

TO: BOARD OF DIRECTORS

FROM: MICHAEL S. LEBRUN
GENERAL MANAGER

DATE: FEBRUARY 6, 2015

**AGENDA ITEM
E-5
FEBRUARY 11, 2015**

**REVIEW BOARD BY-LAWS AND POLICIES
AND PROPOSE EDITS FOR CONSIDERATION**

ITEM

Review Board By-Laws and Policies and propose edits for consideration [RECOMMEND REVIEW OF BY-LAWS AND DIRECT STAFF TO RETURN WITH REVISIONS, IF ANY, FOR FUTURE BOARD APPROVAL]

BACKGROUND

Pursuant to Section 17 of the Board By-Laws, the Board By-Laws Policy shall be reviewed annually. The review shall be provided by District Counsel and ratified by Board action.

Attached are the current Board By-Laws and Policies for your review and consideration.

RECOMMENDATION

Staff recommends that your Honorable Board review the By-laws and policies. If edits are proposed, direct Staff to place consideration of edits on the agenda for the next Regular Board Meeting. If no edits are recommended, the By-laws should be placed on the next consent agenda for adoption by resolution.

ATTACHMENT

- A. Resolution 2014-1330, 2014 Board By-laws

February 11, 2015

E-5

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2014-1330
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING AMENDED BOARD BY-LAWS AND POLICIES (2014)**

WHEREAS, the Board of Directors of Nipomo Community Services District (District) is committed to providing excellence in legislative leadership; and

WHEREAS, the District is a member of the Special District Risk Management Authority (SDRMA); and

WHEREAS, SDRMA has adopted a Credit Incentive Program whereby the District may receive a credit on insurance premiums for the annual review of Board Policies and Procedures (Board By-Laws and Policies); and

WHEREAS, Section 16 of the Board By-Laws and Policies provides for the annual review of the Board By-Laws and Policies by District Legal Counsel; and

WHEREAS, Government Code §§ 61045 and 61047 requires the Board of Directors to adopt:

- A Rules or By-laws governing its proceedings;
- B Administrative Policies;
- C Director Compensation Policies; and
- D Director Reimbursement Policies; and

WHEREAS, Government Code Section § 54954.3(b) provides in relevant part:

“The legislative body of a local agency may adopt reasonable regulations -----
-- limiting the total amount of time allocated for public testimony on particular
issues and for each individual speaker;” and

WHEREAS, on January 22, 2014, District Legal Counsel reviewed the District's previously adopted Board By-Laws and Policies and the District Board of Directors instructed Staff to return with a revised version for Board adoption; and

WHEREAS, on January 22, 2014, the District conducted a public hearing and considered public comment regarding the adoption of the revised Board By-Laws and Policies (2014 update).

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of the Nipomo Community Services District, as follows:

1. The Nipomo Community Services District Board By-Laws and Policies (2014 update) attached hereto as Exhibit "A" are hereby approved and adopted.

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2. All prior District Board By-Laws and Policies, Resolutions and Policies of the District that are inconsistent with the Board By-Laws and Policies (2014 update) attached hereto as Exhibit "A" are hereby repealed.

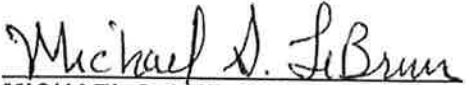
Upon motion by Director Vierheilg, seconded by Director Harrison, on the following roll call vote, to wit:


AYES: Directors Vierheilg, Harrison, Blair, Gaddis and Armstrong
NOES: None
ABSENT: None
ABSTAIN: None

the foregoing resolution is hereby passed and adopted this 12th day of February, 2014.


CRAIG ARMSTRONG,
President of the Board of Directors

ATTEST:


MICHAEL S. LEBRUN
General Manager and Secretary to the Board

APPROVED:

MICHAEL W. SEITZ
District Legal Counsel

NIPOMO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTOR
2014 UPDATE
BOARD BY-LAWS AND POLICIES
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1. OFFICERS OF THE BOARD OF DIRECTORS

- 1.1 The officers of the Board of Directors are President and Vice President.
- 1.2 The President of the Board of Directors shall serve as chairperson at all Board meetings. He/She shall have the same rights as the other Directors of the Board in voting, introducing motions, resolutions and ordinances, and any discussion of questions that follow said actions.
- 1.3 In the absence of the President, the Vice President of the Board of Directors shall serve as chairperson over all meetings of the Board. If the President and Vice President of the Board are both absent, the remaining Directors present shall select one of themselves to act as chairperson of the meeting.
- 1.4 The President and Vice President of the Board shall be elected annually at the last meeting of each calendar year.
- 1.5 The term of office for the President and Vice President of the Board shall commence on January 1 of the year immediately following their election.
- 1.6 The President or, in his/her absence, the Vice President or their designee are authorized to attend meetings of the San Luis Obispo County Planning Commission and meetings of the San Luis Obispo County Board of Supervisors without compensation except reimbursement for use of his/her private vehicle to attend such meetings pursuant to 10.1(b) of these by-laws.

2. MEETINGS

- 2.1 Subject to holiday and scheduling conflicts, regular meetings of the Board of Directors shall commence at 9:00 a.m. on the second and fourth Wednesday of each calendar month in the Board Room at the District Office located at 148 South Wilson, Nipomo, CA. The Board of Directors reserves the right to cancel and/or designate other dates, places, and times for Director meetings due to scheduling conflicts and holidays.

2.2 Special Meetings.

Special meetings may be called by the President or three (3) Directors with a minimum of twenty-four (24) hours public notice. Special meeting agenda shall be prepared and distributed pursuant to the procedures of the Brown Act by the General Manager or the Assistant General Manager in consultation with the President or, in his or her absence, the Vice President or those Directors calling the meeting.

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- 2.3 Directors shall attend all regular and special meetings of the Board unless there is good cause for absence.
- 2.4 No action or discussion may be taken on an item not on the posted agenda; provided, however, matters deemed to be emergencies or of an urgent nature may be added to the agenda under the procedures of the Brown Act. Pursuant to the Brown Act:
- (a) Directors may briefly respond to statements or questions from the public;
 - (b) Directors may, on their own initiative or in response to public questions, ask questions for clarification, provide references to staff or other resources for factual information, or request staff to report back at a subsequent meeting;
 - (c) The Board may take action to direct the General Manager to place a matter on a future agenda;
 - (d) Directors may make brief announcements or make a brief report on his/her own activities under the Director Comment portion of the Agenda.
- 2.5 The President, or in his/her absence the Vice President, shall be the presiding officer at District Board meetings. He/She shall conduct all meetings in a manner consistent with the policies of the District. He/She shall determine the order in which agenda items shall be considered for discussion and/or actions taken by the Board. He/She shall vote on all questions, and on roll call votes his/her name shall be called last.
- 2.6 Three (3) Directors of the Board shall constitute a quorum for the transaction of District business. When a quorum is lacking for a regular, adjourned, or special meeting, the President, Vice President, or any Director shall adjourn such meeting; or, if no Director is present, the District Secretary shall adjourn the meeting.
- 2.7 Except as otherwise specifically provided by law, a majority vote of the total membership of the Board of Directors is required for the Board of Directors to take action.
- 2.8 A roll call vote shall be taken upon the passage of all ordinances and resolutions, and shall be entered in the minutes of the Board, showing those Directors voting aye, those voting no, those temporarily absent because of a conflict of interest, and absent. A roll call vote shall be taken and recorded on any motion not passed unanimously by the Board. Silence shall be recorded as an affirmative vote.

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- 2.10 Any person attending a meeting of the Board of Directors may record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding that the recording cannot continue without disruptive noise, illumination, or obstruction of view that constitutes or would constitute a disruption of the proceedings.
- 2.11 All recording devices, including but not limited to tape recorders, video tape recorders, still and/or motion picture cameras shall remain stationary and shall be located and operated in plain public view and from behind the public speaker's podium. The President retains the discretion to alter these guidelines, including the authority to require that all video tape recorders, still and/or motion picture cameras be located in the back of the room.

3. AGENDAS

- 3.1. The General Manager, in cooperation with the Board President, shall prepare the agenda for each regular and special meeting of the Board of Directors. Any Director may call the General Manager and request an item to be placed on the regular meeting agenda no later than 4:30 p.m. twelve calendar days prior to the meeting date. Such a request must be also submitted in writing either at the time of communication with the General Manager or delivered to the office within the next working day.
- 3.2 The following applies to reconsideration of prior Board actions.
 - (a) After the passage of 9 months from the effective date of the motion, resolution, or ordinance, the matter may be placed on the agenda pursuant to Section 3.1, above, or other provisions of the Brown Act.
 - (b) Prior to the passage of 9 months, any member of the Board of Directors or the General Manager may request the Board of Directors, by motion, to agree to reconsider a prior Board action at a subsequent meeting of the Board.
 - (c) The President of the Board of Directors, upon a determination that there is a need to take immediate action, may place an item on the agenda for reconsideration.
- 3.3 Subject to the following rules, a block of 20 minutes is set aside for each agenda item for public comment, including general public comment:
 - (a) Comments on agendized items should be held until the appropriate item is called.
 - (b) Unless otherwise directed by the President, public comment shall be presented from the podium.

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- (c) The person giving public comment shall state his/her name and whether or not he/she lives within the District boundary prior to giving his/her comment. Public comment shall be directed to the President of the Board.
 - (d) The President, after consideration of the length of the Agenda, the nature of the Agenda item, and the meeting limitations, may expand or further limit the 20-minute time allocation for public comment.
 - (e) Each public commenter shall be limited to 3 minutes unless shortened or extended by the President with consideration of the length of the Agenda, the nature of the Agenda item, and the meeting limitations.
- 3.4 Those items on the District Agenda which are considered to be of a routine and non-controversial nature are placed on the "Consent Agenda". These items shall be approved, adopted, and accepted, etc. by one motion of the Board of Directors; for example, approval of Minutes, approval of Warrants, various Resolutions accepting developer improvements, minor budgetary items, status reports, and routine District operations.
- (a) Directors may request that any item listed under "Consent Agenda" be removed from the "Consent Agenda", and the Board will then take action separately on that item. Members of the public will be given an opportunity to comment on the "Consent Agenda"; however, only a member of the Board of Directors can remove an item from the "Consent Agenda". Items which are removed ("pulled") by Directors of the Board for discussion will typically be heard after other "Consent Agenda" items are approved unless the President chooses an earlier or later time.
 - (b) A Director may ask questions on any item on the "Consent Agenda". When a Director has a minor question for clarification concerning a consent item which will not involve extended discussion, the item may be discussed for clarification and the questions will be addressed along with the rest of the "Consent Agenda". Directors are encouraged to seek clarifications prior to the meeting if possible.

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- (c) When a Director wishes to consider/"pull" an item simply to register a dissenting vote, an abstention or conflict of interest, the Director shall inform the presiding officer that he/she wishes to register a dissenting vote, an abstention or conflict of interest, on a particular item without discussion. The item will be handled along with the rest of the Consent Agenda, and the District Secretary shall register a "no" vote, an abstention or conflict of interest, in the minutes on the item identified by the Director.

4. PREPARATION OF MINUTES AND MAINTENANCE OF RECORDINGS

- 4.1 The minutes of the Board shall be kept by the District Secretary and shall be neatly produced and kept in a file for that purpose, with a record of each particular type of business transacted set off in paragraphs with proper subheads.
- 4.2 The minutes of the Board of Directors shall record the aye and no votes taken by the members of the Board of Directors for the passage or denial of all ordinances, resolutions, or motions.
- 4.3 The District Secretary shall be required to make a record only of such business as was actually considered by a vote of the Board and, except as provided in Sections 4.4 and 4.6 below, shall not be required to record any remarks of Directors or any other person.
- 4.4 The District Secretary shall attempt to record the names and general place of residence of persons addressing the Board during general public comment.
- 4.5 Any Director may request for inclusion into the minutes brief comments pertinent to an agenda item, only at the meeting in which the item is discussed. In addition, the minutes shall include the names of speakers who provided public comment on each agenda item and a summary of the Directors' reports. Materials submitted with such comments shall be appended to the minutes at the request of the General Manager, District Counsel, the Board President, or any Director.
- 4.6 Whenever the Board acts in a quasi-judicial proceeding such as in assessment matters, the District Secretary shall compile a summary of the testimony of the witnesses.

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- 4.7 Any recording of a District meeting made for whatever purpose at the direction of the District shall be subject to inspection pursuant to the California Public Records Act. Consistent with Government Code Section 54953.5(b), the District will maintain the recordings for a 30-day period after the recording. During the 30-day period, the District will provide, without charge, the necessary equipment for inspection of said recordings at the District Office during regular business hours. In addition to the 30-day requirement, the District will attempt to maintain the recordings, without legal obligation to do so, for a minimum of 5 years after the date of the recording. However, during this extended period, the District may not be able to provide the necessary equipment to facilitate inspections.

5. DIRECTORS

- 5.1 Directors shall prepare themselves to discuss agenda items at meetings of the Board of Directors. Directors are encouraged to seek clarification prior to the meeting, if possible.
- 5.2 Members of the Board of Directors shall exercise their independent judgment on behalf of the interest of the entire District, including the residents, property owners and the public as a whole.
- 5.3 Information may be requested from staff before meetings, within such limitations as required by the Brown Act. Information that is requested shall be distributed through the General Manager, and all Directors will receive a copy of all information being distributed.
- 5.4 Directors shall at all times conduct themselves with courtesy to each other, to staff and to members of the audience present at Board meetings.
- 5.5 Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the Board of Directors takes action, dissenting Directors should not create barriers to the implementation of said action.
- 5.6 Pursuant to §54952.2 of the Brown Act:
- (a) Except during an open and public meeting, a majority of the Board of Directors shall not use a series of communications of any kind, directly or thru intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the District.

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(b) Subsection (a) above shall not be construed as preventing District management staff from engaging in separate conversations or communications with members of the District Board of Directors in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the District, provided that District Staff does not communicate to members of the Board of Directors the comments or positions of any other member or members of the Board of Directors.

5.7 Directors shall not be prohibited by action of the Board of Directors from citing his or her District affiliation or title in any endorsement or publication, so long as no misrepresentation is made, or implied, about the District's position on an issue.

6. AUTHORITY OF DIRECTORS

6.1 The Board of Directors is the unit of authority within the District. Apart from his/her normal function as a part of this unit, a Director has no individual authority. As individuals, Directors may not commit the District to any policy, act, or expenditure.

6.2 Directors do not represent any fractional segment of the District but are, rather, a part of the body which represents and acts for the District as a whole.

6.3 The primary responsibility of the Board of Directors is the formulation and evaluation of policy. Routine matters concerning the operational aspects of the District are to be delegated to professional staff members of the District.

7. AUTHORITY OF THE GENERAL MANAGER

Pursuant to Government Code §61051, the General Manager shall be responsible for the following:

7.1. The implementation of the policies established by the Board of Directors for the operation of the District;

7.2 The appointment, supervision, discipline, and dismissal of the District's employees, consistent with the employee relations system established by the Board of Directors;

7.3 The supervision of the District's facilities and services;

7.4 The supervision of the District's finances.

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8. DIRECTOR GUIDELINES

- 8.1 Directors, by making a request to the General Manager or Assistant General Manager, shall have access to information relative to the operation of the District, including but not limited to statistical information, information serving as the basis for certain actions of Staff, justification for Staff recommendations, etc. If the General Manager or the Assistant General Manager cannot timely provide the requested information by reason of information deficiency, or major interruption in work schedules, work loads, and priorities, then the General Manager or Assistant General Manager shall inform the individual Director why the information is not or cannot be made available.
- 8.2 In handling complaints from residents or property owners within the District, or other members of the public, Directors are encouraged to listen carefully to the concerns, but the complaint should be referred to the General Manager for processing and the District's response, if any.
- 8.3 Directors, when seeking clarification of policy-related concerns, especially those involving personnel, legal action, land acquisition and development, finances, and programming, should refer said concerns directly to the General Manager.
- 8.4 When approached by District personnel concerning a specific District policy, Directors should direct inquiries to the General Manager or Assistant General Manager. The chain of command should be followed. If a Director concludes that a personnel issue is not being adequately addressed in this manner, he/she should refer it to the Board's personnel committee for further consideration, in accordance with District Personnel Policy.
- 8.5 Directors and General Manager should develop a working relationship so that current issues, concerns, and District projects can be discussed comfortably and openly.
- 8.6 When responding to constituent requests and concerns, Directors should respond to individuals in a positive manner and route their questions to the General Manager, or in his/her absence, to the Assistant General Manager.
- 8.7 Directors are responsible for monitoring the District's progress in attaining its goals and objectives, while pursuing its mission.

9. DIRECTOR COMPENSATION

- 9.1 Each Director is authorized to receive one hundred dollars (\$100.00) as compensation for each regular adjourned or special meeting of the Board of Directors attended by him/her.

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- 9.2 Each Director appointed to a committee is authorized to receive one hundred dollars (\$100) as compensation for each public meeting of a standing committee attended by him/her.
- 9.3 Each Director appointed to an ad hoc committee is authorized to receive seventy-five dollars (\$75.00) as compensation for each ad hoc committee meeting attended by him/her.
- 9.4 Each Director is authorized to receive one hundred dollars (\$100) per day as compensation for representation of the District at a public meeting or public hearing conducted by another public agency and/or participation in a training program on a topic that is directly related to the District, provided the Board of Directors has previously approved the member's participation and the member delivers a written report to the Board of Directors at the District's next regular meeting regarding the member's participation.
- 9.5 In no event shall Director compensation exceed \$100 per day.
- 9.6 Director compensation shall not exceed six full days in any one calendar month.

10. DIRECTOR REIMBURSEMENT

- 10.1 Subject to the following rules and budgetary limitations, each Director is entitled to reimbursement for their actual and necessary expenses (including the cost of programs and seminars), for his/her attendance at programs, conferences, and seminars that are related to District functions and/or Director development.

- (a) It is the policy of the District to exercise prudence with respect to hotel/motel accommodations. It is also the policy of the District for Directors and staff to stay at the main hotel/motel location of a conference, seminar, or class to gain maximum participation and advantage of interaction with others whenever possible.

If lodging is in connection with a conference or organized education activity, lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of the Board of Directors at the time of booking. If the group rate is not available, the Director shall use lodging that is comparable with the group rate. Personal phone calls, room service, and other discretionary expenditures are not reimbursable.

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- (b) Members of the Board of Directors shall use government and group rates offered by a provider of transportation for travel when available. Directors, using his/her private vehicle on District business, shall be compensated at the prevailing IRS per diem mileage rate.
 - (c) Any Director traveling on District business shall receive in addition to transportation and lodging expenses, a per diem allowance to cover ordinary expenses such as meals, refreshments, and tips. The amount set for per diem shall be considered fair reimbursement. The per diem shall include \$10.00 for breakfast, \$15.00 for lunch and \$30.00 for dinner, for a daily total of \$55.00.
 - (d) All travel and other expenses for District business, conferences, or seminars outside of the State of California shall require separate Board authorization, with specific accountability as to how the District shall benefit by such expenditure.
- 10.2 All expenses that do not fall within the reimbursement policy set forth in 10.1, above, shall be approved by the Board of Directors, at a public meeting, before the expense is incurred.
- 10.3 Board members shall submit an expense report on the District form within ten (10) calendar days after incurring the expense. The expense report shall be accompanied by receipts documenting each expense. Expense reports for mileage, as referenced in Section 10.1(b), shall be submitted no later than the end of each quarter (March, June, September, and December).
- 10.4 Members of the Board of Directors shall provide brief reports on the program, conferences, and seminars attended at the expense of the District at the next regular meeting of the Board of Directors.

11. TRAINING

11.1 Ethics Training

- (a) Pursuant to sections 53234 et seq. of the Government Code, all Directors and designated District personnel shall receive at least 2 hours of ethics training every two years.
- (b) Each newly elected Board Member and designated District personnel shall receive ethics training no later than one year from the first day of service with the District and thereafter shall receive ethics training at least once every two years.

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11.2 Sexual Harassment Prevention Training

Board members may receive, and the General Manager, and supervisors that are designated in the Districts conflict of interest code shall receive sexual harassment prevention training in accordance with the law

12. COMMITTEES

12.1 Ad Hoc Committees

The Board President shall appoint such ad hoc committees as may be deemed necessary or advisable by himself/herself and/or the Board. The duties of the ad hoc committees shall be outlined at the time of appointment, and the committee shall be considered dissolved when its final report has been made.

12.2 Standing Committees

(a) The Board may create standing committees at its discretion. The Board President shall propose and the Board of Directors shall approve standing committee membership.

(b) Standing committees shall be advisory committees to the Board of Directors and shall not commit the District to any policy, act or expenditure. Each standing committee may consider District-related issues, on a continuing basis, assigned to it by the Board of Directors. Members of the standing committees shall be appointed by the Board of Directors.

(c) All standing committee meetings shall be conducted as public meetings in accordance with the Brown Act and Sections 2, 3 and 4 of these By-Laws. Summary notes for each meeting of each committee shall be forwarded to the NCS D Board of Directors as a public record.

13. CORRESPONDENCE DISTRIBUTION POLICY

Time permitting, the following letters and other documents shall be accumulated and delivered to the Board of Directors on Monday of each week and/or with agenda packet.

13.1 All letters approved by the Board of Directors and/or signed by the President on behalf of the District, and

13.2 All letters and other documents received by the District that are of District-wide concern, as determined by District staff.

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14. CONFLICTS AND RELATED POLICY

State laws are in place which attempt to eliminate any action by a Director or the District which may reflect a conflict of interest. The purpose of such laws and regulations is to insure that all actions are taken in the public interest. Laws which regulate conflicts are very complicated. The following provides a brief policy summary of various conflict related laws. Directors are encouraged to consult with District Legal Counsel and/or the FPPC at 1-800-ASK-FPPC (1-800-275-3772), prior to the day of the meeting, if they have questions about a particular agenda item.

14.1 Conflict of Interest

Each Director is encouraged to review the District Conflict Code on an annual basis. The general rule is that an official may not participate in the making of a governmental decision if it is: reasonably foreseeable that the decision will have a material financial effect on the official or a member of his or her immediate family or on an economic interest of the official, and the effect is distinguishable from the effect on the public generally. FPPC regulations related to interests in real property provide that, if the real property in which the Director has an interest is located within 500 feet of the boundaries of the property affected by a decision, that interest is now deemed to be directly involved in the decision.

14.2 Interest in Contracts, Government Code Section 1090

The prohibitions of Government Code Section 1090 provide that the Board of Directors may not contract with any business in which another Director has a financial interest.

14.3 Incompatible Office, Government Code Section 1099

The basic rule is that public policy requires that when the duties of two offices are repugnant or overlap so that their exercise may require contradictory or inconsistent action, to the detriment to the other public interest, their discharge by one person is incompatible with that interest. When a Director is sworn in for such a second office, he/she is simultaneously terminated from holding the first office.

15. EVALUATION OF CONSULTANTS

The District's legal counsel shall be evaluated by the Board of Directors annually during the months of May and June of each year.

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16. CONTINUING EDUCATION

Directors are encouraged to attend educational conferences and professional meetings when the purposes of such activities are to improve District operation. Subject to budgetary constraints, there is no limit to the number of Directors attending a particular conference or seminar when it is apparent that their attendance is beneficial to the District.

17. BOARD BY-LAWS REVIEW POLICY

Subject to 3.1 the Board By-Laws and Policies shall be reviewed annually at the first regular meeting in February. The review shall be provided by District Counsel and ratified by Board action.

18. RESTRICTIONS ON BY-LAWS

The rules contained herein shall govern the Board in all cases to which they are applicable, and in which they are not inconsistent with State or Federal laws.

TO: BOARD OF DIRECTORS

FROM: MICHAEL S. LEBRUN
GENERAL MANAGER



DATE: FEBRUARY 6, 2015

**AGENDA ITEM
E-6
FEBRUARY 11, 2015**

DISCUSS DISTRICT WATER POLICY

ITEM

Consider District water resources policy and provide staff direction [RECOMMEND CONSIDER INFORMATION AND DIRECT STAFF].

BACKGROUND

The District is constructing a supplemental water supply pipeline and preparing to increase our customer's water supply sources for the first time in its fifty-year history. Supplemental water will facilitate better management of the local groundwater resource. Currently, groundwater is the only water supply to the District and entire Nipomo Mesa.

The District's project will ultimately bring 3,000 acre feet per year of supplemental supply to the Nipomo Mesa. 2,500 acre-feet of the new supply will be used to offset existing groundwater demands in compliance with the Stipulation and in hopes of returning our local basin to balance and long-term sustainability.

District's customers are making a significant investment to bring supplemental water to the Mesa. The District desires to protect this investment by ensuring the supplemental water supply results in direct and sustained reduction in urban related groundwater pumping across the Nipomo Mesa.

If new development is allowed to put new demand on groundwater, eventually, the current project would be nullified. For this reason, the Stipulation specifies New Urban Uses will be watered with supplemental water (Section VI.E., Page 27). In order to meet this requirement, the District added 500 acre-feet per year of capacity to the supplemental water project for new development within the District's boundaries. This water capacity is assigned to all new District water connections allowed since the Final Judgment in January 2008.

As the Mesa's only public water purveyor, the District plays an important role in promoting good policy to protect the area's water resources. However, with limited geographic and policy authority, the District is not in a position to dictate water resources policy across the Nipomo Mesa.

The County of San Luis Obispo, through its planning and building powers impacts demand for water resources associated with new/future development. The Nipomo Mesa Management Area (NMMA) Technical Group is the court recognized group that is tasked with monitoring and managing the area groundwater resources and reporting annually to the groundwater court. The NMMA membership includes all four of the Mesa's largest urban water suppliers, including the District. Each purveyor also plays a role in making sure new development is not putting new demand on the groundwater basin.

To be effective, District policy needs to be broadly applicable. To be broadly applicable, the policy should be based on previous court and County actions regarding the use and protection of Nipomo area groundwater resources. Specifically, these actions include the Stipulation and Final Judgment of the court, as mentioned above, and SLO County Ordinance 3090, (Attachment B).

In 2006, the County Board of Supervisors adopted Ordinance 3090 and established the Nipomo Mesa Water Conservation Area. The Ordinance set specific standards for watering new development across the Nipomo Mesa (Pages 1 and 2). Ordinance 3090 was adopted in response to a County commissioned study of the area groundwater that found the resource to be in serious imbalance/overdraft and recommended a Level of Severity III (most severe) designation by the County.

In late 2013 and early 2014, the District circulated a draft Water Resources Policy Statement with the goal of developing consensus and support for the Statement with all interested parties including NMMA members and San Luis Obispo County. NMMA members commented on the draft, but the Technical Group did not indorse the document. District staff and Directors met with County staff and 4th District Supervisor Ray on two occasions in early 2014.

On January 27, 2015, your Board's Facilities/Water Resources Committee considered the February 6, 2014 draft Water Resources Policy Statement and directed staff to bring the draft Policy to the full Board with some suggested edits – see Attachment C.

The District is currently following the key tenant of the Stipulation, County Ordinance 3090, and this draft policy; namely, the assignment of supplemental water to all new water connections approved after the January 2008 Final Judgment.

RECOMMENDATION

Staff is seeking Board and public input on how best to protect the District's primary water supply thorough sustainable management of the local groundwater basin. Staff is seeking Board direction on further development of a District Water Resources Policy.

ATTACHMENTS

- A. June 30, 2005 Stipulation, Table of Contents, Introduction, Definitions, Section VI Physical Solution: Provisions Specific to the Nipomo Mesa Management Area
- B. SLO County Ordinance 3090
- C. Draft Water Policy Statement, February 5, 2015 version

February 11, 2015

E-6

ATTACHMENT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER
CONSERVATION DISTRICT,

Plaintiff,

v.

CITY OF SANTA MARIA, et al.,

Defendants.

) SANTA MARIA GROUNDWATER
) LITIGATION
) Lead Case No. CV 770214
) (CONSOLIDATED FOR ALL PURPOSES)

) [Consolidated With Case Numbers:
) CV 784900; CV 785509; CV 785522;
) CV 787150; CV 784921; CV 785511;
) CV 785936; CV 787151; CV 784926;
) CV 785515; CV 786791; CV 787152;
) CV 036410]

AND RELATED CROSS-ACTIONS AND
ACTIONS CONSOLIDATED FOR ALL
PURPOSES

) San Luis Obispo County Superior Court Case
) Nos. 990738 and 990739

) [Assigned to Judge Jack Komar for All
) Purposes]

STIPULATION (JUNE 30, 2005 VERSION)

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1 **I. INTRODUCTION -- ALL MANAGEMENT AREAS**

2 The Stipulating Parties hereby stipulate and agree to entry of judgment containing the
3 terms and conditions of this Stipulation.

4 **A. Parties and Jurisdiction**

5 1. Plaintiff and Cross-Defendant Santa Maria Valley Water Conservation District
6 (“District”) is a water conservation district organized under California Water Code section 74000,
7 *et seq.* The District does not pump Groundwater from the Basin.

8 2. Defendants, Cross-Complainants and Cross-Defendants the City of Santa Maria
9 (“Santa Maria”), City of Guadalupe (“Guadalupe”), Southern California Water Company
10 (“SCWC”), Nipomo Community Services District (“NCSD”), Rural Water Company (“RWC”),
11 City of Arroyo Grande (“Arroyo Grande”), City of Pismo Beach (“Pismo Beach”), City of Grover
12 Beach (“Grover Beach”) and Oceano Community Services District (“Oceano”) rely, in part, on
13 Groundwater to provide public water service to customers within the Basin.

14 3. Cross-Defendant County of San Luis Obispo (“San Luis Obispo”) is a subdivision
15 of the State of California. Cross-Defendant San Luis Obispo County Flood Control and Water
16 Conservation District (“SLO District”) is a public entity organized pursuant to the laws of the
17 State of California. Neither San Luis Obispo nor SLO District pumps Groundwater from the
18 Basin.

19 4. Cross-Defendant County of Santa Barbara (“Santa Barbara”) is a subdivision of
20 the State of California. Santa Barbara does not pump Groundwater from the Basin.

21 5. Numerous other Cross-Defendants and Cross-Complainants are Overlying
22 Owners. Many of these Overlying Owners pump Groundwater from the Basin, while others do
23 not currently exercise their Overlying Rights. Those Overlying Owners who are Stipulating
24 Parties are identified on Exhibit “A”.

25 6. This action presents an *inter se* adjudication of the claims alleged between and
26 among all Parties. This Court has jurisdiction over the subject matter of this action and over the
27 Parties herein.

28 ///

1 **B. Further Trial**

2 The Stipulating Parties recognize that not all Parties have entered into this Stipulation and
3 that a trial will be necessary as to all non-Stipulating Parties. No Stipulating Party shall interfere
4 or oppose the effort of any other Stipulating Party in the preparation and conduct of any such
5 trial. All Stipulating Parties agree to cooperate and coordinate their efforts in any trial or hearing
6 necessary to obtain entry of a judgment containing the terms and conditions of this Stipulation.
7 No Stipulating Party shall have any obligation to contribute financially to any future trial.

8 **C. Definitions**

9 As used in this Stipulation, the following terms shall have the meanings herein set forth:

- 10 1. Annual or Year – That period beginning January 1 and ending December
11 31.
- 12 2. Annual Report – The report prepared and filed with the Court annually for
13 each Management Area.
- 14 3. Appropriative Rights – The right to use surplus Native Groundwater for
15 reasonable and beneficial use.
- 16 4. Available State Water Project Water – The amount of SWP Water an
17 Importer is entitled to receive in a given Year based upon the California Department of Water
18 Resources final Table A allocation.
- 19 5. Basin - The groundwater basin described in the Phase I and II orders of the
20 Court, as modified, and presented in Exhibit “B”.
- 21 6. Developed Water – Groundwater derived from human intervention as of
22 the date of this Stipulation, which shall be limited to Twitchell Yield, Lopez Water, Return
23 Flows, and recharge resulting from storm water percolation ponds.
- 24 7. Groundwater – Twitchell Yield, Lopez Water, Return Flows, storm water
25 percolation, Native Groundwater and all other recharge percolating within the Basin.
- 26 8. Importer(s) – Any Party who brings Imported Water into the Basin. At the
27 date of this Stipulation, the Importers are Santa Maria, SCWC, Guadalupe, Pismo Beach, and
28 Oceano.

1 9. Imported Water – Water within the Basin, originating outside the Basin
2 that absent human intervention would not recharge or be used in the Basin.

3 10. Lopez Project – Lopez Dam and Reservoir located on Arroyo Grande
4 Creek, together with the associated water treatment plant, delivery pipeline and all associated
5 facilities, pursuant to State Water Resources Control Board permit No. 12814 (A-18375) and
6 pending application No. A-30826.

7 11. Lopez Water – Groundwater within the Basin derived from the operation of
8 the Lopez Project.

9 12. Management Areas – The three areas within the Basin that have sufficient
10 distinguishing characteristics to permit the water resources and facilities of each area to be
11 individually managed. The Management Areas are: the Northern Cities Management Area, the
12 Nipomo Mesa Management Area, and the Santa Maria Valley Management Area, as shown on
13 Exhibit "C".

14 13. Management Area Engineer – The individual(s) or consulting firm(s) that
15 are hired to prepare the Monitoring Plan(s) and Annual Report(s) for one or more of the
16 Management Areas.

17 14. Monitoring Parties – Those Parties responsible for conducting and funding
18 each Monitoring Program.

19 15. Monitoring Program – The data collection and analysis program to be con-
20 ducted within each Management Area sufficient to allow the preparation of the Annual Report.

21 16. Native Groundwater – Groundwater within the Basin, not derived from
22 human intervention, that replenishes the Basin through precipitation, stream channel infiltration,
23 tributary runoff, or other natural processes.

24 17. New Developed Water – Groundwater derived from human intervention
25 through programs or projects implemented after the date of this Stipulation.

26 18. New Urban Uses – Municipal and industrial use which may occur on land
27 that, as of January 1, 2005, was located: 1) within the boundaries of a municipality or its sphere of
28 influence, or within the process of inclusion in its sphere of influence; or 2) within the certificated

1 service area of a publicly regulated utility. The New Urban Use areas are identified in Exhibit
2 "D". New Urban Uses does not include the current DJ Farms development within Guadalupe
3 City limits (including Santa Barbara County APN 113-080-18, 113-080-24).

4 19. Nipomo Mesa Management Area or NMMA – That Management Area
5 shown on Exhibit "C".

6 20. Nipomo Mesa Management Area Technical Group – The committee
7 formed to administer the relevant provisions of the Stipulation regarding the Nipomo Mesa
8 Management Area.

9 21. Northern Cities Management Area – That Management Area which is part
10 of Zone #3 of the San Luis Obispo County Flood Control and Water Conservation District as
11 shown on Exhibit "C".

12 22. Northern Cities – Arroyo Grande, Pismo Beach, Grover Beach and
13 Oceano.

14 23. Northern Parties – The Northern Cities, the Overlying Owners within the
15 Northern Cities Management Area, San Luis Obispo and the SLO District.

16 24. Overlying Right – The appurtenant right of an Overlying Owner to use
17 Native Groundwater for overlying, reasonable and beneficial use.

18 25. Overlying Owner(s) – Owners of land overlying the Basin who hold an
19 Overlying Right.

20 26. Party – Each Person in this consolidated action, whether a Stipulating
21 Party or a non-Stipulating Party.

22 27. Person – Any natural person, firm, association, organization, joint venture,
23 partnership, business, trust, corporation, or public entity.

24 28. Public Hearing – A hearing after notice to all Parties and to any other
25 person legally entitled to notice.

26 29. Return Flows – Groundwater derived from use and recharge within the
27 Basin of water delivered through State Water Project facilities.

28 ///

1 30. Santa Maria Valley Management Area – That Management Area shown on
2 Exhibit “C”.

3 31. Severe Water Shortage Conditions – Those conditions, as separately
4 defined in a Severe Water Shortage Response Plan for each Management Area, that trigger
5 certain discretionary and mandatory responses by the Stipulating Parties upon order of the Court.

6 32. Severe Water Shortage Response Plan – The discretionary and mandatory
7 responses for each Management Area that are to be implemented when Severe Water Shortage
8 Conditions exist.

9 33. State Water Project Water or SWP Water – Water imported through the
10 State of California State Water Resources Development System pursuant to Division 6, Part 6,
11 Chapter 8, of the California Water Code.

12 34. Stipulating Party – A Party that has signed this Stipulation, as listed in
13 Exhibit “A”, or its heirs, executors, administrators, trustees, successors, assigns, and agents.

14 35. Storage Space – The portion of the Basin capable of holding water for sub-
15 sequent reasonable and beneficial uses.

16 36. SWP Contract(s) – Those series of contracts that entitle the Importers to
17 use SWP facilities to bring Imported Water into the Basin.

18 37. Twitchell Management Authority or TMA – The committee formed to
19 administer the relevant provisions of the Stipulation regarding the Santa Maria Valley Manage-
20 ment Area.

21 38. Twitchell Participants – Those Stipulating Parties holding rights to
22 Twitchell Yield.

23 39. Twitchell Project – Dam and reservoir authorized by Congress as the
24 “Santa Maria Project” on September 3, 1954 (Public Law 774, 83d Congress, ch. 1258, 2d
25 session, 68 Stat. 1190) and located on the Cuyama River, approximately six miles upstream from
26 its junction with the Sisquoc River, pursuant to that certain License For Diversion And Use of
27 Water, License No. 10416, issued by the State Water Resources Control Board.

28 ///

1 40. *Twitchell Water* – Groundwater derived from operation of the Twitchell
2 Project.

3 41. *Twitchell Yield* – The total amount of Groundwater allocated annually to
4 the Twitchell Participants.

5 **II. EXHIBITS**

6 The following Exhibits are attached to this Stipulation and incorporated herein:

7 1. *Exhibit "A"*, list identifying the Stipulating Parties and the parcels of land
8 bound by the terms of this Stipulation.

9 2. *Exhibit "B"*, Phase I and II Orders, as modified, and the attached map
10 depicting the Santa Maria Basin.

11 3. *Exhibit "C"*, map of the Basin and boundaries of the three Management
12 Areas.

13 4. *Exhibit "D"*, map identifying those lands as of January 1, 2005: 1) within
14 the boundaries of a municipality or its sphere of influence, or within the process of inclusion in its
15 sphere of influence; or 2) within the certificated service area of a publicly regulated utility; and a
16 list of selected parcels that are nearby these boundaries which are excluded from within these
17 areas.

18 5. *Exhibit "E"*, 2002 Settlement Agreement between the Northern Cities and
19 Northern Landowners.

20 6. *Exhibit "F"*, the agreement among Santa Maria, SCWC and Guadalupe
21 regarding the Twitchell Project and the TMA.

22 7. *Exhibit "G"*, the Court's Order Concerning Electronic Service of Pleadings
23 and Electronic Posting of Discovery Documents dated June 27, 2000.

24 8. *Exhibit "H"*, the form of memorandum of agreement to be recorded.

25 **III. DECLARATION OF RIGHTS -- ALL MANAGEMENT AREAS**

26 The terms and conditions of this Stipulation set forth a physical solution concerning
27 Groundwater, SWP Water and Storage Space, consistent with common law water rights priorities.

28 ///

1 public water supplier, before forming a mutual water company to provide water service.

2 3. No modification of land use authority. This Stipulation does not modify
3 the authority of the entity holding land use approval authority over the proposed New Urban
4 Uses.

5 4. New Urban Uses shall provide a source of supplemental water to offset the
6 water demand associated with that development. For the purposes of this section, supplemental
7 water shall include all sources of Developed Water, except: i) Twitchell Water, ii) storm water
8 percolation ponds existing as of the date of entry of the judgment, or iii) Overlying Owners' right
9 to use of surplus Developed Water.

10 **VI. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NIPOMO MESA MAN-**
11 **AGEMENT AREA**

12 As supplemented by the provisions of this Stipulation that apply to all Management Areas,
13 the following terms shall apply to the Nipomo Mesa Management Area.

14 **A. Supplemental Water**

15 1. MOU. NCSD has entered into a Memorandum of Understanding
16 ("MOU") with Santa Maria which contemplates the wholesale purchase and transmission from
17 Santa Maria to the NMMA of a certain amount of water each Year (the "Nipomo Supplemental
18 Water"). All water delivered pursuant to the MOU for delivery by NCSD to its ratepayers shall
19 be applied within the NCSD or the NCSD's sphere of influence as it exists at the time of the
20 transmission of that water.

21 2. The NCSD agrees to purchase and transmit to the NMMA a minimum of
22 2,500 acre-feet of Nipomo Supplemental Water each Year. However, the NMMA Technical
23 Group may require NCSD in any given Year to purchase and transmit to the NMMA an amount
24 in excess of 2,500 acre-feet and up to the maximum amount of Nipomo Supplemental Water
25 which the NCSD is entitled to receive under the MOU if the Technical Group concludes that such
26 an amount is necessary to protect or sustain Groundwater supplies in the NMMA. The NMMA
27 Technical Group also may periodically reduce the required amount of Nipomo Supplemental
28 Water used in the NMMA so long as it finds that groundwater supplies in the NMMA are not

1 endangered in any way or to any degree whatsoever by such a reduction.

2 3. The Stipulating Parties agree to support (and, conversely, not to oppose in
3 any way or to encourage or assist any other Person or party in opposing or challenging) the imple-
4 mentation of the MOU, which includes environmental and regulatory permits and approvals, the
5 approval of a wholesale water supply agreement between Santa Maria and NCS D, and the
6 alignment and construction of a pipeline and related infrastructure necessary to deliver the
7 Nipomo Supplemental Water from Santa Maria to the NMMA (“Nipomo Supplemental Water
8 Project”). ConocoPhillips retains the right to object to or provide input on the alignment of any
9 pipelines associated with the Nipomo Supplemental Water Project if they might interfere with the
10 location of existing ConocoPhillips pipelines. The Stipulating Parties retain their rights to be
11 compensated for any interest or property acquired in implementing the Nipomo Supplemental
12 Water Project.

13 4. NCS D and Santa Maria shall employ their best efforts to timely implement
14 the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for
15 administrative actions and in the California Environmental Quality Act.

16 5. The enforcement of the provisions of Paragraph VI(D) below is condi-
17 tioned upon the full implementation of the Nipomo Supplemental Water Project, including the
18 Yearly use of at least 2,500 acre-feet of Nipomo Supplemental Water (subject to the provisions of
19 Paragraph VI(A)(2) above) within the NMMA. In the event that Potentially Severe Water
20 Shortage Conditions or Severe Water Shortage Conditions are triggered as referenced in Para-
21 graph VI(D) before Nipomo Supplemental Water is used in the NMMA, NCS D, SCWC,
22 Woodlands and RWC agree to develop a well management plan that is acceptable to the NMMA
23 Technical Group, and which may include such steps as imposing conservation measures, seeking
24 sources of supplemental water to serve new customers, and declaring or obtaining approval to
25 declare a moratorium on the granting of further intent to serve or will serve letters. In the event
26 that it becomes apparent that the Nipomo Supplemental Water will not be fully capable of being
27 delivered, any Stipulating Party may apply to the Court, pursuant to a noticed motion, for appro-
28 piate modifications to this portion of the Stipulation and the judgment entered based upon the

1 terms and conditions of this Stipulation, including declaring this Paragraph VI to be null and void,
2 and of no legal or binding effect.

3 6. Once the Nipomo Supplemental Water is capable of being delivered, those
4 certain Stipulating Parties listed below shall purchase the following portions of the Nipomo
5 Supplemental Water Yearly:

6 NCSD - 66.68%

7 Woodlands Mutual Water Company - 16.66%

8 SCWC - 8.33%

9 RWC - 8.33%

10 **B. Rights to Use Groundwater**

11 1. ConocoPhillips and its successors-in-interest shall have the right to the
12 reasonable and beneficial use of Groundwater on the property it owns as of the date of this Stipulation
13 located in the NMMA (“ConocoPhillips Property”) without limitation, except in the event
14 the mandatory action trigger point (Severe Water Shortage conditions) described in Paragraph
15 VI(D) (2) below is reached. Further, any public water supplier which provides water service to
16 the ConocoPhillips Property may exercise that right subject to the limitation described in Paragraph
17 VI(D)(2).

18 2. Overlying Owners that are Stipulating Parties that own land located in the
19 NMMA as of the date of this Stipulation shall have the right to the reasonable and beneficial use
20 of Groundwater on their property within the NMMA without limitation, except in the event the
21 mandatory action trigger point (Severe Water Shortage Conditions) described in Paragraph
22 VI(D)(2) below is reached.

23 3. The Woodlands Mutual Water Company shall not be subject to restriction
24 in its reasonable and beneficial use of Groundwater, provided it is concurrently using or has made
25 arrangements for other NMMA parties to use within the NMMA, the Nipomo Supplemental
26 Water allocated to the Woodlands in Paragraph VI(A)(5). Otherwise, the Woodlands Mutual
27 Water Company shall be subject to reductions equivalent to those imposed on NCSD, RWC and
28 SCWC, as provided in Paragraph VI(D)(1-2).

1 ///

2 C. NMMA Technical Group

3 1. The NMMA Technical Group shall include representatives appointed by
4 NCSD, SCWC, ConocoPhillips, Woodlands Mutual Water Company and an agricultural Over-
5 lying Owner who is also a Stipulating Party.

6 2. The NMMA Technical Group shall develop a Monitoring Program for the
7 NMMA (“NMMA Monitoring Program”), which shall be consistent with the Monitoring
8 Program described in Paragraph IV(D). The NMMA Monitoring Program shall also include the
9 setting of well elevation and water quality criteria that trigger the responses set forth in Paragraph
10 D below. The Stipulating Parties shall provide monitoring and other production data to the
11 NMMA Technical Group at no charge, to the extent that such data has been generated and is
12 readily available. The NMMA Technical Group shall adopt rules and regulations concerning
13 measuring devices and production reports that are, to the extent feasible, consistent with the
14 Monitoring Programs for other Management Areas. If the NMMA Technical Group is unable to
15 agree on any aspect of the NMMA Monitoring Program, the matter may be resolved by the Court
16 pursuant to a noticed motion.

17 3. The NMMA Technical Group meetings shall be open to any Stipulating
18 Party. NMMA Technical Group files and records shall be available to any Stipulating Party upon
19 written request. Notices of the NMMA Technical Group meetings, as well as all its final work
20 product (documents) shall be posted to groups.yahoo.com/group/NipomoCommunity/

21 4. The NMMA Technical Group functions shall be funded by contribution
22 levels to be negotiated by NCSD, SCWC, RWC, ConocoPhillips, and Woodlands Mutual Water
23 Company. In-lieu contributions through engineering services may be provided, subject to agree-
24 ment by those parties. The budget of the NMMA Technical Group shall not exceed \$75,000 per
25 year without prior approval of the Court pursuant to a noticed motion.

26 5. Any final NMMA Technical Group actions shall be subject to *de novo*
27 Court review by motion.

28 ///

1 ///

2 **D. Potentially Severe and Severe Water Shortage Conditions**

3 1. Caution trigger point (Potentially Severe Water Shortage Conditions)

4 (a) Characteristics. The NMMA Technical Group shall develop
5 criteria for declaring the existence of Potentially Severe Water Shortage Conditions. These
6 criteria shall be approved by the Court and entered as a modification to this Stipulation or the
7 judgment to be entered based upon this Stipulation. Such criteria shall be designed to reflect that
8 water levels beneath the NMMA as a whole are at a point at which voluntary conservation
9 measures, augmentation of supply, or other steps may be desirable or necessary to avoid further
10 declines in water levels.

11 (b) Responses. If the NMMA Technical Group determines that Poten-
12 tially Severe Water Shortage Conditions have been reached, the Stipulating Parties shall coordi-
13 nate their efforts to implement voluntary conservation measures, adopt programs to increase the
14 supply of Nipomo Supplemental Water if available, use within the NMMA other sources of
15 Developed Water or New Developed Water, or implement other measures to reduce Groundwater
16 use.

17 2. Mandatory action trigger point (Severe Water Shortage Conditions)

18 (a) Characteristics. The NMMA Technical Group shall develop the
19 criteria for declaring that the lowest historic water levels beneath the NMMA as a whole have
20 been reached or that conditions constituting seawater intrusion have been reached. These criteria
21 shall be approved by the Court and entered as a modification to this Stipulation or the judgment to
22 be entered based upon this Stipulation.

23 (b) Responses. As a first response, subparagraphs (i) through (iii) shall
24 be imposed concurrently upon order of the Court. The Court may also order the Stipulating
25 Parties to implement all or some portion of the additional responses provided in subparagraph (iv)
26 below.

27 (i) For Overlying Owners other than Woodlands Mutual Water
28 Company and ConocoPhillips, a reduction in the use of Groundwater to no more than 110% of

1 the highest pooled amount previously collectively used by those Stipulating Parties in a Year,
2 prorated for any partial Year in which implementation shall occur, unless one or more of those
3 Stipulating Parties agrees to forego production for consideration received. Such forbearance shall
4 cause an equivalent reduction in the pooled allowance. The base Year from which the calculation
5 of any reduction is to be made may include any prior single Year up to the Year in which the
6 Nipomo Supplemental Water is transmitted. The method of reducing pooled production to 110%
7 is to be prescribed by the NMMA Technical Group and approved by the Court. The quantifica-
8 tion of the pooled amount pursuant to this subsection shall be determined at the time the manda-
9 tory action trigger point (Severe Water Shortage Conditions) described in Paragraph VI(D)(2) is
10 reached. The NMMA Technical Group shall determine a technically responsible and consistent
11 method to determine the pooled amount and any individual's contribution to the pooled amount.
12 If the NMMA Technical Group cannot agree upon a technically responsible and consistent
13 method to determine the pooled amount, the matter may be determined by the Court pursuant to a
14 noticed motion.

15 (ii) ConocoPhillips shall reduce its Yearly Groundwater use to
16 no more than 110% of the highest amount it previously used in a single Year, unless it agrees in
17 writing to use less Groundwater for consideration received. The base Year from which the calcu-
18 lation of any reduction is to be made may include any prior single Year up to the Year in which
19 the Nipomo Supplemental Water is transmitted. ConocoPhillips shall have discretion in deter-
20 mining how reduction of its Groundwater use is achieved.

21 (iii) NCS D, RWC, SCWC, and Woodlands (if applicable as
22 provided in Paragraph VI(B)(3) above) shall implement those mandatory conservation measures
23 prescribed by the NMMA Technical Group and approved by the Court.

24 (iv) If the Court finds that Management Area conditions have
25 deteriorated since it first found Severe Water Shortage Conditions, the Court may impose further
26 mandatory limitations on Groundwater use by NCS D, SCWC, RWC and the Woodlands. Manda-
27 tory measures designed to reduce water consumption, such as water reductions, water restrictions,
28 and rate increases for the purveyors, shall be considered.

1 ///

2 (v) During Severe Water Shortage Conditions, the Stipulating
3 Parties may make agreements for temporary transfer of rights to pump Native Groundwater,
4 voluntary fallowing, or the implementation of extraordinary conservation measures. Transfer of
5 Native Groundwater must benefit the Management Area and be approved by the Court.

6 **E. New Urban Uses**

7 1. Within the sphere of influence or service area. New Urban Uses shall
8 obtain water service from the local public water supplier. The local public water supplier shall
9 provide water service on a reasonable and non-discriminatory basis.

10 2. Outside the sphere of influence or service area. New municipal and indus-
11 trial uses on land adjacent to or within one quarter mile of the boundary line depicted in Exhibit D
12 shall comply with any applicable Corporations Code provisions, including good faith negotiations
13 with the local water purveyor(s), prior to forming a mutual water company to provide water
14 service.

15 3. The ConocoPhillips property, owned as of the date of this Stipulation and
16 located within the NMMA, is not in the sphere of influence or service area, nor is it in the process
17 of being included in the sphere of influence, of a municipality or within the certificated service
18 area of a publicly regulated utility as of the date of this Stipulation, nor is it adjacent to or in close
19 proximity to the sphere of influence of a municipality or the certificated service area of a publicly
20 regulated utility as of the date of this Stipulation, as those terms are used in Paragraphs VI(E)(1
21 and 2).

22 4. No modification of land use authority. This Stipulation does not modify the
23 authority of the entity holding land use approval authority over the proposed New Urban Uses.

24 5. New Urban Uses as provided in Paragraph VI(E)(1) above and new muni-
25 cipal and industrial uses as provided in Paragraph VI(E)(2) above shall provide a source of
26 supplemental water, or a water resource development fee, to offset the water demand associated
27 with that development. For the purposes of this Paragraph, supplemental water shall include all
28 sources of Developed Water or New Developed Water.

February 11, 2015

E-6

ATTACHMENT B

EXHIBIT "C"

EXHIBIT LRP2005-00006:A

ORDINANCE NO. 3090

AN ORDINANCE AMENDING TITLE 22 OF THE
SAN LUIS OBISPO COUNTY CODE, THE LAND USE ORDINANCE
SECTION 22.112.020 RELATING TO THE
NIPOMO MESA WATER CONSERVATION AREA

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1. Section 22.112.020 of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended by adding new subsection E to read as follows and renumbering all figures as necessary:

22.112.020 – Areawide Standards

E. Nipomo Mesa Water Conservation Area. The following standards apply to all land in the Nipomo Mesa Water Conservation Area shown in Figure 112-4.

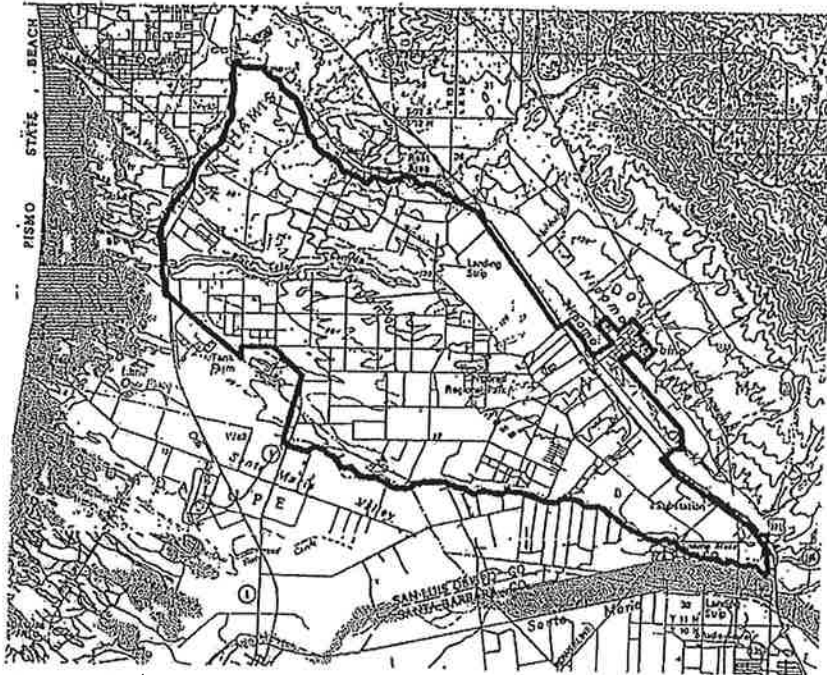


Figure 112-4 - Nipomo Mesa Water Conservation Area

1. General Plan Amendments and land divisions. Applications for general plan amendments and land divisions in the Nipomo Mesa Water Conservation Area shall include documentation regarding estimated existing and proposed non-agricultural water demand for the land division or development that could occur with the General Plan Amendment. If this documentation indicates that the proposed non-agricultural water demand exceeds

the demand without the requested amendment or land division, the application shall include provisions for supplemental water as follows:

- a. **General Plan Amendments.** Where the estimated non-agricultural water demand resulting from the amendment would exceed the existing non-agricultural demand, the application shall not be approved unless supplemental water to off-set the proposed development's estimated increase in non-agricultural demand has been specifically allocated for the exclusive use of the development resulting from the general plan amendment, and is available for delivery to the Nipomo Mesa Water Conservation Area.
 - b. **Land Divisions.** Where the estimated non-agricultural water demand resulting from the land division would exceed the existing non-agricultural demand, a supplemental water development fee shall be paid for each dwelling unit or dwelling unit equivalent, at the time of building permit issuance, in the amount then currently imposed by county ordinance, not to exceed \$13,200. If the development resulting from the land division is subject to payment of supplemental water development fees to an entity other than San Luis Obispo County, the amount of these other fees shall be deducted from the County fee.
2. **Landscape standards.** The standards in Chapter 22.16 apply to the following projects within the Nipomo Mesa Water Conservation Area. Only exceptions, as set forth in Subsection 22.16.020.B.2, 4, 6, and 7, are allowed within this area:
- a. **Public projects.** Projects completed by a public agency that require a land use permit.
 - b. **New non-residential projects.** All new projects within the Recreation, Office and Professional, Commercial Retail, Commercial Service, Industrial and Public Facilities land use categories.
 - c. **Developer-installed.**
 - (1) All developer-installed landscaping in all Residential land use categories within urban or village areas.
 - (2) All developer-installed landscaping in all land use categories outside of urban or village areas where the parcel is 5.0 acres or less.
 - d. **Homeowner-installed.** All homeowner-installed landscaping for any project for which a land use permit is required.
 - e. **Drip irrigation.** Drip irrigation systems are required for all landscaped areas (except turf areas). The drip irrigation system shall include the following components: automatic rain shut-off device, soil moisture sensors, a separate meter for outdoor water and an operating manual to instruct the building occupant how to use and maintain the water conservation hardware.

- f. Turf area limits: The maximum amount of turf (lawn) area shall not exceed twenty percent of the site's total irrigated landscape area. In all cases, the site's total irrigated landscape area shall be limited to 1,500 square feet.
3. Building Permits. Building permits issued for construction in the Nipomo Mesa Water Conservation Area shall comply with Section 19.20.240.d.

SECTION 2. The project qualifies for a Categorical Exemption (Class 7) pursuant to CEQA Guidelines Section 15307 because the actions proposed will assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

SECTION 3. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4. This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.


INTRODUCED and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 23rd day of May, 2006, by the following roll call vote, to wit:

AYES: Supervisors James R. Patterson, Harry L. Ovitt, Jerry Lenthall, Chairperson
K.H. 'Katcho' Achadjian

NOES: None

ABSENT: Supervisor Shirley Bianchi

ABSTAINING: None



Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

JULIE L. RODEWALD

County Clerk and Ex-Officio Clerk of the Board of Supervisors
County of San Luis Obispo, State of California

By: Christensen Deputy Clerk

es [SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

JAMES B. LINDHOLM, JR.
County Counsel

By: 

Deputy County Counsel

Dated: May 11, 2006

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss

I, JULIE L. RODEWALD, County Clerk of the above
entitled County, and Ex-Officio Clerk of the Board
of Supervisors thereof, do hereby certify the fore-
going to be a full, true and correct copy of an order
entered in the minutes of said Board of Super-
visors, and now remaining of record in my office.

Witness, my hand and seal of said Board of
Supervisors this 9-6-06

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors

By Annette Ramlich
Deputy Clerk

February 11, 2015

E-6

ATTACHMENT C

Nipomo Community Service District

DRAFT – Water Resources Policy Statement

February 6, 2015 Version

BACKGROUND

Purpose

This policy is intended to support the mission of the NCSD to “provide our customers with reliable, quality, and cost-effective services now and in the future.”

Demand

Past and Current

Annual groundwater production across the Nipomo Mesa is reported (both metered and estimated values) in the Nipomo Mesa Management Area (NMMA) Technical Group’s annual report (The NMMA Technical Group is a court appointed body whose boundaries encompass the Nipomo Mesa). The Group estimates the area’s total annual production of groundwater for agricultural and urban uses back in 1975 was just over 4,000 acre-feet. In 1989, total production exceeded 8,000 acre-feet and in 2008, total pumping was estimated to be 12,600 acre-feet (4.1 Billion Gallons). In the ensuing years demand dropped somewhat and most recently began trending up again. The estimate for total production across the NMMA in 2012 is 11,260 acre-feet.

Future

San Luis Obispo County has authority over all discretionary building and land use approvals within the District service area and throughout the Nipomo Mesa area. A main driver and limitation of future water demand is County development approval. The District has limited ability to deny water service to County approved development within its service area and no authority to control development or the associated increase in groundwater demand outside its service boundary. However, the District has the ability and duty to deny services that would encourage and enable violation of the 2005 Stipulation that new urban uses “shall provide a source of supplemental water, or a water resource development fee, to offset the water demand associated with that development.” (Stipulation, June 30, 2005, VI(E)(5), page 27)

There are significant under-developed and un-developed lands in the District and throughout the Nipomo Mesa. The area’s mild climate and relatively pristine environment will likely continue to attract new residents to the area. Therefore, increased water demand from new development must be considered.

Supply

The entire Nipomo Mesa and greater Nipomo area relies on groundwater to meet 100% of current water needs. The District and two other large water companies account for about 39% of the annual groundwater pumping and supply about half of the area’s residential homes and commercial businesses.

Nipomo Community Service District

DRAFT – Water Resources Policy Statement

The remainder of users including agriculture, residential and commercial, is supplied by private wells which access the groundwater.

District concerns for the health of the groundwater basin and long-term supply reliability date back to the mid 1980's. In the early 1990's, the customers of the District declined participation in the coastal branch of the State Water Project.

In June 2013, the District awarded construction contracts for Nipomo Supplemental Water Project, Phase 1. The Project will have an initial ~~has a~~ 650 acre-foot per year (AFY) capacity and is scheduled to be completed by ~~May~~ July 2015. Phases 2 and 3 of the project will bring total capacity to 3,000 AFY and are not yet scheduled for construction.

The District is currently projected to use 2,167 AFY of supplemental water and 1,234 AFY of groundwater 2030. The District's historical maximum groundwater water use of 2,900 AFY was established in 2007. Importation of supplemental water will allow reduction of 1,560 AFY of groundwater pumping at buildout. This reserve of 1,560 AFY will be banked against any potential reduction of supplemental water delivery in the future.

Basis for Policy Statement

San Luis Obispo County Actions

In 2004, the County completed a Resource Capacity Study of the groundwater underlying the Nipomo Mesa that concluded the area groundwater basin was being excessively over pumped. Based on the study, the County Board of Supervisors subsequently certified a Level of Severity III (most severe level) for the area's groundwater resources. According to the County's Resource Management program: *"Level III occurs when the demand for the resource equals or exceeds its supply and is the most critical level of concern. The County should take a series of actions to address resource deficiencies before Level III is reached."*

In May 2006, the County adopted Ordinance 3090 (Attached hereto) establishing the Nipomo Mesa Water Conservation Area (NMWCA) boundaries. The Ordinance requires all land divisions within the NMWCA that lead to increased non-agricultural water demand pay a supplemental water fee. Further, Ordinance 3090 requires that amendments to the General Plan which increase non-agricultural water demand within the NMWCA be watered by imported or supplemental water. (The County defined NMWCA covers essentially the same area as the court defined NMMA.)

In December 2006, the District raised concerns over a County development approval and environmental findings which seemed to contradict Ordinance 3090. The County went ahead with approving a general plan amendment with a mitigated negative declaration and the District subsequently filed a lawsuit. On

Nipomo Community Service District

DRAFT – Water Resources Policy Statement

March 17, 2008, the Superior Court of the State of California issued its final judgment in the case (attached hereto). The settlement held in favor of the District's position and required the payment of a supplemental water fee deposit by the project proponent prior to recordation of a final development map.

In October 2008, the County, based on a finding of "overdraft" within the NMWCA caused by recent climatic conditions, adopted Ord. 3160 requiring that water conservation measures be implemented in new construction throughout the NMWCA.

Groundwater Lawsuit

In 1997, the Santa Maria Groundwater Basin, including the entire NMWCA defined by the County, became subject to groundwater litigation. On January 25, 2008 the court issued a Final Judgment in the case and ordered a 2005 Stipulation that had been entered into by most litigants be implemented. The ruling was appealed. In 2012, the Appellate court sent three minor aspects of the Final Judgment and Stipulation back to the trial court. The appellant's requests for further case review by both the California and United States Supreme Courts were denied.

The 2005 Stipulation defines three management areas across the basin (Northern Cities, Nipomo Mesa, and Santa Maria Valley) and establishes membership and reporting requirements for each. The Stipulation requires that the District lead a project (the Nipomo Supplemental Water Project) to import 2,500 AFY of water to the NMMA from the City of Santa Maria (June 30, 2005 Stipulation, Section VI Physical Solution). With certain stated exceptions, the Stipulation additionally requires that all new urban water uses shall provide a source of supplemental water or a supplemental water development fee to offset the new water uses associated with that development (June 30, 2005 Stipulation Section VI.E. New Urban Uses). Developed water for new use is above and beyond the 2,500 AFY required by the Stipulation for the purpose of offsetting the existing pumping imbalance.

The Stipulation requires the NMMA Technical Group to develop a monitoring program that includes trigger points, based on well levels and water quality, for potentially severe and severe water shortage conditions (June 30, 2005 Stipulation Section VI.D). Response to water shortage conditions includes voluntary and mandatory conservation measures. Mandatory measures are to be proposed to, and approved by, the Court.

The County and all major water purveyors operating in the Nipomo Mesa area signed the Stipulation and did not appeal the Final Judgment. The District is implementing the Court's Final Judgment as it pertains to basin monitoring and supplemental water acquisition.

In spring 2006, the NMMA Technical Group's Key Well Index reached a Potentially Severe Water Shortage criterion and remains in that condition today. In the spring of 2013, following a very dry

Nipomo Community Service District

DRAFT – Water Resources Policy Statement

winter, the index dropped over 25% and came within a fraction of a foot from a Severe Water Shortage criterion.

WATER RESOURCES POLICY STATEMENT

The above summarized court rulings and County ordinances form the basis of the following District water resources policy:

1. In the context of the court's Final Judgment, "new" use of the groundwater basin is use associated with development approved after the judgment was filed on January 25, 2008 and is subject to the terms of the June 30, 2005 Stipulation (P66).
2. The District added 500 AFY of capacity to the Court ordered 2,500 AFY Nipomo Supplemental Water Project. The District added the capacity in order to water new development on undeveloped and under-developed parcels within its services boundary. All District approved applications for new water service after January 2008 will be tentatively counted against the added 500 AF of supplemental water capacity. When a 'new' project is issued a Will Serve letter (final non-revocable commitment to serve), the allocation of water for the project will be permanently counted against the ~~500AF of~~ District's 500AF of additional added supplemental water project capacity.
3. Once the District has allocated 500AF of supplemental water capacity from the current supplemental water project to 'new' urban uses, no further applications for new water service will be accepted and no commitments for new water service will be made by the District unless and until additional supplemental/developed water sources are under contract.
4. Subject to the terms of the 2005 Stipulation the District will work with the County of San Luis Obispo to insure that areas outside the District services boundary and within the NMWCA/NMMA, and excepting only development within the Woodlands Specific Plan (for which 416 AFY of capacity in the Nipomo Supplemental Water Project has been specifically reserved), all new urban uses are met by a future source (in addition to the court defined Nipomo Supplemental Water Project) of supplemental water as follows:
 - Within the service boundaries of Golden State Water Company (GSWC) and Rural Water Company (RWC), all new uses for water must be met by supplemental water (2005 Stipulation).
 - In areas not served by GSWC, NCSD, or RWC, subject to stated exceptions in the 2005 Stipulation, all new urban uses resulting from land divisions must pay a supplemental water fee (SLO CO Ordinance 3090). The fee must be applied to a new supply of supplemental

Nipomo Community Service District

DRAFT – Water Resources Policy Statement

water. All new urban uses resulting from general plan amendment must utilize new sources of supplemental/developed water (SLO CO Ordinance 3090).

- The District has the duty to deny services in the NMMA/NCMA that would enable violation of the 2005 Stipulation that new urban uses “shall provide a source of supplemental water, or a water resource development fee, to offset the water demand associated with that development.”

5. The District will work with San Luis Obispo County to reconcile County Ordinance 3090 with the 2005 Stipulation by expanding the County Ordinance to require that all new water uses (not just that new water use resulting from property division and/or general plan amendment) pay a supplemental water fee toward new sources of supplemental water, subject to the terms of the June 30, 2005 Stipulation.

6. Supplemental water charges collected from inside the District boundary will be utilized to build out the current supplemental water project to full (3,000 AFY) capacity.

~~7. The District will work with the County and other area purveyors and development interests to define and acquire new sources of supplemental/developed water.~~

7. The District will continue to work with the County and NMMA groundwater producers to define and implement management measures that will protect area groundwater resources.

8. The District will continue work with the County and other regional purveyors and interested persons to define and acquire new sources of supplemental/developed water and otherwise develop regional solutions to improve long-term water resources.

TO: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER

FROM: PETER V. SEVCIK, P.E. *P.V.S.*
DIRECTOR OF ENGINEERING
AND OPERATIONS

DATE: FEBRUARY 5, 2015

AGENDA ITEM
E-7
FEBRUARY 11, 2015

**DISCUSS SUPPLEMENTAL WATER ALLOCATION AND
RESERVATION METHODOLOGY**

ITEM

Consider supplemental water allocation and reservation methodology and provide staff direction [RECOMMEND CONSIDER INFORMATION AND DIRECT STAFF].

BACKGROUND

The District's commitment to provide water service for new development is a two-step process. The District first allocates water for the project through the Intent-to-Serve letter process to allow a developer to begin the County of San Luis Obispo planning approval process. The developer then has up to 4 years to complete the County planning approval process. Once the project is approved by the County and the developer satisfies all of the District's Intent-to-Serve letter conditions, including payment of the District's connection charges, the District "permanently" reserves water for the project and provides a Will-Serve letter for the project.

The District's current water allocation policy established an annual limit and procedure for water service allocation for residential development. The allocation system was intended to "meter out" allocations to balance the effect of adding additional burden to the groundwater basin while providing enough allocation to support planned orderly development that would support the District's program to acquire supplemental water. The allocation policy set an overall annual water allocation limit of 32.5 AFY for residential development and exempted commercial development. There was no cumulative cap on the quantity of water that could be allocated.

The District is now constructing a supplemental water project to increase available water and meet the District's share of the court ordered commitment to bring a minimum of 2,500 AFY of supplemental water to the Nipomo Mesa Management Area (NMMA). In addition to offsetting current groundwater demand, all new urban water demand within the NMMA must be met with new developed water.

The District's supplemental water project includes a 500 AFY capacity reservation for new development within the District's existing boundaries. A formal program to track water allocation and reservation for all new development, not just residential development, against the 500 AFY supplemental water project reservation is required to ensure that the District does not over reserve or under reserve water for new development in the future.

District monthly water charges as well as one-time connection charges are developed on the basis of meter size, i.e., meter capacity. One potential methodology would be to allocate and reserve water for new development based on meter size. For example, based on actual water usage data, a 1 inch water meter would be allotted .48 AFY allocation and reservation. Meter

**SUPPLEMENTAL WATER ALLOCATION AND RESERVATION METHODOLOGY
FEBRUARY 11, 2015**

capacity ratios, which are based on physical meter capacity, would be used to allocate and reserve water for other size meters. All new water connections, residential and commercial, would be assigned an allocation and reservation based on meter size. The assigned allocation and reservation would be tracked against the District's 500 AFY supplemental water capacity reservation. The allocation and reservation per meter could be adjusted as necessary as water use patterns changed.

The use of meter size to track supplemental water assigned to new development within the District would be a practical, equitable, defensible and realistic methodology. The same methodology could be used as a basis by the other water purveyors within the NMMA as well as the County in making sure new development is not putting new demand on the groundwater basin.

New development is driven largely by economic conditions. In addition, the County, through its planning and building powers, impacts demand for water resources associated with new/future development. While it is difficult to predict the timing and type of new water connections, it is also not necessary. What is important to know is when the District is getting close to fully allocating and reserving the 500 AFY of supplemental water so that the District can plan for acquiring additional supplies. Based on an average of 50 new water connections per year over the last 10 fiscal years, staff anticipates that it could take up to 20 years, at an allocation rate of 24 AFY (50@1 inch meters X .48 AFY per meter), to fully allocate and reserve the 500 AFY.

The Board may consider setting specified amounts of supplemental water aside for specific types of development over a specified time frame. For example, the District might specify 15 acre-feet of water for commercial development in any one year. However, the District's ability to restrict allocation of water resources and otherwise impact County approved development plans would need to be further explored. Unless the basis for the allocations could be defended, the District might find itself revising the criteria in the face of service requests from approved County development.

FISCAL IMPACT

The proposed allocation methodology based on meter size would support the continued development of the District's supplemental water project, provide water for new development, and maintain fairness and equity among existing and future rate payers within the District.

STRATEGIC PLAN

Goal 1. WATER SUPPLIES. Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

RECOMMENDATION

Staff is seeking Board direction on development of a new methodology to allocate and reserve the District's 500 AFY supplemental water capacity reservation for new development.

ATTACHMENTS

None