

NIPOMO COMMUNITY SERVICES DISTRICT

Serving the Community Since 1965

REGULAR MINUTES

SEPTEMBER 11, 2013, AT 9:00 A.M.

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

JAMES HARRISON, PRESIDENT
LARRY VIERHEILIG, VICE PRESIDENT
DAN GADDIS, DIRECTOR
BOB BLAIR, DIRECTOR
CRAIG ARMSTRONG, DIRECTOR

PRINCIPAL STAFF

MICHAEL S. LEBRUN, GENERAL MANAGER
LISA BOGNUDA, FINANCE DIRECTOR
MIKE SEITZ, GENERAL COUNSEL
PETER SEVCIK, DIRECTOR OF ENG. & OPS.
MERRIE WALLRAVIN, BOARD CLERK

Mission Statement: The Nipomo Community Services District's mission is to provide its customers with reliable, quality, and cost-effective services now and in the future.
--

00:00:00

A. CALL TO ORDER AND FLAG SALUTE

President Harrison called the Regular Meeting of September 11, 2013, to order at 9:00 a.m. and led the flag salute.

President Harrison announced a moment of silence in memory of the victims of 9-11-2001.

00:01:53

B. ROLL CALL AND PUBLIC COMMENT FOR ITEMS NOT ON AGENDA

At roll call, Directors Armstrong, Gaddis Vierheilig, and Harrison were present. Director Blair was not present.

There was no public comment.

00:02:04

C. PRESENTATIONS AND PUBLIC COMMENT

C-1) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST AND REPORTS ON ATTENDANCE AT PUBLIC MEETINGS, TRAINING PROGRAMS, CONFERENCES, AND SEMINARS.

Receive Announcements and Reports from Directors

Director Armstrong

- ◇ *August 26, Attended the South County Advisory Council meeting. The Council met and discussed the Laetitia recirculated revised draft EIR and the proposed project at Phillips 66 Refinery.*

Director Gaddis

- ◇ *September 23, South County Advisory Council will meet.*

Director Vierheilig

- ◇ *September 4, Attended the Water Resources Advisory Council meeting and discussed the Paso Robles Ground Water Basin and reviewed the Integrated Regional Water Management Plan.*
- ◇ *September 9, Attended the NCSW Water Resources Committee Meeting.*
- ◇ *September 12, Finance and Audit Committee will meet at 9:00 a.m. at NCSW.*
- ◇ *September 17, Blacklake Management Association will meet and discuss drought tolerant plants.*
- ◇ *Commented on the Cambria Community water situation.*

Item C-1 (Continued)

Director Harrison

- ◇ August 21, Attended the Olde Towne Nipomo Association.
- ◇ August 22, Attended the Fire Safe Council Meeting.
- ◇ August 24, Attended the Dana Adobe fundraiser, the outcome was outstanding.
- ◇ September 14, the Rotary club of Nipomo and Five Cities Eco Club will be maintaining and cleaning the center divider on Tefft Street in front of Vons.
- ◇ September 28, Ride Nipomo will host a fundraiser for the preservation of trails on the Mesa. Tickets are sold out.
- ◇ November 16, Thanksgiving in November, sponsored by local service clubs, Turkey dinner at St. Joseph's Catholic Church and delivering of dinners for those who are disabled.

00:07:57

C-2) RECEIVE PUBLIC COMMENT ON PRESENTATIONS AND REPORTS PRESENTED UNDER ITEM C AND BY MOTION RECEIVE and FILE PRESENTATIONS AND REPORTS

Director Vierheilig left the meeting from 9:10 to 9:12 for a personal call.

There was no public comment.

*Upon the motion of Director Vierheilig and seconded by Director Armstrong, the Board unanimously approved to receive and file the presentations and reports as submitted.
 Vote 4-0.*

YES VOTES	NO VOTES	ABSENT
Directors Vierheilig, Armstrong, Gaddis, and Harrison	None	Director Blair

Michael LeBrun, General Manager, announced that supplemental materials to the packet were placed at the back of the room.

00:11:19

D. CONSENT AGENDA

D-1) WARRANTS

**D-2) APPROVE BOARD MEETING MINUTES:
 AUGUST 14, 2013 REGULAR MEETING**

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet and answered questions from the Board.

There was no public comment.

*Upon the motion of Director Armstrong and seconded by Director Gaddis, the Board unanimously approved the Consent Agenda as submitted.
 Vote 4-0.*

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Gaddis, Vierheilig, and Harrison	None	Director Blair

E. ADMINISTRATIVE ITEMS

00:14:54

E-1) CONSIDER RAMCO ENTERPRISES' REQUEST FOR OUTSIDE DISTRICT WATER SALES VIA HYDRANT METER

Michael LeBrun, General Manager, reviewed the report as presented in the Board Packet.

The following members of the public spoke:

Mike Winn, NCSD customer, spoke in opposition of the request for outside District water sales via a hydrant meter.

Ed Eby, NCSD customer, spoke in opposition of the request for outside District water sales via a hydrant meter and handed the Board a memorandum from District Legal Counsel on the District's options in addressing water shortage (See Exhibit "A").

Upon the motion of Director Vierheilig and seconded by Director Gaddis, the Board unanimously denied the Ramco Enterprises' request for outside District water sales via a hydrant meter.

Vote 4-0.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilig, Gaddis, Armstrong, and Harrison	None	Director Blair

00:28:03

E-2) APPROVE SUPPORT SERVICES CONTRACT FOR NOT TO EXCEED \$17,940 FOR WATER SYSTEMS CONSULTING (WSC) TO PROVIDE ON GOING CONSULTING SERVICES

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Spencer Waterman, WSC Staff Planner, and Mr. LeBrun answered questions from the Board.

There was no public comment.

Upon the motion of Director Gaddis and seconded by Director Armstrong, the Board unanimously approved WSC providing ongoing support services and directed staff to issue WSC a Task Order with a not to exceed value of \$17,940 for these services.

Vote 4-0.

YES VOTES	NO VOTES	ABSENT
Directors Gaddis, Armstrong, Vierheilig, and Harrison	None	Director Blair

00:37:51

E-3) RECEIVE UPDATE ON JIM O. MILLER PARK DEVELOPMENT

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mike Seitz, Legal Counsel, Kathy Kubiak, Olde Towne Nipomo Association President, and Mr. LeBrun answered questions from the Board.

The following member of the public spoke:

Mike Winn, NCSD customer, commented on the Board receiving a written letter from the County regarding the soils for the new location, language of the MOU, and questioned who will pay for water used at the park.

The Board gave direction to staff, but took no action.

00:56:26

E-4) CONSIDER LOCAL AREA FORMATION COMMISSION REQUEST FOR NOMINATIONS FOR SPECIAL DISTRICT ALTERNATE MEMBER

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet and answered questions from the Board.

The following members of the public spoke:

Ed Eby, NCSD customer, commented on who makes up LAFCO, spoke in support of NCSD's nomination for one of their own Board members, and urged the Nominee to campaign and mail resumes to all voting parties.

Mike Winn, NCSD customer, commented on the importance of NCSD's involvement in LAFCO and commented on the importance of the Alternative seat attending LAFCO meetings regularly.

Upon the motion of Director Harrison and seconded by Director Vierheilig, the Board unanimously nominated Director Gaddis for the Alternate Special District seat on LAFCO. Vote 4-0.

YES VOTES	NO VOTES	ABSENT
Directors Harrison, Vierheilig, Gaddis, and Armstrong	None	Director Blair

01:04:52

F. GENERAL MANAGER'S REPORT

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Peter Sevcik, Director of Engineering and Operations, reviewed the Southland Wastewater Treatment Facility Improvements Phase I Project Monthly Progress Report dated July 2013 and answered questions from the Board. Michael LeBrun, General Manager, reviewed the remaining Manager's report as presented in the Board packet and answered questions from the Board.

There was no public comment.

01:28:11

I. CLOSED SESSION ANNOUNCEMENTS

1. CONFERENCE WITH DISTRICT LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC §54956.9 SMVWCD VS. NCSD (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
2. CONFERENCE WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(a):
 Existing litigation - 1 case: Mesa Community Alliance Vs. District, Case No. CV 130222

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

K. ADJOURN TO CLOSED SESSION

President Harrison adjourned to closed session at 10:30 a.m.

Nipomo Community Services District
**REGULAR MEETING
 MINUTES**

L. OPEN SESSION
 ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 11:15 a.m.

Mike Seitz, District Legal Counsel, announced that the Board discussed Items One and Two listed above under closed session announcements, but took no reportable action.

G. COMMITTEE REPORT

There were no committee reports.

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Vierheilig

- ◇ Requested an update on the Blacklake Sewer Master Plan.

There was no public comment.

ADJOURN

President Harrison adjourned the meeting at 11:20 a.m.

MEETING SUMMARY	HOURS & MINUTES
Regular Meeting	1 hours 35 minutes
Closed Session	0 hour 45 minutes
TOTAL HOURS	2 hours 20 minutes

SEPTEMBER 11, 2013

REGULAR BOARD MEETING MINUTES

EXHIBIT "A"

JON S. SEITZ
MICHAEL W. SEITZ


SHIPSEY & SEITZ, INC.
A LAW CORPORATION
1066 PALM STREET
POST OFFICE BOX 953
SAN LUIS OBISPO, CALIFORNIA 93406
(805) 543-7272 FAX (805) 543-7281
JON S. SEITZ
District Legal Counsel
Nipomo Community Services District

JOHN L. SEITZ
(1924-1986)
GERALD W. SHIPSEY
(RETIRED)

MEMORANDUM
2 of 2

TO: DOUG JONES, GENERAL MANAGER
NIPOMO COMMUNITY SERVICES DISTRICT BOARD OF
DIRECTORS

RE: ADDRESSING WATER SHORTAGES

FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL 

DATE: February 28, 2002

At the District's Board meeting of February 20, 2002, I was directed to review and present to the District Board of Directors the District's options in addressing water shortages.

BACKGROUND

By way of background, the Board has discussed the limitations of approving new water connections under the authority of §64568 of Title 22 of the California Administrative Codes. That memorandum is included in the Staff Report.

DISTRICT'S OPTIONS IN ADDRESSING WATER SHORTAGES

The exception to the general rule that the District must provide water upon request, under reasonable rules and regulations, occurs when the District has declared a water shortage emergency pursuant to Water Code §350. Which provides as follows:

"The governing body of a distributor of a public water supply, whether publicly or privately owned and including a mutual water company, may declare a water shortage emergency condition to prevail within the area

served by such distributor **whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection.**" (Emphasis added)

Absent an immediate interruption in service by a water system failure, the Water Shortage Emergency Declaration may only be adopted after the District has conducted a duly noticed public hearing that provides the District's customers with an opportunity to be heard and to protest that declaration. (Water Code §351 and 352.)

§353 of the Water Code addresses regulations and restrictions that the District must adopt if a Declaration of a Water Shortage Emergency is approved and provides in relevant part:

"When the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it **shall** thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection." (Emphasis added).

The phrase "Conserve The Water Supply" implies that the District is empowered to maintain appropriate reserves of water to maintain future needs and that it need not run out of water before taking conservation measures. (See Swanson v. Marine Municipal Water District. App. First District. 1976) 128 Cal Reporter 485.

Further §354 of the Water Code provides the District with authority to establish priorities for water that is not necessary to supply water for domestic use, sanitation and fire protection. §354 states:

"After allocating and setting aside the amount of water which in the opinion of the governing body will be necessary to supply water needed for domestic use, sanitation, and fire protection, the regulations may establish priorities in the use of water for other purposes and provide for the allocation, distribution, and delivery of water for such other purposes, without discrimination between consumers using water for the same purpose or purposes."

Water Code §355 identifies the duration of the regulations and restrictions:

“The regulations and restrictions shall thereafter be and remain in full force and effect during the period of the emergency and until the supply of water available for distribution within such area has been replenished or augmented.”

Water Code §356 provides for discontinuance of service for violation of the District's rules and regulations and provides:

“The regulations and restrictions may include the right to deny applications for new or additional service connections, and provision for their enforcement by discontinuing service to consumers willfully violating the regulations and restrictions.”

And lastly, Water Code §358 provides the standard that the Board of Directors must meet when making findings under Government Code §350 (Supra) and provides as follows:

“Nothing in this chapter shall be construed to prohibit or prevent review by any court of competent jurisdiction of any finding or determination by a governing board of the existence of an emergency or of regulations or restrictions adopted by such board, pursuant to this chapter, on the ground that any such action is fraudulent, arbitrary, or capricious.”

END OF MEMO