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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.

10/7/11

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