives:

Do not approve the Wholesale Water Supply Agreement with the NCSD. This alternative is not recommended for the following reasons:

- Delivery of a smaller amount of water, and/or constructing project infrastructure at a different location would not minimize significant effects of the Project.
- This Agreement follows the intent and object of the approved MOU between the City of Santa Maria and the NCSD.
- This Agreement abides by the Stipulation that provides for "the NCSD and the City shall employ their best efforts to timely implement the Nipomo Supplement Water Project."
- The NCSD has approved the Agreement.
- The City has sufficient water of quality and quantity to meet the requirements of the Agreement.
- The Agreement will be fiscally prudent for the City.

### Fiscal Considerations:

Based on fiscal projections, the sale of supplemental water to the NCSD will be revenue neutral in the worst case scenario and generate revenue under most scenarios. This follows the City's longstanding judicial use of fiscal assets.

### Impact to the Community:

The sale of supplemental water to the NCSD will be a positive impact to the community by implementing groundwater restoration and preservation and by improving the groundwater basin balance.

There would be traffic impacts to the community during construction of the Waterline Intertie Project. Motorists on North Blosser Road may experience detours and delays during construction of the Project. To minimize any impact, the Utilities Department will work with the NCSD and the contractor to provide sufficient public notification and signage before and during construction.

Other Agency Review:

The Final EIR was certified by NCSD and Wholesale Water Supply Agreement and the Waterline Intertie Project Consistency Review Agreement were approved by the NCSD.

  
RICHARD G. SWEET, P.E.<sup>For</sup>  
Director of Utilities

ATTACHMENTS:

- Attachment "A" – Table 3-6 from the 2005 Urban Water Management Plan
- Attachment "B" - Intertie Map
- Attachment "C" – San Luis Obispo Coastkeeper Letters
- Attachment "D" – Addendum to the Environmental Impact Report