

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE October 25, 2011	(3) CONTACT/PHONE Courtney Howard, Water Resources Engineer (805) 781-1016	
(4) SUBJECT Request for Staff Direction to Return to the Board with a Final Resolution to Allow the Nipomo Community Services District (NCSD) to Create an Assessment District to Fund Capital Improvements for the NCSD's Supplemental Water Project for the Nipomo Mesa Management Area.			
(5) SUMMARY OF REQUEST Provide staff with direction to return to the Board with a final resolution to allow the Nipomo Community Services District to create an Assessment District to fund capital improvements for the NCSD's Supplemental Water Project for the Nipomo Mesa Management Area, subject to County Counsel's review and approval.			
(6) RECOMMENDED ACTION It is our recommendation that your Honorable Board provide staff with direction to return to the Board with a final resolution to allow the Nipomo Community Services District to create an Assessment District to fund capital improvements for the NCSD's Supplemental Water Project for the Nipomo Mesa Management Area, subject to County Counsel's review and approval.			
(7) FUNDING SOURCE(S) N/A	(8) CURRENT YEAR FINANCIAL IMPACT N/A	(9) ANNUAL FINANCIAL IMPACT N/A	(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A
(11) OTHER AGENCY INVOLVEMENT/IMPACT (LIST): Nipomo Community Services District; Golden State Water Company, Rural Water Company and Woodlands Ventures, LLC; Cities of Arroyo Grande, Grover Beach, Pismo Beach and Santa Maria; State Department of Water Resources, Water Resources Advisory Committee; San Luis Obispo County Local Agency Formation Commission			
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? ____ <input type="checkbox"/> Permanent ____ <input type="checkbox"/> Limited Term ____ <input type="checkbox"/> Contract ____ <input type="checkbox"/> Temporary Help ____			
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input checked="" type="checkbox"/> 3rd, <input checked="" type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All	(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A	(15) MADDY ACT APPOINTMENTS Signed-off by Clerk of the Board: <input checked="" type="checkbox"/> N/A	
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Board Business (Time Est. 120)	(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig) <input type="checkbox"/> Contracts (Orig + 3 Copies) <input type="checkbox"/> Ordinances (Orig) <input type="checkbox"/> N/A <input type="checkbox"/> Email Resolution and Ordinance to CR_Board_Clerk (in MS Word)		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: ____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A	(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> BAR ID Number: ____ <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____	(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	(22) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date <u>9/21/10: A-2</u>	
(23) ADMINISTRATIVE OFFICE REVIEW <div style="text-align: center; font-family: cursive; font-size: 2em; margin-top: 20px;">Nikki Schmitz</div>			

Reference: 11OCT25-BB-1



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

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TO: Board of Supervisors

FROM: Courtney Howard, Water Resources Engineer *CH*

VIA: Paavo Ogren, Director of Public Works *PO*

DATE: October 25, 2011

SUBJECT: Request for Staff Direction to Return to the Board with a Final Resolution to allow the Nipomo Community Services District to Create an Assessment District to Fund Capital Improvements for the NCSD's Supplemental Water Project for the Nipomo Mesa Management Area

Recommendation

It is our recommendation that your Honorable Board provide staff with direction to return to the Board with a final resolution to allow the Nipomo Community Services District to create an Assessment District to fund capital improvements for the NCSD's Supplemental Water Project for the Nipomo Mesa Management Area, subject to County Counsel's review and approval.

Discussion

In 2010, your Board approved an agreement with the Nipomo Community Services District (the "2010 NCSD Agreement"; Exhibit "A") to form an assessment district that would help fund a supplemental water project for the Nipomo Mesa Management Area (NMMA), which is commonly referred to as the Nipomo Supplemental Water Project (Project) and is being led by the NCSD. The Project is intended to provide water supplies from the City of Santa Maria to the NMMA and to provide benefits to properties within the boundaries of NCSD, Golden State Water Company (GSWC), Rural Water Company (RWC) and Woodlands Mutual Water Company (WMWC), collectively referred to as the NMMA Purveyors. The 2010 NCSD Agreement provides that the County will do the following:

- Form the assessment district once NCSD has completed preliminary Project efforts.

- Approve the assessments subject to property owner approval pursuant to the California Constitution, Articles XIII C and XIII D, which is more commonly referred to as Proposition 218.
- Collect annual assessments on property tax bills and pay assessment district debt that may be issued to help fund the Project.

Leading up to approval of the 2010 NCSD Agreement, NCSD's request for County participation was based on the premise that County involvement was required since some of the properties benefitting from the project were located outside the boundaries of NCSD but still within the unincorporated area of the County. The other NMMA Purveyors do not have assessment district powers because they are private water purveyors and not public agencies. After your Board's approval of the 2010 NCSD Agreement, NCSD began its due diligence efforts with County/NCSD Bond Counsel who advises the NCSD on debt that would need to be borrowed to construct project infrastructure. During these efforts, NCSD learned that an alternative approach to the formation of the assessment district is legally allowable (Exhibit "B").

Current NCSD Request – Basis for Recommendation

On July 27, 2011, the NCSD Board of Directors directed their staff to request the County to allow NCSD to lead Project assessment proceedings, which is reflected in Exhibit "C". Staff's recommendation has been developed consistent with the NCSD request. If the recommended action is carried-out, it would effectively rescind the County's involvement under the 2010 NCSD Agreement and the County's role concerning the formation of an assessment district to finance the Project will end. That role is already limited to administrative responsibilities pursuant to the 2010 NCSD Agreement and as referenced above.

Although your Board does have authority on assessment district proceedings to the extent that the boundaries of the assessment district are outside NCSD boundaries, an assessment district itself is not required. Assessment districts are one of several alternatives available to local/public agencies to help fund infrastructure. Water purveyors, whether public or private, can also fund projects through rates that they charge to customers, typically on a monthly or bi-monthly schedule. Capacity charges paid by new customers also may help fund projects.

Assessment districts are commonly used because they help spread costs to both developed and undeveloped properties and provide for a more equitable allocation of costs. In addition, funds borrowed by the assessment district are secured by liens on the individual properties, which is the unique feature that generally provides greater credit-worthiness and lower interest charges. Due to the nature of the real property liens, Proposition 218 requires that 50% of property owners must approve them through formal balloting procedures established by Proposition 218 (not the Elections Code). Each property owner's ballots are counted based on the amount of the proposed assessments (i.e., one vote for each dollar proposed to be assessed).

It is also noteworthy to recognize that the County's role on Project efforts overall will be limited whether the recommended action is approved or not. Specifically, as a result of negotiation by the NMMA Purveyors during the proceedings of the Santa Maria

Groundwater Basin Litigation, its judgment stipulates the Project's implementation by the NMMA Purveyors. The County's role has not included project development, environmental analysis, alternatives analysis or the funding plan and other work efforts because NCSD and the other NMMA Purveyors are independent from County government and are acting under independent powers that they currently have under State law.

It may be un-likely that the multi-jurisdictional nature of water operations within NMMA is clear to all, and public testimony may include those who wish for the County to either actively implement, or deny, the Project. Approval or denial of the Project is not part of this item except to the point that the formation of an assessment district includes a project so that property owners can either approve or deny property related assessments for the project.

In contrast to limited involvement in the Project's development, the County's historical role relating to water resources within the NMMA, including evaluations of the groundwater basin through the Resource Management System and actions to address the resource capacity findings, have been substantial. Staff has provided the following background information and the exhibits primarily so that the Board is aware of the ongoing efforts by NCSD and other NMMA Purveyors, and historical evaluations of the groundwater basin and related actions. Ultimately, whether the recommended action is approved or not, approval or denial of the assessments for the Project will rest with property owners.

Project Background

Exhibit "D" includes the Project description and its objectives as stated in its Environmental Impact Report (EIR) and Exhibit "E" illustrates the Project schedule. The Project EIR was certified on April 22, 2009 by NCSD. The Notice of Determination was filed on May 15, 2009 and no litigation was filed within the 30 day period required by the California Environmental Quality Act. A Supplemental Water Memorandum of Understanding between the NCSD and the City of Santa Maria was executed on September 7, 2004, which was followed by a Wholesale Water Agreement between the two agencies executed on January 5, 2010 (Exhibit "F"). The Wholesale Water Agreement provides for the following water delivery amounts through June 30, 2085 (end of term):

Delivery Years 1 through 10:	2,000 acre feet per year
Delivery Years 11 through 19:	2,500 acre feet per year
Delivery Years 20 through end of Term:	3,000 acre feet per year

It should be noted that the NCSD has led the evaluation of supplemental water project alternatives. Exhibit "G" is a chronology and summary of alternatives analyses of supplemental water that could benefit the Mesa. Included in the alternatives analyses is a direct connection to the State Water Project, which is not feasible due to contracts with the Department of Water Resources which provide zero capacity rights to San Luis Obispo County south of the "Lopez Turnout." Also included in the alternatives analyses

is desalinization, which is estimated to cost significantly more and would include permitting requirements of the California Coastal Commission, which may be possible, but would certainly be extensive in terms of costs and would take years, if not more than a decade, to obtain.

Need for Supplemental Water

The need for supplemental water has been evaluated and addressed in several settings. In general, the County's Resource Management system, in cooperation with local agencies in San Luis Obispo County, have been addressing resource issues in advance of depletion in an attempt to solve resource constraints before they become problematic. In contrast, courts and litigation are generally more involved once a resource problem has expanded in its controversy and when issues of damages may be apparent.

The County has evaluated the water resources within the Nipomo Mesa Water Conservation Area as part of the Resource Management System, including preparation of a Resource Capacity Study. General Plan amendments have included conditions to address water supply concerns with some relationship to litigation. Lastly, the Santa Maria Groundwater Basin litigation included judicial findings that identified concerns and the need for physical solutions.

Resource Management System (RMS) Evaluations and Actions

Several studies of the Nipomo Mesa area in the 1970s and 1980s suggested the possibility of groundwater overdraft. Based on these studies, Level of Severity II was recommended in the 1990 RMS Annual Summary Report and, in 1993, the County commissioned the State Department of Water Resources (DWR) to conduct an update of its 1979 study of the Arroyo Grande – Nipomo Mesa area. The Board of Supervisors directed staff to conduct a resource capacity study (RCS) for water supply in the Nipomo Mesa area, to be based on the DWR update, when it was completed, which would lead to certification of a level of severity and adoption of appropriate mitigation measures. DWR's update was completed in 2002. By the time of its release, the Environmental Impact Report for the 1998 Woodlands Specific Plan had been certified and litigation was also underway to determine water rights in the Santa Maria Valley Groundwater Basin. Because of contradictory conclusions among the various studies, the County retained S.S. Papadopoulos and Associates to review all available studies for the RCS.

In 2004 the RCS was complete, and, based on confirmation that, for the Nipomo Mesa area, demand equals or exceeds the dependable yield, it recommended a Level of Severity III. In 2007, your Board certified a Level of Severity III and adopted the following modifications to Titles 19 and 22 in 2008:

- Requirements to offset a development's water use via participation in a conservation program and to install water-conserving fixtures (Title 19)
- Landscape standards that require water-saving irrigation components and limit turf (Title 22)

2002 Woodlands Land Use Entitlements

In 2002 the Board of Supervisors approved four land use entitlements as allowed by the 1998 Woodlands Specific Plan. These four entitlements authorized a subdivision with 1,220 single-family lots and 100 multi-family units (Tract 2341 and Development Plan S990187U) and Development Plans (D990194D and D990195D) for construction of the first phase of development that included 447 single-family residences, and 18 hole golf course, and infrastructure for a 19-acre business park and 14-acre village center.

Tract 2341 required a Senate Bill 610 (SB 610) certification. In summary, SB 610 is a statutory requirement that was adopted in 2001. It requires that it be determined for subdivisions with more than 500 residential units that a "sufficient water supply" is available and the mechanism for providing the water to the subdivision must be identified. "Sufficient water supply" means: the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including but not limited to, agricultural and industrial uses.

At the San Luis Obispo County Planning Commission hearing on the Woodlands project, the Commission denied the project, in part, because it did not conclude that it could certify the SB 610 requirement. The Planning Commission's denial was appealed to the Board of Supervisors. Prior to the Board hearing, Woodlands Ventures, LLC, executed an agreement with NCS D that outlines the terms for sharing in the cost of implementing a water resource management action required as a result of the Santa Maria Groundwater Basin Litigation, and the Board upheld the appeal. The contractual requirement between Woodlands and NCS D will be satisfied as part of the Nipomo Supplemental Water Project.

County Ordinance 3090

In consideration of the 2004 RCS your Board adopted modifications to Title 22 (also referred to as Ordinance 3090) which requires those seeking a general plan amendment that would result in a net increase in the non-agricultural water demand to utilize supplemental water from outside the boundaries of the Nipomo Mesa Water Conservation Area (NMWCA) (which is within the boundaries of the NMMA except for a portion of the NCS D that overlies an area outside of the Santa Maria Valley Groundwater Basin). The modification to Title 22 also requires the payment of a supplemental water development fee, at the time of building permit issuance and in the amount then currently imposed by County ordinance, for parcels in land divisions that would increase non-agricultural water demands.

Santa Maria Groundwater Basin Litigation

The groundwater basin litigation was initiated in 1997 between Santa Maria Valley Water Conservation District and the City of Santa Maria, the City of Guadalupe, and Golden State Water Company and unnamed defendants and grew to include over 900 parties altogether. The County was named in the litigation primarily due to its operations of Lopez Dam and Reservoir (Zone 3) and its relationship to water supplies in the northern portion of the basin. The final judgment that was entered on

January 25, 2008 incorporated the June 2005 settlement stipulation (Stipulation), the terms of which are described below. This judgment has been appealed by the Landowner Group (LOG) and the Wineman Group.

The Stipulation established the following three (3) management areas:

- The Santa Maria Valley Management Area (SMVMA), which is south of the Santa Maria river in Santa Barbara County but also includes a portion of the basin north of the Santa Maria River in San Luis Obispo County
- The Northern Cities Management Area (NCMA) which generally represents the “Five Cities” or “Zone 3” portion of the County
- The Nipomo Mesa Management Area (NMMA)

In 2004, Judge Komar included the following statement in his Partial Statement of Decision RE Trial Phase III:

“Some wells in the Nipomo Mesa area do show lowering of water levels that may result from a pumping depression or other cause, and there may be some effects in that portion of the Basin that are not shared Basin-wide, but that is not sufficient in any event to demonstrate Basin-wide overdraft.”

It should also be noted that Judge Komar included the following statement in his final judgment:

“The court determines that there is a reasonable likelihood that drought and overdraft conditions will occur in the Basin in the foreseeable future that will require the exercise of the court's equity powers. The court therefore retains jurisdiction to make orders enforcing the rights of the parties hereto in accordance with the terms of this judgment.”

For the NMMA, the following are general highlights of the Stipulation:

- Establishes a technical group (TG) made up of representatives from ConocoPhillips, Golden State Water Company, Nipomo Community Services District, and Woodlands Mutual Water Company, along with an agricultural overlying landowner, who is also a Stipulating Party, to administer the relevant provisions of the Stipulation.
- Requires the NMMA TG to identify trigger points for implementing voluntary actions and trigger points for implementing mandatory actions, and to develop a monitoring program to identify when those potentially severe and severe water shortage conditions occur.
- Supports development of the Nipomo Supplemental Water Project
- Requires that new “Urban Uses” “provide a source of supplemental water, or a water resource development fee, to offset the water demand associated with that development.”

Exhibit “H” illustrates the location of sustained pumping depressions and where low levels may induce sea water intrusion. The 2010 NMMA Annual Report states “This depression creates a transient groundwater divide between both coastal areas and the

Northern Cities Management Area. If this groundwater depression widens to the west or lengthens to the north, the groundwater divide may be breached, allowing groundwater flow from coastal areas to the groundwater depression. This potential reversal of groundwater gradients could create conditions for seawater intrusion.” The Fall 2010 measurements included in the 2010 NMMA Annual Report and as shown in Exhibit “H”, depict the deepest point of the depression at 72 feet below sea level.

Other Agency Involvement/Impact

The cities of Arroyo Grande and Pismo Beach have acted in support of the Nipomo Supplemental Water Project and provided letters of support included as Exhibit “I.” On September 28, 2011, the Oceano Community Services District acted in support of the Nipomo Supplemental Water Project and directed staff to provide a letter of support. The City of Grover Beach considered sending a letter of support on October 3, 2011, and directed staff to come back at a later date with responses to questions.

The Water Resource Advisory Committee, with 34 members representing seven cities, eight community services districts, five supervisorial districts, other public and private water purveyors and specific groups and individuals for agricultural and environmental interests at-large, have supported the inclusion of the Supplemental Water Project in the Countywide Integrated Regional Water Management Plan (IRWMP).

On September 20, 2011, the California Department of Water Resources approved grant funding of up to \$2.3 million for the Nipomo Supplemental Water Project (known at the time as the Nipomo Waterline Intertie Project) based on the IRWMP grant application submitted in January 2011.

The Nipomo Supplemental Water Project would connect to water supply infrastructure of the City of Santa Maria; NCSD and the City of Santa Maria have executed an agreement dated January 5, 2010.

The Santa Maria Groundwater Basin litigation 2005 Stipulation was approved by the Court in June 2005 and includes Nipomo Supplemental Water as one of the physical solutions. Approximately, 700 parties signed the Stipulation, including the County, Nipomo Community Services District, the City of Santa Maria, Golden State Water Company, Rural Water Company, Guadalupe, the City of Arroyo Grande, the City of Pismo Beach, the City of Grover Beach, the Oceano Community Services District and the Santa Maria Valley Water Conservation District.

Woodlands Ventures, LLC, and NCSD have an agreement to share in the cost of the Nipomo Supplemental Water Project that is included in the 2005 Stipulation.

Sphere of Influence conditions established by the San Luis Obispo County Local Agency Formation Commission require a source of supplemental water prior to approval of any annexation.

Financial Considerations

The estimated County cost under the 2010 NCSD Agreement is \$60,000, which is reimbursable from NCSD. No substantial costs would be incurred by the County if the recommended action is approved.

The total Project cost is estimated at \$24 million. Exhibit "J" provides a breakdown of those costs. \$21.8 million is proposed to be funded by assessments on benefitting properties and the balance by State grant.

The estimated annual assessment for a single family residence on less than 0.35 acres of land financed by the assessment district is estimated to be between \$150 and \$525 depending on the NMMA Purveyor and their level of participation in the Project. Exhibit "K" provides a summary assessment calculation.

The estimated total monthly cost equivalent of the Nipomo Supplemental Water Project, including assessments and operating costs, based on a customer using 40 units of water every two months, within the boundaries of NCSD, is \$32.67 (annual assessment of \$260 divided by 12 months plus \$11, which is the O&M and non-capital cost of water from Santa Maria). The estimated monthly cost equivalent for the other NMMA Purveyors is not analyzed "herein."

The Agreement between NCSD and the City of Santa Maria (City) provides that NCSD will be charged at the lowest tiered rate established in the City's water rate ordinance, plus a power cost to deliver the water. State law requires that city rate ordinances be established in accordance with Proposition 218 (i.e. based on cost of service). The cost to NCSD of water purchased from the City will normally be subject to increases (or decreases) in the future, but is required to be based on actual cost analysis.

Exhibit "G" provides a comparison of the cost (in 2007 dollars) of the three most feasible alternative projects that were evaluated in technical memorandums commissioned by the NCSD.

Results

The results of the recommended action are limited to determining whether the County will continue to participate in the formation of the assessment district and related proceedings, or whether NCSD will proceed independently.

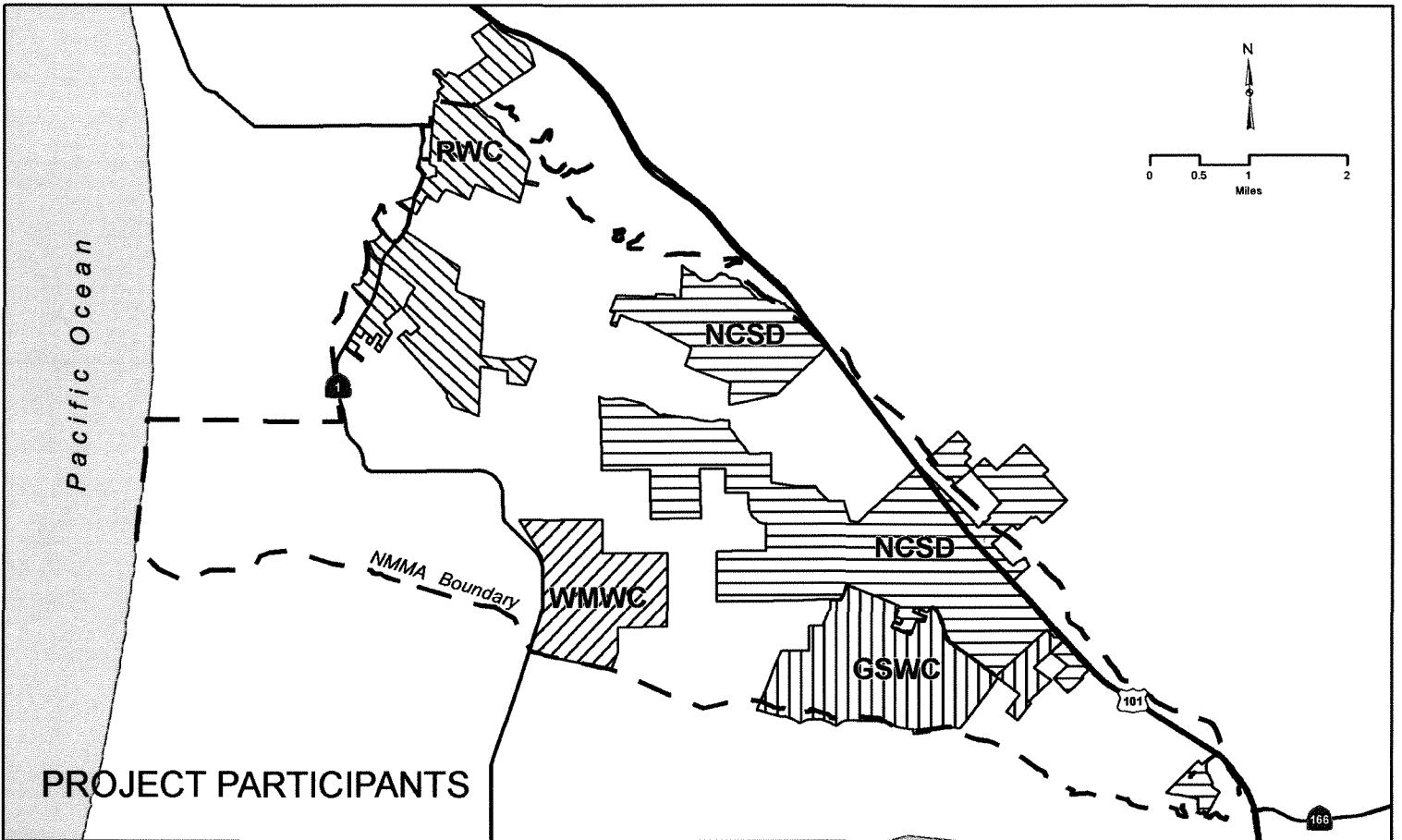
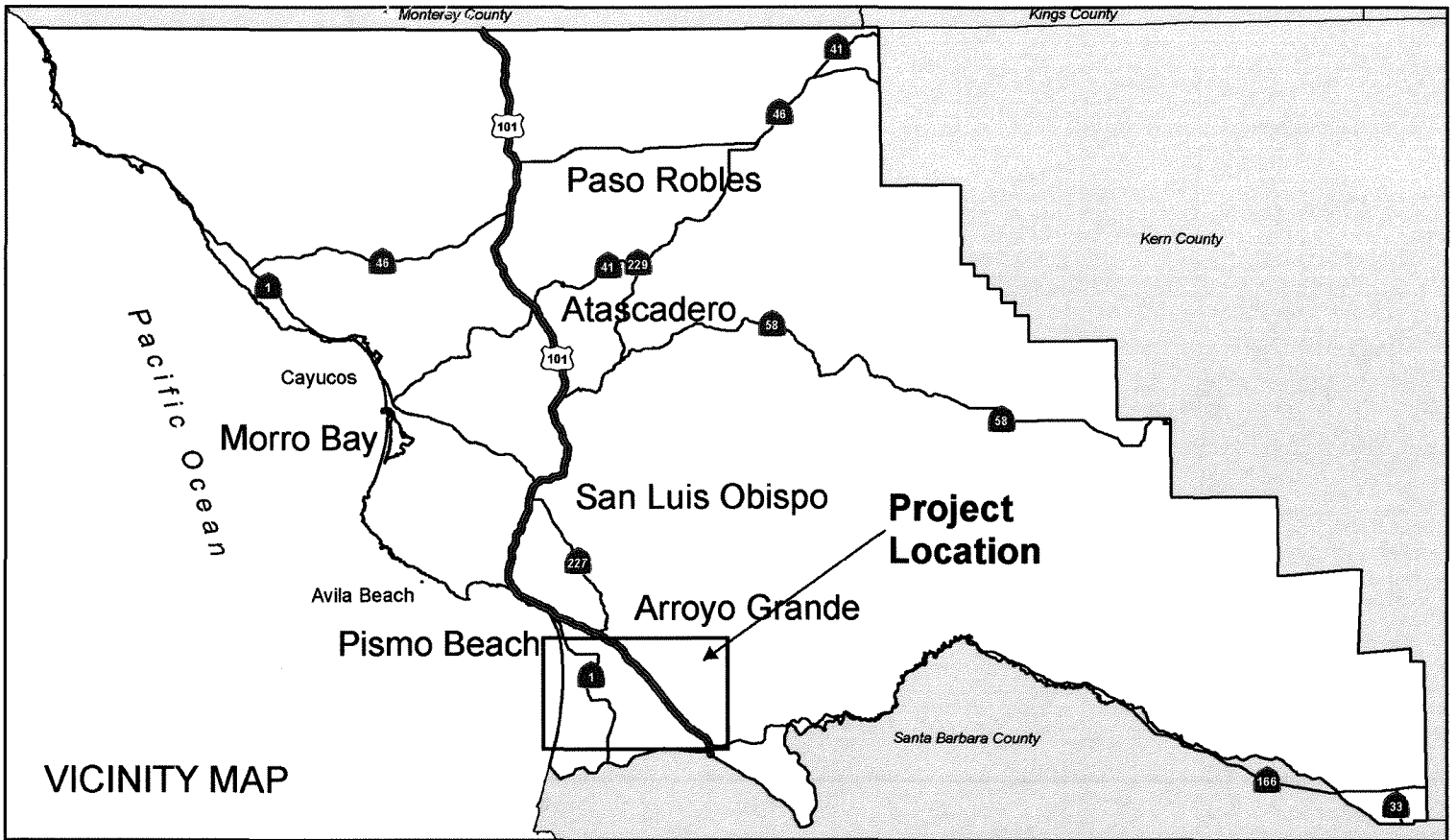
Approval of the assessments by property owners will have a significant positive influence on the timing of the Nipomo Supplemental Water Project and help lead to substantial improvements in water resources within the NMMA, thereby ensuring a healthy, livable and well-governed community. Likewise, denial of the assessments by property owners will impair project timing and not improve water resources within the NMMA in the immediate future.

Attachments: Vicinity Map
Exhibit "A" – 2010 NCSD and County Agreement
Exhibit "B" – Legal Determination for Assessment Lead
Exhibit "C" – NCSD Request dated October 11, 2011
Exhibit "D" – Project Description and Objectives
Exhibit "E" – Project Schedule
Exhibit "F" – NCSD and Santa Maria Wholesale Water Agreement
Exhibit "G" – Chronology and Summary of Project Alternatives
Exhibit "H" – Groundwater Contours
Exhibit "I" – Letters of Support for Project
Exhibit "J" – Total Project Costs
Exhibit "K" – Summary of Assessment Calculations

File: CF 310.100.01 (Nipomo Agreements & Amendments)

Reference: 11OCT25-BB-1

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- Golden State Water Company
- Nipomo Community Service District
- Rural Water Company
- Woodlands
- Nipomo Mesa Management Area Boundary

Nipomo Supplemental Water Project
VICINITY MAP

Copy of document found at www.NoNewWipTax.com

PUBLIC WORKS
GIS SERVICES

D-2
SAN LUIS OBISPO CO.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU"), dated as of ~~September 21~~, 2010, by and between the County of San Luis Obispo, California (the "County"), a political subdivision duly organized and existing under the laws of the State of California (the "State"), and the Nipomo Community Services District (the "CSD"), a public instrumentality duly organized and existing under the laws of said State, is undertaken with regard to the following facts:

RECITALS:

WHEREAS, the CSD has a present need to arrange financing for the construction of a waterline intertie project (the "Project") described in that certain Environmental Impact Report ("EIR") approved and adopted by the CSD on May 13, 2009; and

WHEREAS, the Project calls for the design and construction of pipelines and other facilities by the CSD for the conveyance of water from the City of Santa Maria, California ("City") to properties within the CSD; and

WHEREAS, the Project is CSD's effort to implement a physical solution to groundwater conditions within the Nipomo Mesa Management Area ("NMMA") identified in the June 2005 Stipulation (as identified herein) partially settling the Santa Maria Groundwater Basin Litigation. Said Stipulation was duly signed by, inter alia, the CSD, the City of Santa Maria, and the County of San Luis Obispo; and

WHEREAS, the Project is also consistent with the need to address groundwater conditions within the Nipomo Mesa Water Conservation Area (NMWCA) as identified in the County's Resource Capacity Study, Water Supply in the Nipomo Mesa Area, dated November 2004; and

WHEREAS, the CSD represents that water companies pumping groundwater in the NMMA, specifically Golden State Water Company, Rural Water Company, and Woodlands Mutual Water Company (collectively the "Water Companies") are signatories to the Stipulation; and

WHEREAS, the CSD represents that while it has the authority to create an assessment district that includes any properties benefiting from the Project that lie within the CSD's boundaries, the CSD does not have the power to create an assessment district that includes any properties benefiting from the Project that lie outside the CSD's boundaries; and

WHEREAS, the CSD has requested that the County undertake the necessary processes for the possible establishment of an assessment district (the "Assessment District") that would include properties specially benefiting from the Project, including properties that lie both within and outside the CSD's boundaries that specially benefit from the Project and properties within the boundaries of the Water Companies that specially benefit from the Project; and

WHEREAS, the Project is and will be located within or proximate to the boundaries of the County; and

WHEREAS, the parties hereto wish to provide the terms and conditions upon which the possible formation of such an Assessment District would be processed by the County;

NOW, THEREFORE, be it agreed and understood by the parties hereto, as follows:

Section 1. Recitals; Defined Terms. The foregoing recitals are true and correct. Capitalized terms used but not defined herein shall have the meanings set forth in the Recitals hereof or as follows:

“1913 Act” shall mean Sections 10000 *et seq.* of the Health & Safety Code of the State, comprising the Municipal Improvement Act of 1913.

“Assessment District” shall mean the assessment district, if any, formed at the conclusion of the Assessment Proceedings.

“Assessment Proceedings” shall mean the formal proceedings aimed at the formation of an assessment district for the Project undertaken by the County pursuant to the 1913 Act or any other applicable law relating to procedures for the formation of an assessment district for the Project.

“Auditor-Controller” shall mean the Auditor-Controller of the County.

“Bond Issuance Phase” shall mean the period of time following the Conclusion Date through and including the Closing Date.

“Bond Law” shall mean the Improvement Bond Act of 1915, being Sections 8500 *et seq.* of the Health & Safety Code of the State.

“Cash Contribution” shall mean the cash payments made by the CSD to or on behalf of the County in order to provide for the costs of services associated with the satisfaction of the conditions of this MOU, as it may from time to time be amended. The initial Cash Contribution of the CSD is set forth on Exhibit A to this MOU.

“Claims” shall mean all claims, demands, litigation, losses, judgments, damages, liabilities, costs and expenses, regardless of whether the claim is formally commenced in a court or not. As used herein, “Claims” shall refer to any Claim by any person or entity, including, but not limited to, any Claim by the CSD.

“Closing Date” shall mean the date upon which the CSD Bonds are issued by the County on behalf of the Assessment District, and the proceeds thereof made available to the CSD for the Project.

“Commencement Date” shall be the date the County receives the first “Notice to Proceed – Formation Phase” from the CSD pursuant to Section 4(A) of this MOU.

“CSD Bonds” shall mean any assessment bonds issued by the County under the Bond Law after the Conclusion Date for the initial financing of the Project after an assessment district is created.

"Effective Date" shall mean the date of execution of this MOU by the CSD or by the County, whichever is later, as shown on the signature page hereof. Once each party's governing body approves this MOU, it shall be promptly signed by its authorized representative.

"Formation Costs" shall mean the costs of any party relating to the Assessment Proceedings and/or any preliminary activities relating to the County's possible formation of the Assessment District, including, without limitation, the Cash Contribution, legal costs and expenses of the parties hereto, the costs of published and mailed notices, engineering expenses, testing, environmental and soils testing and reporting and fees of financial advisors and consultants.

"Conclusion Date" shall mean the date upon which the Assessment Proceedings are concluded, regardless of whether an Assessment District is formed on such date.

"Formation Phase" shall mean the period of time from the Effective Date through and including the Conclusion Date.

"Project Costs" shall mean the sums paid or to be paid for the acquisition, construction or improvement of any portion or segment of the Project, in accordance with a purchase order or contract therefor, together with all related administrative, engineering, legal, financial and other costs incurred by the CSD in connection with such acquisition, construction or improvement, including all applicable sales taxes and other charges.

"Stipulation" shall mean that certain Stipulation of June 30, 2005, approved by the Superior Court of the State of California, County of Santa Clara, in that certain groundwater adjudication commonly referred to as the *Santa Maria Valley Water Conservation District vs. the City of Santa Maria, et al.* (lead case number CV770214, later incorporated into a final judgment in said litigation, issued January 25, 2008.

Section 2. Duties of CSD. The CSD shall, at its own expense and with due diligence, during the term of this MOU, in addition to its obligation to pay costs and expenses as provided in Section 5 below, (a) hire a registered professional engineer to prepare a detailed engineer's report; (b) deliver to the County a detailed engineer's report consistent with article XIID, section 4 of the California Constitution and other applicable law that would, *inter alia*, identify all properties receiving special benefits from the Project; (c) retain a financial advisor to serve the CSD; (d) provide adequate information to property owners regarding the Project and the proposed formation of the Assessment District; (e) construct the Project in accordance with engineering plans and specifications provided to the County and in compliance with the Stipulation and the applicable provisions of the EIR; and (f) provide annual disclosure respecting the CSD Bonds as required pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission. At the County's request, the CSD shall, at its own expense, provide the County with any requested information relating to the Project, including, but not limited to, any and all updated engineering or design information, and any and all agreements signed or approved by the CSD.

Section 3. Duties of County. During the term of this MOU, and in conjunction with the timeframes set forth below, the County shall have the following duties:

(A) During the Formation Phase, the County shall: (1) retain special counsel to assist in the Formation Phase; (2) coordinate the process for the formation of the Assessment District.

including publication and/or mailing of notices required under the 1913 Act and adoption of appropriate resolutions; (3) collect and tabulate the results of balloting; and (4) canvass the final tabulation of ballots.

(B) Following the creation of an Assessment District, if any, the County shall: (1) retain Bond Counsel to assist in the issuance of the CSD Bonds; (2) administer the Assessment District after formation, including the annual delivery of assessment rolls to the Auditor-Controller of the County and the transmission of collected assessments to the fiscal agent to be used as debt service for the CSD Bonds; (3) retain its own financial advisor and underwriter or underwriters in connection with the authorization, issuance and sale of the CSD Bonds; (4) coordinate the issuance of the CSD Bonds through the preparation of appropriate resolutions, fiscal agent agreements, a preliminary and a final official statement and related legal documents; (5) administer the sale of the CSD Bonds; (6) provide for payment of the costs of issuance of the CSD Bonds from proceeds thereof; (7) make the proceeds of the CSD Bonds available to the CSD for the construction of the Project; and (8) require the fiscal agent to maintain appropriate books and records respecting the CSD Bonds, collection and payment of debt service thereon, and investment earnings on unexpended proceeds; provided, however, that the CSD shall be responsible for the payment of all costs and expenses associated with the County's performance under this Section.

Section 4. Notice to Proceed.

(A) Formation Phase. The County shall commence performance of County duties under Section 3(A) above within five (5) days of CSD's "Notice to Proceed – Formation Phase" and unless otherwise directed in writing by the CSD shall proceed with said duties with due diligence.

(B) Bond Issuance Phase. Following the creation of an Assessment District, and after the parties have amended Exhibit A, and the CSD has paid the amended deposit amount to the County, the County shall commence performance of County duties under Section 3(B) above within five (5) days of CSD's "Notice to Proceed – Bond Issuance Phase," and unless otherwise directed in writing by the CSD, shall proceed with said duties with due diligence.

Section 5. Costs and Expenses. The CSD covenants and agrees that it shall pay all Formation Costs and any other costs and expenses of the County relating to the duties described in Sections 3(A) and/or 3(B) above, including reasonable and necessary County staff time and the costs and expenses of consultants retained for said purposes by the County within twenty days of receipt of invoices for such costs and expenses. County invoices shall be itemized and shall identify the person providing the service, the service performed, the amount of time spent on performing the service, the amount charged for each item of service and a description by item for cost and expenses. Within five business days of the Effective Date of this MOU, the CSD shall deposit with the County the sum specified on Exhibit A attached hereto.

Following the creation of an Assessment District, the County and the CSD shall agree upon such additional deposits, costs and expenses as may be necessary for the issuance of the CSD Bonds pursuant to the Bond Law and shall amend Exhibit A to reflect such additional deposits, costs and expenses. In no event shall the County be liable to pay any of the costs and expenses incurred in connection with the execution of this MOU, the processing of the proposed

Assessment District or the issuance of the CSD Bonds, which shall all be the responsibility of the CSD.

Section 6. Reimbursement of Cash Contributions, Expenses. To the extent permitted by law, the CSD shall be entitled to be reimbursed for amounts advanced under Section 2 and 5 hereof from the proceeds of the CSD Bonds, as and when issued. Notwithstanding the foregoing, the County makes no representations and can provide no assurances to the CSD that the CSD Bonds will in fact be issued, that the CSD will be reimbursed therefrom, or that the CSD Bonds will be issued upon terms sufficient to generate enough proceeds to pay both Project Costs and the Formation Costs.

Section 7. Notices and Hearings. In connection with the Formation Phase and the issuance of the CSD Bonds, the County will be required, pursuant to pertinent provisions of the 1913 Act and the Bond Law, to provide notices, including published notices, and to conduct public hearings; the CSD covenants and agrees to post notices (and, as to parties which have previously so requested of the CSD, to mail notices) of each related agenda item being considered and of each related public hearing to be conducted by the County.

Section 8. Assessments Based on Special Benefits. In providing the engineering and related support during the Formation Phase, the CSD understands and agrees that the assessments to be imposed upon properties within the Assessment District, when formed, shall be made strictly upon the basis of special benefit to such properties as required by law.

Section 9. Maintenance and Operation of Project.

(A) CSD Ownership of the Project. Except as to connectors and pumping facilities associated with the Project to be owned and/or operated by the City, the Project and all of its pumps, machinery, conduits, apparatus, fixtures, fittings and equipment of any kind, real property (including rights-of-way) and capacity (except as provided in subparagraph E below) are and shall be, owned and/or operated by the CSD and shall be held and operated and maintained by the CSD as provided for herein.

(B) CSD's Objectives and Covenants. The CSD covenants and agrees that it will operate and maintain the Project in accordance with all relevant and valid governmental laws, ordinances, approvals, rules, regulations and requirements, including, without limitation, such zoning, sanitary, pollution, environmental and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the CSD. The CSD further covenants and agrees that it will maintain and operate the Project in good repair, working order and condition, and that it will from time to time inspect and test all of the Project against then-current water supply industry standards, and that the CSD will pursue all necessary and proper replacement, repairs, renewals and improvements thereto. The CSD's operation of the Project, shall be consistent with the provisions of the "Stipulation" and "Final Judgment." The CSD agrees further that all revenues received from the Project shall be used for the sole benefit of the Project.

(C) CSD's Capital Reserves; Annual Budgets to Be Prepared by the CSD. In order to satisfy its covenants set forth in this MOU, the CSD shall determine the amount of capital reserves necessary for the Project for each upcoming fiscal year and its annual budget shall reflect such capital reserves. The CSD shall provide copies of the draft budget to the County for review and comment prior to final approval by the CSD's governing board.

(D) No Sale, Lease or Disposing of Project. The CSD covenants and agrees not to sell, lease or otherwise dispose of the Project or any part thereof essential to the proper operation thereof or to the earning or collection of the gross revenues of the Project, nor to enter into any MOU or lease which would impair the operation of the Project, or any part thereof necessary in order to secure adequate revenues for the payment of amounts due under this MOU, other than as necessary to secure the CSD Bonds; *provided, however*, that any real or personal property which has become nonfunctional or obsolete or which is not needed for the efficient operation of the Project may be sold or disposed of if such disposition will not have the effect of reducing revenues of the Project below the levels required under this MOU.

(E) Assignment of Capacity. Nothing in this MOU prohibits the CSD from assigning capacity interests in the Project's pipelines and related facilities to any of the Water Companies so long as such assignment is consistent with the final engineer's report and all applicable laws. Copies of any such assignments made by the CSD shall be immediately provided to the County and its Bond Counsel. If the CSD desires CSD Bonds to be issued on a tax-exempt basis, such assignments, if desired by the CSD, should not be undertaken without consultation with and the prior written approval of Bond Counsel to the County. Following the issuance of any CSD Bonds for the Project on a tax-exempt basis, such assignments, if desired by the CSD, shall not be undertaken without consultation with and the prior written approval of Bond Counsel to the County.

(F) CSD to Maintain Project. The CSD covenants and agrees to maintain and preserve the Project in good repair and working order at all times, to operate the same in an efficient and economical manner and to pay all operation and maintenance costs of the Project as they become due, all in accordance with the best business judgment of the CSD.

(G) No Superior Liens or Payments. The CSD covenants and agrees not to create or allow any lien on or payment from the revenues of the Project or any part thereof prior to, or superior to, the CSD's obligations to provide for debt service on the CSD Bonds.

(H) CSD to Insure Project. The CSD covenants and agrees to procure and maintain insurance, that is reasonable, relating to the Project which the CSD shall deem advisable or necessary to protect its interests and/or which may be required for the issuance of CSD Bonds. Such insurance shall afford protection in such amounts and against such risks as are usually covered in connection with similar water enterprises in the State of California; *provided*, that any such insurance may be maintained under a self-insurance program, so long as such self-insurance program is maintained in accordance with standards and in such amounts as are then usually maintained for similar water delivery projects in the State.

(I) CSD to Pay Obligations; Observe Laws. The CSD covenants and agrees to pay and discharge all valid taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Project or any part thereof when the same shall become due and to duly observe and conform to all valid regulations and requirements of any governmental authority relative to the operation of the Project that are not being contested by the CSD in good faith.

(J) Eminent Domain. CSD covenants and agrees that if all or any material part of the Project shall be taken by eminent domain proceedings, or if the CSD receives any insurance proceeds resulting from a casualty loss to any material portion of the Project, the proceeds

thereof shall be used by the CSD to construct or install replacements for the condemned or destroyed components of the Project or to redeem the CSD Bonds.

Section 10. Indemnification. The County is willing to enter into this MOU only if all of the County's expenses, costs, and possible exposure to liability relating to this MOU are assumed by the CSD to the fullest extent allowed by law. Accordingly, the CSD agrees to indemnify, defend and hold harmless the County, including its officers, employees and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the County, against any and all Claims by any person relating to this MOU, the engineer's report, the Assessment Proceedings, the issuance of the CSD Bonds (including but not limited to, any Claims relating to the exclusion from gross income of interest on the CSD Bonds or the failure to satisfy the requirements of Rule 15c2-12 (Continuing Disclosure), promulgated by the Securities and Exchange Commission), and/or the design, construction, operation or maintenance of the Project, regardless of whether or not the Claim arises from any omission of the County, the CSD, or some other person or entity. The CSD's duty to defend the County extends to all of the aforementioned Claims even if the Claim arises from the active or passive negligence by the County. The CSD's duty to indemnify the County extends to all of the aforementioned Claims even if the Claims arise from any active or passive negligence by the County (but not from any willful acts by the County).

In case any Claim shall be made or action brought against the County or any controlling person as provided above, the County shall promptly notify the CSD in writing setting forth the particulars of such Claim or action and the CSD shall assume the defense thereof, including the retaining of counsel reasonably acceptable to the County and the payment of all expenses. Notwithstanding the CSD's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the CSD shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the CSD to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the CSD and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are materially different from or additional to those available to the CSD; (iii) the CSD shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the CSD shall authorize the indemnified party to employ separate counsel at the expense of the CSD. The CSD will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened Claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such Claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

Nothing contained in the foregoing indemnity provisions shall be construed to require the CSD to:

- A. Indemnify, defend and hold harmless the County from claims by its own employees, contractors and consultants that are unrelated to any act or omission by the CSD, its employees, agents, representatives or contractors; or

B. Indemnify, defend and hold harmless the contractors and consultants retained by County pursuant to this MOU.

Section 11. CSD's Assumption of Risk. The CSD acknowledges that the County is entering into this MOU at the request of the CSD, and that the County has never before (1) created an assessment district, nor issued bonds, for a project that is being constructed, owned and operated by a community services district, or (2) created an assessment district for such a project that included properties outside the boundaries of the community services district. The CSD enters into this MOU with full appreciation of the risks associated with such a venture and assumes all risks associated with a unilateral or mutual mistake of law or fact, frustration of purpose, or impossibility of performance. Under no circumstances shall any obligations or duties of the CSD under this MOU be excused, voided or relieved by any unilateral or mutual mistake of law or fact, frustration of purpose, or impossibility of performance. Under no circumstances shall the County be out of pocket for any costs associated with this MOU.

Section 12. Notices. The County covenants and agrees to provide notice to the CSD, at the address shown on Exhibit B hereto, of all hearings and other proceedings related to the formation of the Assessment District, the approval or issuance of the CSD Bonds and the Project which the County may conduct during the term of this MOU. The CSD covenants and agrees to provide notice to the County, at the address shown on Exhibit B hereto, of all hearings and other proceedings related to the formation of the Assessment District, the approval or issuance of the CSD Bonds and the Project which the CSD may conduct during the term of this MOU. Either party may provide a different notice address to the other party, in which case, an amended Exhibit B will be provided to each party.

Section 13. Cooperation of Parties. The parties hereto recognize that it is essential to cooperate fully concerning the handling of data and information contemplated by this MOU. In connection herewith, the parties therefore agree to provide any data, information and documentation reasonably necessary in order to accomplish the goals of this MOU.

Section 14. Opinions and Determination: Good Faith. Where terms of this MOU provide for an action to be based upon opinion, judgment, approval, review or determination of either the CSD or the County hereto such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The County and the CSD shall each act in good faith in performing their respective obligations as set forth in this MOU.

Section 15. Term of Agreement: Survival of Obligations. This MOU shall automatically terminate (A) on the day which is 365 days following the Effective Date, (i) if no Assessment District is formed, or (ii) if no CSD Bonds have then been issued; or (B) the day the final CSD Bonds are retired and paid in full. The CSD's obligations under Sections 5 (Costs and Expenses), 9 (Indemnification) and 10 (County's Access to Information) shall survive the termination of this MOU, and shall remain in full force and effect until fully satisfied.

Section 16. No Guarantee of Assessment District Formation. The County and the CSD understand that there is no guarantee that an Assessment District will be formed by virtue of execution and delivery of this MOU or the efforts of either party during the Formation Phase. If a proposed assessment district is not approved by a sufficient number of property owner

ballots as required by applicable law, the County shall be under no obligation to conduct any further Assessment Proceedings under this MOU.

Section 17. Modification. No amendment to or variation of the terms of this MOU, excepting notice addresses, as described in Section 11, shall be valid unless made in writing and signed by the affected parties; no oral understanding or agreement not incorporated herein shall be binding upon any of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding unless authorized by the parties in writing.

Section 18. Successors and Assigns. The terms, covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

Section 19. Review for Legal Adequacy. Each party to this MOU acknowledges and agrees that this MOU has been reviewed by legal counsel to such party for legal adequacy.

Section 20. No Waiver. No waiver of the breach of any of the covenants, agreements, restrictions or conditions of this MOU by any party shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this MOU. No delay or omission of any party in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this MOU.

Section 21. Severability. If any term or portion of this MOU is held to be invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall continue in full force and effect.

Section 22. Governing Law. This MOU shall be governed by the provisions of the laws of the State of California applicable to contracts made and performed in such State.

Section 23. Counterparts. This MOU may be executed in counterparts, each of which shall, together, constitute an entire document.

IN WITNESS WHEREOF, the parties have each executed this MOU by their duly authorized representatives as set forth below:

COUNTY OF SAN LUIS OBISPO

By FRANK R. MECHAM
Chairperson, Board of Supervisors

Dated: SEP 21 2010

APPROVED AS TO FORM:
WARREN R. JENSEN,
COUNTY COUNSEL:

By *Robert J. Foran*
Deputy County Counsel

ATTEST:
JULIE L. RODEWALD, COUNTY CLERK

By SANDY CURRENS
Deputy County Clerk

NIPOMO COMMUNITY SERVICES DISTRICT

By *James Harrison*
Authorized Representative

Dated: *Aug 12 2010*

EXHIBIT A

ESTIMATED COSTS AND CASH CONTRIBUTIONS

(as of _____, 2010)

The Formation Phase costs to be paid or reimbursed by the CSD are estimated at \$60,000; upon execution of the MOU, the CSD shall deposit the sum of \$25,000 with the County as a credit towards the total Formation Phase costs.

This schedule will be amended following the successful conclusion of the Formation Phase and the further authorization of the parties.

EXHIBIT B
NOTICE ADDRESSES

If to the County :

The County of San Luis Obispo
c/o Public Works Director
County Government Center Room 207
San Luis Obispo, CA 93408

Copy to: County Counsel, County Government Center Room D320, San Luis Obispo,
CA 93408

If to the CSD:

General Manager
Nipomo Community Services District
148 South Wilson Street
Nipomo, CA 93444-0326

Copy to:

Jon S. Seitz
Shipsey & Seitz, Inc
1066 Palm Street
San Luis Obispo, CA 93401
Phone: (805) 543-7272
Email: Jon@shipseyandseitz.com



555 South Flower Street • Forty-First Floor • Los Angeles, California 90071

www.fulbright.com

MEMORANDUM

TO: Michael S. LeBrun, Interim General Manager
Jon S. Seitz, Esq., General Counsel

FROM: Maryann L. Goodkind

DATE: April 18, 2011

RE: Alternative Approach for Assessment District Formation for Nipomo-Mesa Water Intertie Project

It has been proposed that a portion of the Nipomo-Mesa Water Intertie Project will be funded utilizing the mechanism of an assessment district established pursuant to the Municipal Improvement Act of 1913¹ (the "1913 Act"), which will also include the issuance of bonds pursuant to the Improvement Bond Act of 1915² (the "1915 Act"). Since a portion of parcels to be assessed lie outside of the boundaries of the Nipomo Community Services District ("NCSD") it is currently proposed that the County of San Luis Obispo (the "County") be the entity to form the assessment district and issue the assessment bonds since all parcels of land to be benefitted by the facilities to be financed fall within the jurisdiction of the County.

This memorandum discusses an alternative approach to forming the assessment district that involves the NCSD as the entity to establish the assessment district and issue the bonds with the consent of the County.

Government Code Section 61129 of the Community Services District Law³ provides that a community services district may levy assessments to finance its authorized capital improvements using the 1913 Act and 1915 Act. Section 10103⁴ of the 1913 Act incorporates certain provisions of the Improvement Act of 1911⁵ (the "1911 Act") that sets forth a procedure

¹ California Streets and Highways Code Section 10000 et seq. (*all Section references are to the California Streets and Highways Code unless otherwise noted*).

² Section 8500 et seq.

³ California Government Code Section 61000 et seq.

⁴ Section 10103. "*The provisions of Chapter 2 (commencing with Section 5115) of Part 3 of Division 7 of this code providing for the construction of work and the levy of an assessment by a city within a county or by a county within a city, are incorporated in this division as if fully set out herein. Upon obtaining the consent required in that chapter, a city may construct improvements and levy an assessment in a county or in another city, a county may construct improvements and levy an assessment within a city, and a public corporation may construct improvements and levy an assessment outside of its boundaries either within a city or within a county. ...*"

⁵ Section 5000 et seq.

Michael S. LeBrun, Interim General Manager
Jon S. Seitz, Esq., General Counsel
April 18, 2011
Page 2

by which a city, county or public corporation may obtain consent to expand the boundaries of the assessment district and allow for work outside the jurisdiction of the forming entity. A community services district is considered a public corporation and therefore may utilize these provisions.⁶

The NCS D may wish to form the assessment district in lieu of the County. The procedure entails obtaining the consent of any city or county in which either (i) property to be assessed or (ii) work to be financed, lie outside the boundaries of the NCS D. Section 5115 provides that the Board of the NCS D find that the public interest or convenience requires that "the proposed work is of such a character that it directly and peculiarly affects property in two or more cities, or in one or more cities and counties, and that the purposes sought to be accomplished by the work can best be accomplished by a single, comprehensive scheme of work."

Before the NCS D may adopt a resolution of intention to form the assessment district it must first obtain consent of the County by submitting the proposed resolution of intention to the Board of the County. The County may then give its consent through the adoption of a resolution that consents to the work within its boundaries, the assumption of jurisdiction by the NCS D over the parcels to be assessed and the proposed resolution of intention.⁷ Should any of the work lie outside of the boundaries of the County, the NCS D must obtain the consent of those entities as well (i.e., the City of Santa Maria).

If the NCS D determines to form the assessment district then it would also be the issuer of the assessment bonds. All responsibility for the issuance, administration and monitoring of the

⁶ Section 10003. "Municipality" and "city" include every city, city and county, or county, or other entity, public corporation, or agency authorized to operate under this division [emphasis added], including any joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and any special district organized for the purpose of aiding in the development or improvement of navigation or commerce to, or within, the district."

⁷ Sections 5117 and 5118.

"Section 5117. The city may include within the boundaries of an assessment district created pursuant to this division lands lying within the boundaries of any one or more cities, or counties, when such lands, in the opinion of the legislative body conducting the proceeding, will be benefited by the proposed work if the consent of the legislative body of any territory proposed to be assessed shall first be obtained to the formation of the assessment district and, if any of the proposed work is to be done within such territory, to the work described in the resolution of intention and the assumption of jurisdiction thereover for the purposes aforesaid prior to the adoption thereof."

"Section 5118. The proposed resolution of intention shall be submitted to the legislative bodies which have jurisdiction over the territory into which the proposed work or the assessment district therefor may extend. When the resolution of intention is approved and the consent of the legislative bodies whose consent is necessary is obtained to the work and the formation of the assessment district described therein, the resolution of intention may be adopted. The consent if any shall, of itself, constitute assent to the assumption of jurisdiction thereover for all purposes of the proceeding and authorize the legislative body initiating the proceeding to take each and every step required for or suitable for the consummation of the work extending outside the limits of the city, and the levying, collecting and enforcement of the assessments to cover the expenses thereof and the issuance and enforcement of bonds to represent unpaid assessments."

Michael S. LeBrun, Interim General Manager
Jon S. Seitz, Esq., General Counsel
April 18, 2011
Page 3

assessment district and bond issue would lie with the NCSD, including fielding questions from property owners, accepting prepayments, placing the assessment roll on the tax roll, complying with continuing disclosure, etc.

We hope this discussion of an alternative approach to form the assessment district is helpful to the Board of the NCSD in moving forward with the proposed financing of the Nipomo-Mesa Water Intertie Project.

MLG

NIPOMO COMMUNITY

BOARD MEMBERS

JAMES HARRISON, PRESIDENT
LARRY VIERHEILIG, VICE PRESIDENT
MICHAEL WINN, DIRECTOR
ED EBY, DIRECTOR
DAN A. GADDIS, DIRECTOR



Serving the Community Since 1965

SERVICES DISTRICT

STAFF

MICHAEL S. LEBRUN, GENERAL MANAGER
LISA BOGNUDA, ASSISTANT GENERAL MANAGER
PETER SEVCIK, P.E., DISTRICT ENGINEER
TINA GRIETENS, UTILITY SUPERINTENDENT
JON SEITZ, GENERAL COUNSEL

148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932 Website address: ncsd.ca.gov

October 11, 2011

County Board of Supervisors
Room D-430
County Government Center
San Luis Obispo, California 93408

Dear Chairperson Hill, Vice-Chairperson Patterson, Supervisor Teixeira, Supervisor Gibson,
and Supervisor Mecham:

SUBJECT: REQUEST TO FORM THE PROPOSED NIPOMO COMMUNITY SERVICES DISTRICT ASSESSMENT DISTRICT (SUPPLEMENTAL WATER PROJECT)

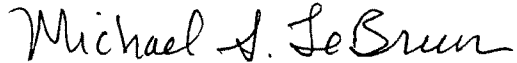
The Nipomo Community Services District (the "District") is contemplating taking on the responsibility of forming the proposed assessment district for the financing of the water improvements relating to its supplemental water project, including the pipeline and related facilities such as pumps, storage tanks and pressure relief valves that would connect the City of Santa Maria's water distribution system to the District's water distribution system. As you are aware, currently the District and the County of San Luis Obispo (the "County") have a Memorandum of Understanding in which the County has agreed to be the forming agency for the proposed assessment district.

Enclosed please find a memorandum detailing the reasons the District desires to be the forming agency. If the County determines to allow the District to be the forming agency for the assessment district, assessment law, specifically Sections 5117, 5118 and 10103 of the California Streets and Highways Code, requires that the District receive consent and approval of the resolution of intention for the assessment district from any jurisdictions (i) in which land lying outside the boundaries of the District is contemplated to be included in the proposed assessment district, and (ii) in which improvements to be financed by the assessment district lie (if outside the boundaries of the District). Therefore, the District is requesting that the San Luis County Board of Supervisors consider the attached Resolution giving such consent to the assumption of jurisdiction for outside properties and improvements to be included in the assessment district, as well as approval of the form of the resolution of intention (attached as Exhibit A to the County Resolution).

If you have any questions, please contact me.

Very truly yours,

NIPOMO COMMUNITY SERVICES DISTRICT



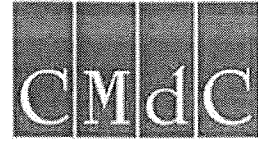
Michael S. LeBrun
General Manager

Enclosure(s):

- October 7, 2011 deCrisis & Co., INC Memorandum
- Draft Resolution of Board of Supervisors (Granting Consent to Conduct Assessment)
- Draft Resolution of Nipomo Community Services District (Intent to Form Assessment District)

c:

- Nipomo Community Services District Board of Directors
- NCSD District Legal Counsel (Shipsey & Seitz, Inc.)
- County of San Luis Obispo Public Works Director
- Fulbright & Jaworski L.L.P.
- C.M. de Crinis & Co.



C.M. de CRINIS & CO., INC.

MEMORANDUM

DATE: October 7, 2011

TO: Michael LeBrun – General Manager

FROM: Curt de Crinis & Paul McDonnell

RE: Nipomo Community Services District Bond Program

As you have requested, listed below are reasons that the Nipomo CSD should be considered as the lead/sole agency for planned assessment district financing.

1. Nipomo is the agency designing, bidding and managing the construction of the project. Nipomo will also be the agency owning the improvements. The financing of the project should therefore be managed and controlled by Nipomo. This will help assure the financing and the financing schedule is coordinated closely with the construction schedule. The fact that a portion of the proposed assessment financing also relate to agreements between other water companies and the City of Santa Maria further illustrate this point.

2. The source of repayment will be assessments levied on parcels primarily within the corporate boundaries of Nipomo and the other private water suppliers involved. The parcels assessed are customers of Nipomo directly or through water supply agreements with the three private water suppliers. Public outreach and inquiries about the assessment district, financing and the project are best managed by Nipomo.
3. Assessment bonds, once issued, require annual administration including preparation of the annual tax levy, correct records of prepayments, bond calls and decisions on foreclosure covenant actions for delinquent assessments. As the Agency responsible for the project overall Nipomo is best positioned to administer such actions with its customer base and its requirements. Managing this relationship with the customer base may be important in maintaining support for future water rates and other issues.
4. Nipomo's management of its own financing program reduces complexity, costs and time delays associated with the review, approval and issuance of the financing by an outside agency such as the County. Issuance by an outside agency requires additional legal reviews, staff review, board actions, public outreach, and increases risks of confusion and uncoordinated actions. Nipomo will be a better position to assure flexibility is maintained. This will help assure property owners are assessed at the lowest amounts possible.
5. Nipomo has issued bonds in the past and intends on issuing bonds next year for its Southland wastewater project. Nipomo has also issued assessment bonds and currently administers an assessment district. Nipomo has retained qualified professionals and legal counsel with experience working with assessment and water financing. These professionals are also familiar with the Nipomo's finances. The Nipomo staff is confident it is receiving the legal and financial advice required to successfully complete the financing program.

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SAN LUIS OBISPO GRANTING CONSENT TO THE
FORMATION OF AN ASSESSMENT DISTRICT BY THE
NIPOMO COMMUNITY SERVICES DISTRICT**

WHEREAS, the Board of Directors of the Nipomo Community Services District (“Nipomo CSD”) proposes to adopt a Resolution of Intention (the “Resolution of Intention”) to initiate proceedings to consider the formation of a special assessment district designated as Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project) (the “Assessment District”), under the provisions of the Municipal Improvement Act of 1913, being Division 12 (commencing with Section 10000) of the Streets and Highways Code of the State of California, (the “Improvement Act”), Article XIID of the Constitution of the State of California (“Article XIID”) and the Proposition 218 Omnibus Implementation Act (Government Code Sections, 53750, and following) (together with the Improvement Act and Article XIID, the “Assessment Law”), to finance the acquisition or construction of certain water improvements to be located in and to specially benefit certain real property partially located in the County of San Luis Obispo (the “County”); and

WHEREAS, Sections 5117 and 5118 of the Improvement Act of 1911 and Section 10303 of the Improvement Act provide that, when another public agency initiates proceedings under the Improvement Act to consider the formation of an assessment district to include parcels or portions of parcels and improvements within territory of the County, the Board of Supervisors of the County must consent to the formation of such assessment district and approve the proposed Resolution of Intention of such legislative body to form such assessment district and the Improvements proposed to be constructed, prior to the adoption of such Resolution of Intention by such legislative body; and

WHEREAS, the Board of Directors of the Nipomo CSD has requested that the Board of Supervisors of the County consent to the formation of the Assessment District and approve the Resolution of Intention, attached hereto, and the Improvements described in the Exhibit “A” to the Resolution of Intention (the “Improvements”); and,

NOW, THEREFORE, the Board of Supervisors, does hereby resolve and determine as follows:

Section 1. The above recitals are all true and correct.

Section 2. Pursuant to the Improvement Act, the Board of Directors of the County of San Luis Obispo hereby consents to the formation of the Assessment District and approves the Resolution of Intention and the Improvements.

Section 3. The foregoing approval of the Board of Supervisors of the County of San Luis Obispo is conditional upon (a) compliance by the Nipomo CSD with the provisions of the Assessment Law in undertaking the proceedings to consider the formation of the Assessment District and in levying any assessment upon the properties

within the Assessment District and (b) the agreement by Nipomo CSD as specified in the Resolution of Intention that Nipomo CSD shall hold harmless and indemnify the County, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the County in reviewing and granting its consent to the formation of the Assessment District and approving the Resolution of Intention and the Improvements.

Section 4. The County Clerk of the County is hereby directed to certify and transmit a copy of this Resolution to the Secretary of Nipomo CSD.

Section 5. This resolution shall take effect immediately upon its adoption.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

By _____
Chairperson of the Board of Supervisors
County of San Luis Obispo

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN JENSEN

County Counsel

By: _____
Deputy County Counsel

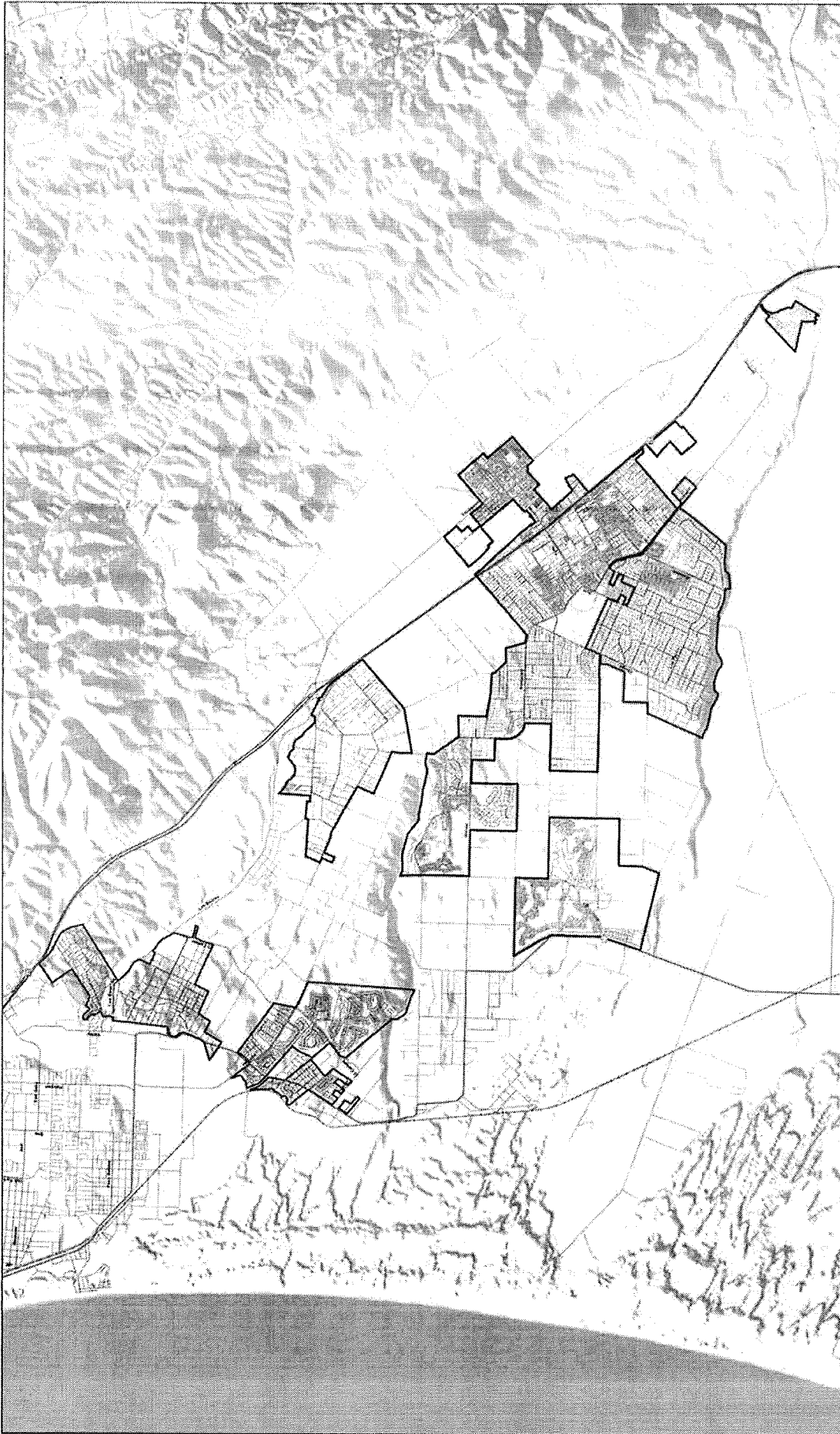
Dated: _____

EXHIBIT "A"

RESOLUTION NO. 2012-_____

OF THE NIPOMO COMMUNITY SERVICES DISTRICT

(proposed Boundary Map)



THIS
BASEMAP COMPILED FROM
DATA PROVIDED BY THE
COUNTY OF WASHINGTON
AND IS PROVIDED AS IS
WITHOUT WARRANTY OR
LIABILITY. THE USER
AGREES TO HOLD THE
COUNTY OF WASHINGTON
HARMLESS FROM ANY
AND ALL SUCH DAMAGES.

MAP PRODUCED: JANUARY 2010



**WIP ASSESSMENT DISTRICT
PROJECT BASEMAP**

- Legend**
- GRIC Assessment Boundary
 - HCSO Assessment Boundary
 - MTRC Assessment Boundary
 - RVC Assessment Boundary
 - Assessment Point

NOVUS GROUP
10000 15th Avenue SW
Suite 100
Burien, WA 98148
Phone: 206.835.1100
Fax: 206.835.1101
www.novusgroup.com

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT) PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Board of Directors of the Nipomo Community Services District ("District"), desires to initiate proceedings for the formation of an assessment district (the "Assessment District"), pursuant to the provisions of the Municipal Improvement Act of 1913 (the "Improvement Act"), being Division 12 (commencing with Section 10000) of the Streets and Highways Code of the State of California, Article XIID of the Constitution of the State of California ("Article XIID"), the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, being Division 4 of the Streets and Highways Code of the State of California (commencing with Section 2800), and the Proposition 218 Omnibus Implementation Act (commencing with Section 53750) of the Government Code of the State of California, and for the issuance of bonds in the proceedings under the Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State of California (commencing with Section 8500) (the "Bond Act"), for the purpose of financing certain public capital water improvements (the "Improvements"), of benefit to the properties within the proposed Assessment District; and

WHEREAS, the territory proposed for inclusion in the proposed Assessment District includes parcels of land located within the District as well as certain other parcels of land located in whole or in part within the County of San Luis Obispo ("San Luis Obispo County") that, in the opinion of the Board of Directors, will be specially benefited by the Improvements; and

WHEREAS, a portion of the Improvements are proposed to be located within San Luis Obispo County, the City of Santa Maria (the "City of Santa Maria") [and the County of Santa Barbara (the "Santa Barbara County")]; and

WHEREAS, pursuant to Section 10103 of the Improvement Act and Sections 5117 and 5118 of the Improvement Act of 1911, Division 7 (commencing with Section 5000) of the Streets and Highways Code, before the Board of Directors may adopt a resolution of intention initiating such proceedings, it must submit the proposed Resolution of Intention to and obtain the consent of (i) the Board of Supervisors of the San Luis Obispo County (the "San Luis Obispo County Board"), (ii) the City Council of the City of Santa Maria (the "Santa Maria City Council") [and (iii) the Board of Supervisors of Santa Barbara County (the "Santa Barbara County Board")] to the formation of the proposed Assessment District and the approval of the Resolution of Intention and the proposed Improvements;

WHEREAS, the Board of Directors has received consent from San Luis Obispo County Board as to the inclusion of territory outside the boundaries of the District, and has received

consent from the San Luis Obispo County Board, Santa Maria City Council [and Santa Barbara County Board] for the proposed Improvements; and

WHEREAS, the public interest and convenience require the construction and acquisition of the Improvements.

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

Section 1. The above recitals are true and correct.

Section 2. The proposed improvements (the "Improvements") generally consist of the acquisition and financing of certain public capital water improvements, including water acquisition charges constituting capital charges, as more particularly described on Exhibit A attached hereto.

Section 3. In the opinion of the Board of Directors, the Board of Directors hereby finds and determines that the public interest and convenience require that the proposed Improvements is of such a character that it directly and peculiarly affects property in one or more jurisdictions, and that the purposes sought to be accomplished by the proposed Improvements can best be accomplished by a single, comprehensive scheme of work, thereby requiring inclusion of Improvements and property that lie outside the territorial limits of the District.

Section 4. In the opinion of the Board of Directors, the Board of Directors hereby finds and determines that the public interest and convenience require that property within the boundaries of the Assessment District lying outside the jurisdiction of the District will be benefitted by the proposed Improvements, and that the consents of the legislative bodies having jurisdiction over any such property proposed to be assessed have been obtained to (i) the formation of the Assessment District and (ii) the assumption by the District of jurisdiction thereover. The consents of the legislative bodies which contain the proposed Improvements that lie outside of the boundaries of the District have been obtained to (y) the formation of the Assessment District and the proposed Improvements to be done within such territory, and (z) the assumption by the District of jurisdiction thereover.

Section 5. The District shall hold harmless and indemnify San Luis Obispo County, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the San Luis Obispo County Board in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.

Section 6. The District shall hold harmless and indemnify the City of Santa Maria, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the Santa Maria City Council in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.

Section 7. The District shall hold harmless and indemnify Santa Barbara County, its officers and employees, from any and all causes of action, claims, losses or damages which may

arise, directly or indirectly, from the action of the Santa Maria City Council in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.]

Section 8. The Board of Directors hereby (i) finds that the public interest, necessity and convenience require the acquisition, improvement, and financing of the Improvements, and (ii) declares its intention to order the Improvements and form an assessment district to be known as the “Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project)” pursuant to the Improvement Act. Unless otherwise specifically provided, all Improvements and work to be funded by the Assessment District shall be made and done pursuant to the Improvement Act.

Section 9. The Board of Directors hereby declares that the territory within the boundaries hereinafter specified and described as the Assessment District is the land benefitted by the Improvements to be made and to be assessed to pay the costs and expenses thereof; that the expense of the Improvements is hereby made chargeable upon the Assessment District; and that the exterior boundaries of the Assessment District are hereby specified and described to be shown on that certain map now on file in the office of the Secretary of the District entitled “Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project) Assessment Diagram/Boundary Map,” which map indicates by a boundary line the extent of the territory included in the proposed Assessment District. On the original and a copy of the map of the Assessment District on file in the Secretary’s office, the Secretary shall endorse the certificate evidencing the date and adoption of this Resolution of Intention. The Secretary shall file the original of such map in his or her office and, within fifteen (15) days after adoption of the resolution fixing the time and place of hearing on the formation and extent of the Assessment District, the Secretary shall file a copy of such map so endorsed in the records of the County Recorder, County of San Luis Obispo, State of California.

Section 10. The Board of Directors hereby appoints and designates the District Engineer to perform the duties and functions of the Superintendent of Streets in connection with such proceedings.

Section 11. The proposed Improvements are hereby referred to the Assessment Engineer to make and file with the Secretary of the District a report in writing in accordance with Article XIID, Section 4 of the California Constitution and Section 10204 of the Improvement Act. The District intends to comply with the requirements of Part 7.5 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, and hereby directs the Assessment Engineer to include in the report all of the information required in Section 2961 of the California Streets and Highways Code.

Section 12. The Board of Directors hereby determines that it is in the public interest and more economical to do work on private property to eliminate any disparity in level or size between the proposed Improvements and private property than to adjust the work on public property to eliminate such disparity.

Section 13. The Board of Directors hereby declares its intention to enter into an agreement or agreements with the City of Santa Maria and any other public agency, regulated

public utility or mutual water company pursuant to Chapter 2 of the 1913 Act (commencing with Section 10100) if any of the Improvements are to be owned, managed or controlled by any other public agency, regulated public utility or mutual water company.

Section 14. Pursuant to Section 4 of Article XIID of the Constitution of the State of California, parcels within the assessment district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment, unless the District can demonstrate by clear and convincing evidence that such publicly owned parcels in fact receive no special benefit.

Section 15. Notice is hereby given that bonds to represent unpaid assessments, and which bear interest at a fixed or variable interest rate of not to exceed twelve percent (12%) per annum, or such higher maximum interest rate as may be provided in the resolution of issuance, will be issued hereunder in the manner provided in the Bond Act, and the last installment of such bonds shall mature in not to exceed 39 years from the second of September next succeeding twelve (12) months from their date. The alternate procedure for collecting assessments and advance retirement of bonds as set forth in Part 11.1 of the Bond Act shall apply herein. Pursuant to Section 8650.1 of the Bond Act, the Board of Directors may determine that the principal amount of bonds maturing or becoming subject to mandatory prior redemption each year shall be other than the amount equal to an even annual proportion of the aggregate principal of the bonds.

Section 16. The Board of Directors hereby further declares that it is its intention to covenant that, upon default of any assessment payment due (except under certain circumstances to be specified in the fiscal agent agreement or trust indenture for the bonds) it will cause foreclosure proceedings to be brought within 150 days of such default, as permitted by Section 8830(b) of the Bond Act.

Section 17. The Board of Directors hereby further declares that it is its intention to create a special reserve fund as permitted by Sections 8880-8886 of the Bond Act.

Section 18. The Board of Directors hereby finds and determines that if the assessment proposed herein results in a surplus in the improvement fund to be provided for in the proceedings hereafter taken pursuant to this Resolution of Intention, after the improvements are acquired or constructed, the surplus shall be used or allocated in accordance with the provisions of Sections 10427 to 10427.2, inclusive, of the Improvement Act.

Section 19. The Board of Directors hereby designates the General Manager and Secretary to the Board of Directors (General Manager or Secretary depending on the context), or the designated agent of the General Manager, to collect and receive the assessments.

Section 20. Pursuant to Streets and Highways Code Section 8769, the Board of Directors hereby determines and declares that the District will not obligate itself to advance available funds from the District treasury to cure any deficiency which may occur in the bond redemption fund; provided, however, this determination shall not prevent the District from, in its sole and unbridled discretion, advancing funds for such purpose as otherwise provided in the Bond Act.

Section 21. The Board of Directors hereby further declares that the bonds issued for Assessment District No. 2012-1 shall be refundable in accordance with the provisions of the "Refunding Act of 1984 for 1915 Improvement Act Bonds." The specific conditions under which said bonds may be refunded include the condition that there be a reduction in the interest cost to maturity by reason of the refunding of such bonds and the condition that the refunding bonds shall bear interest at a maximum rate, and shall have a maximum number of years to maturity, not in excess of the maximum rate and years to maturity, respectively, then permitted by law. Any adjustment to assessments resulting from any such refunding will be done on a pro rata basis.

Section 22. It is the intention of the Board of Directors that the Nipomo Public Facilities Corporation shall initially purchase and hold certain of the bonds to finance the acquisition of water, and its related public capital improvement costs, from the City of Santa Maria.

Section 23. Whenever, in the Improvement Act or in the Bond Act a notice, resolution, order or other matter relative to said proceedings for the work, acquisitions and improvements in said assessment district is required to be published, the Secretary is hereby ordered to publish such notice, resolution or other matter in the Santa Maria Times and the Tribune, which is hereby selected by the Board of Directors for that purpose.

Section 24. The Secretary shall transmit a certified copy of this Resolution of Intention and Boundary Map to the County Clerk of San Luis Obispo, the City Clerk of the City of Santa Maria [and the County Clerk of Santa Barbara County].

Section 25. This resolution shall take effect immediately.

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

AYES:

NOES:

ABSTAIN:

ABSENT:

the foregoing resolution is hereby passed and adopted on this ____ day of _____, 2011.

JAMES HARRISON
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

JON S. SEITZ
District Legal Counsel

EXHIBIT A

The improvements proposed to be funded through Assessment District No. 2012-1 are briefly described as follows:

The design and construction of certain public capital water facilities, together with appurtenances and appurtenant work related thereto, including construction of a waterline to connect the City of Santa Maria water distribution system with the Nipomo Community Services District water distribution system, involving an underground pipeline with a nominal capacity of 3000 acre-feet to be installed under the Santa Maria river using horizontal directional drilling technique, the construction of a storage tank and booster station to deliver the water into the District's system, all related, permits, fees, bonds, construction management, construction engineering (e.g. soils, survey, archeological), and also including water charges and other fees related to the acquisition of water from the City of Santa Maria for related public capital water facilities designated by the City of Santa Maria, including but not limited to blending reservoir and water system capacity improvements.

III. PROJECT DESCRIPTION

A. PROJECT BACKGROUND

The Nipomo Community Services District (NCSD or the District) was formed in 1965 and currently provides water, wastewater, lighting and solid waste disposal services to approximately 12,000 residents of the Nipomo area. The Nipomo Community Services District is a California Community Services District organized pursuant to Government Code Sections 61000 et. seq. The NCSD's service area overlies the southern portion of the Nipomo area within the unincorporated portion of San Luis Obispo County. Pursuant to the Government Code, the NCSD provides water to its residents, similar to a municipal water district. The Nipomo Community Services District's authority does not include legislative or executive powers over zoning or land use. (Further details concerning the legislative authority of the Nipomo Community Services District can be found in Section V.A. Land Use). The District currently relies primarily upon groundwater from the Nipomo Mesa Management Area (formerly known as the Nipomo Mesa Groundwater Subbasin) of the Santa Maria Groundwater Basin for water supply.

Over the past several years, a number of groundwater studies have been conducted in the Nipomo Mesa area in order to assess the status of groundwater resources in the area. These analyses include: 1) Water Resources of the Arroyo Grande – Nipomo Mesa Area in 2002, prepared by the California Department of Water Resources (DWR), dated October 25, 2002; 2) Water and Wastewater Impacts Analyses for both the Summit Station Area Land Use Ordinance Amendment and the Woodlands EIR, prepared by Cleath & Associates, both dated 2003; (3) Nipomo Mesa Groundwater Resource Capacity Study prepared by the firm of S.S. Papadopoulos & Associates, Inc.; (4) "Water Supply in the Nipomo Mesa Area, October, 2004", a Resource Capacity Study prepared by the County of San Luis Obispo, Department of Planning and Building in 2004 and 5) Technical Memorandum Regarding Emergency Water Shortage Regulations and Future Groundwater in Storage prepared by Science Applications International Corporation (SAIC) dated January 6, 2008.

The above referenced studies contained varying conclusions concerning the status of groundwater supplies in the Nipomo Mesa Management Area. The Cleath Reports concluded that a groundwater overdraft condition does not exist in the Nipomo Mesa Sub-Area but a water deficit does exist within the area and this deficit is compensated by inflows from other portions of the Santa Maria Groundwater Basin. The 2002 Department of Water Resources Report concluded that overdraft of the Santa Maria Groundwater Basin is not likely through the year 2020 but indicates that projected water demands significantly exceed the dependable safe yield of groundwater in the Nipomo Mesa Sub-Area. The 2004 Papadopoulos Report concluded that the Nipomo Mesa Sub-Basin is currently in overdraft and that the greater Santa Maria Groundwater Basin is in steady decline. The County's 2004 Resource Capacity Study indicated that in order to maintain sustainability of the Nipomo Mesa groundwater supply, total extractions would have to be stabilized at 6,000 acre-feet per year (as first indicated in the Department of

Water Resources Report) and that sustainability can be achieved through a combination of conservation and water supply augmentation.

Since 1997, the entire Santa Maria Groundwater Basin, including the Nipomo Mesa Groundwater Management Area, has been the subject of ongoing adjudication based upon a lawsuit initiated by the Santa Maria Valley Water Conservation District against the City of Santa Maria and other water purveyors in the groundwater basin. When the lawsuit was first initiated, the issue was whether or not the City of Santa Maria had the right to claim ownership of percolated effluent resulting from the use of imported water in the basin. Subsequently, the lawsuit has broadened to address groundwater management of the entire Santa Maria Groundwater Basin. A preliminary ruling by the Court concluded that the overall Santa Maria Groundwater Basin is not currently in an overdraft condition but recognized the need for active management of the existing hydrologic sub-areas.

On August 3, 2005, the Court approved a Settlement Stipulation for the case which divides the Santa Maria Groundwater Basin into three separate management sub-areas; the Northern Cities Management Area, the Nipomo Mesa Management Area and the Santa Maria Valley Management Area. The Settlement Stipulation contained specific provisions with regard to groundwater rights, groundwater monitoring programs and development of plans and programs to respond to potential water shortage conditions. Within the Settlement Stipulation and subsequent Judgment, the Nipomo Community Services District has agreed to purchase supplemental water from the City of Santa Maria for delivery to the Nipomo Mesa Management Area.

In 2004, the San Luis Obispo Local Agency Formation Commission (LAFCO) completed a Sphere of Influence Update and Municipal Services Review for the Nipomo Community Services District (pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000) as well as a Program Environmental Impact Report (EIR) for that project. The EIR evaluated the impacts of expanding the Sphere of Influence to include eight study areas (5,000 acres) adjacent to the Nipomo Community Services District. As a result of the Sphere of Influence Update and their analysis of available services and resources, LAFCO required that prior to the approval of any annexation to the NCS D, the District shall implement a water conservation program that decreases water use by 15 percent based upon per connection water consumption and update its Urban Water Management Plan (UWMP) “to reflect the need to provide additional water in the amount of 1,000 acre feet” to serve the expanded Sphere of Influence area. LAFCO also required that prior to the approval of any annexation, the District must complete negotiations for a supplemental water source outside the Nipomo Mesa Management Area.

In December, 2005, the Nipomo Community Services District completed their Urban Water Management Plan 2005 Update. This update was intended to provide a viable tool for the NCS D’s long-term water use planning and to comply with requirements of the California Urban Water Management Act which requires that all urban water suppliers serving more than 3,000 customers prepare and adopt an urban water management plan

every five years. The NCS D Urban Water Management Plan 2005 Update contains background on past and current water demands for different sectors of the Nipomo Community Services District. A copy of this plan is included within Technical Appendix B of this EIR. It provides data on water deliveries in the year 2000 and estimates of total water demand in 2005, based upon the following land use sectors: single family residential, multi-family residential and all other non-residential uses designated as "commercial". Estimates of future demand within the Urban Management Plan 2005 Update contained various assumptions regarding land uses and growth rates within the Nipomo area. As indicated therein, projected water demands for 2025 range from 4,030 acre-feet per year (assuming an existing County land use designation scenario and a 2.3 percent growth rate) to 5,750 acre-feet per year (assuming a high density land use assumption, higher than that currently allowed by the South County Area Plan, and a 7.8 percent growth rate). Future water demands were compared to projected water supplies during a normal water year, a single dry year and multiple dry years. Within a single dry year, no differences in conditions from the normal supply year are anticipated. Additional irrigation demands within this scenario are expected to be compensated by water conservation. Within multiple dry years, irrigation uses would be limited and additional water conservation measures would be required.

In response to these concerns regarding the availability of groundwater supplies in combination with the legislative requirements and judicial directives noted above, the Nipomo Community Services District entered into a Memorandum of Understanding with the City of Santa Maria dated September 7, 2004 for the purchase of approximately 2,500 acre-feet per year with deliveries of water to NCS D not to exceed a maximum of 250 acre-feet per month. The water will be a mix of both City groundwater and State Water Project water that is delivered to the City. According to the District, this acquisition of additional water supply is intended to augment current groundwater inventories with the goals of increasing the reliability and diversity of water supplies and balancing groundwater levels in the Nipomo Mesa Management Area. The Settlement Agreement and Judgment allocates approximately 2,500 acre-feet per year between Nipomo Community Services District and other water purveyors who overlie the Nipomo Mesa Management Area, including the Woodlands, Golden State (formerly Southern California) Water Company and Rural Water Company. Copies of the Memorandum of Understanding, Court Stipulation and Court Judgment are included within Technical Appendix C of this EIR.

In 2005, the Nipomo Community Services District prepared a Feasibility Study which evaluated several alternative methods for extension of a waterline from the City of Santa Maria across the Santa Maria River to connect to existing water transmission facilities within the NCS D. This study provided the basis for selection of three alternatives for extending a waterline from the City of Santa Maria. At that time, the proposed project involved the adoption of one of three alternative methods for the extension of the water supply pipeline across the Santa Maria River: a) attaching the pipeline to the existing Highway 101 bridge or b) two routes for horizontal directional drilling and underground burial of the pipeline beneath the riverbed.

In December, 2007, the Nipomo Community Services District completed their Water and Sewer Master Plan Update. A copy of this Master Plan is included within Technical Appendix D of this EIR. This Master Plan Update discussed projects completed under the previous master plans, identified new projects to meet current and future water and sewer demands and estimated costs and priorities for these future projects. The methodology utilized in the Master Plan Update included the development of future water demand and sewer flow projections. These projections to the year 2030 were based upon population growth and increases in system use assuming a General Plan build-out scenario for the NCS D service area and its Sphere of Influence. Existing annual water demand was identified at 3,000 acre-feet per year with future (2030) water demand estimated to be 6,200 acre-feet per year. This estimate of future water demand provided the basis for the design capacity of the proposed waterline intertie project.

In 2005, the Nipomo Community Services District initiated preparation of a Draft and Final Environmental Impact Report which addressed the potential impacts of these three proposed methods for extension of a water supply pipeline. A Draft Environmental Impact Report dated May, 2006 for that project was prepared, reviewed and circulated for public and agency review and comment during the months of May and June of 2006. Subsequent to circulation of that document, several revisions and/or additions to the project design were recommended. These revisions included the reduction in water storage, additional NCS D water distribution system improvements, resolution of water quality issues and phased project development. In addition, an expanded number of project alternatives were also evaluated including the investigation of the viability of desalinization and direct use of State Water Project water. In December, 2006, the NCS D Board of Directors suspended further work on the EIR until the NCS D Board of Directors could evaluate a lower cost project and project design issues could be resolved.

Since that time, several additional studies and field surveys have been prepared by NCS D in order to further evaluate and refine the design of the waterline intertie project. This information includes the Preliminary Engineering Memorandum, prepared by Boyle Engineering, dated November, 2006; Evaluation of Supplemental Water Alternatives – Technical Memorandum No. 1, prepared by Boyle Engineering dated June 2007; Evaluation of Desalinization as a Source of Supplemental Water - Technical Memorandum No. 2, prepared by Boyle Engineering dated September 28, 2007; Evaluation of Supplemental Water Alternatives - Technical Memorandum No. 3, prepared by Boyle Engineering dated November 30, 2007; California Red-Legged Frog Survey Results, prepared by Padre Associates dated April 12, 2007; Recent Biological Field Survey Results from Padre Associates dated March, 2008 and final Preliminary Engineering Memorandum for the proposed project dated May, 2008 prepared by Boyle Engineering.

In addition, the NCS D recently updated their Water and Sewer Master Plan (December, 2007) in which the District water model was updated and recommendations for improvements to the District water distribution system were made. The final Preliminary Engineering Memorandum presented several revisions to the project design which included revised pipeline sizes and routes, a relocated pump stations, elimination of another pump station, a resized water storage reservoir, upgraded in-system water

distribution facilities, phased development of the proposed project and an alternative method of water treatment.

In January, 2008, the State Court issued its final decision on the groundwater rights litigation discussed above. In April, 2008, the NCSB Board of Directors authorized preparation of this Draft and Final Environmental Impact Report pursuant to the requirements set forth in the California Environmental Quality Act (Public Resources Code 21000 et. seq.) and the State CEQA Guidelines which will address the environmental impacts of the currently proposed project.

B. PROJECT OBJECTIVES

The basic objective of the proposed Nipomo Community Services District Waterline Intertie Project is to construct a pipeline connection from the City of Santa Maria water distribution system across the Santa Maria River to the existing water distribution system within the Nipomo Community Services District. In so doing, the proposed project will also achieve the following objectives:

1. Slow the depletion of the above-sea-level groundwater in storage beneath the Nipomo Mesa Groundwater Management Area (NMMA) of the Santa Maria Groundwater Basin to reduce the potential for sea water intrusion by using supplemental water consistent with the settlement agreement and the judgment related to the groundwater adjudication. Since projections have shown that sea water intrusion could occur in 12-14 years with no new development, and under 8 years in a “dry years” scenario, the nearest-term project completion is essential. The conservative goal of this project is to provide at least 2,000 acre-feet per year (AFY) of supplemental water to the NMMA by 2013.
2. Comply with the 2005 groundwater adjudication settlement stipulation and judgment that dictates the need for active management of the NMMA.
3. Assist in stabilizing the groundwater levels in the NMMA by reducing pumping in the NMMA.
4. Augment current water supplies available to the Nipomo Community Services District by a phased delivery of supplemental water. Phase I will supply approximately 2,000 AFY by pipeline from Santa Maria following Phase I construction completion. Phase II will supply up to an additional 1,000 AFY by pipeline from Santa Maria (a cumulative total of 3,000 AFY). A third phase (Phase III), if implemented, would supply up to an additional 3,200 AFY (a cumulative total of 6,200 AFY) by pipeline from Santa Maria. *Each phase will be separately approved and funded by authorization of the NCSD Board of Directors. Phases I and II will supply water only to customers in the current NCSD boundaries and other water purveyors in the NMMA, specifically the Woodlands Mutual Water Company, Golden State Water Company and Rural Water Company. Only in Phase III will water be made available to new customers in the 2004 Sphere of Influence Areas that are annexed into the NCSD boundaries.”*
5. Augment current water supplies available to the Woodlands and other water purveyors on the Mesa by 831 acre-feet per year as follows: Woodlands (415 AFY), Golden State Water Company (208 AFY) and Rural Water Company (208 AFY).
6. Increase the reliability of District water supply by providing a diversity of water sources. Avoid the potential use of supplemental water return flows from the District,

the Woodlands and the other purveyors, being used to support the water requirements of new development.

7. Comply with Local Agency Formation Commission (LAFCO) conditions for securing supplemental water prior to annexation of lands now within the District's Sphere of Influence. This supplemental water for annexations shall be in addition to the 3,000 AFY developed by Phases I and II.
8. Avoid multiple waterline crossings of the Santa Maria River and associated environmental impacts, by constructing a single pipeline capable of transporting sufficient water for potential NMMA growth consistent with the South County Area Plan (Inland) of San Luis Obispo County's General Plan. The pipeline diameter crossing the Santa Maria River would accommodate a 6,200 AFY capacity.
9. Slow the depletion of the above-sea-level groundwater in storage beneath the NMMA by:
 - A. Providing supplemental water for new development within the current service area of the District and the Mesa's other water purveyors (Golden State and Rural Water) consistent with the South County Area Plan (Inland);
 - B. Facilitating supplemental water delivery for new development within the District's Sphere of Influence consistent with the South County Area Plan (Inland) and the conditions in LAFCO's 2004 Sphere of Influence Update;
 - C. Providing the basis for the assessment of County Impact Fees upon development outside the District's Sphere of Influence and the service areas of the Mesa's other water purveyors (Golden State and Rural Water Companies).

These project objectives play an important role in this EIR in that these objectives provide the basis for judging the merits of the proposed project. These objectives also assist in the evaluation (and possible adoption or rejection) of alternatives to the proposed project (see Section VII. Alternatives to the Proposed Project).

Attachment E

Supplemental Water Project
Assessment District No. 1 Schedule

ID	Task Name	Start	Finish	4th Quarter				1st Quarter				2nd Quarter				3rd Quarter				4th Quarter							
				Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
1	Assessment District Engineer Report Development	Fri 10/8/10	Fri 2/24/12	█				█				█				█											
17	Balloting Process	Mon 1/9/12	Fri 8/17/12	█				█				█				█											
31	Water Purveyor Public Outreach	Mon 6/6/11	Fri 4/13/12	█				█				█				█											
32	Water Purveyor Public Outreach	Mon 6/6/11	Fri 4/13/12	█				█				█				█											
33	Public Relations	Thu 10/21/10	Tue 2/28/12	█				█				█				█											
39	Construction Schedule	Mon 10/3/11	Fri 2/28/14	█				█				█				█											
40	Finalize Design for All Contracts	Mon 10/3/11	Fri 5/11/12	█				█				█				█											
41	Solicit Bids	Mon 5/21/12	Fri 7/20/12	█				█				█				█											
42	Award Bids	Mon 7/23/12	Fri 8/31/12	█				█				█				█											
43	Construction	Mon 9/3/12	Fri 2/28/14	█				█				█				█											

Copy of document found at www.NoNewWipTax.com

Attachment F

WHOLESALE WATER SUPPLY AGREEMENT

This Wholesale Water Supply Agreement ("Agreement") is made and entered into as of 1-5-2010, by and between the CITY OF SANTA MARIA ("City"), a California municipal corporation, and NIPOMO COMMUNITY SERVICES DISTRICT ("NCSD"), an independent special district formed under and pursuant to Section 61000, *et seq.* of the California Government Code. City and NCSD are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

A. The City provides retail potable water service to customers within its service area in the Santa Maria Valley, in northern Santa Barbara County. The City holds a contract with the Central Coast Water Authority to receive water from the State Water Project ("SWP"). City also holds rights to recharge from Twitchell reservoir and rights to pump groundwater from the Santa Maria Groundwater Basin ("Santa Maria Basin").

B. NCSD provides retail potable water service and sewer service within its established boundaries located in and around the Nipomo Mesa Management Area ("NMMA") of the Santa Maria Basin.

C. Both the City and the NCSD are Parties to a certain groundwater adjudication lawsuit commonly referred to as the Santa Maria Groundwater Litigation (Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.; Superior Court of California, County of Santa Clara Case no. 1-97-CV-770214) (herein the "Basin Litigation"). On August 3, 2005, the Court approved a Settlement Stipulation (herein the "Stipulation") that was signed by the Parties, related to the Basin Litigation which, among other things, provides that "the NCSD and City shall employ their best efforts to timely implement the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for administrative action and in the California Environmental Quality Act." The Stipulation was later incorporated into the final Judgment.

D. On a long term basis, City has water available for use in the NMMA that is surplus to that needed to serve City's current and long-term future anticipated demands.

E. Pursuant to the Stipulation, NCS D seeks to acquire a Supplemental Water supply (referred to herein as "Supplemental Water") to alleviate pressure on the NMMA from groundwater pumping and to meet current needs and projected demands of NCS D customers.

F. Consistent with the Stipulation and Judgment, and subject to the terms and conditions of this Agreement, City is willing to sell and deliver to NCS D an established quantity of Supplemental Water on a wholesale basis.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Purpose.** Consistent with the Stipulation and Judgment, the purpose of this Agreement is to formalize the terms and conditions by which City will provide Supplemental Water to NCS D, including an equivalent amount of capacity in City's water distribution system, for delivery to the NCS D water distribution system through the interconnection described in Paragraph 9, beginning on the Effective Date and continuing each year thereafter for as long as this Agreement remains in effect.

2. **Termination of MOU.** City and NCS D executed a Memorandum of Understanding ("MOU") on September 7, 2004, to provide for the reservation of a Supplemental Water supply of up to three thousand (3,000) acre-feet per year in anticipation of the negotiation of this Agreement. This Agreement shall supercede the terms of the MOU, which shall terminate and be of no further force or effect. The initial reservation payment of \$37,500 that was made upon execution of the MOU shall be credited by City to the first quarterly invoice for water delivery pursuant to Paragraph 8.

3. **Term of Agreement.**

(a) **Contract Term.** The term of the Agreement shall commence on the Effective Date and end on June 30, 2085 ("Term"). Notwithstanding the Term, the delivery of Supplemental Water pursuant to this Agreement during any period on or after June 30, 2035, shall be subject to the renewal of the contract between the City and Central Coast Water Authority for SWP water. Furthermore, the terms of this Agreement shall be subject to renegotiation as described below in the event that the SWP contract or any subsequent SWP contract is not renewed or the terms of such renewal either (i) substantially impair the ability of City to continue to provide Supplemental Water in the quantities set forth in this Agreement; or (ii) the cost of continuing to provide Supplemental Water pursuant to the terms of this Agreement would create a significant financial burden on the City. In no event shall the City be required to deliver Supplemental Water following June 30, 2035 at a financial loss. Upon the occurrence of one of the foregoing events and within thirty (30) days of a written request from City to NCSD requesting renegotiation, the Parties shall negotiate in good faith and use their best efforts to equitably amend the terms of this Agreement to allow for the continued delivery of Supplemental Water on terms that are mutually beneficial to the Parties for the duration of the Term. The parties will meet in good faith in 2085 to determine whether to extend the term of the Agreement.

(b) **Dispute Resolution.** In the event of a dispute as to whether clause (i) and/or (ii) of Paragraph 3(a) have been triggered as a result of the renegotiation or non-renewal of the SWP contract, then such dispute shall be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. If a final finding is made as a result of such dispute resolution procedure that clause (i) and/or clause (ii) have been triggered, then the Parties shall negotiate in good faith pursuant to Paragraph 3(a). If the Parties cannot agree on the terms and conditions for equitably amending the terms of this Agreement to address a substantial impairment pursuant to clause (i) of Paragraph 3(a), then whether or not there is a feasible solution to address such substantial impairment may also be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. Notwithstanding the foregoing, the allocation of cost and/or any revision in the price of Supplemental Water to implement a solution

or address the existence of an impairment or significant financial burden as set forth in Paragraph 3(a) shall be solely determined by the Parties on mutually acceptable terms and the dispute resolution procedure shall have no authority to order or impose any change with respect to such terms.

(c) **Effective Date.** The "Effective Date" shall mean the date that the NCSD interconnection described in Paragraph 9 has been completed and approved by City's technical staff as operationally ready for commencement of delivery of Supplemental Water.

(d) **Delivery Year.** Each "Delivery Year" shall commence on the Effective Date and any anniversary thereof during the Term and continue for a period of one (1) year.

4. **Quantity of Supplemental Water.**

(a) **Minimum Delivery.** In each Delivery Year during the Term of this Agreement, City shall deliver and NCSD shall purchase the following minimum quantity of Supplemental Water ("Minimum Quantity"):

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

Any portion of the Minimum Quantity of Supplemental Water that is not taken by NCSD during a given Delivery Year shall be forfeit and shall not roll over to the next year. In the event that City, in its sole and absolute discretion, agrees to deliver unused Supplemental Water in a subsequent Delivery Year, such late delivery shall be an accommodation to NCSD and shall not constitute a waiver or amendment to the terms of this Agreement.

(b) **Additional Delivery.** NCSD may request delivery of Supplemental Water in excess of the Minimum Quantity up to an additional 3,200 acre feet per year. NCSD shall give City no less than thirty (30) days written notice of its desire to purchase additional

Supplemental Water and the proposed schedule for such delivery. City shall make a good faith effort to comply with such request subject to (i) the availability of excess Supplemental Water from sources used for delivery of water to City's retail customers; and (ii) sufficient delivery capacity to fulfill such request at the NCSO interconnection using the City's existing water distribution system. Any such additional Supplemental Water shall be purchased and delivered on the same terms as the Minimum Quantity, provided, however, that if the cost of procuring and delivering additional Supplemental Water exceeds the cost of delivering the Minimum Quantity, City shall have the right to impose a surcharge to compensate City for such additional cost as a condition to delivery. City shall notify NCSO of the amount of any such surcharge prior to delivery of any additional Supplemental Water and NCSO shall have the right to withdraw its request. In no event shall City be required to undertake any capital cost or expansion of its existing infrastructure to provide additional Supplemental Water.

5. **Reservation of Minimum Quantity.** Subject to the terms and conditions of this Agreement, City shall hold on reserve sufficient Supplemental Water each year, including an equivalent amount of capacity in City's water distribution system, for City to fulfill its obligation to deliver the Minimum Quantity to NCSO under this Agreement. City shall deliver such Supplemental Water to NCSO from sources used to provide water to City's retail customers. Notwithstanding the foregoing, during the term of the Agreement, City may substitute or combine new or additional replacement sources of water for the source of Supplemental Water, provided, however, that any substitute, combined or additional sources must be equivalent in deliverability, reliability, quality, pressure, and environmental impacts to the source being replaced. Disputes regarding this Paragraph shall be resolved pursuant to Paragraph 19.

6. **Purchase Price for Supplemental Water.** The purchase price for Supplemental Water delivered by City to NCSO shall be based on the "Base Rate" of the City's Water Consumption Rates. For fiscal year 2008-09, the Base Rate is \$2.441 per one hundred cubic feet of water (or \$1,063.37 per acre-foot of water). The Base Rate may be adjusted each fiscal year subject to approval by the City Council, consistent with applicable legal requirements. Any such adjustment in the purchase price shall go into effect in the next quarterly billing period.

7. **Costs of Delivery.** Except as expressly set forth in this Agreement, City shall be responsible for all costs and expenses related to providing Supplemental Water to NCSD at the NCSD interconnection pursuant to this Agreement. Notwithstanding the foregoing, the purchase price for Supplemental Water includes a cost component for energy costs incurred by City to supply Supplemental Water to the NCSD interconnection equal to two hundred and six dollars and eighty five cents (\$206.85) per acre foot ("Base Energy Cost"). In the event that the actual cost of energy incurred by City to supply Supplemental Water in any Delivery Year exceeds the Base Energy Cost, then City shall have the right to charge NCSD a premium equal to the difference between the actual cost and the Base Energy Cost. The Base Energy Cost shall be adjusted each Delivery Year by a percentage which is equivalent to fifty percent (50%) of the increase or decrease, if any, in the Consumer Price Index - Energy Services (Electricity and Natural Gas) - Los Angeles-Riverside-Orange County or any successor index.

8. **Payments for Supplemental Water.** City shall bill NCSD on a quarterly basis in arrears for Supplemental Water delivered to NCSD's interconnection during the previous three (3) months. The amount payable by NCSD to City shall be based on the total quantity in acre-feet of Supplemental Water delivered during the quarter just ended multiplied by the then-current purchase price (as determined in Paragraph 6), plus any costs payable by NCSD pursuant to this Agreement. Notwithstanding the foregoing, to the extent that NCSD has taken less than the Minimum Quantity as of the final quarterly billing for a Delivery Year, City shall bill NCSD for the remainder of the Minimum Quantity whether or not such Supplemental Water has been delivered, provided that such water was made available for delivery to NCSD as provided in Paragraph 9. All invoices billed to NCSD shall be payable within thirty (30) days of the invoice date, provided that no charges are disputed. City shall have the right to charge late fees of up to five percent (5%) of the overdue amount for any invoice that is not paid within such period. In the event NCSD disputes any charges on an invoice, the undisputed amount shall be paid consistent with this Paragraph and the original invoice shall be returned to City for correction and resubmission. If the parties are unable to reach an agreement regarding disputed charges, disputes shall be resolved pursuant to Paragraph 19.

9. **Delivery of Water.**

(a) **Point of Delivery.** The physical point of delivery of Supplemental Water pursuant to this Agreement shall be the proposed interconnection between the City water distribution system and the NCSD water distribution system located at Taylor Street and Blosser Road or such other alternative location as may be approved by City and NCSD. All facilities constructed by NCSD will be used solely for the purpose of delivering Supplemental Water to NCSD. NCSD shall cooperate with the reasonable requests of City with respect to taking any action necessary to preserve the integrity of the City's water distribution system and the City shall do likewise for NCSD. The operation and maintenance of the NSCD Interconnection will be detailed in an Operation Memorandum of Understanding that will be approved by the City and NCSD prior to connection. City shall waive any fees for City permits related to construction of facilities for delivery of the water. If the parties cannot agree on the terms of the Operations Memorandum of Understanding then the disputed terms will be subject to the dispute resolution procedures referenced in Paragraph 19 of this Agreement.

(b) **Facilities.** NCSD shall be responsible for designing, constructing and operating the NCSD interconnect. The plans and specifications of the NCSD interconnect shall be subject to prior approval by City, which approval shall not unreasonably be withheld provided that such plans and specifications conform to applicable code provisions and any technical requirements imposed for connections to the City's water distribution system. NCSD shall also be responsible for obtaining any and all regulatory and environmental permits, licenses or other approvals necessary to construct and operate the NCSD interconnection. NCSD and/or any contractor working on the NCSD interconnect shall provide insurance coverage naming the City as an additional insured and the scope of such insurance coverage shall be subject to the reasonable approval of City's risk manager prior to commencement of any work.

(c) **Construction, Regulatory/ Permit and Other Costs.** NCSD shall be solely responsible for all costs related to the construction and operation of the NCSD interconnection with City's retail water distribution system. NCSD shall also be solely

responsible for all regulatory and/or permit compliance and costs with respect to the NCSD interconnection.

(d) City Streets: License to Use Easements and Rights of Way. The City shall provide NCSD a license, at no additional cost, to use such portions of City streets, easements, and right of ways as are reasonably necessary to build the NCSD interconnect and deliver the Supplemental Water to NCSD. Such license shall be non-revocable during the Term of this Agreement and shall automatically terminate upon the termination of this Agreement. The foregoing licenses shall not include the right of NCSD to make any alteration or improvement within such City streets, easements and rights of way except in compliance with Paragraph 9.

(e) Delivery Schedule. City will deliver the Supplemental Water to NCSD at the NCSD interconnection upon a mutually agreeable delivery schedule. The volume of delivery to the NCSD interconnection shall not exceed a maximum of two hundred and seventy-five (275) acre-feet per month or a peak hour flow averaging 2500 gallons per minute. Delivery pressure at the point of connection shall exceed 60 psi during City's normal system operation, not including emergencies or incidents described in 9(f). Before delivery begins, the District and City shall agree to an Operation Memorandum of Understanding (OMOU) to describe the specific procedures and limitation on the operations provided for in this Agreement.

(f) Force Majeure. If by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, or state, order, rule, or regulation, the City is prevented, in whole or in part, from the delivery of the Supplemental Water to NCSD, as provided herein, then City may reduce delivery of Supplemental Water up to the same percentage the City reduces water delivery to its retail customers.

(g) Suspension. The delivery of water may be suspended or curtailed during any period of public emergency or disaster that is declared by City. For the purposes of this Agreement, a public emergency or disaster shall not include ordinary measures taken during

periods of drought or water shortage.

(h) **Obligations of City.** For the purposes of this Agreement and subject the limitations contained in this Paragraph 9, City shall have fulfilled its obligation to make Supplemental Water available for delivery so long as the amount of Supplemental Water purchased by NCSO is available at the NCSO interconnection for NCSO to take delivery of pursuant to a predetermined and mutually agreed upon delivery schedule.

10. **Water Quality.** City shall be responsible for ensuring that the quality of the Supplemental Water made available for delivery is of the same pressure and quality of water that City delivers to its residential customers. The quality of water which is delivered by the City to its residents complies with federal, state and local laws, regulations and permit requirements which are applicable to City, including standards applicable to wastewater discharge, as amended from time to time and subject to any compliance waiver granted to the City ("Quality Standards"). City shall provide NCSO with a copy of the Quality Standards (and any change thereto) which are applicable to City and NCSO shall be solely responsible for ensuring that the Quality Standards meet the federal, state and local laws, regulations and permit requirements for potable water delivery by NCSO to its customers, including the discharge of such water. To the extent that the quality standards which are applicable to NCSO exceed the Quality Standards, then NCSO shall be responsible for any necessary additional treatment of the Supplemental Water. City agrees to indemnify and hold NCSO harmless from any actual liability which arises as a result of the failure of Supplemental Water which is delivered to the NCSO interconnection to meet the Quality Standards. NCSO shall be solely responsible for any actual liability resulting from a change in water quality following the point of delivery (including any additional treatment undertaken by NCSO) and shall indemnify and hold City harmless from any actual liability which arises from any such change. City and NCSO shall promptly notify the other in the event that either becomes aware of a material adverse change in the quality of the Supplemental Water and shall cooperate to identify the cause of such change.

11. **Remarketing of Supplemental Water.** NCSO shall be free to remarket the Supplemental Water to other Parties within the NMMA without restriction to price and terms.

NCSD assumes all responsibility for delivery of Supplemental Water from the NCSD interconnection to its customers and contracting Parties. City's obligations under this Agreement are solely with NCSD and no customer of NCSD nor other third party shall have the right to enforce the terms of this Agreement as a third party beneficiary. City shall not sell water to other parties or persons within NCSD's service area or sphere of influence, as amended from time to time, without first receiving the written approval of NCSD.

12. Regulatory Requirements.

(a) Obligations of the City. The implementation of this Agreement shall be subject to satisfaction by City of the regulatory requirements set forth herein. City shall, if necessary, undertake the following: (i) Obtain all permits, consents, entitlements and approvals necessary to enable the City to reserve and sell, and NCSD to purchase, the Supplemental Water that is the subject of this Agreement; and (ii) fully and completely comply with the requirements of the California Environmental Quality Act ("CEQA"), including, if it is determined that this transaction is subject to CEQA and not exempt from CEQA, the completion of an initial study, and (1) either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report shall have been completed and certified, and (2) the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report.

(b) Obligations of NCSD. NCSD shall be solely responsible for obtaining all regulatory approvals necessary in connection with purchasing and taking delivery of the Supplemental Water.

13. Service Area Integrity. Nothing in this Agreement is intended nor shall it be interpreted to waive the right of City to provide water service to current or future areas within or adjacent to its existing service area.

14. **Representations or Warranties of City.** City makes the following representations, warranties and covenants to NCSD:

(a) **Power and Authority to Execute and Perform this Agreement.** The City has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Availability of Resource.** Based on information which is currently known to City and City's current forecast of future use, on a long-term basis, City has water and the necessary infrastructure available to fulfill City's obligations under this Agreement that is surplus to that needed to serve City's current and long-term future anticipated demand.

(c) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of the City, and is enforceable against the City in accordance with its terms.

15. **Representations or Warranties of NCSD.** NCSD makes the following representations, warranties and covenants to City:

(a) **Power and Authority to Execute and Perform this Agreement.** NCSD has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of NCSD, enforceable against NCSD in accordance with its terms.

16. **Default and Termination by City.** In the event NCSD fails to make any payment to City under this Agreement when due, or fails to perform any obligation otherwise required by this Agreement, City shall demand in writing that NCSD cure such non-performance. NCSD shall have thirty (30) days after receipt of such demand to cure. In the event NCSD fails to cure a default within the thirty (30) day period, City may suspend delivery of Supplemental Water and redirect such water to other uses for the duration of the suspension. City shall restore

water delivery when NCSD has cured all outstanding defaults and paid all amounts due to the City in full. In the event that NCSD does not cure a default within one (1) year of suspension, then City may terminate this Agreement at any time thereafter.

17. **Default and Termination by NCSD.** NCSD shall have the right to terminate this Agreement, without recourse, if (i) the City is found to be in material breach of its obligations to deliver the Supplemental Water as set forth in this agreement; or (ii) upon written notice to City that NCSD is unable to pay for the Supplemental Water due to the majority protest procedures or other procedures referenced in Proposition 218; or (iii) upon three (3) years prior written notice to City, provided, however, that no such termination without cause shall become effective until the thirtieth (30th) anniversary of the Effective Date.

18. **Expiration of Term.** This Agreement shall terminate and be of no further force and effect as of the expiration of the Term.

19. **Dispute Resolution.** Except as otherwise limited by this Agreement, any dispute arising under this Agreement, including, without limitation, all disputes relating in any manner to the performance or enforcement of this Agreement, shall be resolved by binding arbitration in the County of Santa Barbara, California, pursuant to the comprehensive arbitration rules and procedures of Judicial Arbitration and Mediation Services (“JAMS”) or any successor thereto, as amended or as augmented in this Agreement (the “Rules”). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney’s fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a

court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters which are directly relevant to the claims in controversy. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in the Code of Civil Procedure. Notwithstanding the election by the parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.

20. **Indemnity.** NCSD, its successors and assigns, shall hold harmless, defend and indemnify City, its officials, employees, agents, successors and assigns (all of which are herein referred to as the “City Indemnified Parties”) from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited to reasonable attorneys’ fees (collectively, “Damages”), which may be imposed on, incurred by, or asserted against City Indemnified Parties as a result of (i) a breach of NCSD’s obligations; or (ii) the conduct of NCSD’s operations associated with the NCSD interconnection to City’s retail distribution system and the subsequent delivery of Supplemental Water to NCSD’s customers. Notwithstanding the foregoing, in no event shall NCSD be liable to indemnify a City Indemnified Party for (i) any Damages resulting from the negligence or willful misconduct of City; (ii) any third party claim brought in connection with regulatory approvals; or (iii) any claim brought in connection with the quality of the Supplemental Water as provided in Paragraph 10 above. This indemnification shall survive termination of the Agreement.

21. **Third Party Claims.** Promptly following notice of any “Third Party Claim” for which City is indemnified hereunder, City shall notify NCSD of such claim in writing. NCSD shall have a period of thirty (30) days following the receipt of such notice to notify City of whether NCSD elects to assume the defense thereof. If NCSD so notifies City that it elects to assume the defense, NCSD thereafter shall undertake and diligently pursue the defense of the Third Party Claim. NCSD shall not consent to entry of judgment or enter into any settlement

agreement, without the consent of City, which does not include a complete and unconditional release of City or which imposes injunctive or other equitable relief against City. City shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If NCSD does not give the requisite notice, or fails to assume and diligently pursue the defense of such Third Party Claim, City may defend against such Third Party Claim in such manner as it may deem appropriate, at NCSD's expense, including without limitation settlement thereof on such terms as City may deem appropriate, and to pursue such remedies as may be available to City against NCSD. Notwithstanding the foregoing, City shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of NCSD, which does not include a complete and unconditional release of NCSD.

22. **Notice of Claims.** The Parties shall promptly notify each other within ten (10) days of City or NCSD becoming aware of: (1) any claims or suits brought against City or NCSD which involve this Agreement or water supplied to NCSD pursuant to this Agreement, (2) any Third Party Claims, and (3) any force majeure event. Any such notice shall conform to the requirements specified in Paragraph 28 of this Agreement.

23. **Remedies Not Exclusive.** Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

24. **No Transfer of Rights.** The rights granted to NCSD hereunder constitute the right to take delivery of Supplemental Water only and shall not be interpreted as a sale, transfer, or assignment of any of City's water rights.

25. **Subject to Applicable Law.** The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations and special districts as they now exist and as they may be amended or codified by the Legislature of the State of California.

26. **Entire Agreement.** This Agreement contains the entire understanding between NCSD and City with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between NCSD and City. This Agreement cannot be amended except in writing signed by both Parties.

27. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

28. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

29. **Headings; Paragraph References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

30. **Separability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

31. **Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. NCSD shall

have the right to assign its rights under this Agreement with the written consent of City, provided, however, that the City shall not unreasonably withhold such consent and further provided that the assignee agrees to be bound by all of the obligations of NCSD set forth herein. Notwithstanding the foregoing, no assignment permitted hereunder shall permit the delivery of Supplemental Water to any property or development other than the Property without the written consent of the City, in its sole and absolute discretion.

32. **Opinions and Determinations: Good Faith.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The District and the NCSD shall each act in good faith in performing their respective obligations as set forth in this Agreement.

33. **Incorporation of Recitals.** Recitals A through F are incorporated herein by reference as though set forth at length.

34. **Attorneys Fees.** In the event that any legal proceeding other than the dispute resolution procedures referenced in Paragraph 19, above, is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

35. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SANTA BARBARA OTHER THAN A COURT LOCATED WITHIN THE

CITY OF SANTA MARIA OR THE NORTHERN PORTION OF SANTA BARBARA COUNTY, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.


IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

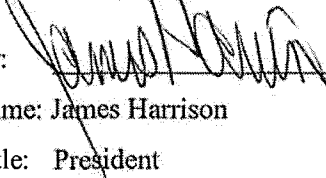
CITY:

NCSD:

City of Santa Maria
a California municipal corporation

Nipomo Community Services District
a California public agency

By: 
Name: Richard G. Sweet, P.E.
Title: Director of Utilities

By: 
Name: James Harrison
Title: President

Address: 2065 E. Main Street
Santa Maria, CA 93454
Fax: (805) 928-7240
Phone: (805) 925-0951

Address: P.O. Box 326
Nipomo, CA 93444
Fax: (805) 929-1932
Phone: (805) 929-1133

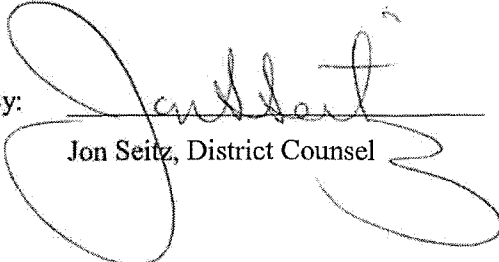
APPROVED AS TO FORM:

APPROVED AS TO FORM:

Best Best & Krieger LLP

District Counsel

By: 
Eric Garner, Partner

By: 
Jon Seitz, District Counsel

Attachment G

NCS D Supplemental Water Chronology and Alternatives Summary

Chronology

- 1970's and 1980's; various development projects on Nipomo Mesa (including Blacklake Golf Resort) raise concerns over groundwater resources.
- 1991; District Customer Vote to not participate in County led State Water Project. Vote considered advisory and NCS D Board opts to move forward with State Water.
- 1992; District Customers Vote overwhelmingly to not participate in State Water
- 1994; District completes Evaluation of Alternatives Study
- 1997; Groundwater Adjudication Case begins
- 2001; District completes revised Evaluation of Alternatives
- 2004; District signs MOU with City of SM to purchase City water
- April 2005; District completes Intertie Feasibility Study
- June 2005; Intertie is incorporated in to Stipulated Settlement
- June 2006; Preliminary Engineering Memorandum and Cost Estimate
- June 2007; District completes third Study of Alternatives
- 2007 – 2011; District works to complete project design and construction cost detail
- March 2009; EIR Certified for Intertie Project
- Jan 2010; District enters a Water Wholesale Agreement with City of Santa Maria – this agreement replaces/suppercedes the 2004 MOU

Alternatives Summary

Evaluation of Alternative Supplemental Water Supplies

Prepared by Bookman-Edmonston Engineering, Inc.

July 1994

- Evaluated seven (7) supplemental water supply sources including State Water Project, purchase of water from a State Water Project Contractor, Purchase of water from a Federal Central Valley Project Contractor, Desalination, Wastewater Reuse, California Drought Water Bank, and water from fractured rock.
- Recommendation was to pursue construction of turnout on SWP Coastal Branch and negotiate with CCWA/City of Santa Barbara whereby the City would produce desalted water for NCS D and an equal amount of water would be delivered by CCWA to NCS D through the turnout. Additional recommendations were to pursue joint wastewater reuse project with South San Luis Obispo County Sanitation District and investigate long-term dependability of water from fractured rock in foothills as well as maximize water conservation.

Evaluation of Water Supply Alternatives

Prepared by Kennedy/Jenks Consultants

October 2001

- Evaluated thirteen (13) potential water sources including State Water Project, Intertie with City of Santa Maria, Desalination, Purchase of property with water rights, Wastewater Reuse, Oil field produced water, hard rock drilling, water conservation and transport using water bags.

- Recommendations were ranked in the following order of priority for further investigation, evaluation and pursuit:
 - Water conservation
 - Intertie with City of Santa Maria
 - Desalination of refinery water
 - Wastewater reuse
 - Hard rock drilling

Draft Evaluation of Supplemental Water Alternatives – Technical Memorandum No. 1
Constraints Analysis

Prepared by Boyle Engineering
June 2007

- Evaluated eight (8) alternatives including Santa Maria Valley Groundwater, State Water, Desalination, Brackish water from Oso Flaco, Nacimiento Water Project, Groundwater recharge with wastewater effluent, Groundwater exchange of recycled water for direct reuse, and Intertie with City of Santa Maria.
- Recommended for further evaluation, in addition to Intertie with City of Santa Maria, were State Water and desalination.
- Estimated cost of \$2100 per acre-foot for Intertie with City of Santa Maria

Evaluation of Desalination as a Source of Supplemental Water – Administrative Draft Technical Memorandum No. 2

Prepared by Boyle Engineering
September 2007

- Developed preliminary workplan, cost and schedule to implement desalination plant.
- Estimated timeframe to implement was in excess of eight (8) years.
- Estimated cost of \$3600 per acre-foot of water higher than \$2100 per acre-foot for Intertie with City of Santa Maria.

Evaluation of Supplemental Water Alternatives – Technical Memorandum No. 3 Implementation fo Water Supply from CCWA/State Water Pipeline

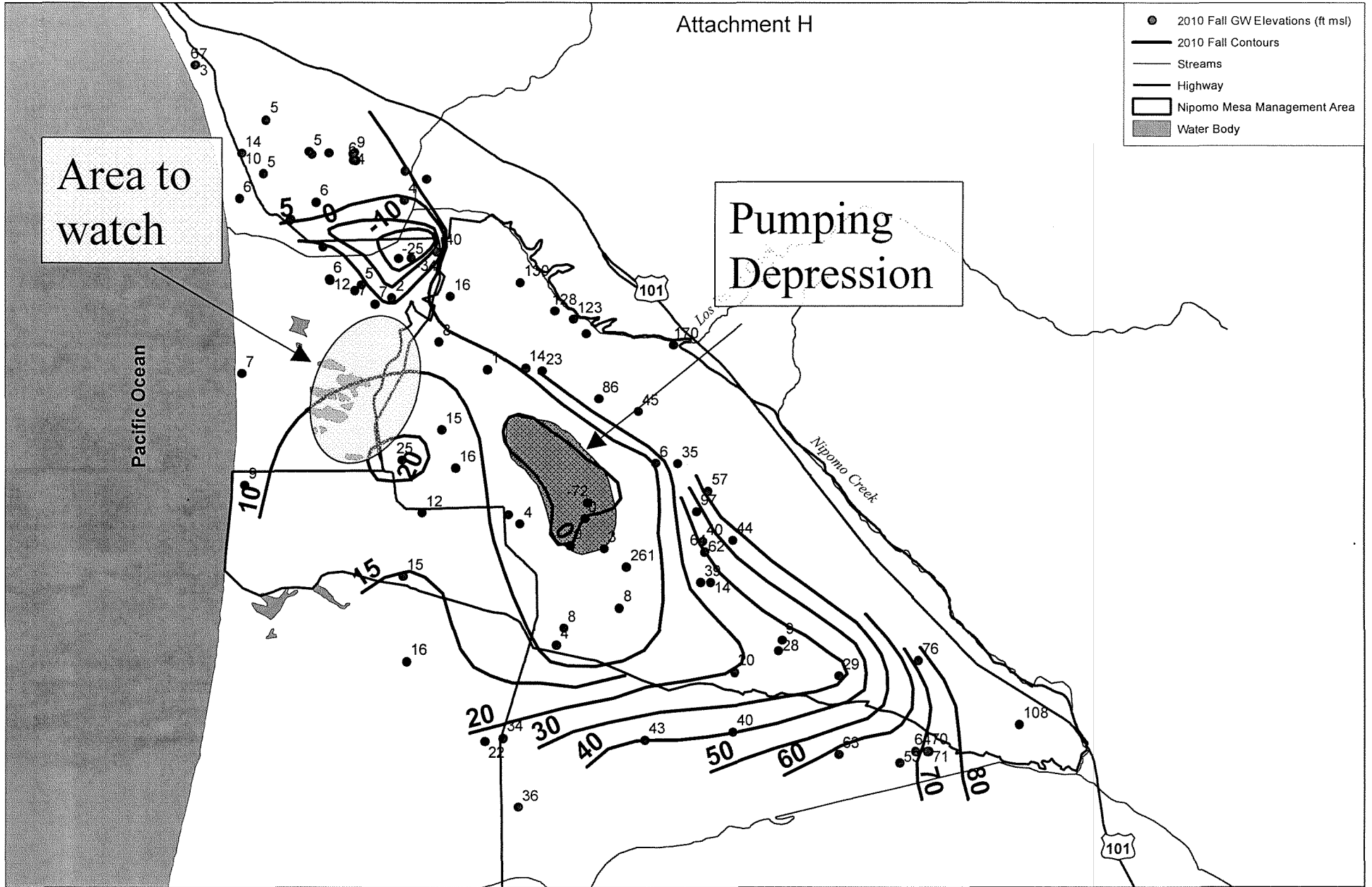
Prepared by Boyle Engineering
November 2007

- Developed potential framework for agreement needed to gain access to CCWA/State Water, described facilities needed to implement, and developed range of anticipated costs.
- Estimated timeframe to implement was four (4) to seven (7) years assuming negotiations with CCWA were successful.
- Estimated cost of up to \$4200 per acre-foot of water, assuming negotiations with CCWA were successful, higher than \$2100 per acre-foot for Intertie with City of Santa Maria.
- Intertie with City of Santa Maria considered more reliable since City can provide groundwater during State Water Project shortages or failures.

- 2010 Fall GW Elevations (ft msl)
- 2010 Fall Contours
- Streams
- Highway
- Nipomo Mesa Management Area
- Water Body

Area to watch

Pumping Depression

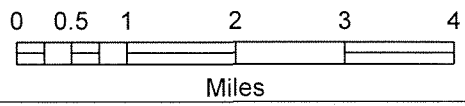


Copy of document found at www.NoNewWipTax.com

NOTES:
 Coordinate System: UTM Zone 10N
 Horizontal Datum: NAD 83

N

2010 Fall Groundwater Contours



**NMMA
Technical
Group**

DATE: 4/21/11

BY: J. Herbert

Attachment I



From the Office of the Mayor

Shelly Higginbotham

760 Mattie Road

Pismo Beach, CA 93449

(805) 235-6604

shigginbotham@pismobeach.org

September 8, 2011

San Luis Obispo County Board of Supervisors
Room D-430, County Government Center
San Luis Obispo, CA 93408

SUBJECT: Letter of Support for the Nipomo Supplemental Water Supply Project

Dear Honorable Supervisors:

This letter communicates the City of Pismo Beach's support for the Nipomo Supplemental Water Supply Project, outlining why this project is so critically important to the residents of San Luis Obispo County, and urges your board to publicly support full implementation of the project.

Approximately one-quarter of the City's freshwater supply comes from the Santa Maria Groundwater Basin, a vast underground reservoir, covering nearly 300 square miles from Pismo Beach south to Santa Maria. For nearly 30 years, the Cities of Arroyo Grande, Pismo Beach and Grover Beach and the Oceano Community Services District have limited their pumping from the Santa Maria Groundwater Basin so as to not exceed the basin's safe yield. However, continued growth on the Nipomo Mesa, which depends entirely on groundwater from the Santa Maria Groundwater Basin, has contributed to a deepening groundwater depression underlying the Nipomo area that threatens the entire region.

Under the terms of the 2008 Judgment in the adjudication of the Santa Maria Groundwater Basin, the Nipomo Community Services District (NCSD) must purchase and deliver a minimum of 2,500 acre-feet of supplemental water each year to the Nipomo Mesa. According to the 2010 annual report prepared by the Nipomo Mesa Management Area (NMMA), "there are a number of direct measurements that indicate that demand exceeds the ability of the supply to replace the water pumped from the aquifers" underlying the Nipomo Mesa. Therefore, not only is the Nipomo Supplemental Water Supply Project required under the terms of the adjudication, it is urgently needed to help correct the imbalance of water supply and demand in southern San Luis Obispo County.

SLO County Board of Supervisors
September 8, 2011
Page 2

In closing, the Santa Maria Groundwater Basin is a critical water resource that provides water supplies to more than 53,000 residents and thousands of acres of irrigated cropland in southern San Luis Obispo County. The long-term reliability of this important regional resource is being threatened by the deepening groundwater depression underlying Nipomo. The Nipomo Supplemental Water Supply Project is a necessary and urgent first step to begin to manage the regional water resources sustainably, and protect the economy of the South County area. Please join our city in providing your full support for this important regional project.

Sincerely,



Shelly Higginbotham
Mayor



CITY OF
ARROYO GRANDE
CALIFORNIA

August 26, 2011

San Luis Obispo County Board of Supervisors
Room D-430, County Government Center
San Luis Obispo, CA 93408

SUBJECT: Letter of Support for the Nipomo Supplemental Water Supply Project

Dear Honorable Supervisors,

This letter communicates the City of Arroyo Grande's support for the Nipomo Supplemental Water Supply Project, outlining why this project is so critically important to the residents of San Luis Obispo County, and urges your board to publicly support full implementation of the project.

More than one-third of the City's freshwater supply comes from the Santa Maria Groundwater Basin, a vast underground reservoir, covering nearly 300 square miles from Pismo Beach south to Santa Maria. For nearly 30 years, the Cities of Arroyo Grande, Pismo Beach and Grover Beach and the Oceano Community Services District have limited their pumping from the Santa Maria Groundwater Basin so as to not exceed the basin's safe yield. However, excessive pumping associated with continued growth on the Nipomo Mesa, which depends entirely on groundwater from the Santa Maria Groundwater Basin, has contributed significantly to a deepening groundwater depression underlying the Nipomo area that threatens the entire region.

Under the terms of the 2008 Judgment in the adjudication of the Santa Maria Groundwater Basin, the Nipomo Community Services District (NCSD) must purchase and deliver a minimum of 2,500 acre-feet of supplemental water each year to the Nipomo Mesa. According to the 2010 annual report prepared by the Nipomo Mesa Management Area (NMMA), "there are a number of direct measurements that indicate that demand exceeds the ability of the supply to replace the water pumped from the aquifers" underlying the Nipomo Mesa. Therefore, not only is the Nipomo Supplemental Water Supply Project required under the terms of the adjudication, it is urgently needed to help correct the imbalance of water supply and demand in southern San Luis Obispo County.

OFFICE OF THE MAYOR • 300 East Branch Street • Arroyo Grande, California 93420
Phone: (805) 473-5400 • Fax: (805) 473-0386 • E-mail: agcity@arroyogrande.org • Website: www.arroyogrande.org

In closing, the Santa Maria Groundwater Basin is a critical water resource that provides water supplies to more than 53,000 residents and thousands of acres of irrigated cropland in southern San Luis Obispo County. The long-term reliability of this important regional resource is being threatened by the deepening groundwater depression underlying Nipomo. The Nipomo Supplemental Water Supply Project is a necessary and urgent first step to begin to manage the regional water resources sustainably, and protect the economy and quality of life of the South County area. Please join our City in providing your full support for this critically important regional project.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Ferrara", written in a cursive style.

Tony Ferrara,
Mayor, On behalf of the City Council
City of Arroyo Grande

Attachment J

Table 4-9 - Project Budget

Proposal Title: San Luis Obispo County Integrated Proposal (SLOCIP)

Project Number 4: Nipomo Waterline Intertie Project

Budget Category	(a) Non-State Share* (Funding Match)	(b) Requested Grant Funding	(c) Other State Funds Being Used	(d) Total	(e) % Funding Match
(a) Direct Project Administration Costs	\$447,033	\$0	\$0	\$447,033	100%
(b) Land Acquisition	\$325,129	\$0	\$0	\$325,129	100%
(c) Planning/Design/Engineering/Environmental Documentation	\$1,668,271	\$0	\$0	\$1,668,271	100%
(d) Construction/Implementation	\$13,578,200	\$2,300,000	\$0	\$15,878,200	86%
(e) Environmental Compliance/ Mitigation/Enhancement	\$160,000	\$0	\$0	\$160,000	100%
(f) Construction Management	\$2,666,274	\$0	\$0	\$2,666,274	100%
(g) Other Costs	\$0	\$0	\$0	\$0	100%
(h) Construction/Implementation Contingency	\$2,946,000	\$0	\$0	\$2,946,000	100%
(i) Grand Total (Sum rows (a) through (h) for each column)	\$21,790,907	\$2,300,000	\$0	\$24,090,907	90%

*List sources of funding: Non-State Share (Funding Match) is to be funded through the formation of an assessment district with assessments to be paid by benefitting properties and NCS D Capital Program Reserves. Assessment district formation vote currently scheduled for the Spring of 2011.

Attachment K

Nipomo Supplemental Water Project
PRELIMINARY Projected Cost Summary Table
September 2011

Capital Costs (Property Assessment)				
	NCS D	G S W C	W M W C	R W C
Capacity (AF) ¹	2168	208	416	208
Capacity (%)	72.3	6.9	13.9	6.9
Estimated Cost (\$) per BU ² (One time Cash Payment)	3,100/4,100	1,600	5,650	2,500
Estimated Annual Cost (\$) per BU (Financed over 30-years) ³	260/350	150	525	240
Operating Costs (Rate Impact)				
	NCS D	G S W C	W M W C	R W C
Current Cost (\$) of Water per Month ⁴	53	Not Available	Not Available	41
Estimated Additional Monthly Cost (\$)	11	Not Available	Not Available	10
Total Monthly Water Cost (\$)	64	Not Available	Not Available	51

Notes:

1. Project Capacity is 3000 acre-feet per year
2. BU is Benefit Unit and is equal to single family residential equivalent with a lot size of less than .35 acres. For existing NCS D customers with no additional development potential, \$3,100 per BU applies, For undeveloped land or under-developed property within the NCS D, \$4,100 per BU applies.
3. Each water service area has a varying amount of total BU. For existing NCS D customers with no additional development potential, \$260 per BU applies, For undeveloped land or under-developed property within the NCS D, \$350 per BU applies.
4. Cost of water per month figures are based on an 'average' customer using 40 units of water every two months. Additional assumptions are used (e.g. using current cost of water, water usage for average customer remains unchanged).
5. NCS D = Nipomo Community Services District; GSWC = Golden State Water Company; WMWC = Woodlands Mutual Water Company; RWC = Rural Water Company.