

TO: BOARD OF DIRECTORS  
FROM: MICHAEL S. LEBRUN *MSL*  
GENERAL MANAGER  
DATE: MAY 17, 2013



## AUTHORIZATION OF THE NIPOMO COMMUNITY SERVICES DISTRICT WATER REVENUE REFUNDING BONDS, SERIES 2013A

### ITEM

It is recommended that the Board of Directors:

1. Adopt the following resolution:

Resolution of the Board of Directors of the District Authorizing the Issuance of Not To Exceed \$3,700,000 Water Revenue Refunding Bonds, Series 2013A and Approving an Indenture of Trust, an Escrow Agreement, a Continuing Disclosure Agreement, a Bond Purchase Agreement and a Preliminary Official Statement in Connection Therewith and Authorizing the Taking of Certain Actions in Connection Therewith.

then

2. Convene to the Nipomo Community Services District Public Facilities Corporation (PFC) and have the PFC approve an escrow agreement in connection with the issuance by the District of not to exceed \$3,700,000 Water Revenue Refunding Bonds, Series 2013A.

### BACKGROUND

2003 Certificates. In 2003, the District executed and delivered its \$4,000,000 Revenue Certificates of Participation (Pipeline and Storage Facility Project) Series 2003 (the "2003 Certificates"), of which \$3,235,000 is currently outstanding at an average interest cost of 4.74%. The 2003 Certificates were sold with MBIA bond insurance (then rated "Aaa" and "AAA," now "Baa" and "BBB"), with current underlying ratings of "A" by Standard & Poor's. Based on current bond market conditions, a refunding could reduce true interest cost to 3.56% inclusive of all refunding costs. This would produce a savings in present value dollars of \$216,806 and \$353,194 in Total Dollars. Average annual savings would be \$17,597 over the remaining 20 years life of the Bonds.

The refunding savings are attractive with present value (PV) savings at over 6.5% of the 2003 Certificates outstanding and a 3% PV savings rate is considered by many issuers and financial policies as a net PV savings benchmark. Actual savings will not be determined until time of sale and could be higher or lower depending on bond market conditions in late May.

2013 Bonds. It is now proposed to refinance the 2003 Certificates by issuing refunding bonds authorized by Articles 10 and 11 of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law") in a principal amount not to exceed \$3,700,000 Water Revenue Refunding Bonds, Series 2013A (the "Bonds"). The District will use the proceeds of the Bonds to prepay 2003 Installment Payments. The Bonds will be secured by and payable from Property Tax Revenues first and then Net Revenues of the Water Enterprise. The term of the Bonds is proposed to be 20 years (the remaining term of the 2003 Certificates). Total annual debt payments are expected to be approximately \$234,000 per year depending on final bond rating and market conditions at time of sale.

A standard bond debt service reserve fund will also be funded from Bonds proceeds. A reserve fund serves to enhance the bond rating, cover the last debt payment and satisfy investor concerns. The District has also created a rate stabilization fund in the amount of \$400,000 from existing funds of the Water Enterprise to manage the need for future rate increases.

A Bond Rating has been applied for from Standard and Poor's Corporation. The Rating is expected to be announced on May 22, 2013. It is currently expected that the Water Enterprise system rating will be in the "A" category but there is no assurance of this. Bond insurance may also be considered, if the District is approved, and if shown to be cost effective in lowering interest cost net of the premium. Bonds are proposed to be sold in late May with a bond closing in early June. The true interest rate on the debt is expected to be under 4% depending on the final bond rating and marketing conditions at time of sale. It is currently proposed to sell the Bonds by negotiated sale to Citigroup Global Markets, Inc., as underwriter, pursuant to a Bond Purchase Agreement following a RFP selection process conducted by staff and financial advisor.

It is appropriate at this meeting to consider for adoption the resolutions authorizing the issuance of the Bonds. Resolutions for the District and PFC are attached which would authorize the issuance of not to exceed \$3,700,000 of Water Revenue Refunding bonds by the District. The Bonds will be sold on a negotiated basis at a true interest cost of not to exceed 4.0%. The resolutions also approve the various documents in connection with the issuance of the Bonds. Fulbright & Jaworski L.L.P., has acted as bond counsel and disclosure counsel, C.M. de Crinis & Co., as financial advisor, and The Bank of New York Mellon Trust Company, N.A., as trustee.

General Summary of Security: Principal of and interest on the Bonds are secured by Net Revenues of the District's water enterprise, including, first, the Property Tax Revenues. Net Revenues also include gross revenues of the enterprise minus operating and maintenance costs. The District covenants to maintain its rates and charges at a specified level to have sufficient Net Revenue to make debt service payments on the Bonds. There is also a reserve fund securing the Bonds.

*Indenture of Trust:* The Indenture of Trust is one of the key legal documents that lays out the legal structure and terms of the financing. It specifies payment dates, maturity dates of the Bonds; revenues and accounts specifically pledged to the repayment of the Bonds; flow of funds; default and remedy provisions; defeasance provisions in the event the Bonds are redeemed early; parity obligation tests; rate covenants and further covenants of the District. The Indenture is drafted by Bond Counsel and executed by the District and Trustee.

*Official Statement:* The Official Statement describes the security and discloses potential risks to prospective investors. It will generally describe the sources of payment for the Bonds, the future improvement projects, the financial condition of the District's water enterprise, the economic and demographic characteristics of the District, and inherent known risk factors associated with the security. It's important that this document not contain any material misstatements or omissions. The Preliminary Official Statement (often referred to as the "POS") is distributed by the underwriter to prospective investors prior to the bond sale so that they can make informed purchase decisions. The POS should be as close to final as possible with the actual terms of the pricing (interest rates and principal amounts) left necessarily blank. The Final Official Statement (FOS) will be prepared shortly after the bond sale and must be available in time for bond closing. The POS and FOS are drafted by Bond Counsel, acting as disclosure counsel and is executed by the District.

*Escrow Deposit and Trust Agreement:* This agreement provides that the proceeds from the Bonds will be deposited with the 2003 Certificate trustee and used to prepay and defease the 2003 Certificates. This document is drafted by Bond Counsel and executed by the District, the PFC and the Trustee, as escrow agent.

*Continuing Disclosure Agreement:* This agreement outlines the updated information related to the security that the District will agree to provide to the bond markets. Securities and Exchange Commission Rule 15c2-12 requires that certain disclosure be undertaken by the District. Disclosure is required annually, and on an exceptional basis for any major "material" event. This document is drafted by Bond Counsel, acting as disclosure counsel, and executed by the District and the Trustee.

*Bond Purchase Agreement:* This agreement between the District and Citigroup Global Markets Inc., as the underwriter for the Bonds. The Bonds will be sold on a negotiated basis at a true interest rate of not to exceed 4.0% and with an underwriter's discount of not to exceed 1% and a principal amount of not to exceed \$3,700,000. The sale of the Bonds is scheduled for late May. The underwriter commits to purchase the Bonds at closing at the agreed upon prices and amounts subject to certain closing conditions. This document is drafted by Bond Counsel and executed by the District and the Underwriter.

More specific details of the financing can be found in the drafts of the documents referenced above.

It is appropriate at this meeting to consider for adoption the resolutions of the District and PFC authorizing the refunding of the 2003 Certificates and the issuance of the Bonds.

### **FISCAL IMPACT**

Total annual debt payments for the Bonds are expected to be approximately \$234,000 per year for a term of twenty years payable first from Property Tax Revenues and then from other net revenues of the Water Enterprise.

### **STRATEGIC PLAN**

Strategic Plan Goal 6.1 – Operate all enterprise funds to be financially sound  
Strategic Plan Goal 6.3 – Ensure that decisions consider short and long term fiscal impacts

### **RECOMMENDATION**

Staff recommends that your Honorable Board adopt Resolution 2013-XXXX approving:

- AN INDENTURE OF TRUST
- AN ESCROW DEPOSIT AND TRUST AGREEMENT
- A CONTINUING DISCLOSURE AGREEMENT
- A PRELIMINARY OFFICIAL STATEMENT
- A BOND PURCHASE AGREEMENT

then

Convene to Nipomo Community Services District Public Facilities Corporation

**ATTACHMENTS**

- A. RESOLUTION 2013-REFUND
- B. INDENTURE OF TRUST
- C. ESCROW DEPOSIT AND TRUST AGREEMENT
- D. PRELIMINARY OFFICIAL STATEMENT (INCLUDES CONTINUING DISCLOSURE AGREEMENT)
- E. BOND PURCHASE AGREEMENT

MAY 22, 2013

ITEM E-1

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2013-\_\_\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO  
COMMUNITY SERVICES DISTRICT AUTHORIZING THE ISSUANCE AND  
SALE OF NOT TO EXCEED \$3,700,000 WATER REVENUE REFUNDING  
BONDS, SERIES 2013A AND APPROVING AN INDENTURE, AN ESCROW  
AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, A BOND  
PURCHASE AGREEMENT AND PRELIMINARY OFFICIAL STATEMENT IN  
CONNECTION THEREWITH AND AUTHORIZING THE TAKING OF CERTAIN  
ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, the Nipomo Community Services District (the "District") owns and operates that certain Water System referred to herein as the "Enterprise"; and

**WHEREAS**, the District has heretofore caused the execution and delivery of its \$4,000,000 Nipomo Community Services District Revenue Certificates of Participation (Pipeline and Storage Facility Project) Series 2003 (the "Series 2003 Certificates") for the purpose of financing certain improvements to the Enterprise (the "Prior Improvements"); and

**WHEREAS**, the District has determined that it is in the best interests of the District to refund and prepay the Series 2003 Certificates at this time to achieve an interest rate savings; and

**WHEREAS**, for the purpose of prepaying the unpaid installment payments due by the District for the purchase of the Prior Improvements acquired under that certain 2003 Installment Purchase Agreement, dated as of May 1, 2003 (the "Series 2003 Installment Purchase Agreement"), by and between the District and the Nipomo Community Services District Public Facilities Corporation (the "Corporation"), the District proposes to issue its Water Revenue Refunding Bonds, Series 2013A (the "Bonds"), in a principal amount not to exceed \$3,700,000, pursuant to and in accordance with Articles 10 and 11 of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law"); and

**WHEREAS**, it has been proposed that the Bonds be sold on a negotiated basis in accordance with the terms of a Bond Purchase Agreement, the proposed form of which has been presented to the Board of Directors of the District (the "Board"); and

**WHEREAS**, the documents specified below have been filed with the District and the members of the Board, with the aid of its staff, have reviewed said documents; and

**WHEREAS**, the District has duly considered the issuance and sale of the Bonds, and wishes at this time to approve the issuance and sale of the Bonds.

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

**Nipomo Community Services District  
Resolution No. 2013-\_\_\_\_\_**

**Resolution of the Board of Directors of the Nipomo Community Services District Authorizing the Issuance and Sale of Its Not To Exceed \$3,700,000 Water Revenue Refunding Bonds, Series 2013A and Approving an Indenture, Escrow Agreement, a Continuing Disclosure Agreement, a Bond Purchase Agreement and Preliminary Official Statement in Connection Therewith and Authorizing the Taking of Certain Actions in Connection Therewith.**

**Section 1.** The refunding and prepayment of the Series 2003 Certificates are hereby authorized and approved by the District.

**Section 2.** The Water Revenue Refunding Bonds, Series 2013A (the "Bonds") are hereby authorized by the District to be issued in an amount not to exceed \$3,700,000 in the aggregate pursuant to and in accordance with the provisions of the Indenture, as hereinafter defined.

**Section 3.** The below enumerated documents are hereby approved, and the President, General Manager, or Finance Director, or the written designee of any such official (a "Responsible Officer"), is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such officials, with the advice of counsel to the District and Special Counsel, and the Secretary or Assistant Secretary is hereby authorized and directed to attest to such official's signature:

- (a) an Indenture of Trust, by and between the District and The Bank of New York Mellon Trust Company, N. A., as trustee (the "Trustee"), relating to the issuance of the Bonds (the "Indenture"); and
- (b) an Escrow Deposit and Trust Agreement, by and among the Corporation, the District and The Bank of New York Mellon Trust Company, N. A., as escrow bank, relating to the prepayment and defeasance of the Series 2003 Certificates (the "Escrow Agreement"); and
- (c) a Continuing Disclosure Agreement by the District and accepted by the Trustee as dissemination agent, relating to the Bonds.

**Section 4.** The District hereby approves the preparation of an Official Statement describing the financing, together with any changes therein or additions thereto deemed advisable by a Responsible Officer.

**Section 5.** The District hereby approves the Preliminary Official Statement relating to the Bonds, substantially in the form on file with the Secretary and presented to the Board at this meeting, with such revisions, amendments and completions as shall be approved by a Responsible Officer with the advice of counsel to the District and Bond Counsel, in order to make the Preliminary Official Statement final as of its date, except for the omission of certain information, as permitted by Section 240.15c2-12(b)(1) of Title 17 of the Code of Federal Regulations ("Rule 15c2-12"), and any certificate relating to the finality of the Official Statement under Rule 15c2-12. A Responsible Officer is authorized and directed to approve and execute the final Official Statement, dated as of the date of the sale of the Bonds, and a statement that the facts contained in the final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the

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Services District Authorizing the Issuance and Sale of Its Not To  
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time of sale of the Bonds, true and correct in all material respects and that the final Official Statement did not, on the date of sale of the Bonds, and does not, as of the date of delivery of the Bonds, contain any untrue statement of a material fact with respect to the District or the Enterprise or omit to state material facts with respect to the District or the Enterprise required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. Any and each Responsible Officer, or the written designee of any such official, shall take such further actions prior to the execution of the final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the final Official Statement by a Responsible Officer, which shall include such changes and additions thereto deemed advisable by a Responsible Officer, shall be conclusive evidence of the approval of the final Official Statement by the District.

**Section 6.** The final Official Statement, when executed, is approved for distribution in connection with the offering and sale of the Bonds.

**Section 7.** The District hereby approves the Bond Purchase Agreement, by and between the District and Citigroup Global Markets Inc., in substantially the form presented to this Board. Any Responsible Officer is hereby authorized jointly to execute the Bond Purchase Agreement, in substantially the form presented to this Board, with such revisions, amendments and completions as shall be approved by any Responsible Officer, with the advice of Bond Counsel and District Counsel, such approval to be conclusively evidenced by the execution and delivery thereof by any Responsible Officer, provided that, the Bond Purchase Agreement shall provide for a true interest cost not greater than 4.0%, and an underwriter's discount not greater than 1% of the principal amount of Bonds.

**Section 8.** The President, the General Manager, the Finance Director, the Secretary, the Assistant Secretary and all other appropriate officials of the District are hereby authorized and directed, for and in the name and on behalf of the District, to do any and all things and take any and all other actions, including the publication of any notices necessary or desirable in connection with the refunding and prepayment of the Series 2003 Certificates and the issuance and sale of the Bonds, procurement of municipal bond insurance and reserve fund surety bond, and execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, deem necessary or advisable in order to consummate the lawful refunding and prepayment of the Series 2003 Certificates and the issuance and sale of the Bonds and the consummation of the transactions as described herein.

**Section 9.** This resolution shall take effect immediately.

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Disclosure Agreement, a Bond Purchase Agreement and  
Preliminary Official Statement in Connection Therewith and  
Authorizing the Taking of Certain Actions in Connection Therewith.**

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 \_\_\_\_\_, 2013.

\_\_\_\_\_  
**JAMES HARRISON**  
President of the Board

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
**MICHAEL S. LEBRUN**  
Secretary to the Board

\_\_\_\_\_  
**MICHAEL W. SEITZ**  
District Legal Counsel