

Don Wells
519 Woodgreen Way
Nipomo, CA 93444

RECEIVED
AUG 27 2024
NIPOMO COMMUNITY
SERVICES DISTRICT

August 26, 2024

Hand-Delivered to the NCSD Office on August 27, 2024

TO: Nipomo Community Services Board of Directors, info@nscd.ca.gov

RE: **Approve Annexation of Dana Reserve**

Dear Chairman and Directors:

Please include this letter in the public record for the August 28, 2024 NCSD Board of Directors Hearing on the annexation of the Dana Reserve into the NCSD service area (Agenda Item E-1).

I have been an NCSD customer for 17 years and I am completely in support of annexing the Dana Reserve property to the NCSD district. Anyone who objectively reviews the facts must acknowledge that the annexation will significantly benefit the district and its present customers.

The NCSD's role is to efficiently procure, manage and deliver water and wastewater services to its customers in a fiscally responsible manner. It is NOT the NCSD's role to second-guess and obstruct the land use decisions of the County Board of Supervisors who approved the Dana Reserve development. In fact, the NCSD does not have the authority to do so.

The opponents of the Dana Reserve do not speak for all those NCSD customers who, like me, want the NCSD to do its job without bowing to the desires of a group that is against the project despite all the expert evidence that the project is a boon to the NCSD infrastructure and its financial status.

Attached is the "Key Takeaways" page (p. 10) from the Tuckfield and Associates rate study of May 17, 2022 (found on the NCSD website), which summarizes some of these benefits, including the lower water and sewer rates for current NCSD customers, and the improvements to the NCSD's reserves and debt coverage ratios. For example, the Tuckfield study contains the Wastewater Financial Plan (p. 8, attached) which shows that with the Dana Reserve the wastewater capital fund will improve from a negative (\$423,846) to a positive \$805,100, and that the wastewater reserves will improve from a negative (\$32,665) to a positive \$772,435.

Also, the more than \$40 million in fees, capacity charges and other funds the Dana Reserve will pay directly to the NCSD will significantly improve the aging and inadequate NCSD infrastructure for current NCSD customers as well as Dana Reserve customers. Without this influx of funds from the Dana Reserve, present NCSD customers will inevitably have to pay higher rates to finance things like replacing pipelines and adding 1.5 million gallons of water storage.

As to the claim that there is not enough water to serve the Dana Reserve, this is clearly refuted by the water studies (also on the NCSD website) which show that even with the full build-out of the Dana Reserve and full build-out of every vacant lot in the present NCSD service area, including all ADUs, there will still be hundreds of acre feet per year of excess water even in times of extended drought.

Given all the expert evidence showing how the many benefits of annexing the Dana Reserve outweigh any perceived disadvantages, the NCSD will best serve its customers by voting to annex.

Sincerely,



Don Wells

Key Takeaways

From the results of the analyses, there are several key takeaways from the discussion above.

1. 100 percent of current SFR water customers will receive a reduction in their water bill as shown in Chart 1, and 100 percent of current SFR wastewater customers will receive a reduction in their wastewater bill as shown in Table 9.
2. Based on a legal opinion provided by the District's attorney, all of the water supplied to DRP's customers will be from supplemental water. Table 4 shows that a higher water rate will be charged to consumption of the DRP customers. DRP customers will not be beneficiaries of the less expensive groundwater.
3. No water or wastewater rate increases would be required in FY 2025-26 because of the addition of the DRP.
4. The cash balance will be increased in both the water and wastewater reserves with the addition of the DRP.
5. The District's water and wastewater debt service coverage ratios are improved from the addition of the DRP because of the higher revenues received versus expenses incurred.

It has been a pleasure to perform this Study for the District. If there are any questions or additional information is needed, please contact me at 949-760-9454.

Very Truly Yours,

TUCKFIELD & ASSOCIATES



G. Clayton Tuckfield
President/Principal Consultant
Tuckfield & Associates

Table 8
Wastewater Financial Plan
 Includes Fund 130, Fund 135, Fund, 710, and Fund 810

Description	Rate Study	With Dana	
	FY 2024-25	Reserve	Difference
Proposed Rate Increase (July 1)	3.8%	0.0%	
Revenues			
Sewer Revenues, Existing Rates [1]	\$2,257,600	\$3,060,200	\$802,600
Total Additional Sewer Rate Revenue	454,400	492,400	38,000
Interest Earnings [2]	24,000	28,000	4,000
Miscellaneous Revenues	500	500	0
Total Revenues	\$2,736,500	\$3,581,100	\$844,600
Revenue Requirements			
Operation and Maintenance Expense	\$1,824,500	\$1,864,000	\$39,500
Replacement Capital	395,000	739,900	344,900
Capital Outlay	33,200	33,200	0
Existing Debt Service [3]	596,800	596,800	0
Total Revenue Requirements	\$2,849,500	\$3,233,900	\$384,400
Net Funds Available Before Capital	(\$113,000)	\$347,200	\$460,200
Wastewater Capital			
Capital Sources of Funds			
Replacement Capital	\$395,000	\$739,900	\$344,900
Capacity Charges [4]	58,000	58,000	0
Total Uses of Funds	\$453,000	\$797,900	\$344,900
Capital Uses of Funds			
Capital Improvement Plan	\$763,846	\$763,846	\$0
Total Uses of Funds	\$763,846	\$763,846	\$0
Net Capital Spending	(\$310,846)	\$34,054	\$344,900
Net Funds Available After Capital	(\$423,846)	\$381,254	\$805,100
Available Reserves (Including capital funds)			
FY beginning available cash [5]	\$2,641,181	\$2,641,181	
Additions (reductions)	(\$423,846)	\$381,254	
FY ending available reserves	\$2,217,335	\$3,022,435	
Target Reserves [6]	\$2,250,000	\$2,250,000	
Above (below) Target	(\$32,665)	\$772,435	
Debt Service Coverage			
Net Revenues [7]	\$936,800	\$1,741,900	
Annual Debt Service [8]	\$596,800	\$596,800	
Coverage	157%	292%	

[1] Projected using the existing rates.
 [2] Interest earnings on the average fund balance calculated at 1.00%.
 [3] Debt service on the 2012 Certificates of Participation.
 [4] Assumption from rate study.
 [5] The available FY 2020-21 cash balance includes Fund 130, Funds 135, 710, and 810.
 [6] Target reserve includes Operating, Capital Replacement, and Rate Stabilization reserves.
 [7] Includes capacity charge revenue and interest income.
 [8] Includes 2012 COPs.

From: Jeff Board <boardj1954@gmail.com>
Sent: Monday, August 26, 2024 4:28 PM
To: Raymond Dienzo
Cc: Info
Subject: NCSD Board Meetings - Public Comments

Dear Mr. Dienzo:

I live in Nipomo and am an NCSD customer. As such, I would like to suggest that during the public comment period of the NCSD Board Meetings, when speakers give their name for the record, they also identify themselves as being an NCSD customer or not, and state whether or not they have a personal financial interest in the matter they are speaking on, i.e., whether or not they are employed by the agency that governs their issue, or whether or not they are on the payroll of a firm or developer that has a financial interest in their issue. I believe transparency is tantamount to carrying out the business of the Special District; this information is important in carrying out your duties on behalf of customers - those people who elected you.

Sincerely,

Jeffrey A. Board
684 Barberry Way, Nipomo, CA 93444

From: Nipomo CSD Website <nipomocsd@gmail.com>
Sent: Monday, August 26, 2024 10:33 PM
To: Info
Subject: New Contact Form submission - Entry ID#81 - Can not be there at the NCSD meeting on August 28th

Routing

Information

Your Name

Kitt Jenae

Your Email Address

hoofmessages@gmail.com

Subject

Can not be there at the NCSD meeting on August 28th

Message

I am a Nipomo resident who pays for my water. I want to register my passionate thoughts via email since I will be working. Recently I learned of the a narrow 3-2 vote by the County Board of Supervisors to approve of a measure diverting over 2% of property tax revenue from the General Fund to support water for the Dana Reserve development. This decision not only undermines SLO County's tax revenue sharing policy! I understand the NCSD will discuss the potential annexation of the Dana Reserve area, which is crucial for the project to proceed. On top of the already stated fact above as well as The Environmental Impact Report (EIR) showing the Dana Reserve was identified with 19 significant and unmitigable issues I express an INTENSE NO!!!!!!

Fraud prevention

blue

From: garym2210@sbcglobal.net
Sent: Tuesday, August 27, 2024 10:34 AM
To: Info; Raymond Dienzo
Subject: I support the Dana Reserve

Nipomo Community Service Directors:

I am in favor of the Dana Reserve Project.

My name is Gary martin, I grew up in Nipomo and a senior citizen resident. I control, and pay bills for 2 properties in your Service District. This project will spread the cost of purchasing Santa Maria water and develop good modern infrastructure that has lacked in our area over the years of bad planning by our County. Young working families, like my own son, who is a Cal Poly graduate, and his family need affordable housing in our area. I also have two sisters who live here who feel the same way.

From: Babak Naficy <babaknaficy@naficylaw.com>
Sent: Tuesday, August 27, 2024 1:24 PM
To: Info
Subject: Dana Reserve Annexation Agenda Item No. E1.
Attachments: Dana Reserve comments to NCSA Final.pdf

To whom it may concern

Please deliver a copy of this comment letter to each member of the Board of Directors upon receipt of this email.

Also, please acknowledge receipt of this email

Thank You

Babak Naficy

Babak Naficy

Law Offices of Babak Naficy
890 Monterey Street, Suite H
San Luis Obispo, CA 93401
babaknaficy@naficylaw.com

https://url.avanan.click/v2/___www.naficylaw.com___YXAzOm5jc2Q6YTpvOjFIYTdmMGEwN2NmNTM4MTQyMGI4ZDgzZDNjNmJhOTI4OjY6NzFkZDo3Mjc5M2RkZDc2ODAzMzRiNzNiZDQ1NTNmODc0N2JkMWJlY2Y1MWE3MzFmNGQzMjNhNjc2MjFkYmY4YjBhZDMzOnQ6VDpO
805-593-0926 phone
805-593-0946 fax



August 26, 2024

Via Email

Board of Directors
Nipomo Community Services District
148 S. Wilson St.
Nipomo, Ca, 93444
info@ncsd.ca.gov

*Re: Agenda Item No. E1.
Annexation Agreement with NKT Development LLC and LAFCO
Plan for Services, and Required findings under CEQA*

Honorable Board Members:

My office represents the Nipomo Action Committee (“NAC”), on whose behalf I submit the following comments for your consideration regarding the proposed annexation agreement with NKT Development LLC concerning the Dana Reserve residential project (“Project”).

I urge you not to approve the proposed annexation agreement because, as explained more fully below, the NCSD cannot lawfully rely on the 500 acre-foot-per-year (“AFY”) “Phase II” water transfer from Santa Maria to serve the Dana Reserve Project because the Project is located outside the NCSD’s current boundaries. The District is legally precluded from using Phase II waters to supply water to any project outside of the District’s current jurisdictional boundaries because this 500 AFY transfer has been specifically earmarked for infill projects within the District’s current service area only. This supply can only be used to offset and mitigate the current customer demand and to accommodate infill growth with the NCSD’s service area. The District, moreover, has recognized that

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any future agreement to provide water to projects outside its jurisdiction but within the Sphere of Influence ("SOI") is contingent on acquisition of up to 3200 AFY (Phase III) from Santa Maria.

The District's current Staff Report acknowledges "that the earlier Supplemental Water Project ("SWP") EIR noted the initial phases of the SWP would serve customers within the existing boundaries of the District." In its October 23, 2023, letter to the SLO County Planning Commission, the NCSO denied this basic fact and instead, claimed "[t]he extra 500 acre-feet per year ("AFY") NCSO built into the Nipomo Supplemental Water Project for new development is eligible to serve any new project within the NCSO's service boundary or its sphere of influence." NCSO letter at p. 2.

The current Staff Report goes on to claim, however, that this limitation "represented plans and estimates at the time based on water use in the early 2000's, and not a legal restriction" Staff Report at p. 7. The Staff Report makes no effort to explain why the District's counsel and other representatives did not make this information available to the County Board of Supervisors prior to the County's approval of the Project.

As the Staff Report admits, the text of the SWP 2009 Final EIR unambiguously explains that

Phases I and II of the proposed project [i.e. the Santa Maria Supplemental Water Project] will be separately approved and funded by authorization of the NCSO Board of Directors. Phases I and II totaling 3,000 acre-feet per year will supply water only to customers within the current NCSO boundaries and other water purveyors in the NMMA. Only in Phase III totaling an additional 3,200 acre-feet per year of supplemental water will be made available to new customers in the 2004 Sphere of Influence Areas that are annexed into the District.

2009 Waterline Intertie FEIR, p. V-11. (italics in the original.)

Significantly, this language was added to the text of the FEIR in response to comments from both LAFCO and the public, including a suggestion that the Draft EIR be revised to note that "the first two phases

of the proposed project will be used to meet the needs within the present boundaries of the NCSD not to increase the size of the District by expanding to the Sphere of Influence areas.” 2009 Waterline Intertie FEIR, p. XI-25. Yet, increasing the size of the District is precisely what is being proposed here.

Similarly, the FEIR’s description of Project objectives clearly explains that Phase I and II water is to be used only within the District’s current boundaries.

*Each phase will be separately approved and funded by authorization of the NCSD Board of Directors. Phases I and II will supply water only to customers in the current NCSD boundaries and other water purveyors in the NMMA, specifically the Woodlands Mutual Water Company, Golden State Water Company and Rural Water Company. **Only in Phase III will water be made available to new customers in the 2004 Sphere of Influence Areas that are annexed into the NCSD boundaries.***”

Waterline Intertie FEIR, at pp. III-6 and VII-2 (italics in the original to indicate revision to the text of the Draft EIR, bold emphasis added).

According to the 2009 FEIR, another objective of the NCSD was to

Comply with Local Agency Formation Commission (LAFCO) conditions for securing supplemental water prior to annexation of lands now within the District’s Sphere of Influence. This supplemental water for annexations shall be in addition to the 3,000 AFY developed by Phases I and II.

Waterline Intertie FEIR, at pp. III-7 and VII-2.

A 2012 Addendum to the 2009 FEIR similarly confirmed that “Phase I and II will supply water only to customers in current NCSD boundaries and other purveyors in the NMMA [namely Woodlands Mutual and Golden State].” 2012 Addendum, p. III-3.

The Staff Report does not point to any evidence to show the

District formally decided to abandon this objective. Instead, the Staff Report mischaracterizes and attempts to downplay the legal significance of the 2009 FEIR's explanation concerning the restriction on the Phase II water supply. Without any citation or meaningful explanation, the Staff Report baldly asserts that the restrictions on potential use of the 500 AFY Phase II water transfer "represented plans and estimates at the time based on the early 2000's, and not a legal restriction." This is false.

The prohibition against using Phase I and II waters to support projects outside the District's boundaries is reflected in subsequent legally binding documents, including the October 16, 2015, Supplemental Water Management and Groundwater Replenishment Agreement ("SWMGRA") between NCS D, Golden State, Rural Water Company and Woodlands. This agreement was intended to describe and delineate "(1) payment to NCS D for each Party's allocations costs and (2) distribution and use of Nipomo Supplemental Water." SWMGRA, p. 5.

The SWMGRA specifically prohibits all parties to the agreements from using any Phase I and II waters for the benefit of any project outside the parties' existing boundaries: "the Nipomo Supplemental Water delivered to the Parties [which includes the NCS D] pursuant to this Agreement **shall be used exclusively for the benefit of the properties within the existing jurisdictions and service areas of the parties** and in accordance with the Judgment and Stipulation." *Ibid*, emphasis added. Accordingly, the Staff Report's claim that the restriction on use of the 500 AFY Phase II transfer was based on early 2000 estimates and is not legally binding is patently false. Moreover, there is no evidence to suggest the NCS D ever took any formal action to remove the prohibition against providing supplemental water to projects outside of its jurisdiction.

Similarly, LAFCO's latest NCS D Sphere of Influence Update Municipal Service Review ("2018 SIU") states that the "additional AFY

capacity (i.e. Phase II transfer) has been reserved for use by the Nipomo CSD for infill.” See, Municipal Service Review, 2018, p. 3-31. In this context, “infill” must be understood to refer to development within the District’s boundaries.

Finally, a 2010 Memorandum of Agreement between the County of San Luis Obispo and the District, which is incorporated in and appended to the 2018 SIU, acknowledges that the District is not free to use the 500 AFY Phase II water supplies to support annexation of Dana Reserve. Exhibit A attached to this MOA, which in turn is attached to the 2018 as Attachment B, provides in part:

Commitment by the Nipomo Community Services District. The District is currently designing and, with the assistance from the County, intends to construct a Waterline Intertie Project with the City of Santa Maria to deliver approximately 3,000 AFY of supplemental water (Phase I Project¹). The Phase I Project will deliver supplemental water to the District, the Woodlands, the Golden State Water Company and the Rural Water Company consistent with the Judgment and Stipulation in the Santa Maria Groundwater Adjudication. **Water delivered to the District from the Phase I Project will be used to serve existing and future customers within the District's current boundary.**

Annexation of Dana Reserve will unfairly deny properties within the District’s existing boundaries a chance to develop. LAFCO’s 2018 Municipal Service Review determined that “the District does not have an adequate water supply to serve the anticipated build-out under the current General Plan plus the sphere of influence areas.” Municipal Service Review, p. 3-46. LAFCO also determined that “the District does not currently have adequate and reliable water resources available to meet the needs of the Sphere of Influence over the next 20 years. At this point in time the District’s most viable future water source is the City of Santa Maria via the water-intertie pipeline. Future annexations should be

¹ / This document erroneously refers to both Phase I (2500 AFY) and Phase II (500 AFY) as Phase I.

carefully considered with a focus on the NCSD's ability to provide reliable, adequate, and sustainable water service." *Ibid.* These findings demonstrate that the District has insufficient water supplies to support any infill projects within the District's boundaries if it commits its share of Phase II 500 AFY transfer to Dana Reserve. District therefore needs all of its current water supplies to enable build-out within its jurisdiction and must focus its efforts on acquiring additional supplies from Santa Maria to accommodate expansion of services into the Sphere of Influence.

Annexation of the Dana Reserve Project would violate LAFCO policies

Annexation of Dana Reserve would be inconsistent with LAFCO policies, including Policy 2.3.2, which provides: "Prior to annexation of territory within an agency's Sphere of Influence, the Commission encourages development on vacant or underutilized parcels already within the boundaries of a jurisdiction." As the 2018 SUI admits, the District does not have sufficient water supplies to meet the needs of infill development within its jurisdiction and the Sphere of Influence. Accordingly, annexation of Dana Reserve would be in violation of LAFCO Policy 2.3.2..

LAFCO policies also include Policy 2.3.8, which requires the District to show it has the capability of meeting the need for services... Here, the District cannot show it can lawfully meet the water supply needs of Dana Reserve because of the restrictions on Phase II water supplies from Santa Maria.

Annexation of the Dana Reserve Project would undermine the long-term reliability of the District's water supplies.

The annexation of Dana Reserve would also undermine the long-term reliability of NCSD's water supplies and be grossly unfair to the current NCSD customers, whose sacrifices and water-saving efforts has

directly enabled the District to reduce groundwater pumping. These reductions in water use were undoubtedly intended to promote the health of the groundwater basin and to combat the negative effects of prolonged droughts which are only expected to worsen as a result of climate change. The current NCSD customers did not make these sacrifices in order to facilitate the annexation of the largest residential development in the area since the approval of Trilogy. By approving the annexation of Dana Reserve, the District would essentially thank its customers for their sacrifices by approving a Project that would undermine the reliability of the District's groundwater supplies and with it, the residents' peace of mind.

Conclusion

For all of these reasons, I urge you to not to proceed with the annexation of Dana Reserve at this time.

Babak Naficy
Attorney for Nipomo Action
Committee

August 27, 2024

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AUG 27 2024

NIPOMO COMM.
SERVICES DIST.

Nipomo Community Service District
148 S Wilson
Nipomo CA 93444

To the NCSD Board,

As a Nipomo resident for over 30 years, I insist that you vote in the interest of our Nipomo community by voting AGAINST the annexation of the Dana Reserve project.

The Dana Reserve project threatens to deplete the limited water resources in our area. The existing infrastructure cannot support an increase in demand for water needed for such an expansive project. The restrictions on the supplemental water project stipulate that water cannot be used for new developments like the Dana Reserve. It is your duty to use our water for how it was intended.

As an elected official to the NCSD Board, you have an obligation to consider and advocate for what is in the best interest of Nipomo and its residents. The Dana Reserve project is NOT in the best interests of our Nipomo community.

I am concerned that this project will deepen water shortages, negatively impact the environment, and create growth that Nipomo is not set up for.

Please vote AGAINST the annexation of the Dana Reserve and do what is correct for our community.

Sincerely,



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(805) 266-5178
Katie.e@sbcglobal.net