

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

(1) DEPARTMENT Public Works	(2) MEETING DATE 3/27/2012	(3) CONTACT/PHONE Paavo Ogren, Director of Public Works (805) 781-5252	
(4) SUBJECT Nipomo Supplemental Water Project Assessment District; Consideration of Assessment Ballots totaling \$89,801.39 for 8 parcels owned by the County.			
(5) RECOMMENDED ACTION It is our recommendation that your Honorable Board, acting as the San Luis Obispo County Flood Control and Water Conservation District consider the proposed assessments for the Nipomo Supplemental Water Project and provide direction as you deem appropriate on assessment ballots (Neutral staff position).			
(6) FUNDING SOURCE(S) County Parks, GSA	(7) CURRENT YEAR FINANCIAL IMPACT \$15,000.00	(8) ANNUAL FINANCIAL IMPACT \$6,800.00	(9) BUDGETED? No
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business (Time Est. 60 min.)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A		(12) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(13) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(14) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
(15) LOCATION MAP No	(16) BUSINESS IMPACT STATEMENT? No	(17) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date 12/13/11	
(18) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(19) SUPERVISOR DISTRICT(S) District 4 -			

Reference: 12MAR27-BB-1

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works
Paavo Ogren, Director of Public Works

DATE: 3/27/2012

SUBJECT: Nipomo Supplemental Water Project Assessment District; Consideration of Assessment Ballots totaling \$89,801.39 for 8 parcels owned by the County.

RECOMMENDATION

It is our recommendation that your Honorable Board, acting as the San Luis Obispo County Flood Control and Water Conservation District consider the proposed assessments for the Nipomo Supplemental Water Project and provide direction as you deem appropriate on assessment ballots (Neutral staff position).

DISCUSSION

The Nipomo Community Services District has been working on the development of a supplemental water project (Project) for the Nipomo Mesa in cooperation with other water purveyors including the Woodlands Mutual Water Company, the Golden State Water Company, and the Rural Water Company. Attachment "A" is an excerpt from the "NCSO Waterline Intertie Final EIR" that provides the Project description, including a Project background and Project objectives. The Project includes a physical intertie with the City of Santa Maria (City), which will provide the source of supplemental water from City supplies pursuant to an agreement dated January 5, 2010. The Nipomo Mesa Management Area (NMMA), which was established as a result of the Santa Maria Groundwater Basin litigation, and the boundaries of the water purveyors are depicted in the attached vicinity map. The Wholesale Water Supply Agreement between NCSO and the City of Santa Maria is included as Attachment "B".

As part of the Project development, NCSO has initiated the creation of an assessment district to fund the development of the physical intertie. Pursuant to Proposition 218, the "Right to Vote on Taxes Act" (1996) and as codified in Article XIII D of the California State Constitution, the proposed assessments can only be levied and collected if approved by property owners. Since the County of San Luis Obispo owns 8 properties within the assessment district boundaries that are subject to assessment which total \$89,801.39 in total proposed assessments, your Board may choose to submit ballots in favor of the Project assessments, in opposition to the Project assessments, or your Board may choose to take a neutral position and to not submit ballots. The following table provides a list of the County parcels and the proposed assessments.

Table 1
Nipomo CSD Water Assessment--All County-Owned Parcels

APN	Current Land Use	Proposed Assessment
092-121-085	Nipomo Native Gardens	\$ 1,447.96
092-121-086	Nipomo Regional Park	\$ 68,054.12
090-082-012	Nipomo Senior Center	\$ 1,447.96
090-141-006	Proposed future Jim O. Miller Park Site	\$ 2,422.79
090-142-007	Tefft Street Lot- Possible future DSS Site	\$ 7,416.69
091-443-017	Vacant land not used for fire station	\$ 7,416.69
092-094-004	Vacant Lot	\$ 797.59
092-453-001	Vacant Lot (San Luis Obispo County Flood Control and Water Conservation District)	\$ 797.59
Total		\$ 89,801.39
Total Proposed Assessment in the Assessment District		\$ 21,463,314.00
County assessments as a percentage of the total proposed assessments		<u>0.42 %</u>

Basis for Staff Position

The staff position is “neutral” on the assessment ballots consistent with the long-standing position that the assessment process required by Proposition 218 creates a mandate for community-based decision making. As a result, the overriding obligation of local agencies that choose to propose assessments is to work with stakeholders, including property owners, to review the merits of the proposed project, alternatives, impacts and the results of a “no project alternative.” County staff has not been involved in the Project development, nor have we been involved in the stakeholder outreach efforts, and therefore we formally maintain a neutral position.

Nevertheless, staff recognizes that demonstrable evidence does exist illustrating that the sustainability of the groundwater resources for the Nipomo Mesa is a justified issue of significant concern. Indeed, prior action of your Board relating to water resources on the Nipomo Mesa reflects your Board’s unambiguous concern over its groundwater resources. The following summarizes prior Board actions that your Board may wish to consider while determining whether to adopt a neutral position, or alternatively, whether to submit ballots in favor or in opposition to the proposed assessments.

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 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 NCSO 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 NCSO 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). 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.
- The Nipomo Supplemental Water Project is stipulated as a physical solution.
- 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.”

Attachment “C” 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 Attachment “C”, depict the deepest point of the depression at 72 feet below sea level.

Water Resource Advisory Committee Support

Your Board's primary advisory committee on regional water resource issues is the Water Resources Advisory Committee (WRAC). At its July 7, 2010 meeting, WRAC considered recommendations on which projects locally should be included in the grant application for Integrated Regional Water Management (IRWM) program. The Project was included along with two others and unanimously supported by WRAC. On September 20, 2011, the California Department of Water Resources awarded \$10.4 million in grants for the IRWM application, of which \$2.3 is allocated to the Project. The grant reduces the amount of the proposed assessments by approximately 10%. The grant is not available for alternatives and will not be available for the Project if it does not proceed in a timely manner.

Prior Board action on the Assessment District

Most recently, on December 13, 2011, your Board adopted a resolution granting consent to the formation of the assessment district by NCSA. At that time, your Board also adopted CEQA findings of fact and overriding considerations, which are included as Attachment “D.” Section 6, pages 44-54, of Attachment “D” includes “Findings on Alternatives.” It should also be noted that prior to adoption of the consent resolution at your Board’s December 2011 meeting, your Board had approved a Memorandum of Understanding (September 2010) with NCSA to jointly create the assessment district. The modified approach recently approved in December 2011 was in response to a revised request from NCSA, based in part on advice from their financial and legal advisors, which are included in Attachment “E.”

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.

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 Nipomo 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 the Nipomo Supplemental Water Project 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.

The San Luis Obispo County department of Planning and Building prepared Attachment "F", which is posted on their website and used also to respond to questions regarding "the potential for future use and/or subdivision of land within the areas served by the Nipomo Community Services District, the Rural Water Company, the Woodlands Water Company, and the Golden State Water Company."

FINANCIAL CONSIDERATIONS

If the assessments are approved, the lump-sum cost to the County would be \$89,801.39. The Department of General Services has indicated that assessments on APN's 090-142-007 and 091-443-017 would be paid in lump sum from the current year budget, and that annual costs of the other assessments would total approximately \$6,800 per year. Costs associated with purchasing water from the City of Santa Maria will be incurred by the operating funds of the water purveyors, and are not included in the cost of the proposed assessments, which are intended to only cover the capital costs of the Project. Grants have also been approved that will help pay for a portion of the Project to help mitigate cost impacts.

The total Project cost including Financing Costs and reserves is estimated at \$29,763,314. Attachment "G" provides a breakdown of those costs. Approximately \$21.46 million is proposed to be funded by assessments on benefitting properties, \$6.0 million from NCSD reserves, and \$2.3 million by the IRWM grant.

The Agreement between NCSD and the City of Santa Maria 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.

RESULTS

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.

File: CF 310.100.01

Reference: 12MAR27-BB-1

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ATTACHMENTS

1. Attachment A - Excerpts from the NCSD Waterline Intertie Final EIR
2. Attachment B - Wholesale Water Supply Agreement between NCSD and the City of Santa Maria
3. Attachment C - 2010 Fall Groundwater Contours
4. Attachment D - CEQA Findings of Fact and Overriding Considerations
5. Attachment E - Request to Form the Proposed NCSD Assessment District
6. Attachment F - Information - Nipomo Assessment District by San Luis Obispo County Department of Planning and Building
7. Attachment G - Table from Engineer's Report of Total Costs