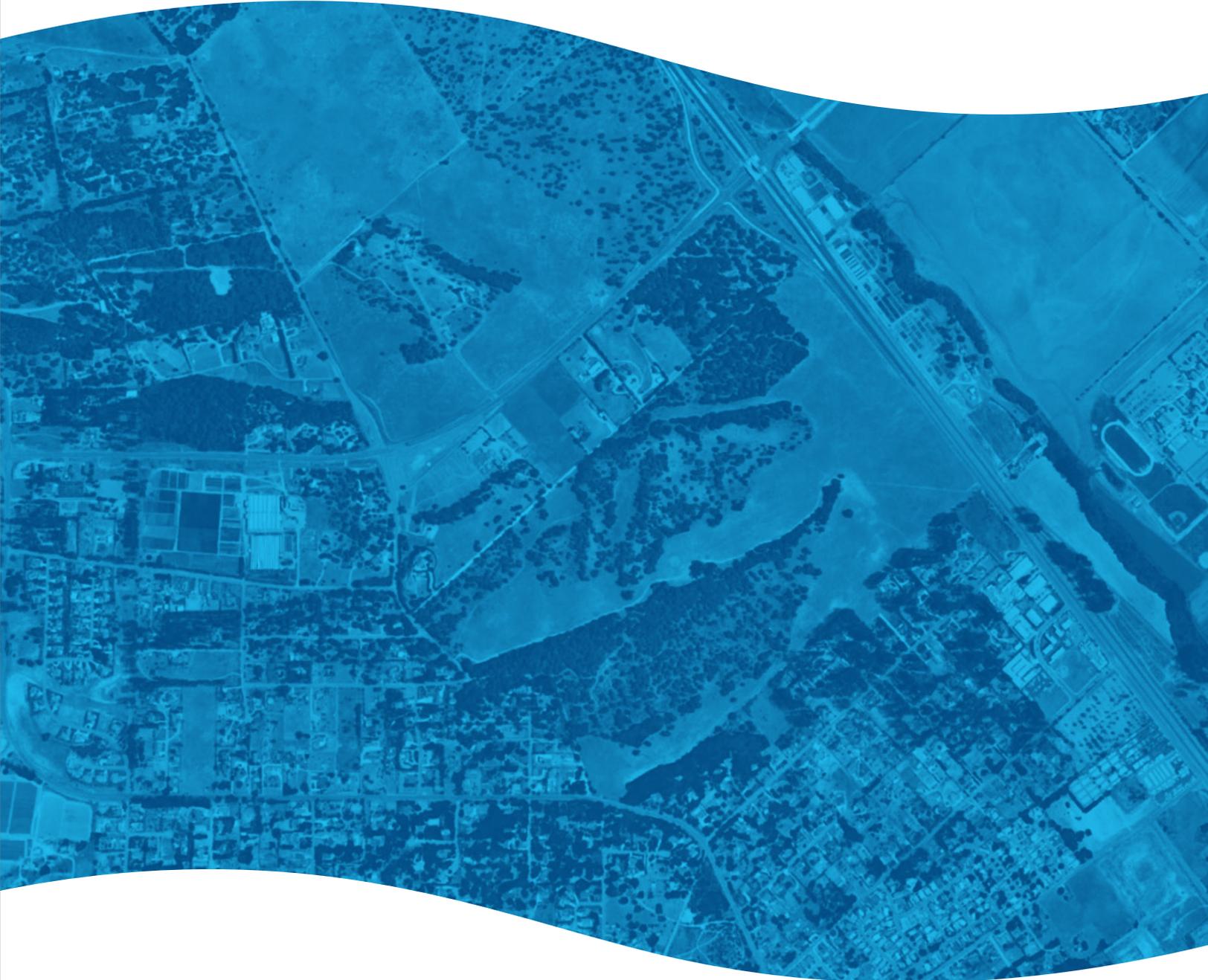




# Nipomo Community Services District



## Plan for Services Dana Reserve Specific Plan



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Nipomo Community Services District  
Plan for Services Dana Reserve Specific Plan  
Final August 21, 2024

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- Appendix B: Wholesale Water Supply Agreement
- Appendix C: Supplemental Water Management and Groundwater Replenishment Agreement
- Appendix D: Final Santa Maria River Valley Groundwater Basin Judgement
- Appendix E: Implementation Phasing Schedule

### Previous Studies and Reports

The following reports, studies, and other resources were reviewed and utilized during the preparation of this Plan for Services report:

1. Dana Reserve Development Phasing Study – Revised Figures for Annexation Agreement, dated May 22, 2024, prepared by Michael K. Nunley & Associates, Inc. (MKN)
2. Final Dana Reserve Specific Plan Environmental Impact Report (EIR), dated April 2024, prepared by Steven W. Carothers and Associates Environmental Consultants
3. Final Dana Reserve Specific Plan, dated April 2024
4. Dana Reserve Water Supply Assessment, dated March 6, 2024, prepared by Richard G Sweet and RRM Design Group
5. Dana Reserve Development Phasing Study, dated March 5, 2024, prepared by MKN
6. Dana Reserve Development Water and Wastewater Service Evaluation, dated March 30, 2022, prepared by MKN
7. Water and Wastewater Rate Impact Analysis Study, dated May 17, 2022, prepared by Tuckfield & Associates
8. 2020 Urban Water Management Plan (UWMP), dated December 2021, prepare by MKN
9. Sphere of Influence Update Municipal Service Review, dated March 15, 2018, prepared by San Luis Obispo Local Agency Formation Commission

### List of Acronyms

Abbreviation	Description
ADU	Accessory Dwelling Unit
AF	Acre-Feet
AFY	Acre-Feet Per Year
DR	Density Residential
EIR	Environmental Impact Report
EOL	End of Line
FC	Flex Commercial
GBT	Gravity Belt Thickener
GPD	Gallons per Day
gpm	Gallons per Minute
GSWC	Golden State Water Company
GSWCCR	Golden State Water Company Cypress Ridge
LAFCO	Local Agency Formation Commission
LF	Linear Feet
MF	Multi-Family
MKN	Michael K. Nunley & Associates, Inc.
NBD	Neighborhood
NCSD	Nipomo Community Services District
NMMA TG	Nipomo Mesa Management Area Technical Group
NSWP	Nipomo Supplemental Water Project
PSH	People's Self Help
PVC	Polyvinyl Chloride
RAS	Return Activated Sludge
RWQCB	Regional Water Quality Control Board
SF1	Single Family 1
SF2	Single Family 2
URL	Urban Reserve Line
UWMP	Urban Water Management Plan
WMWC	Woodlands Mutual Water Company
WRF	Water Reclamation Facility
WWTF	Wastewater Treatment Facility

## 1.0 INTRODUCTION AND OVERVIEW

---

This section provides an overview of the Dana Reserve Specific Plan Project (Project) and overall requirements for preparing the Plan for Services for the Project.

### 1.1 Project Overview

The proposed Project is located adjacent to the northern boundary of the unincorporated community of Nipomo in San Luis Obispo County (County) and will include phased development of a 288-acre master-planned community with the following elements:

- Up to 1,370 residential units and ADU's as allowed by state law
- 110,000–203,000 square feet (floor area) of commercial and non-residential (visitor serving/hotel, education) uses
- A minimum of 55.6 acres of open space and recreation areas, and related circulation and infrastructure

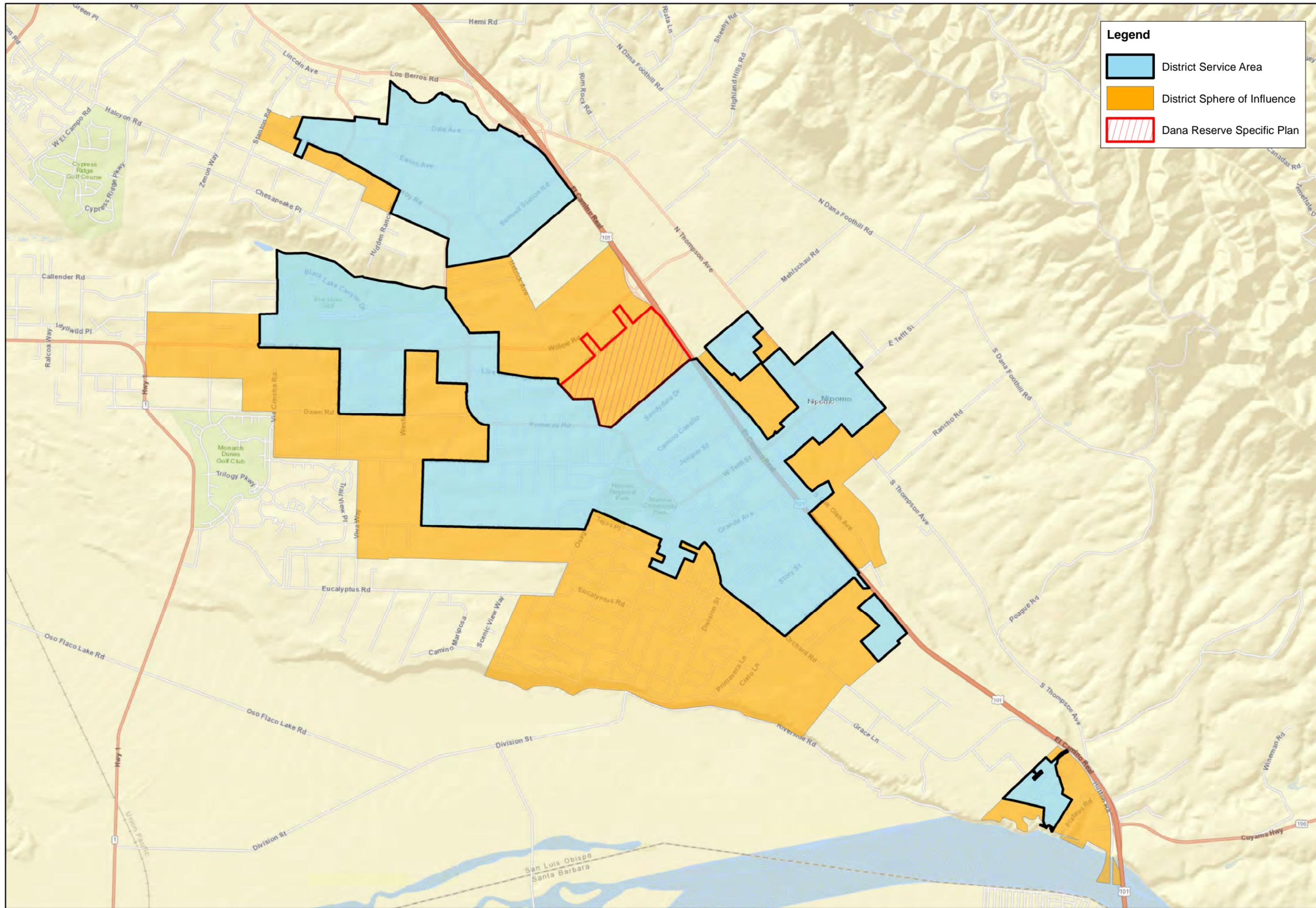
The Project includes a County-initiated General Plan and Ordinance Amendment to change the land use categories within the specific plan area and to incorporate the property into the Nipomo Urban Reserve Line (URL). The Project requires annexation into the Nipomo Community Services District (District) service area to receive solid waste, water, and wastewater services. The project site is located in the Residential Rural land use category, west of US 101, east of Hetrick Avenue, and adjacent to the Nipomo URL. The project is located within the South County Inland Sub Area of the South County Planning Area. **Figure 1-1** provides an overview of the proposed project location.

### 1.2 Purpose of Plan for Services Report

On October 13, 2022, San Luis Obispo Local Agency Formation Commission (LAFCO) officially received an application for annexation of the Project (Annexation #30) to the District and the application has remained on information hold since that time. Items required to be finalized prior to LAFCO fully processing the annexation application include the following:

- County approval of the Project, including associated entitlements such as tentative tract map, general plan amendment(s), Conditional Use Permit, Developer Agreement
- County certification of the Final Environmental Impact Report
- Approval of a tax exchange agreement between the District and the County
- Completion of a Plan for Services prepared by the District
- Any other documents, studies or information that LAFCO deems to be required from the applicant or District upon review of the final project and entitlements noted above, and upon further processing of the annexation application request

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**Legend**

- District Service Area
- District Sphere of Influence
- Dana Reserve Specific Plan



**Nipomo Community Services District**  
**Plan for Services Dana Reserve Specific Plan**

Figure 1-1:  
 Project Location Map

  
 1 inch = 3,600 feet  




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## INTRODUCTION AND OVERVIEW

On April 24, 2024, the Project was approved (Resolution No. 2024-108) by the County and the Environmental Impact Report was certified (Resolution No. 2024-109).

### 1.3 California Law

This Plan for Services Report addresses the requirements set forth in the Government Code (described below) that LAFCO will evaluate as part of their review process with respect to the Project annexation to the District.

#### Government Code 56653

(a) If an application for a change of organization or reorganization is submitted pursuant to this part, the applicant shall submit a plan for providing services within the affected territory.

(b) The plan for providing services shall include all of the following information and any additional information required by the commission or the executive officer:

(1) An enumeration and description of the services currently provided or to be extended to the affected territory.

(2) The level and range of those services.

(3) An indication of when those services can feasibly be extended to the affected territory, if new services are proposed.

(4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.

(5) Information with respect to how those services will be financed.

### 1.4 Project Phasing and Proposed Improvements

**Table 1-1** provides an overview of the water distribution system, wastewater collection, and wastewater treatment improvements required to serve the Project, the entity responsible for financing/construction of the necessary improvements, and approximate timeframe for completion.

Table 1-1: Required Water and Wastewater Improvements for the Project				
Project Type	Project Number	Project Description	Reponsible Entity	Timeframe for Completion
<b>Water Distribution and Storage</b>	Project 1	New 16-inch Main on North Oak Glen Drive	District	Prior to First Unit
	Project 2	New 16-inch US 101 Crossing at Sandysdale Drive	District	Prior to First Unit
	Project 3	Frontage Road Extension	Developer	Prior to First Unit
	Project 4	Willow Road End of Line Project	Developer	Prior to First Unit
	Project 5	16-inch Main Replacement on Tefft Street	District	Prior to Unit 689
	Project 6	Foothill Tank Improvements	District	Prior to First Unit
	Project 7	Joshua Road Pump Station Reservoir	District	Prior to Unit 1,000
<b>Wastewater Collection</b>	Project 1	Frontage Road Sewer Extension	Developer	Prior to First Unit
	Project 2A	Proposed Sanitary Sewer Lift Station, Force Main, and Wastewater Collection System Connection for Dana Reserve Development	Developer	Prior to First Unit
	Project 2B	Dana Reserve Lift Station Pump #3	Developer	Prior to First Unit
	Project 3	Sanitary Sewer Replacement	District	In Progress
<b>Wastewater Treatment</b>	Project 4	Influent Lift Station	District	Prior to First Unit
	Project 5	Grit Removal	District	Prior to Unit 1,009
	Project 6A	Extended Aeration Basin No. 2	District	Prior to First Unit
	Project 6B	Extended Aeration Basin No. 3	District	Prior to Unit 1,009
	Project 7	Secondary Clarifier	District	Prior to Unit 1,009
	Project 8	Gravity Belt Thickener	District	Prior to Unit 1,009
	Project 9	Dewatering Screw Press	District	Prior to Unit 1,009

Figure 2-2 identifies the location and extent of the required water distribution, wastewater collection, and wastewater treatment improvement projects.

## 2.0 PLAN FOR SERVICES

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Per Government Code 56653, the following Plan for Services has been prepared for the Project, located west of US 101 and east of Hetrick Avenue, in anticipation of its annexation into the District.

### 2.1 Services to be Extended

The District will provide the following services to the annexation site:

- Solid Waste and Recycling
- Water Supply and Distribution
- Wastewater Collection and Treatment

### 2.2 Level and Range of Services

The following sections identify the level and range of solid waste/recycling, water supply, and wastewater collection/treatment services to be provided to the Project. The following sections summarize discussions from the Dana Reserve Specific Plan (Final April 2024), Dana Reserve Development Phasing Study (Michael K. Nunley & Associates, Inc. (MKN), March 2024), Dana Reserve Development Water and Wastewater Service Evaluation (MKN, March 2022; Dana W&WW Evaluation), and 2020 Urban Water Management Plan (MKN, December 2021; UWMP).

#### 2.2.1 Solid Waste and Recycling

The District has a franchise service agreement with South County Sanitary Services for garbage, green waste, and recycling services. South County Sanitary Services disposes collected solid waste at the Cold Canyon Landfill, which is a regional facility. Based on current disposal rates, this facility has the capacity to accept solid waste until at least the year 2040. South County Sanitary Services has reviewed the conceptual plans and will provide solid waste, recycling, and green waste pick-up service to the Project (Dana Reserve Specific Plan, April 2024). The District's franchise agreement includes all areas that are annexed into the District. The level of service provided to the annexed territory will be the same as that provided to the remainder of the District service area.

**Appendix A** includes a copy of a will serve letter from South County Sanitary Services to provide garbage, green waste, and recycling services to the Project upon annexation to the District.

#### 2.2.2 Water Supply and Distribution

The following section provides an overview of the Project water demands, District water supply availability, and potential impacts to the District's existing water distribution system.

**Project Water Demands**

To estimate proposed water demand increases per year from the Project, duty factors developed in the Dana W&WW Evaluation were applied to the proposed phasing plan above. **Table 2-1** below presents the anticipated increase in water demand by year and the total anticipated demand for the development. All demands include a 10% contingency factor as described in the Dana W&WW Evaluation. As noted in the 2024 Water Supply Assessment (WSA), through the planning process and change to the Project, water demand increased to 376 AFY. However, this remains within the available supply.

Table 2-1: Phased Annual Demand Increases for Dana Reserve									
Land Use Type	Acreage <sup>1</sup>	Phased Water Demand Increase by Year (AF <sup>2</sup> )							Total
		2024	2025	2026	2027	2028	2029	2030	
Single Family	149.5	26.9	38.5	53.5	48.2	44.1	19.1	-	<b>230.3</b>
Multi-Family	23.5	5.3	23.6	7.4	20.4	7.2	-	-	<b>63.9</b>
Commercial	22.3	2.70	2.70	18.0	7.74	2.7	2.70	-	<b>36.5</b>
Recreation/Park	11	-	-	-	9.56	-	-	-	<b>9.6</b>
<b>Total</b>	<b>206.3</b>	<b>34.9</b>	<b>64.8</b>	<b>78.9</b>	<b>85.9</b>	<b>54.0</b>	<b>21.8</b>	<b>-</b>	<b>340</b>
<b>Notes:</b>									
1. Acreage from Final Environmental Impact Report (EIR) Table 2-3 Land Use Acreage Summary and excludes existing Residential Rural, Open Space, and Primary Roads land uses									
2. AF = acre-feet									

**Table 2-2** presents the projected combined water demand per year for the existing District service area, District interconnections, future District demands (infill development and accessory dwelling units (ADUs)), and the Project.

Table 2-2: District and Project Future Water Demand							
Land Use Type	Projected Water Demand (AF)						
	2024	2025	2026	2027	2028	2029	2030
Single Family	1,397	1,406	1,415	1,424	1,433	1,441	1,450
Multi-Family	135	136	136	137	138	139	140
Commercial	97	97	98	99	99	100	100
Landscape	263	265	267	268	270	272	273
Other	7	7	7	7	7	7	7
Agricultural Irrigation	18	18	18	18	18	18	18
Losses	189	190	191	192	194	195	196
<b>Subtotal</b>	<b>2,106</b>	<b>2,119</b>	<b>2,132</b>	<b>2,145</b>	<b>2,159</b>	<b>2,172</b>	<b>2,184</b>
District Interconnections							
WMWC <sup>1</sup>	0	417	417	417	417	417	417
GSWC <sup>2</sup>	0	208	208	208	208	208	208
GSWCCR <sup>3</sup>	0	208	208	208	208	208	208
<b>Subtotal</b>	<b>0</b>	<b>833</b>	<b>833</b>	<b>833</b>	<b>833</b>	<b>833</b>	<b>833</b>
Dana Reserve Project							
Single Family	26.9	65.4	118.9	167	211	230	230
Multi-Family	5.3	28.9	36.2	56.6	63.8	63.8	63.8
Commercial	2.7	5.4	23.4	31.1	33.8	36.5	36.5
Recreation/ Park	-	-	-	9.6	9.6	9.6	9.6
<b>Subtotal</b>	<b>34.9</b>	<b>99.7</b>	<b>179</b>	<b>264</b>	<b>318</b>	<b>340</b>	<b>340</b>
<b>Total</b>	<b>2,141</b>	<b>3,051</b>	<b>3,144</b>	<b>3,242</b>	<b>3,310</b>	<b>3,345</b>	<b>3,357</b>
<b>Notes:</b>							
1. WMWC = Woodlands Mutual Water Company							
2. GSWC = Golden State Water Company							
3. GSWCCR = Golden State Water Company Cypress Ridge							

### Project Water Distribution System

The Project will include four proposed connection points to the District’s existing water distribution system and the onsite backbone of the onsite distribution system will include 12-inch diameter pipelines for maintaining District-recommended pressures and velocities.

### Water Supply

The current water service area boundary encompasses approximately 3,907 acres (parcel acreage only and excludes right-of-way) in the Nipomo area of southern San Luis Obispo County and serves water to an estimated current population of 13,771 people (2020 Census data). The District service area is primarily residential land uses, with some light commercial and suburban residential. The District is comprised of one water system with three pressure zones; one zone serves the Blacklake Specific Plan area, one zone serves the Maria Vista Pressure Zone, and the third zone serves the rest of the District’s service area.

Actual total demand in the FY 2023/24 fiscal year was 1,820 AFY, which consisted of 1,140 AF of imported NSWP water and 680 AF of groundwater.

**Imported Water**

Groundwater was the sole source of the District’s water supply until 2015, when the District began importing water from the City of Santa Maria (City) as part of the Nipomo Supplemental Water Project (NSWP). The NSWP included the design and construction of the following infrastructure to deliver supplemental water to the District from the City’s existing water distribution system:

- Approximately 5,000 feet of 24-inch transmission pipeline located within the City
- Flow control and meter station located within the City
- Santa Maria River crossing including 2,600 feet of 24-inch pipeline
- Joshua Road Pump Station with four 800-gallon per minute (gpm) pumps with onsite generator and 0.5-million gallon storage tank
- Approximately 1,700 feet of 24-inch transmission pipeline from the Joshua Road Pump Station to the District’s existing distribution system
- Approximately 12,000 feet of 16-inch transmission pipeline located within the District’s service area

The District executed the Wholesale Water Supply Agreement (Wholesale Agreement) with the City on May 7, 2013, which is included as **Appendix B**. Supplemental water consists of a “municipal mix” of both surface water from the State Water Project and groundwater from the City. The Wholesale Agreement dictates a minimum water delivery to the District of 2,500 acre-feet per year (AFY) by fiscal year 2025-26 with a maximum allowable delivery of 6,200 AFY. It should be noted that the existing Santa Maria River crossing, pump station, and portion of transmission pipeline were designed to deliver 6,200 AFY. However, pump replacements and additional pipelines would be required to deliver the full 6,200 AFY to the District service area. While the District is obligated to meet the minimum delivery from the Wholesale Agreement, the District will continue operating the groundwater wells to serve existing and future demands. **Table 2-3** outlines the required Wholesale Agreement water delivery schedule.

Table 2-3: Wholesale Water Agreement Delivery Schedule	
AFY	Effective Delivery Date
645	7/1/2015
800	7/1/2016
1,000	7/1/2020
2,500	7/1/2025
6,200	Maximum Capacity

These deliveries also include delivery to WMWC, GSWC, and GSWCCR. **Table 2-4** summarizes the required NSWP purchase allocations for the District, GSWC, and WMWC per the Supplemental Water Management and Groundwater Replenishment Agreement (Replenishment Agreement) as of October 16, 2015. The Replenishment Agreement is included as **Appendix C**.

Table 2-4: NSWP Replenishment Agreement Allocation (AFY)		
Water Purveyor	Percent Allocation	NSWP (2,500 AFY)
NCSD <sup>1</sup>	66.68	1,667
NCSD (as needed)	-	500
GSWC	8.33	208
GSWCCR	8.33	208
WMWC	16.66	417
<b>Total</b>	<b>100.00</b>	<b>3,000</b>
<b>Note:</b>		
1. NCSD = Nipomo Community Services District		

**Groundwater**

The District extracts groundwater from the Santa Maria River Valley Groundwater Basin. The Nipomo Mesa Management Area Technical Group (NMMA TG), which is the court-assigned entity responsible for assessment of groundwater within the Nipomo Mesa Management Area of the Santa Maria River Valley Groundwater Basin, declared a Stage II water severity condition for subbasin purveyors. This condition results in a voluntary groundwater reduction goal of 506 AFY for the District. The District owns five wells, four of which are active and one currently being rehabilitated. These five wells have a combined pumping capacity of 3,100 gpm or 5,000 AFY. However, for planning purposes 2,100 gpm is available assuming the largest well is out of service.

**Water Supply Availability**

Through the NSWP, the District has a maximum supply capacity of 2,167 AFY (including the remaining 500 AFY of NSWP water to serve new development demands). This excludes the 833 AFY allocation for WMWC and GSWC. Based on the existing infrastructure of the NSWP and contractual obligations, between the District and the City, this water supply source is considered 100% reliable and available during normal, single, and multiple dry year conditions.

The Santa Maria River Valley Groundwater Basin has been the subject of ongoing litigation since 1997 and is an adjudicated basin. The District signed a June 30, 2005, Stipulation in the case that was ultimately approved by the Court and incorporated into the final judgment (“Final Judgment”) that was filed on January 25, 2008. The Judgement is included in **Appendix D**. As part of the Final Judgment, the District has a voluntary pumping limit from the basin depending on the NMMA TG-defined drought levels. **Table 2-5** summarizes the District’s voluntary groundwater reduction goals per NMMA TG-defined drought levels.

Table 2-5: NMMA TG Water Shortage Response Stages		
NMMA TG-Defined Drought Levels	Groundwater Reduction Goal (%)	Available Groundwater (AF)
Stage 1	0	2,533
Stage 2	20	2,027
Stage 3	30	1,733
Stage 4	50	1,267
Stage 5	60	1,013

The District’s UWMP evaluated supply availability for five consecutive dry years for existing and future demand conditions (including the Project). To analyze worst-case supply conditions, the evaluation assumed that NMMA TG would declare a Stage 2 drought level for the first year and increase the voluntary groundwater reduction goals in subsequent years up to 60% (1,013 AFY from groundwater). **Table 2-6** provides a summary of the District’s projected supply and demand through 2045 for multiple dry years.

**Table 2-6: Multiple Dry Years Supply and Demand Comparison**

		2025	2030	2035	2040	2045
First Year (NMMA TG Stage 2)	Groundwater Supply	2,027	2,027	2,027	2,027	2,027
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	<b>Total</b>	<b>5,027</b>	<b>5,027</b>	<b>5,027</b>	<b>5,027</b>	<b>5,027</b>
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	<b>Total</b>	<b>3,127</b>	<b>3,371</b>	<b>3,438</b>	<b>3,505</b>	<b>3,573</b>
	<b>Difference (AF)</b>	<b>1,900</b>	<b>1,656</b>	<b>1,589</b>	<b>1,522</b>	<b>1,454</b>
Second Year (NMMA TG Stage 3)	Groundwater Supply	1,733	1,733	1,733	1,733	1,733
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	<b>Total</b>	<b>4,733</b>	<b>4,733</b>	<b>4,733</b>	<b>4,733</b>	<b>4,733</b>
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	<b>Total</b>	<b>3,127</b>	<b>3,371</b>	<b>3,438</b>	<b>3,505</b>	<b>3,573</b>
	<b>Difference (AF)</b>	<b>1,606</b>	<b>1,362</b>	<b>1,295</b>	<b>1,228</b>	<b>1,160</b>
Third Year (NMMA TG Stage 4)	Groundwater Supply	1,267	1,267	1,267	1,267	1,267
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	<b>Total</b>	<b>4,267</b>	<b>4,267</b>	<b>4,267</b>	<b>4,267</b>	<b>4,267</b>
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	<b>Total</b>	<b>3,127</b>	<b>3,371</b>	<b>3,438</b>	<b>3,505</b>	<b>3,573</b>
	<b>Difference (AF)</b>	<b>1,140</b>	<b>896</b>	<b>829</b>	<b>762</b>	<b>694</b>
Fourth Year (NMMA TG Stage 5)	Groundwater Supply	1,013	1,013	1,013	1,013	1,013
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	<b>Total</b>	<b>4,013</b>	<b>4,013</b>	<b>4,013</b>	<b>4,013</b>	<b>4,013</b>
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	<b>Total</b>	<b>3,127</b>	<b>3,371</b>	<b>3,438</b>	<b>3,505</b>	<b>3,573</b>
	<b>Difference (AF)</b>	<b>886</b>	<b>642</b>	<b>575</b>	<b>508</b>	<b>440</b>
Fifth Year (NMMA TG Stage 5)	Groundwater Supply	1,013	1,013	1,013	1,013	1,013
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	<b>Total</b>	<b>4,013</b>	<b>4,013</b>	<b>4,013</b>	<b>4,013</b>	<b>4,013</b>
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	<b>Total</b>	<b>3,127</b>	<b>3,371</b>	<b>3,438</b>	<b>3,505</b>	<b>3,573</b>
	<b>Difference (AF)</b>	<b>886</b>	<b>642</b>	<b>575</b>	<b>508</b>	<b>440</b>
<b>Notes:</b>						
1. Based on Table 7-4 Retail: Multiple Dry Years Supply and Demand Comparison from District's UWMP						
2. At the time the UWMP was prepared, the Project's demand estimate was 352 AFY as opposed to the currently estimated 340 AFY						

## PLAN FOR SERVICES

Based on this evaluation and the District's ongoing management of current water supplies, there are sufficient resources to serve future demands (including the Project) during multiple dry years.

### Water Distribution

The Dana W&WW Evaluation concluded that the District has sufficient supply sources to serve existing and future demand conditions, including the Project. However, through hydraulic evaluation of the existing water distribution and storage facilities it was determined that the Project will have a significant impact on those facilities. Based on the hydraulic evaluations, the following improvements were identified to address the observed system deficiencies.

- New 16-inch pipeline on North Oak Glen Avenue and Tefft Street
- North Frontage Road pipeline extension
- Willow Road end of line pipeline
- Foothill Tank site improvements
- Joshua Road Reservoir site improvements

### 2.2.3 Wastewater Collection and Treatment

The following section provides an overview of the Project wastewater flows, potential impacts to the District's existing wastewater collection, and treatment facilities.

#### Project Wastewater Flows

Projected wastewater flows for the existing District service area and Project were developed and presented in the Dana W&WW Evaluation. In that analysis, water billing records by parcel were adjusted using average 10-year water production records. These were used to develop water demand factors for each land use category, and wastewater return factors were then applied to each land use to estimate existing and future wastewater flows. All flows include a 10% contingency factor as described in the Dana W&WW Evaluation. **Table 2-7** provides an overview of the anticipated wastewater flows for the Project. As with water demand, through the planning process and change to the Project, wastewater flow increased to 267 AFY. However, this remains within the capacity evaluated.

**Table 2-7: Phased Annual Flow Increases for Dana Reserve**

Land Use Type	Acreage <sup>1</sup>	Phased Wastewater Flow Increase by Year (GPD <sup>2</sup> )							Total
		2024	2025	2026	2027	2028	2029	2030	
Single Family	149.5	14,351	20,565	28,554	25,743	23,524	10,208	-	122,945
Multi-Family	23.5	4,243	18,872	5,918	16,303	5,807	-	-	51,143
Commercial	22.3	2,163	2,163	14,422	6,201	2,163	2,163	-	29,275
Recreation/ Park	11	-	-	-	5,530	-	-	-	5,530
<b>Total</b>	<b>206.3</b>	<b>21,000</b>	<b>42,000</b>	<b>49,000</b>	<b>54,000</b>	<b>31,000</b>	<b>12,000</b>	<b>-</b>	<b>209,000</b>

**Notes:**

1. Acreage from Final EIR Table 2-3 Land Use Acreage Summary and excludes existing Residential Rural, Open Space, and Primary Roads land uses
2. GPD = gallons per day

**Table 2-8** presents the projected combined wastewater flow per year for the existing District service area, future District flows (infill development and ADUs), Blacklake Service Area, and the Project.

**Table 2-8: District and Project Future Wastewater Flow**

Land Use Type	Projected Cumulative District Wastewater Flows (GPD)						
	2024	2025	2026	2027	2028	2029	2030
Existing District and County Service Area Flows	591,246	591,246	591,246	591,246	591,246	591,246	591,246
Future District Service Area Flows	-	67,736	81,283	94,831	108,378	121,925	135,472
Future Blacklake Service Area	-	58,000	58,000	58,000	58,000	58,000	58,000
ADUs	-	5,232	6,279	7,325	8,372	9,418	10,464
<b>Subtotal</b>	<b>592,000</b>	<b>723,000</b>	<b>737,000</b>	<b>752,000</b>	<b>766,000</b>	<b>781,000</b>	<b>796,000</b>
<b>Dana Reserve Project</b>							
Single Family	14,351	34,915	63,469	89,212	112,735	122,944	122,944
Multi-Family	4,243	23,115	29,034	45,337	51,144	51,144	51,144
Commercial	2,163	4,327	18,748	24,950	27,113	29,277	29,277
Recreation/ Park	-	-	-	5,530	5,530	5,530	5,530
<b>Subtotal</b>	<b>21,000</b>	<b>63,000</b>	<b>112,000</b>	<b>166,000</b>	<b>197,000</b>	<b>209,000</b>	<b>209,000</b>
<b>Total</b>	<b>613,000</b>	<b>786,000</b>	<b>849,000</b>	<b>918,000</b>	<b>963,000</b>	<b>990,000</b>	<b>1,005,000</b>

### **Project Wastewater Collection System**

The Project will include an onsite wastewater collection system that will convey project flows to a proposed connection point at Frontage Road. Pipeline sizes are not currently identified but it is assumed all gravity pipelines will be designed and constructed in accordance with District standards. In addition, two onsite lift stations were identified to convey flow from neighborhoods 8 and 9 (near Hetrick Avenue) to the onsite collection system.

### **District Wastewater Collection System**

The District's wastewater collection system includes two separate service areas including the Town Sewer System and the Blacklake Sewer System. The District's wastewater collection system consists of ten lift stations in the Town Sewer System, three lift stations in the Blacklake Sewer System, gravity sewer mains, and the Blacklake Water Reclamation Facility (WRF) and Southland Wastewater Treatment Facility (WWTF). However, the District is currently in the process of consolidating the two systems through the Blacklake Sewer Consolidation Project to regionalize wastewater treatment at the District's Southland WWTF. The Blacklake Sewer System will be connected to the Town Sewer System through a new lift station and force main. In addition to the ten District lift stations within the Town Sewer System, flow from two County lift stations (Galaxy and People's Self Help (PSH)) discharge to the collection system. The Town Sewer System includes 30 miles of gravity collection system pipeline ranging in diameter from 6-inch to 24-inch. Based on the hydraulic evaluations, the following improvements were identified to address the observed system deficiencies.

- Connection to Dana Reserve collection area:
  - Install approximately 2,500 linear feet of 6-inch polyvinyl chloride (PVC) force main from the Dana Reserve Development lift station to Frontage Road and continue new pipeline to Camino Caballo (by Developer)
  - Install approximately 1,200 linear feet of 12-inch PVC gravity sewer pipeline and new manholes on Frontage Road (by Developer)
- Sanitary sewer lift station for Dana Reserve Development (by Developer)
- Replace existing 10-inch with 3,500 linear feet (LF) of 15-inch PVC sewer main and manholes between Juniper Street and Grande Avenue (in progress by District)
- Replace existing 12-inch with 1,170 LF of 18-inch PVC sewer main and manholes between Grande Avenue and Division Street (in progress by District)

The hydraulic analysis in the Dana W&WW Evaluation concluded the Frontage Road sewer improvements should be implemented as soon as possible to meet existing system flows. The gravity sewer pipeline sizes were selected to meet future flow conditions including buildout of the Project.

**Treatment Facility**

The Dana W&WW Evaluation concluded that the Project will have a significant impact on the District’s Southland WWTF. Additionally, the Central Coast Regional Water Quality Control Board (RWQCB) has notified the District that the Southland WWTF will be enrolled under General Waste Discharge requirements for Discharges from Domestic Wastewater Systems with Flows Greater than 100,000 gallons per day (Order No. R3-2020-0020). Recommended projects to meet current and future regulatory requirements with the addition of the Project loading are listed in **Table 2-9**.

Table 2-9: Summary of Southland WWTF Evaluation		
Process	Summary of Findings	Recommendations to Meet Existing Demands with Dana Reserve
Influent Lift Station	Capacity is adequate for existing conditions	Install a third pump, sized the same as existing
Influent Screen	Capacity is adequate for existing flowrates	–
Grit Removal	Capacity is adequate for existing conditions	Install second grit system
Extended Aeration Basins	Additional basins required	Install Aeration Basin #2 to meet current capacity requirements. Install Aeration Basin #3 to meet anticipated permit requirements. Expand blower system as needed
Secondary Clarifiers	Overflow rate is adequate for existing conditions. Peak solids loading rate is exceeded at existing demands with Dana Reserve	Install third clarifier for redundancy. Upgrade Return Activated Sludge (RAS) pumping system
Gravity Belt Thickener (GBT)	Additional operating hours will be necessary to meet existing demands with Dana Reserve. No redundancy is available if the single GBT fails	Install second GBT
Dewatering Screw Press	Additional press required to meet combined loading	Install second screw press

**2.3 Timing to Extend Services**

The Project will be a multiuse neighborhood encompassing 288 acres of currently undeveloped land and will include up to 1,370 residential units, 4.7 acres of commercial development, and 10.1 acres of recreational land use. The proposed project phasing is shown in **Figure 2-1**.

Figure 2-1: Project Phasing Plan (2024 Specific Plan)



The proposed phasing plan for the project is shown in **Table 2-10**. Residential units have been grouped as single-family, clustered single-family, or multi-family with commercial and park areas grouped by type.

Table 2-10: Anticipated Dana Reserve Specific Plan Construction Schedule							
Land Use	2024	2025	2026	2027	2028	2029	Total
<b>Residential Single-Family Units - DR-SF1<sup>1,2</sup></b>							
NBD <sup>3</sup> - 4	24	24	24	–	–	–	72
NBD - 5	–	10	20	25	24	25	104
NBD - 6	–	–	24	24	30	36	114
NBD - 7	31	31	31	31	33	–	157
NBD - 8	12	12	12	12	14	–	62
NBD - 9	30	40	40	40	40	8	198
<b>Subtotal</b>	<b>97</b>	<b>117</b>	<b>151</b>	<b>132</b>	<b>141</b>	<b>69</b>	<b>707</b>
<b>Residential Single-Family (Cluster) Units - DR-SF2<sup>4</sup></b>							
NBD - 3	–	22	42	42	18	–	124
<b>Subtotal</b>	<b>0</b>	<b>22</b>	<b>42</b>	<b>42</b>	<b>18</b>	<b>0</b>	<b>124</b>
<b>Residential Multi-Family - DR-MF<sup>5</sup></b>							
NBD - 1	–	80	–	93	–	–	173
NBD - 2	–	52	53	53	52	–	210
NBD - 10	38	37	–	–	40	41	156
<b>Subtotal</b>	<b>38</b>	<b>169</b>	<b>53</b>	<b>146</b>	<b>92</b>	<b>41</b>	<b>539</b>
<b>Total Residential</b>	<b>135</b>	<b>308</b>	<b>246</b>	<b>320</b>	<b>251</b>	<b>110</b>	<b>1,370</b>
<b>Flex Commercial Square Footage - DR-FC<sup>6</sup></b>							
Hotel	–	–	60,000	–	–	–	60,000
Education	–	–	–	–	15,000	15,000	30,000
Retail (Village & Flex)	15,000	15,000	40,000	43,000	–	–	113,000
<b>Total Commercial</b>	<b>15,000</b>	<b>15,000</b>	<b>100,000</b>	<b>43,000</b>	<b>15,000</b>	<b>15,000</b>	<b>203,000</b>
Public Neighborhood Park	–	–	–	435,600	–	–	435,600
<b>Notes:</b>							
1. Unit values based on 2024 Dana Reserve Specific Plan including an increase in the number of proposed deed-restricted affordable housing units from 104 to 156 in Neighborhoods 10A and 10B							
2. DR = density residential; SF1 = Single Family 1							
3. NBD = neighborhood							
4. SF2 = Single Family 2							
5. MF = multi-family							
6. FC = flex commercial							

Since the development schedule is expected to vary from what was originally proposed by the developer, it is recommended that milestones be set for completion of water and wastewater improvements based on the number of residential units. Since residential water demand represents over 86% of the total demand, using residential units to establish milestones for project completion as opposed to years allows District staff to set measurable milestones. Although multi-family residential units are anticipated to have a higher water demand than residential units, District staff intend to use the total number of residential units as "triggers" for project implementation. Differences between water demands among types of residential development will be considered by District staff when scheduling projects, particularly if multi-family development significantly outpaces residential development. **Table 2-11** correlates projected total number of single and multi-family units with total water demand and wastewater flow for the development according to the proposed construction schedule.

Table 2-11: Correlation Between Residential Development and Anticipated Demands/Flows for the Project							
Land Use Type	Cumulative Development <sup>1</sup>						
	2024	2025	2026	2027	2028	2029	2030
Single-Family Residential Units	97	236	429	603	762	831	831
Multi-Family Residential Units	38	207	260	406	498	539	539
<b>Total Residential Units<sup>2</sup></b>	<b>135</b>	<b>443</b>	<b>689</b>	<b>1,009</b>	<b>1,260</b>	<b>1,370</b>	<b>1,370</b>
Cumulative Demand (AF) <sup>3</sup>	47	99	166	241	280	340	340
Cumulative Flow (GPD) <sup>4</sup>	21,000	63,000	112,000	166,000	197,000	209,000	209,000
<b>Notes:</b> <ol style="list-style-type: none"> <li>1. Planned cumulative residential units per annum from developer construction schedule</li> <li>2. Unit values based on 2024 Dana Reserve Specific Plan</li> <li>3. Total estimated annual water demand calculated from <b>Table 2-2</b></li> <li>4. Total estimated annual wastewater flows calculated from <b>Table 2-8</b></li> </ol>							

## 2.4 Improvements Required

The following identifies the water distribution, wastewater collection, and wastewater treatment improvements that will be required to serve the Project.

### 2.4.1 Water Distribution System, Wastewater Collection, and Treatment Improvements

Major water transmission and storage projects were recommended for implementation prior to completion and occupancy of the first residential unit due to the need for fire flow, emergency storage, and redundant water supply to the project. Several projects will need to be initiated as soon as possible after the annexation agreement is approved in order to address the proposed development schedule. Based on the Dana Reserve Development Phasing Study – Revised Figures for Annexation Agreement (MKN, May 2024), an updated schedule for implementation of the required water and wastewater improvements was developed. The implementation schedule will be initiated upon the effective date of the annexation agreement between the District and the Project Developer. The schedule is organized according to months from completion of the annexation agreement. Updates made as an adaptation to the original Dana Reserve Development Phasing Study (MKN, March 2024) included the following:

- Wastewater projects have been organized into two major phases:
  - o Requiring completion prior to the first residential unit
  - o Requiring completion prior to Unit 1,009
- Wastewater Project 6 has been separated into Projects 6A and 6B, for each aeration basin respectively
- The District will need to complete Wastewater Project 6A – Extended Aeration Basin No. 2 prior to completion of the first residential unit
- The District will need to complete the following projects prior to completion of Unit 1,009:
  - o Wastewater Project 6B – Extended Aeration Basin No. 3

- Wastewater Project 8 – GBT
- Wastewater Project 9 – Dewatering Screw Press

Table 2-12 provides an overview of the water distribution system, wastewater collection, and treatment improvements required to serve the Project.

Table 2-12: Required Water and Wastewater Improvements for the Project					
Project	Complete Units to Initiate Construction	Engineering, Administration, & Construction Management	Construction	Contingency	Total
<b>Water Distribution System Improvement Projects</b>					
Project 1	Prior to First Unit	\$800,000	\$2,640,000	\$800,000	<b>\$4,240,000</b>
Project 2	Prior to First Unit	\$280,000	\$930,000	\$280,000	<b>\$1,490,000</b>
Project 4	Prior to First Unit	Developer Funded			
Project 6	Prior to First Unit	To Be Financed Separately by District			
Project 5	Prior to Unit 689	\$1,650,000	\$5,470,000	\$1,650,000	<b>\$8,770,000</b>
Project 7	Prior to Unit 1,000	\$1,360,000	\$4,500,000	\$1,180,000	<b>\$7,040,000</b>
<b>Water Projects Subtotal</b>		<b>\$4,090,000</b>	<b>\$13,540,000</b>	<b>\$3,910,000</b>	<b>\$21,540,000</b>
<b>Wastewater Collection System Improvement Projects</b>					
Project 2A	Prior to First Unit	Developer Funded			
Project 2B	Prior to First Unit	Developer Funded			
Project 3		In Progress – District Funded			
<b>Wastewater Treatment Improvement Projects</b>					
Project 4	Prior to First Unit	\$20,000	\$60,000	\$20,000	<b>\$100,000</b>
Project 6A	Prior to First Unit	\$610,000	\$2,020,000	\$610,000	<b>\$3,240,000</b>
Project 5	Prior to Unit 1,009	\$210,000	\$650,000	\$210,000	<b>\$1,070,000</b>
Project 6B	Prior to Unit 1,009	\$650,000	\$2,180,000	\$650,000	<b>\$3,480,000</b>
Project 7	Prior to Unit 1,009	\$910,000	\$3,020,000	\$910,000	<b>\$4,840,000</b>
Project 8	Prior to Unit 1,009	\$270,000	\$880,000	\$270,000	<b>\$1,420,000</b>
Project 9	Prior to Unit 1,009	\$500,000	\$1,620,000	\$500,000	<b>\$2,620,000</b>
<b>Wastewater Projects Subtotal</b>		<b>\$3,170,000</b>	<b>\$10,430,000</b>	<b>\$3,170,000</b>	<b>\$16,770,000</b>
<b>Notes:</b>					
1. All costs rounded to nearest \$10,000					
2. Cost values shown based on Table 6-2 from Dana Reserve Development Phasing Study – Revised Figures for Annexation Agreement (MKN, May 2024)					

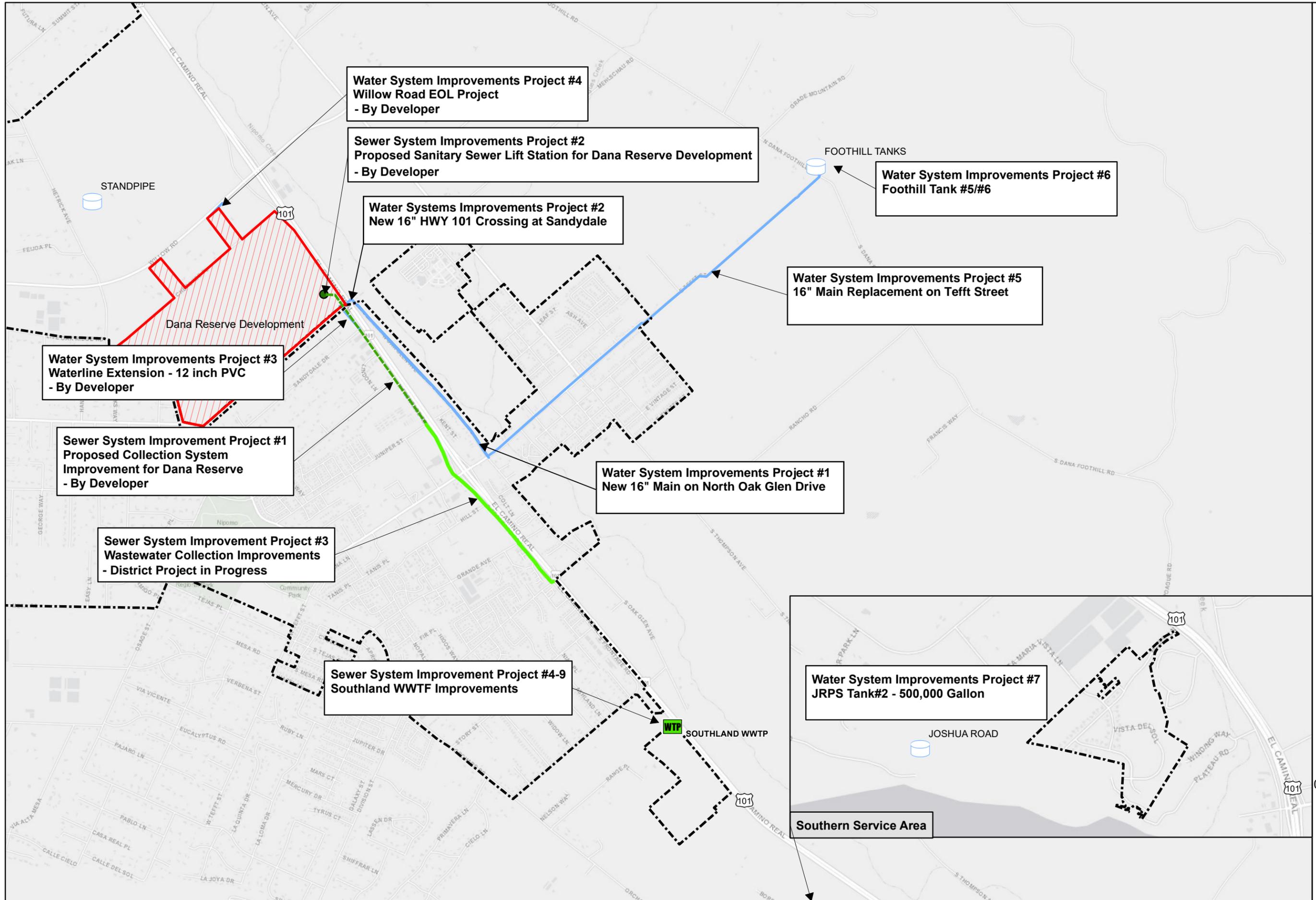
Figure 2-2 identifies the location and extent of the required water distribution, wastewater collection, and wastewater treatment improvement projects.

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**Nipomo Community Services District**  
**Plan for Services**  
**Dana Reserve Specific Plan**

**Figure 2-2**  
Required Water and Wastewater Improvements Map



**Water System Improvements Project #4**  
**Willow Road EOL Project**  
**- By Developer**

**Sewer System Improvements Project #2**  
**Proposed Sanitary Sewer Lift Station for Dana Reserve Development**  
**- By Developer**

**Water Systems Improvements Project #2**  
**New 16" HWY 101 Crossing at Sandydale**

**Water System Improvements Project #6**  
**Foothill Tank #5/#6**

**Water System Improvements Project #5**  
**16" Main Replacement on Tefft Street**

**Water System Improvements Project #3**  
**Waterline Extension - 12 inch PVC**  
**- By Developer**

**Sewer System Improvement Project #1**  
**Proposed Collection System Improvement for Dana Reserve**  
**- By Developer**

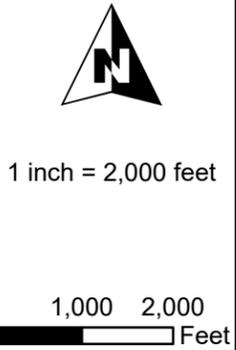
**Water System Improvements Project #1**  
**New 16" Main on North Oak Glen Drive**

**Sewer System Improvement Project #3**  
**Wastewater Collection Improvements**  
**- District Project in Progress**

**Sewer System Improvement Project #4-9**  
**Southland WWTF Improvements**

**Water System Improvements Project #7**  
**JRPS Tank#2 - 500,000 Gallon**

**Southern Service Area**



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## 2.5 Services Financing

Over 60% of the investment for water and wastewater improvements to serve the Project and approximately 30% completion of recommended projects will be required prior to completion of the first unit within the development. Major capital improvement projects will be funded by the Project developer through capacity charges collected by the District. As identified in the Water and Wastewater Rate Impact Analysis Study (Tuckfield & Associates, May 2022) prepared for the District, water supply for the Project will be from the NSWP which consists of a higher water rate as compared to the District's groundwater supply. These rates will cover the cost of operating and maintaining the water system. In addition, the customer base expansion will benefit the entire District service area as developed parcels will contribute to the debt service of NSWP capital costs. The same study (Tuckfield & Associates in May 2022) included a cost allocation analysis, demonstrating that the current water rates for the District will yield positive benefits.

As identified in the Water and Wastewater Rate Impact Analysis Study (Tuckfield & Associates, May 2022), the Project customers will be merged into the existing District wastewater customer base. Since most of the costs for wastewater treatment are fixed, the addition of the Project customers will also have a positive benefit on the District's existing wastewater rates.

### 2.5.1 Water Improvements

Major water transmission and storage projects were recommended for implementation prior to completion and occupancy of the first residential unit due to the need for fire flow, emergency storage, and redundant water supply to the project. Several projects will need to be initiated as soon as possible after the annexation agreement is approved in order to address the proposed development schedule. The project will not affect the rates of the existing customers during the interim period between construction and build-out. It is important to note that these benefits to the existing customer base will not be realized fully until project build-out.

What will affect the existing customers rates is the increase in supplemental water supply from 1,000 acre-feet per year to 2,500 acre-feet per year starting July 1, 2025. The cost for this increase in supplemental water supply will be paid by the existing customers split among the District (2/3 of the cost), Golden State Water Company, and Woodlands Mutual Water Company (1/3 of the cost). This additional supplemental water supply will be delivered, and the District will incur its cost regardless of whether the project gets built or not. The increase in the customer base resulting from the annexation will benefit the District customers by distributing the cost over this overall larger customer base, but the full benefits will only be realized upon full build-out.

## PLAN FOR SERVICES

### **Developer-Required Improvements**

The developer will need to complete, at the developer's expense and as part of onsite improvements prior to completion of the first residential unit, the following projects:

- Water Project 3 – Frontage Road Extension
- Water Project 4 – Willow End of Line (EOL) Connection

### **District-Required Improvements**

The District will need to complete, subject to developer-providing funding and prior to completion of the first residential unit, the following projects:

- Water Project 1 – New 16-inch Main on North Oak Glen Avenue
- Water Project 2 – New 16-inch US 101 Crossing at Sandydale Drive
- Water Project 6 – Foothill Tank Improvements

The District will need to complete, subject to developer-providing funding, the following projects prior to completion of Unit 689:

- Water Project 5 – 16-inch Main Replacement on Tefft Street

The District will need to complete, subject to developer-providing funding, the following projects prior to completion of Unit 1,000:

- Water Project 7 – 500,000-gallon Tank at Joshua Road Pump Station

### 2.5.2 Wastewater Improvements

Major wastewater collection and treatment improvements are also necessary to provide wastewater service. Several projects will need to be initiated as soon as possible after the annexation agreement is approved to address the proposed development schedule.

Wastewater Project 3 (Frontage Road Trunk Sewer Replacement) is already in design and needs to be completed prior to completion of the first residential unit.

### **Developer-Required Improvements**

The developer will need to complete, at the developer's expense and as part of onsite improvements prior to completion of the first residential unit, the following projects:

- Wastewater Project 1 – Frontage Road Sewer Extension
- Wastewater Project 2 – Dana Reserve Development Lift Station

### District-Required Improvements

The District will need to complete, subject to developer-providing funding and prior to completion of the first residential unit, the following projects:

- Wastewater Project 4 – Influent Lift Station
- Wastewater Project 6A – Extended Aeration Basin No. 2

Additionally, the following projects will need to be completed prior to completion of Unit 1,009:

- Wastewater Project 5 – Grit Removal
- Wastewater Project 6B – Extended Aeration Basin No. 3
- Wastewater Project 7 – Secondary Clarifier
- Wastewater Project 8 – GBT
- Wastewater Project 9 – Dewatering Screw Press

**Appendix E** includes a comprehensive implementation phasing schedule for the water and wastewater improvements required to serve the Project.

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# Appendix A: South County Sanitary Services Will Serve Letter

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- SAN LUIS GARBAGE
- SOUTH COUNTY SANITARY
- MISSION COUNTRY DISPOSAL
- MORRO BAY GARBAGE



*Safety • Integrity • Service*

June 5, 2024

Raymond Dienzo, P.E.

General Manager

Nipomo Community Services District

P.O. Box 326

Nipomo, California 93444

RE: Solid Waste, Recyclable Materials, and Organic Materials Collection - Dana Reserve Annexation

Dear Mr. Dienzo:

At your request, this letter is intended to contribute to the “Plan for Service” being prepared by the Nipomo Community Services District (“NCSD”) for the possible annexation of property into the NCSD boundaries. As you know, NCSD and South County Sanitary Services, Inc. (SCSS) are parties to that certain Amended and Restated Solid Waste, Recycle Materials, and Organic Materials Collection Franchise Agreement between NCSD and South County Sanitary Services, Inc. August 27, 2008, and as most recently amended by that Second Amendment dated November 1, 2022 (collectively, the Agreement) Pursuant to the Agreement, SCSS is NCSD’s exclusive franchisee for, among other things, solid waste and recyclables collection and processing/disposal within the NCSD boundaries.

The proposed annexation is the Dana Reserve Specific Plan project (“DRSP”), a 288 acre planned community currently outside the NCSD’s boundaries, which is largely undeveloped. Under Section 2.4 of Agreement, the franchise area subject to the Agreement “shall automatically extend” to any area annexed to the District. Because the DRSP property is largely undeveloped, there is solid waste provider franchised by the county of San Luis Obispo currently providing service. As such, the parties’ existing Agreement would automatically extend to the DRSP property if the annexation is approved.

Upon certain operational conditions, including safety and accessibility of SCSS’s personnel, vehicles, and equipment - SCSS is prepared to provide solid waste, recyclable materials, and organic materials collection services to the residences and businesses that would be built under the DRSP if the annexation moves forward.

Sincerely,

Jeff Clarin

District Manager

South County Sanitary Services

805-748-8041

Jeffrey.Clarin@Wasteconnections.com

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# Appendix B: Wholesale Water Supply Agreement

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**RESOLUTION NO. 2013-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SANTA MARIA, CALIFORNIA, APPROVING A  
WHOLESALE WATER SUPPLY AGREEMENT WITH  
NIPOMO COMMUNITY SERVICES DISTRICT**

**WHEREAS**, on September 7, 2004, the City Council entered into a Memorandum of Understanding with Nipomo Community Services District ("NCSD") to define the terms under which the City of Santa Maria ("City") and NCSD would negotiate for NCSD to purchase supplemental water from the City; and

**WHEREAS**, on June 30, 2005, a majority of the parties in the Santa Maria Groundwater Litigation, including the City and NCSD, entered into a Stipulated Agreement ("Stipulation"); and

**WHEREAS**, on June 25, 2008, the Superior Court of California (Santa Maria Groundwater Litigation Lead Case No. 1-97-CV-770214) entered into a judgment incorporating the Stipulation; and

**WHEREAS**, on January 5, 2010, the City Council adopted a statement of overriding consideration and made findings of consistency regarding the Final Environmental Impact Report on Resolution 2010-04; and

**WHEREAS**, on January 5, 2010, the City Council approved a Wholesale Water Supply Agreement ("Agreement") for the sale and delivery of supplemental water by the City to NCSD on Resolution 2010-04; and

**WHEREAS**, on May 9, 2012, the NCSD failed to achieve votes necessary to form an Assessment District to acquire approximately \$30 million in funding to construct infrastructure to deliver the quantities of water specified in the initial Agreement; and

**WHEREAS**, the NCSD desires to construct an interim project to deliver quantities of water greatly reduced from the original project, thereby reducing delivery capacity; and

**WHEREAS**, the City and NCSD wish to revise the initial Agreement, notably to modify the Minimum Takedown Schedule (i.e. Quantity) to reflect the reduced delivery capacity, and to modify renegotiation language; and

**WHEREAS**, the proposed revision to the initial Agreement was approved by the NCSD Board of Directors at their regular meeting on Wednesday, April 24, 2013; and

**WHEREAS**, all other terms in the Agreement approved on Resolution 2010-04 remain the same.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the City of Santa Maria as follows:

- 1.) Authorize and direct the Director of Utilities to enter into a new Wholesale Water Supply Agreement with Nipomo Community Services District, hereto attached as Exhibit "A" and made a part of this resolution; and
- 2.) Authorize and direct the Director of Utilities, or his designee, to enter into extensions and modifications to the Agreement, consistent with the terms of the Agreement, in order to carry out the project.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Santa Maria, California, held this 7<sup>th</sup> day of May 2013.

**/s/ ALICE M. PATINO**

\_\_\_\_\_  
Mayor

ATTEST:

**/s/ RHONDA M. GARIETZ, CMC**

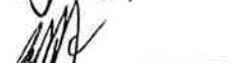
\_\_\_\_\_  
Chief Deputy City Clerk

APPROVED AS TO FORM

  
\_\_\_\_\_  
Sr. Ass. City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Department Head

## WHOLESALE WATER SUPPLY AGREEMENT

This Wholesale Water Supply Agreement ("Agreement") is made and entered into as of May 7, 2013, by and between the **CITY OF SANTA MARIA ("City")**, a California municipal corporation and charter City, and **NIPOMO COMMUNITY SERVICES DISTRICT ("NCSD")**, an independent special district formed under and pursuant to Section 61000, *et seq.* of the California Government Code. City and NCSD are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

### RECITALS

**WHEREAS**, the City provides retail potable water service to customers within its service area in the Santa Maria Valley, in northern Santa Barbara County. The City holds a contract with the Central Coast Water Authority to receive water from the State Water Project ("SWP"). City also holds rights to recharge from Twitchell Reservoir and rights to pump groundwater from the Santa Maria Groundwater Basin ("Santa Maria Basin"); and

**WHEREAS**, NCSD provides retail potable water service and sewer service within its established boundaries located in and around the Nipomo Mesa Management Area ("NMMA") of the Santa Maria Basin; and

**WHEREAS**, both the City and the NCSD are Parties to a certain groundwater adjudication lawsuit commonly referred to as the Santa Maria Groundwater Litigation (Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.; Superior Court of California, County of Santa Clara Case no. 1-97-CV-770214) (referred to herein as "Basin Litigation"). On August 3, 2005, the Court approved a Settlement Stipulation (referred to herein as "Stipulation") that was signed by the Parties, related to the Basin Litigation which, among other things, provides that "the NCSD and City shall employ their best efforts to timely implement the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for administrative action and in the California Environmental Quality Act." The Stipulation was later incorporated into the final Judgment; and

**WHEREAS**, on a long term basis, City has water available for use in the NMMA that is surplus to that needed to serve City's current and long-term future anticipated demands; and

**WHEREAS**, pursuant to the Stipulation, NCSD seeks to acquire a Supplemental Water supply (referred to herein as "Supplemental Water") to alleviate pressure on the NMMA from groundwater pumping and to meet current needs and projected demands of NCSD customers; and

**WHEREAS**, consistent with the Stipulation and Judgment, and subject to the terms and conditions of this Agreement, City is willing to sell and deliver to NCSD an established quantity of Supplemental Water on a wholesale basis.

**NOW THEREFORE**, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Purpose.** Consistent with the Stipulation and Judgment, the purpose of this Agreement is to formalize the terms and conditions by which City will provide Supplemental Water to NCSD, including an equivalent amount of capacity in City's water distribution system, for delivery to the NCSD water distribution system through the interconnection described in Paragraph 9, beginning on the Effective Date and continuing each year thereafter for as long as this Agreement remains in effect.

2. **Termination of MOU and Original Wholesale Water Supply Agreement.** City and NCSD executed a Memorandum of Understanding ("MOU") on September 7, 2004, to provide for the reservation of a Supplemental Water supply of up to three thousand (3,000) acre-feet per year ("AFY") in anticipation of the negotiation of the original Wholesale Water Supply Agreement ("Original Agreement"), executed on January 5, 2010. This Agreement shall supersede the terms of the MOU and Original Agreement, which shall terminate and be of no further force or effect. The initial reservation payment of \$37,500 made upon execution of the MOU has already been credited by City to the first quarterly invoice for water delivery pursuant to Paragraph 8.

3. **Term of Agreement.**

(a) **Contract Term.** The term of the Agreement shall commence on the Effective Date and end on June 30, 2085 ("Term"). Notwithstanding the Term, the delivery of Supplemental Water pursuant to this Agreement during any period on or after June 30, 2035, shall be subject to the renewal of the contract between the City and Central Coast Water Authority for SWP water. Furthermore, the terms of this Agreement shall be subject to renegotiation as described below in the event that the SWP contract or any subsequent SWP contract is not renewed or is renegotiated by the City and Central Coast Water Authority prior to June 30, 2035, and the terms of such renegotiation or renewal either (i) substantially impair the ability of City to continue to provide Supplemental Water in the quantities set forth in this Agreement; or (ii) the cost of continuing to provide Supplemental Water pursuant to the terms of this Agreement would create a significant financial burden on the City. In no event shall the City be required to deliver Supplemental Water at a financial loss following June 30, 2035, or in the event of a change in price due to a renegotiation occurring prior to June 30, 2035, as described in the foregoing sentence. Upon the occurrence of one of the foregoing events and within thirty (30) days of a written request from City to NCSD requesting renegotiation, the Parties shall negotiate in good faith and use their best efforts to equitably amend the terms of this Agreement to allow for the continued delivery of Supplemental Water on terms that are mutually beneficial to the Parties for the duration of the Term. The parties will meet in good faith in 2085 to determine whether to extend the term of the Agreement.

(b) **Dispute Resolution.** In the event of a dispute as to whether clause (i) and/or (ii) of Paragraph 3(a) have been triggered as a result of the renegotiation or non-renewal of the SWP contract, then such dispute shall be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. If a final finding is made as a result of such dispute resolution procedure that clause (i) and /or clause (ii) have been triggered, then the Parties shall negotiate in good faith pursuant to Paragraph 3(a). If the Parties cannot agree on the terms and conditions for equitably amending the terms of this

Agreement to address a substantial impairment pursuant to clause (i) of Paragraph 3(a), then whether or not there is a feasible solution to address such substantial impairment may also be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. Notwithstanding the foregoing, the allocation of cost and/or any revision in the price of Supplemental Water to implement a solution or address the existence of an impairment or significant financial burden as set forth in Paragraph 3(a) shall be solely determined by the Parties on mutually acceptable terms and the dispute resolution procedure shall have no authority to order or impose any change with respect to such terms.

(c) **Effective Date.** The "Effective Date" shall mean the date that the NCSD interconnection described in Paragraph 9 has been completed and approved by City's technical staff as operationally ready for commencement of delivery of Supplemental Water.

(d) **Delivery Year.** Each "Delivery Year" shall commence on the Effective Date and any anniversary thereof during the Term and continue for a period of one (1) year.

#### **4. Quantity of Supplemental Water.**

(a) **Minimum Delivery.** In each Delivery Year during the Term of this Agreement, City shall deliver and NCSD shall purchase the following minimum quantity of Supplemental Water ("Minimum Quantity"):

<u>Delivery Years</u>	<u>Minimum Delivery Volume (AFY)</u>
1	645
2-5	800
6-10	1,000
11-Term	2,500

Any portion of the Minimum Quantity of Supplemental Water that is available for delivery by City in accordance with the mutually agreeable to delivery schedule referenced in Paragraph 9(e) and that is not taken by NCSD during a given Delivery Year shall be forfeit and shall not roll over to the next year. In the event that City, in its sole and absolute discretion, agrees to deliver unused Supplemental Water in a subsequent Delivery Year, such late delivery shall be an accommodation to NCSD and shall not constitute a waiver or amendment to the terms of this Agreement.

(b) **Additional Delivery.** NCSD may request delivery of Supplemental Water in excess of the Minimum Quantity up to an additional thirty-two hundred (3,200) acre feet per year. NCSD shall give City no less than thirty (30) days written notice of its desire to purchase additional Supplemental Water and the proposed schedule for such delivery. City shall make a good faith effort to comply with such request subject to (i) the availability of excess Supplemental Water from sources used for delivery of water to City's retail customers; and (ii) sufficient delivery capacity to fulfill such request at the NCSD interconnection using the City's existing water distribution system. Any such additional Supplemental Water shall be purchased and delivered on the same terms as the Minimum Quantity, provided, however, that if the cost of procuring and delivering

additional Supplemental Water exceeds the cost of delivering the Minimum Quantity, City shall have the right to impose a surcharge to compensate City for such additional cost as a condition to delivery. City shall notify NCSD of the amount of any such surcharge prior to delivery of any additional Supplemental Water and NCSD shall have the right to withdraw its request. In no event shall City be required to undertake any capital cost or expansion of its existing infrastructure to provide additional Supplemental Water.

5. **Reservation of Minimum Quantity**. Subject to the terms and conditions of this Agreement, City shall hold on reserve sufficient Supplemental Water each year, including an equivalent amount of capacity in City's water distribution system, for City to fulfill its obligation to deliver the Minimum Quantity to NCSD under this Agreement. City shall deliver such Supplemental Water to NCSD from sources used to provide water to City's retail customers. Notwithstanding the foregoing, during the term of the Agreement, City may substitute or combine new or additional replacement sources of water for the source of Supplemental Water, provided, however, that any substitute, combined or additional sources must be equivalent in deliverability, reliability, quality, pressure, and environmental impacts to the source being replaced. Disputes regarding this Paragraph shall be resolved pursuant to Paragraph 19.

6. **Purchase Price for Supplemental Water**. The purchase price for Supplemental Water delivered by City to NCSD shall be based on the "Base Rate" of the City's Water Consumption Rates. For fiscal year 2012-13, the Base Rate is two dollars and ninety seven cents (\$2.97) per one hundred (100) cubic feet of water (or \$1,293.73 per acre-foot of water). The Base Rate may be adjusted each fiscal year subject to approval by the City Council, consistent with applicable legal requirements. Any such adjustment in the purchase price shall go into effect in the next quarterly billing period.

7. **Costs of Delivery**. Except as expressly set forth in this Agreement, City shall be responsible for all costs and expenses related to providing Supplemental Water to NCSD at the NCSD interconnection pursuant to this Agreement. Notwithstanding the foregoing, the purchase price for Supplemental Water includes a cost component for energy costs incurred by City to supply Supplemental Water to the NCSD interconnection equal to two hundred and six dollars and eighty five cents (\$206.85) per acre foot ("Base Energy Cost"). In the event that the actual cost of energy incurred by City to supply Supplemental Water in any Delivery Year exceeds the Base Energy Cost, then City shall have the right to charge NCSD a premium equal to the difference between the actual cost and the Base Energy Cost. The Base Energy Cost shall be adjusted each Delivery Year by a percentage which is equivalent to fifty (50) percent of the increase or decrease, if any, in the Consumer Price Index-Energy Services (Electricity and Natural Gas)-Los Angeles-Riverside-Orange County or any successor index.

8. **Payments for Supplemental Water**. City shall bill NCSD on a quarterly basis in arrears for Supplemental Water delivered to NCSD's interconnection during the previous three (3) months. The amount payable by NCSD to City shall be based on the total quantity in acre-feet of Supplemental Water delivered during the quarter just ended multiplied by the then-current purchase price (as determined in Paragraph 6), plus any costs payable by NCSD pursuant to this Agreement. Notwithstanding the foregoing, to the extent that NCSD has taken less than the Minimum Quantity as of the final quarterly billing

for a Delivery Year, City shall bill NCSD for the remainder of the Minimum Quantity whether or not such Supplemental Water has been delivered, provided that such water was made available for delivery to NCSD as provided in Paragraph 9. All invoices billed to NCSD shall be payable within thirty (30) days of the invoice date, provided that no charges are disputed. City shall have the right to charge late fees of up to five (5) percent of the overdue amount for any invoice that is not paid within such period. In the event NCSD disputes any charges on an invoice, the undisputed amount shall be paid consistent with this Paragraph and the original invoice shall be returned to City for correction and resubmission. If the parties are unable to reach an agreement regarding disputed charges, disputes shall be resolved pursuant to Paragraph 19.

#### **9. Delivery of Water.**

(a) **Point of Delivery.** The physical point of delivery of Supplemental Water pursuant to this Agreement shall be the proposed interconnection between the City water distribution system and the NCSD water distribution system located at Taylor Street and Blosser Road or such other alternative location as may be approved by City and NCSD. All facilities constructed by NCSD will be used solely for the purpose of delivering Supplemental Water to NCSD. NCSD shall cooperate with the reasonable requests of City with respect to taking any action necessary to preserve the integrity of the City's water distribution system and the City shall do likewise for NCSD. The operation and maintenance of the NSCD Interconnection will be detailed in an Operation Memorandum of Understanding that will be approved by the City and NCSD prior to connection. City shall waive any fees for City permits related to construction of facilities for delivery of the water. If the parties cannot agree on the terms of the Operations Memorandum of Understanding then the disputed terms will be subject to the dispute resolution procedures referenced in Paragraph 19 of this Agreement.

(b) **Facilities.** NCSD shall be responsible for designing, constructing and operating the NCSD interconnect. The plans and specifications of the NCSD interconnect shall be subject to prior approval by City, which approval shall not unreasonably be withheld provided that such plans and specifications conform to applicable code provisions and any technical requirements imposed for connections to the City's water distribution system. NCSD shall also be responsible for obtaining any and all regulatory and environmental permits, licenses or other approvals necessary to construct and operate the NCSD interconnection. NCSD and/or any contractor working on the NCSD interconnect shall provide insurance coverage naming the City as an additional insured and the scope of such insurance coverage shall be subject to the reasonable approval of City's Risk Manager prior to commencement of any work.

(c) **Construction, Regulatory/Permit and Other Costs.** NCSD shall be solely responsible for all costs related to the construction and operation of the NCSD interconnection with City's retail water distribution system. NCSD shall also be solely responsible for all regulatory and/or permit compliance and costs with respect to the NCSD interconnection.

(d) **City Streets: License to Use Easements and Rights of Way.** The City shall provide NCSD a license, at no additional cost, to use such portions of City streets,

easements, and right of ways as are reasonably necessary to build the NCSD interconnect and deliver the Supplemental Water to NCSD. Such license shall be non-revocable during the Term of this Agreement and shall automatically terminate upon the termination of this Agreement. The foregoing licenses shall not include the right of NCSD to make any alteration or improvement within such City streets, easements and rights of way except in compliance with Paragraph 9.

(e) **Delivery Schedule.** City will deliver the Supplemental Water to NCSD at the NCSD interconnection upon a mutually agreeable delivery schedule. The volume of delivery to the NCSD interconnection shall not exceed a maximum of two hundred seventy-five (275) acre-feet per month or a peak hour flow averaging twenty-five hundred (2,500) gallons per minute. Delivery pressure at the point of connection shall exceed sixty (60) psi during City's normal system operation, not including emergencies or incidents described in Paragraph 9(f). Before delivery begins, the District and City shall agree to an Operation Memorandum of Understanding (OMOU) to describe the specific procedures and limitation on the operations provided for in this Agreement.

(f) **Force Majeure.** If by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, or state, order, rule, or regulation, the City is prevented, in whole or in part, from the delivery of the Supplemental Water to NCSD, as provided herein, then City may reduce delivery of Supplemental Water up to the same percentage the City reduces water delivery to its retail customers.

(g) **Suspension.** The delivery of water may be suspended or curtailed during any period of public emergency or disaster that is declared by City. For the purposes of this Agreement, a public emergency or disaster shall not include ordinary measures taken during periods of drought or water shortage.

(h) **Obligations of City.** For the purposes of this Agreement and subject the limitations contained in this Paragraph 9, City shall have fulfilled its obligation to make Supplemental Water available for delivery so long as the amount of Supplemental Water purchased by NCSD is available at the NCSD interconnection for NCSD to take delivery of pursuant to a predetermined and mutually agreed upon delivery schedule.

10. **Water Quality.** City shall be responsible for ensuring that the quality of the Supplemental Water made available for delivery is of the same pressure and quality of water that City delivers to its residential customers. The quality of water which is delivered by the City to its residents complies with federal, state and local laws, regulations and permit requirements which are applicable to City, including standards applicable to wastewater discharge, as amended from time to time and subject to any compliance waiver granted to the City ("Quality Standards"). City shall provide NCSD with a copy of the Quality Standards (and any change thereto) which are applicable to City and NCSD shall be solely responsible for ensuring that the Quality Standards meet the federal, state and local laws, regulations and permit requirements for potable water delivery by NCSD to its customers, including the discharge of such water. To the extent that the quality standards which are applicable to NCSD exceed the Quality Standards, then NCSD shall be responsible for any necessary additional treatment of the Supplemental Water. City

agrees to indemnify and hold NCSD harmless from any actual liability which arises as a result of the failure of Supplemental Water which is delivered to the NCSD interconnection to meet the Quality Standards. NCSD shall be solely responsible for any actual liability resulting from a change in water quality following the point of delivery (including any additional treatment undertaken by NCSD) and shall indemnify and hold City harmless from any actual liability which arises from any such change. City and NCSD shall promptly notify the other in the event that either becomes aware of a material adverse change in the quality of the Supplemental Water and shall cooperate to identify the cause of such change.

11. **Remarketing of Supplemental Water.** NCSD shall be free to remarket the Supplemental Water to other Parties within the NMMA without restriction to price and terms. NCSD assumes all responsibility for delivery of Supplemental Water from the NCSD interconnection to its customers and contracting Parties. City's obligations under this Agreement are solely with NCSD and no customer of NCSD nor other third party shall have the right to enforce the terms of this Agreement as a third party beneficiary. City shall not sell water to other parties or persons within NCSD's service area or sphere of influence, as amended from time to time, without first receiving the written approval of NCSD.

12. **Regulatory Requirements.**

(a) **Obligations of the City.** The implementation of this Agreement shall be subject to satisfaction by City of the regulatory requirements set forth herein. City shall, if necessary, undertake the following: (i) Obtain all permits, consents, entitlements and approvals necessary to enable the City to reserve and sell, and NCSD to purchase, the Supplemental Water that is the subject of this Agreement; and (ii) fully and completely comply with the requirements of the California Environmental Quality Act ("CEQA"), including, if it is determined that this transaction is subject to CEQA and not exempt from CEQA. The completion of an initial study, and (1) either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report shall have been completed and certified, and (2) the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report.

(b) **Obligations of NCSD.** NCSD shall be solely responsible for obtaining all regulatory approvals necessary in connection with purchasing and taking delivery of the Supplemental Water.

13. **Service Area Integrity.** Nothing in this Agreement is intended nor shall it be interpreted to waive the right of City to provide water service to current or future areas within or adjacent to its existing service area.

14. **Representations or Warranties of City.** City makes the following representations, warranties, and covenants to NCSD:

(a) **Power and Authority to Execute and Perform this Agreement.** The City has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Availability of Resource.** Based on information which is currently known to City and City's current forecast of future use, on a long-term basis, City has water and the necessary infrastructure available to fulfill City's obligations under this Agreement that is surplus to that needed to serve City's current and long-term future anticipated demand.

(c) **Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of the City, and is enforceable against the City in accordance with its terms.

15. **Representations or Warranties of NCSD.** NCSD makes the following representations, warranties, and covenants to City:

(a) **Power and Authority to Execute and Perform this Agreement.** NCSD has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of NCSD, enforceable against NCSD in accordance with its terms.

16. **Default and Termination by City.** In the event NCSD fails to make any payment to City under this Agreement when due, or fails to perform any obligation otherwise required by this Agreement, City shall demand in writing that NCSD cure such non-performance. NCSD shall have thirty (30) days after receipt of such demand to cure. In the event NCSD fails to cure a default within the thirty (30) day period, City may suspend delivery of Supplemental Water and redirect such water to other uses for the duration of the suspension. City shall restore water delivery when NCSD has cured all outstanding defaults and paid all amounts due to the City in full. In the event that NCSD does not cure a default within one (1) year of suspension, then City may terminate this Agreement at any time thereafter.

17. **Default and Termination by NCSD.** NCSD shall have the right to terminate this Agreement, without recourse, if (i) the City is found to be in material breach of its obligations to deliver the Supplemental Water as set forth in this agreement; or (ii) upon written notice to City that NCSD is unable to pay for the Supplemental Water due to the majority protest procedures or other procedures referenced in Proposition 218; or (iii) upon three (3) years prior written notice to City, provided, however, that no such termination without cause shall become effective until the thirtieth (30th) anniversary of the Effective Date.

18. **Expiration of Term.** This Agreement shall terminate and be of no further force and effect as of the expiration of the Term.

19. **Dispute Resolution.** Except as otherwise limited by this Agreement, any dispute arising under this Agreement, including, without limitation, all disputes relating in any manner to the performance or enforcement of this Agreement, shall be resolved by

binding arbitration in the County of Santa Barbara, California, pursuant to the comprehensive arbitration rules and procedures of Judicial Arbitration and Mediation Services ("JAMS") or any successor thereto, as amended or as augmented in this Agreement (the "Rules"). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney's fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters which are directly relevant to the claims in controversy. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in the Code of Civil Procedure. Notwithstanding the election by the parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.

20. **Indemnity.** NCSD, its successors and assigns, shall hold harmless, defend and indemnify City, its officials, employees, agents, successors and assigns (all of which are herein referred to as the "City Indemnified Parties") from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited to reasonable attorneys' fees (collectively, "Damages"), which may be imposed on, incurred by, or asserted against City Indemnified Parties as a result of (i) a breach of NCSD's obligations; or (ii) the conduct of NCSD's operations associated with the NCSD interconnection to City's retail distribution system and the subsequent delivery of Supplemental Water to NCSD's customers. Notwithstanding the foregoing, in no event shall NCSD be liable to indemnify a City Indemnified Party for (i) any Damages resulting from the negligence or willful misconduct of City; (ii) any third party claim brought in connection with regulatory approvals; or (iii) any claim brought in connection with the quality of the Supplemental Water as provided in Paragraph 10 above. This indemnification shall survive termination of the Agreement.

21. **Third Party Claims.** Promptly following notice of any "Third Party Claim" for which City is indemnified hereunder, City shall notify NCSD of such claim in writing. NCSD shall have a period of thirty (30) days following the receipt of such notice to notify City of whether NCSD elects to assume the defense thereof. If NCSD so notifies City that it elects to assume the defense, NCSD thereafter shall undertake and diligently pursue the defense of the Third Party Claim. NCSD shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of City, which does not include a

complete and unconditional release of City or which imposes injunctive or other equitable relief against City. City shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If NCSD does not give the requisite notice, or fails to assume and diligently pursue the defense of such Third Party Claim, City may defend against such Third Party Claim in such manner as it may deem appropriate, at NCSD's expense, including without limitation settlement thereof on such terms as City may deem appropriate, and to pursue such remedies as may be available to City against NCSD. Notwithstanding the foregoing, City shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of NCSD, which does not include a complete and unconditional release of NCSD.

22. **Notice of Claims.** The Parties shall promptly notify each other within ten (10) days of City or NCSD becoming aware of: (1) any claims or suits brought against City or NCSD which involve this Agreement or water supplied to NCSD pursuant to this Agreement, (2) any Third Party Claims, and (3) any force majeure event. Any such notice shall conform to the requirements specified in Paragraph 28 of this Agreement.

23. **Remedies Not Exclusive.** Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

24. **No Transfer of Rights.** The rights granted to NCSD hereunder constitute the right to take delivery of Supplemental Water only and shall not be interpreted as a sale, transfer, or assignment of any of City's water rights.

25. **Subject to Applicable Law.** The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations and special districts as they now exist and as they may be amended or codified by the Legislature of the State of California.

26. **Entire Agreement.** This Agreement contains the entire understanding between NCSD and City with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between NCSD and City. This Agreement cannot be amended except in writing signed by both Parties.

27. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

28. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth

next to their signatures below, or such other address as a Party notifies the other in writing.

29. **Headings; Paragraph References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

30. **Separability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

31. **Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. NCSD shall have the right to assign its rights under this Agreement with the written consent of City, provided, however, that the City shall not unreasonably withhold such consent and further provided that the assignee agrees to be bound by all of the obligations of NCSD set forth herein. Notwithstanding the foregoing, no assignment permitted hereunder shall permit the delivery of Supplemental Water to any property or development other than the Property without the written consent of the City, in its sole and absolute discretion.

32. **Opinions and Determinations: Good Faith.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The City and the NCSD shall each act in good faith in performing their respective obligations as set forth in this Agreement.

33. **Incorporation of Recitals.** Recitals A through F are incorporated herein by reference as though set forth at length.

34. **Attorneys Fees.** In the event that any legal proceeding other than the dispute resolution procedures referenced in Paragraph 19, above, is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

35. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE

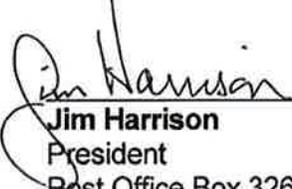
COUNTY OF SANTA BARBARA OTHER THAN A COURT LOCATED WITHIN THE CITY OF SANTA MARIA OR THE NORTHERN PORTION OF SANTA BARBARA COUNTY, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.

**IN WITNESS WHEREOF**, the Parties have executed this agreement as of the date first written above.

**CITY:**  
City of Santa Maria, a California  
municipal corporation and charter city

**NCSD:**  
Nipomo Community Services District,  
a California public agency

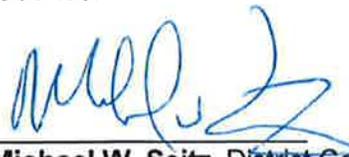
By:   
Name: Richard G. Sweet, P.E.  
Title: Director of Utilities  
Address: 2065 East Main Street  
Santa Maria, CA 93454  
Fax: (805) 928-7240  
Phone: (805) 925-0951 ext. 7211

By:   
Name: Jim Harrison  
Title: President  
Address: Post Office Box 326  
Nipomo, CA 93444  
Fax: (805) 929-1932  
Phone: (805) 929-1133

**APPROVED AS TO FORM:**  
Best, Best & Krieger LLP

**APPROVED AS TO FORM:**  
District Counsel

By:   
Jill Willis, Partner

By:   
Michael W. Seitz, District Counsel

STATE OF CALIFORNIA            )  
COUNTY OF SANTA BARBARA ) ss.  
CITY OF SANTA MARIA            )

I, RHONDA M. GARIETZ, CMC, Chief Deputy City Clerk of the City of Santa Maria and ex officio Clerk of the City Council DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 2013-40 which was duly and regularly introduced and adopted by said City Council at a regular meeting held May 7, 2013, and carried on the following vote:

**AYES:**           Councilmembers Boysen, Green, Orach, Zuniga,  
                          and Mayor Patino.

**NOES:**           None.

**ABSENT:**       None.

**ABSTAIN:**      None.

  
\_\_\_\_\_  
Chief Deputy City Clerk  
of the City of Santa Maria and  
ex officio Clerk of the City Council



CITY OF SANTA MARIA  
OFFICE OF THE CITY MANAGER  
Records/City Clerk, Ext. 306

110 EAST COOK STREET, ROOM #3 • SANTA MARIA, CA 93454-5190 • 805-925-0951 • FAX 805-925-2243 • www.ci.santa-maria.ca.us

May 10, 2013

RECEIVED

MAY 13 2013

NIPOMO COMMUNITY  
SERVICES DISTRICT

Jim Harrison  
Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444

**RE: WHOLESALE WATER SUPPLY AGREEMENT WITH NIPOMO COMMUNITY SERVICES DISTRICT (NCSD)**

Dear Mr. Harrison:

At its regular meeting held on Tuesday, May 7, 2013, the City Council of the City of Santa Maria entered into an Agreement with Nipomo Community Services District ("NCSD") an independent special district formed under and pursuant to Section 61000, et seq. of the California Government Code. Enclosed are two execution originals of the Agreement.

Please sign the Agreements where indicated. Once you have done so, please return one fully executed original to me in the enclosed self-addressed envelope. You should retain one fully executed original for your records.

A certified copy of the Resolution approving the agreement is also enclosed for your records. Should you have any questions regarding the Council's action, please do not hesitate to contact this office at 805-925-0951, Ext. 307 or the Utilities Department at Ext. 7211.

Sincerely,

Rhonda M. Garietz, CMC  
Chief Deputy City Clerk

Enclosure: Wholesale Water Supply Agreement x2  
Resolution - Certified

pc: Utilities Department

# Appendix C: Supplemental Water Management and Groundwater Replenishment Agreement

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**NIPOMO SUPPLEMENTAL WATER PROJECT**  
**SUPPLEMENTAL WATER MANAGEMENT AND GROUNDWATER**  
**REPLENISHMENT AGREEMENT**

This Nipomo Supplemental Water Project Supplemental Water Management and Groundwater Replenishment Agreement ("Agreement") is made this 16<sup>th</sup> day of ~~September~~ <sup>October</sup>, 2015, between the Nipomo Community Services District, Rural Water Company, The Woodlands Mutual Water Company of San Luis Obispo County and Golden State Water Company with regards to the following facts:

**I. RECITALS:**

A. The Nipomo Community Services District ("NCS D") is a public entity, independent special district organized and operated pursuant to Govt. Code section 61000 et seq. NCS D provides water and related services within the NCS D boundary located in the southern portion of San Luis Obispo County, within an area generally referred to as the Nipomo Mesa.

B. Golden State Water Company ("GSWC") is a California corporation and a public utility water corporation as defined by Public Utilities Code §§ 216 and 241 providing water service to customers within the Nipomo Mesa subject to California Public Utilities Commission ("PUC") regulation.

C. Rural Water Company ("RWC") is a California corporation and a public utility water corporation as defined by Public Utilities Code §§ 216 and 241 providing water service to customers within the Nipomo Mesa subject to PUC regulation.

D. The Woodlands Mutual Water Company of San Luis Obispo County ("WMWC") is a California corporation and a mutual water company providing water service to its shareholder – customers within the Nipomo Mesa.

E. Collectively, GSWC, RWC and WMWC, are referred to as the "Water Companies" and individually as a "Water Company". NCS D, GSWC, RWC and WMWC are collectively referred to as the "Parties" and individually as a "Party".

F. The Parties, along with hundreds of other individuals and entities are parties to a certain legal proceedings entitled "*Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*", Superior Court of the State of California, County of Santa Clara, Consolidated Cases CV770214 ("Santa Maria Litigation"), regarding the respective rights of the litigants to groundwater resources in the Santa Maria Groundwater Basin ("Basin").

G. After lengthy proceedings, the court entered an amended judgment

("Judgment") on April 17, 2014, which provides for the long-term management of the Basin water resources.

H. The court retained jurisdiction over the Judgment to ensure the parties manage the Basin water resources consistently with the Judgment.

I. Incorporated into and made a part of the Judgment is a Stipulation dated June 30, 2005 ("Stipulation"), which establishes a detailed management plan for three subareas within the Basin. The Nipomo Mesa is included in the subarea called the Nipomo Mesa Management Area ("NMMA").

J. The Judgment (through the Stipulation) requires NCSD to purchase and transmit to the NMMA a minimum of 2,500 acre-feet of "Nipomo Supplemental Water" each year. NCSD is further required to employ its best efforts to timely implement the Nipomo Supplemental Water Project (NSWP).

K. The Judgment further provides that once the Nipomo Supplemental Water is capable of being delivered, the Parties shall purchase the following portions of the Nipomo Supplemental Water each year to offset groundwater pumping within the NMMA.

<b>Entity</b>	<b>Percent Allocation</b>	<b>AFY (2,500 AF NSWP Yield)</b>
NCSD	66.68	1667.00
GSWC	8.33	208.25
RWC	8.33	208.25
WMWC	16.66	416.50
<b>Total</b>	<b>100.00</b>	<b>2500.00</b>

L. NCSD has entered into a Wholesale Water Supply Agreement with the City of Santa Maria (City), dated May 7, 2013, ("NCSD-City Agreement," attached and incorporated as Exhibit "A"). The NCSD-City Agreement provides a mechanism through which NCSD may purchase Nipomo Supplemental Water for sale and distribution in the NSWP, consistent with the obligations in the Judgment.

M. NCSD has completed construction of the first stage of the NSWP such that NCSD is taking delivery of Nipomo Supplemental Water as of July 1, 2015. The additional stages of the NSWP to allow increased water delivery of a minimum of 2,500 AFY, as required under the Judgment, are currently being planned.

N. On or about June 25, 2015, the PUC approved GSWC's acquisition of RWC. Upon completion of GSWC's acquisition of RWC, GSWC will assume the entirety of RWC's benefits and obligations under this Agreement.

O. NCSD has designed the NSWP to deliver 3,000 AFY. All costs associated with

the capacity in excess of 2,500 AFY are solely assigned to NCSD. Should the Parties, or any faction thereof, elect to expand NSWP facilities to deliver water in excess of 3,000 AFY, further negotiation and agreement among the participating Parties will be required.

P. The purpose of this Agreement is to implement the Parties' obligations with respect to the NSWP as provided in the Stipulation and the Judgment.

In consideration of the foregoing recitals that are incorporated herein by reference and the mutual terms and conditions set forth herein, the Parties agree as follows:

## **II. DEFINITIONS:**

Terms used herein with initial capitalization, whether in singular or plural, shall have the following meanings:

A. "AFY" shall mean acre-feet per year.

B. "Costs" shall mean all the administrative, planning, design, permitting, capital, financing, construction, operation, maintenance, repair, replacement and overhead allocation costs associated with and arising out of the construction and ongoing operation of the NSWP, excluding costs of Points of Interconnection, which shall be funded as provided in Section VII. Costs shall include both actual expenses and reasonably anticipated NSWP related expenses expected to be incurred for the completion of the NSWP and for the ongoing operations of the NSWP. Costs include future financing of phases of the NSWP and future changes in water costs resulting from renegotiation of the NCSD-City Agreement.

C. "Effective Date" shall mean July 1, 2015.

D. "Fiscal Year" shall mean the twelve (12) month period commencing each July 1st during the term of this Agreement and ending the following June 30th.

E. "NSWP Enterprise Fund" shall mean the NSWP Enterprise Fund used by NCSD to account for, budget and track the Costs.

F. "Judgment" shall mean the amended judgment entered by the Court in that case entitled *Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*, Superior Court of the State of California, County of Santa Clara, consolidated cases CV770214.

G. "NCSD-City Agreement" shall mean the agreement between the City of Santa Maria and Nipomo Community Services District titled "Wholesale Water Supply Agreement," dated May 7, 2013.

H. "Nipomo Mesa Management Area" or "NMMA" shall mean the area so defined and described in the Judgment.

I. "Nipomo Supplemental Water" shall mean up to 2,500 AFY of water delivered within the NMMA to offset groundwater pumping.

J. "Nipomo Supplemental Water Project" or "NSWP" shall mean the facilities and appurtenances, including each Point of Interconnection, necessary to deliver Nipomo Supplemental Water as provided in Section VI.(A) of the Stipulation.

K. "NMMA Technical Group" is the group formed pursuant to the requirements of the Stipulation and Judgment.

L. "Point of Interconnection" shall mean those components of the NSWP extending from NCSD's water distribution system to each Water Company through which Nipomo Supplemental Water may be delivered to each Water Company.

M. "Prudent Utility Practice" shall mean the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the water utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of agencies of competent jurisdiction.

N. "PUC" shall mean the California Public Utilities Commission, the entity with regulatory oversight responsibility for RWC and GSWC.

O. "PUC Application" shall mean those materials and testimony required so that GSWC and RWC may obtain PUC approval adequate to satisfy the conditions subsequent set forth in Section V below.

P. "Stipulation" shall mean the agreement dated June 30, 2005, by and between the majority of the litigants in the Santa Maria Litigation, settling their disputes and imposing a physical solution on the management of water resources in the Santa Maria Basin. The Stipulation is incorporated in and is a part of the Judgment.

Q. "Uncontrollable Force" shall mean any cause or event which is beyond the control of the Party affected, including, but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute or strike, labor or material shortage, sabotage, restraint by court order or public authority and action or non-action by or

failure to obtain the necessary authorizations or approvals from any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

**III. PURPOSE:**

A. The purpose of this Agreement is to enable the Parties to meet their respective obligations under the Judgment, based on the percentage allocations presented in Section I.K, regarding the NSWP. In particular, the Parties intend this Agreement to provide for: (1) payment to NCSD for each Party's allocation of Costs, and (2) distribution and use of Nipomo Supplemental Water.

B. The underlying premise of the NSWP is to use Nipomo Supplemental Water within the NMMA to offset 2,500 AFY of groundwater pumping in those areas within the NMMA where groundwater levels are most depressed and thus augment the replenishment of groundwater in those critical areas within the NMMA. As described herein, the Parties will use the Nipomo Supplemental Water to increase groundwater replenishment within the NMMA and improve the long-term reliability and integrity of groundwater availability within the NMMA. The Nipomo Supplemental Water delivered to the Parties pursuant to this Agreement shall be used exclusively for the benefit of properties within the existing jurisdictions and service areas of the Parties and in accordance with the Judgment and Stipulation.

**IV. EFFECTIVE DATE AND TERM:**

A. This Agreement shall be effective on July 1, 2015 and shall terminate on June 30, 2085 ("Term").

B. Notwithstanding the Term, the delivery of Nipomo Supplemental Water to the Parties subsequent to June 30, 2035, is subject to the renewal of the contract for state water between the City and the Central Coast Water Authority. The NCSD-City Agreement provides that it is subject to renegotiation in the event that the City's contract with the Central Coast Water Authority is not renewed as of June 30, 2035 or if the renewal terms would create a significant financial burden to the City or impair the ability of the City to provide Nipomo Supplemental Water in the quantities set forth in the NCSD-City Agreement.

C. Should renegotiation of the NCSD-City Agreement be required, NCSD and the City are required to negotiate and use their best efforts to equitably amend the terms of the NCSD-City Agreement to allow for the continued delivery of Nipomo Supplemental Water on terms mutually beneficial to both parties for the duration of the Term. NCSD will consult and confer with the Water Companies prior to entering into any material amendments to the NCSD-City Agreement.

D. Obligations incurred hereunder but not satisfied prior to termination of this Agreement shall survive such termination until fully discharged, including any payments due by one Party to another Party hereunder.

**V. CONDITIONS SUBSEQUENT:**

This Agreement shall terminate and shall be of no further force and effect as to either or both GSWC and RWC, subject to the following conditions.

A. As promptly as is reasonably practicable and in no event later than October 30, 2015, GSWC shall apply for PUC approval for imposition of the necessary rate adjustments so that GSWC may meet its financial obligations provided under this Agreement. GSWC shall provide NCSD with written notice of the satisfaction or waiver of this provision. If GSWC fails to obtain this PUC approval, through a PUC decision or order that is no longer subject to appeal, on or before December 31, 2017, either NCSD or GSWC may, each in its sole discretion, declare a failure to satisfy this condition and terminate this agreement as to GSWC. If either NCSD or GSWC exercises this termination right, the provisions of Article X(D)(1) of the Stipulation shall apply.

B. As promptly as is reasonably practicable and in no event later than October 30, 2015, RWC shall apply to for PUC approval for imposition of the necessary rate adjustments so that RWC may meet its financial obligations provided under this Agreement. RWC shall provide NCSD with written notice of the satisfaction or waiver of this provision. If RWC fails to obtain this PUC approval, through a PUC decision or order that is no longer subject to appeal, on or before December 31, 2017, either NCSD or RWC may, each in its sole discretion, declare a failure to satisfy this condition and terminate this agreement as to RWC. If either NCSD or RWC exercises this termination right, the provisions of Article X(D)(1) of the Stipulation shall apply.

C. The Parties shall make every reasonable business effort to coordinate and cooperate in providing any necessary data, information and testimony to support the PUC approval processes contemplated in this Section.

D. GSWC and RWC shall each be responsible for its own PUC Application. However, each entity expects its PUC Application to be substantially the same in its content. Each PUC Application shall include a request for full financial participation in the NSWP as provided in this Agreement, as of the Effective Date. RWC and GSWC shall make their reasonable best efforts to obtain a prompt and reasonable response to the PUC Application from the PUC, including making every reasonable attempt to reach an acceptable settlement of the PUC Application in lieu of processing the PUC Application through a contested administrative hearing at the PUC. The Parties acknowledge that obtaining PUC approval of each PUC Application may take 12 months or more, following the date of submission of the PUC Application, and that neither GSWC nor RWC have control over the time it takes the PUC to process and

resolve each PUC Application. Notwithstanding the Effective Date, neither GSWC's, nor RWC's financial obligations provided in this Agreement accrue and are enforceable as to either entity, unless and until the PUC provides GSWC and RWC approval to make the necessary customer water rate adjustments equal to each entity's respective share of the Costs provided in this Agreement as of the Effective Date and otherwise consistent with Section IX.B.

E. Until the conditions subsequent in this section are satisfied with written notice, or waived, neither NCSD, RWC, nor GSWC waive their rights to exercise the provisions of Article X(D)(1) of the Stipulation.

**VI. USE OF NIPOMO SUPPLEMENTAL WATER.**

NCSD shall be responsible for the distribution and use of the Nipomo Supplemental Water between and among the Parties subject to the following:

A. Subject to the groundwater management and recharge protocols provided in this Agreement, the presumed quantity and rate of delivery of Nipomo Supplemental Water for each Party shall be as provided in the table below, based upon an assumed delivery of 2,500 AFY. To the extent Nipomo Supplemental Water is not available for delivery at the volumes or rates shown, each Party's deliveries shall be reduced on a proportional basis. To the extent the implementation of groundwater management and recharge protocols provide for alternative deliveries, each Party shall be responsible for its portion of the Costs as otherwise provided in this Agreement.

Entity	Annual (AF)	Quarterly (AF)	Maximum per Month (AF)
NCSD	1668	417	139
GSWC	208	52	17
RWC	208	52	17
WMWC	416	104	35

B. The highest priority use of Nipomo Supplemental Water shall be to offset groundwater pumping within those regions within the NMMA where depressed groundwater levels exist.

C. Provided that such reduction does not materially and adversely affect its ability to provide water for the reasonable and beneficial use of its customers, for each AF of the 2,500 AFY Nipomo Supplemental Water used within the NMMA, the user shall reduce its groundwater pumping by the same amount. The Parties shall develop a method of confirming this reduction in groundwater use.

D. Over the term of this Agreement, the Advisory Committee (as defined in XII.A) shall periodically meet and confer with the NMMA Technical Group regarding the distribution of the Nipomo Supplemental Water between the Parties, given the priority

specified in subsections VI.A and B, above. Based on the input from the Advisory Committee and the NMMA Technical Group, the status of Points of Interconnection as provided in the Section VII.A below and other relevant hydrologic conditions, NCSD shall determine the distribution of Nipomo Supplemental Water among the Parties. NCSD shall make its determination regarding the distribution of Nipomo Supplemental Water, following the consultation described in this subsection and based upon a reasonable, good faith interpretation of how best to manage the then existing hydrologic conditions within the NMMA, the availability of Nipomo Supplemental Water and the ability to rely on existing Points of Interconnection and establish a new Point of Interconnection with RWC, if one has not yet been established.

E. Pursuant to section VI(B)(3) of the Stipulation, provided WMWC is concurrently using or has made arrangements for other Parties to use within the NMMA the Nipomo Supplemental Water allocated to the WMWC under Section VI(A), above, WMWC shall not be subject to restriction in the reasonable and beneficial use of groundwater necessary for full development of its service area; provided however, nothing in this Agreement is intended to modify or amend the benefits and obligations provided in the Stipulation and the Judgment applicable to WMWC, or the court's retained jurisdiction pursuant to the Stipulation and the Judgment.

## **VII. POINTS OF INTERCONNECTION, CONTROL AND MEASUREMENT OF NIPOMO SUPPLEMENTAL WATER DELIVERIES.**

A. Point(s) of Interconnection. As of the Effective Date, NCSD's water system is interconnected with GSWC and WMWC water systems. Each of these existing interconnections will require improvements, and possibly reconstruction, to be fully functional "Point(s) of Interconnection." No Point of Interconnection is in place between NCSD and RWC. If, pursuant to Section VI.D, the Parties determine each or all Points of Interconnection are necessary to make optimal use of Nipomo Supplemental Water, NCSD and each Water Company shall develop the most cost effective design and arrange for the construction of the Points of Interconnection as promptly as practical. The Cost of each Point of Interconnection, including the improvements required for existing Points of Interconnection with WMWC and GSWC, shall be incorporated into the NSWP Costs and NSWP Enterprise Fund as provided in this Agreement. The Parties acknowledge and agree that the Point of Interconnection with RWC, if and when established, will be included as a component of the NWSP. However, the Parties agree that allocation of Costs for the pipeline portion of the RWC Point of Interconnection may differ from the allocation set forth in Section I.K above, to be agreed upon by the Parties once those Costs are determined. The Costs for the RWC Point of Interconnection, excluding the Costs of the pipeline portion of the RWC Point of Interconnection, shall be shared consistent with the allocation set forth in Section I.K in a magnitude equivalent to that included in the Costs for the WMWC and GSWC Points of Interconnection.

B. Each Point of Interconnection shall include flow control and metering devices

used to control and measure the delivery of Nipomo Supplemental Water at the Point of Interconnection. Each Point of Interconnection and the appurtenant facilities shall be considered part of the NSWP and shall be owned, operated and maintained by NCSD.

C. NCSD shall arrange for the inspection and testing of the metering devices at least once per calendar year, unless more frequent testing and inspection is appropriate as a result of repairs to or replacements of a metering device. NCSD shall provide reasonable advance notice to and coordinate with each Water Company to accomplish required testing or inspection activities.

D. The operation and maintenance of any Point of Interconnection will be detailed in an Operation Memorandum of Understanding that will be approved by the NCSD and other affected parties prior to connection. If the Parties cannot agree on the terms of the Operations Memorandum of Understanding then the disputed terms will be subject to the dispute resolution procedures referenced in XII of this Agreement.

#### **VIII. NSWP ENTERPRISE FUND BUDGET:**

A. NCSD shall operate the NSWP as an enterprise fund ("NSWP Enterprise Fund"), separating all Costs related to the NSWP within and only to that NSWP Enterprise Fund. Prudent Utility Practices shall apply to NCSD's management of the NSWP Enterprise Fund and the NSWP.

B. Each Fiscal Year NCSD shall prepare a NSWP Enterprise Fund Budget ("Budget") for all revenues and expenditures related to the NSWP Enterprise Fund. The Budget shall include a summary of projected Nipomo Supplemental Water deliveries and the Costs associated with those deliveries. A draft of the Budget shall be available to each Water Company for review by May 1<sup>st</sup> of each year. NCSD shall make every reasonable effort to adopt the final Budget during June of each year at a regularly scheduled NCSD board meeting. The Advisory Committee shall determine the most effective content, format and reporting frequency for financial and budget reports for the NSWP Enterprise Fund.

C. The Budget shall provide the basis for and detail the cost allocations and quarterly billings described in Section IX.

D. Unless the Parties agree otherwise, every five years, a third party expert accounting firm shall perform an overhead allocation analysis for NCSD, including the NSWP Enterprise Fund. The overhead allocation recommendations of that study shall be applied in the next annual budgeting cycle for the NSWP Enterprise Fund. The cost of this study shall be included in the administrative overhead allocated to the NSWP Enterprise Fund. The Advisory Committee shall appoint the accounting firm to perform the overhead allocation analysis.

E. The Water Companies acknowledge and agree that NCSD has incurred

**NSWP Supplemental Water Management and Groundwater Replenishment Agreement**

Page 9 of 20

substantial Costs related to the completed portions of the NSWP as of the Effective Date and will incur additional Costs to complete the NSWP. These costs include, but are not limited to, planning, environmental reviews, legal fees, acquisition of easements, an assessment election, and the construction and financing of the primary distribution pipeline extending from the City to NCSD facilities and future stages of the NSWP project. These Costs have been funded by NCSD, with very limited contributions from the Water Companies.

F. The Budget shall include the amortized recovery of the NSWP capital costs (whether funded by NCSD with internal funds or borrowed funds) attributable to each Water Company, pursuant to Section I.K above, plus interest on the unamortized balance of such costs. The capital costs to be amortized in each Budget shall include amounts expended to date and the additional costs necessary to complete the NSWP. NCSD shall not recover interest on the capital portion of NSWP Costs that are funded through the use of NSWP Enterprise Fund assets or reserves.

G. The amortization period for capital costs shall be 30 years beginning July 1, 2015. Interest will be charged monthly on the remaining unamortized balance as of the prior month end.

H. Each Water Company may elect to make early payments of its amortized portion of the capital costs and such early payments shall be credited against the capital obligation of that Water Company.

I. The interest rates to be charged to each Water Company will be determined as follows:

1. For GSWC and RWC, the interest rate charged will be equal to the interest rate on amounts NSCD has borrowed to finance a portion of the project Costs plus one-half of one percent. In the event GSWC's credit rating drops materially below its current rating of A+, and such change would have a material impact on any expected borrowing or financial security related to the NSWP Enterprise Fund, the interest rate charged will be subject to renegotiation between GSWC, RWC and NCSD. The interest specified in this subsection applicable to RWC is predicated on expectation that GSWC will complete its acquisition of RWC prior to the PUC approval of this Agreement. The interest rate and security assurance applicable to RWC's capital obligation shall be subject to renegotiation should GSWC fail to complete its acquisition prior to the PUC's approval of this Agreement.

2. For WMWC, the interest rate charged will be equal to the interest rate on amounts NSCD has borrowed to finance a portion of the project Costs plus two percent. In the event there is a material change in WMWC's financial condition, the interest rate charged will be subject to renegotiation between NCSD and WMWC. WMWC acknowledges that its agreement to amend its bylaws to authorize recordation and enforcement of liens under Corporations

Code § 14304 (“Section 14304 Lien Rights”) constitutes a material inducement to NCSD to forego other forms of security for repayment of WMWC’s capital obligations, and agrees that it shall not subsequently revise its bylaws to relinquish its Section 14304 Lien Rights without having previously agreed to provide alternate security reasonably acceptable to NCSD.

3. In the event NCSD makes additional borrowings to finance subsequent stages of the NSW, the interest rates charged GSWC, RWC and WMWC will be adjusted based on the weighted average of the interest rates attributable to unamortized balances of prior stages of the NSW and the interest rate attributable to the capital costs of the new stage.

J. The NSW Enterprise Fund shall include a funded replacement reserve (“NSW Enterprise Fund Reserve”) to accumulate funds for the future replacement of NSW equipment and facilities. The initial NSW Enterprise Fund Reserve amount shall be set at one percent of total project Costs. Thereafter, the NSW Enterprise Fund Reserve shall be increased annually based upon the percentage increase in the Consumer Price Index (CPI) – All Urban Consumers (Los Angeles-Riverside-Orange Co., CA area) for the immediately preceding calendar year, subject to the following.

1. The maximum balance in the NSW Enterprise Fund Reserve shall be \$3,000,000. The NSW Enterprise Fund Reserve maximum shall be increased annually based upon the percentage increase in the Consumer Price Index (CPI) – All Urban Consumers (Los Angeles-Riverside-Orange Co., CA area) for the immediately preceding calendar year. Once the balance in the NSW Enterprise Fund Reserve reaches the maximum then in effect, the annual reserve shall cease to be collected until such time as the NSW Enterprise Fund Reserve balance drops below the maximum. Should required expenditures exceed the balance then in the NSW Enterprise Fund Reserve, the Advisory Committee will establish a plan for funding the deficit in a timely manner. The maximum balance in the NSW Enterprise Fund Reserve may be increased or decreased subject to unanimous approval by the Advisory Committee.

2. Subject to approval by the Advisory Committee, the balance in the NSW Enterprise Fund Reserve can be used to fund extraordinary unbudgeted operations and maintenance expenses in those cases where the NSW Enterprise Fund does not have sufficient operating funds to cover the expenditure.

3. Interest income earned on the NSW Enterprise Fund Reserve shall remain in the NSW Enterprise Fund.

**IX. RATES AND CHARGES:** Based on the Budget, NCSD shall allocate Costs to and invoice the Water Companies as follows:

A. Each Water Company shall be responsible for its share of the Costs of Nipomo Supplemental Water and the NSWP based on the pro-rata shares of the NSWP as provided in Section I.K and the Budget. The Cost allocations shall take into account all Costs for the NSWP. An energy (pumping) credit shall be provided to each Party for any portion of its Nipomo Supplemental Water not delivered directly to that Party, but instead used by another Party pursuant to Section VI.

B. During the term of this Agreement, and where applicable subject to the jurisdiction and approval by the PUC, each Water Company shall charge and collect rates and charges for the water services furnished in its service area which will yield gross revenues sufficient to pay all costs of operating and maintaining the water system within the designated area, including all payments due under this Agreement, as they become due and payable.

C. Following each calendar quarter, NCSD shall provide a written invoice to each Water Company for its share of the Costs during the prior quarter. All invoices will be payable within thirty (30) days of delivery of the invoice. NCSD shall have the right to charge late fees of up to five (5) percent of the overdue amount for any invoice that is not paid within such period.

D. Until such time as GSWC and RWC receive approval from the PUC as provided in Section V, NCSD will not charge late fees on outstanding GSWC and RWC invoices; however, interest will accrue on outstanding charges at the rate specified in Section VIII.

E. In the event a Party disputes any charges on an invoice, the undisputed amount shall be paid and no late fee will be assessed pending resolution of the disputed amount. Along with payment of the undisputed amount, the Party shall provide a detailed written description of the nature and amount in dispute. NCSD and the Party with the dispute shall make every reasonable business effort to resolve the dispute promptly.

F. Within 90 days after the end of each fiscal year, NCSD shall compare prior year actual Costs to the total amount billed to the Parties for that year. If actual Costs exceed the amount billed for that year, each Party will be billed for its allocated share of the excess costs. If actual Costs are less than the amount billed for that year, each party will have the option to have its allocated share of the difference be (1) credited against any unamortized capital costs then due NCSD or (2) be refunded.

#### **X. CONTINUITY OF SERVICE:**

A. NCSD reserves the right to temporarily interrupt or curtail delivery of Nipomo Supplemental Water to make repairs, replacements, modifications, or to perform maintenance work on the NSWP, or to respond to an existing or impending Uncontrollable Force, as determined in NCSD's sole judgment. NCSD shall use its

reasonable best business efforts to provide advance written notice to the Water Companies of any restriction or interruption in the use of the NSWP or planned deliveries of Nipomo Supplemental Water.

**B.** In addition to limitations specified in X.A. above, NCSD may interrupt or curtail the use of the NSWP to the extent that the continued use of the NSWP could: (i) materially and adversely affect the reliability of the NSWP; or (ii) cause NCSD to violate the terms of any rule, regulation, or binding obligation it may otherwise have with respect to the production, treatment or delivery of Nipomo Supplemental Water.

## **XI. DEVELOPMENT OF EXPANDED GROUNDWATER MANAGEMENT AND RECHARGE CAPABILITY:**

The Parties acknowledge and agree that the availability of additional Nipomo Supplemental Water would be beneficial for use within the NMMA. The Parties agree to negotiate an amendment to this Agreement to include the expanded use of Nipomo Supplemental Water for the benefit of the groundwater resources water balance within the NMMA. The Parties shall use their reasonable best efforts to complete the negotiation as promptly as practical.

## **XII. RESOLUTION OF DISPUTES:**

The Parties' shall attempt to amicably and promptly resolve any dispute arising between the Parties and under this Agreement. Nothing in this Agreement shall preclude any Party from taking any lawful action it deems appropriate to enforce its rights under this Agreement. The Parties shall initially attempt to resolve any dispute by the means set forth below:

**A.** Advisory Committee. The Parties shall exercise best efforts to resolve disputes through consensus. An Advisory Committee shall be established and be comprised of two representatives of each Party. The Advisory Committee shall be convened whenever necessary to ensure this Agreement is being administered and implemented consistent with the intentions of all the Parties. An NCSD representative shall chair the Advisory Committee. The Chair shall be responsible for scheduling all meetings under this section. Any Party may request a meeting of the Advisory Committee.

**B.** Annual Meeting. The Advisory Committee shall meet annually, or as often as necessary, to review the administration and implementation of this Agreement. The Advisory Committee shall use its best efforts to obtain consensus on the resolution of technical, administrative, financial, legal and operational issues that may arise from time to time with regard to this Agreement.

**C.** Dispute Resolution Procedure. The Parties shall submit any dispute related to or arising out of this Agreement to the Advisory Committee for consideration. The

Chair may request the Party or Parties to any dispute to submit a description of the dispute in writing prior to convening the Advisory Committee. As soon as practical, and within 14 days of the submission of a written description of a dispute, the Chair shall schedule a meeting of the Advisory Committee. The Advisory Committee shall convene within 30 days of the submission of a written description of a dispute and shall make every reasonable effort to resolve the dispute.

D. Failure of the Advisory Committee to Resolve the Dispute. If the Advisory Committee fails to resolve a dispute, the Parties may elect to refer the dispute to mediation. If the Parties are unable to agree promptly upon a mediator or a mediation process, each Party may freely pursue any equitable and legal remedy.

E. Emergencies. Where an unresolved dispute may pose an imminent danger to the public, health, safety or welfare, the Parties shall not be subject to the provisions of this Section.

### **XIII. LIABILITY AND INDEMNIFICATION:**

A. Limitation of Liability: Except as to the negligent or willful misconduct of a Party, each Party shall release and hold harmless the other Parties from and against any and all liability, loss, damage and expense arising from, alleged to arise from, in connection with, or incident to the services rendered under this Agreement.

B. Indemnification and Defense: Each Party shall indemnify, defend and hold harmless the other Parties, its directors, members, officers, employees and agents from and against any and all third-party claims, suits or actions instituted on account of personal injuries or death of any person (including but not limited to workers and the public) or physical damage to property resulting from or arising out of the indemnitor's willful misconduct or negligent act or omission while engaged in the performance of obligations or exercise of rights under this Agreement.

C. Limitation on Damages: No Party shall be liable to any other Party for any consequential, incidental, punitive, special or exemplary damages or lost opportunity costs, lost profit or other business interruption damages, by statute or in tort or contract, under any provision of this Agreement.

D. Water Quality. NCSD shall be responsible for ensuring that the quality of the Nipomo Supplemental Water made available for delivery is of the same pressure and quality of water that NCSD delivers to its residential customers. The quality of water which is delivered by NCSD to its residents shall comply with all federal, state and local laws, regulations and permit requirements which are applicable to NCSD, including standards applicable to wastewater discharge, as amended from time to time and subject to any compliance waiver granted to NCSD ("Quality Standards"). NCSD shall provide GSWC, RWC and WMWC with a copy of the Quality Standards (and any change thereto) which are applicable to NCSD and GSWC, RWC and WMWC shall be solely responsible for ensuring that the Quality Standards meet the federal, state and local laws, regulations and

permit requirements for potable water delivery by GSWC, RWC and WMWC to its customers, including the discharge of such water. To the extent that the quality standards which are applicable to GSWC, RWC and WMWC exceed the Quality Standards, then GSWC, RWC and WMWC shall be responsible for any necessary additional treatment of the Nipomo Supplemental Water. NCS D agrees to indemnify and hold GSWC, RWC and WMWC harmless from any liability which arises as a result of the failure of the Nipomo Supplemental Water which is delivered to the GSWC, RWC and WMWC to meet the Quality Standards. GSWC, RWC and WMWC shall be solely responsible for any actual liability resulting from a change in water quality following the Point of Interconnection (including any additional treatment undertaken by GSWC, RWC and WMWC) and shall indemnify and hold NCS D harmless from any actual liability which arises from any such change. NCS D and GSWC, RWC and WMWC shall promptly notify the other in the event that either becomes aware of a material adverse change in the quality of the Nipomo Supplemental Water and shall cooperate to identify the cause of such change.

#### **XIV RELATIONSHIP OF THE PARTIES:**

The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any Party. Each Party shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Party shall be under the control of or shall be deemed to control another Party. No Party shall be the agent of or have a right or power to bind another Party without such other Party's express written consent, except as provided in this Agreement.

#### **XV. UNCONTROLLABLE FORCES:**

If the existence of an Uncontrollable Force, as defined in Section II.Q above, disables a Party from performing its obligations under this Agreement (except for such Party's obligations to make payments hereunder), such Party shall not be considered to be in default in the performance of any such obligations while such disability of performance exists. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved.

#### **XVI. AUDITS:**

Each Party shall have the right to audit any costs, payments, settlements or other supporting information pertaining to this Agreement, including the Costs and the Budget. Any such audit shall be undertaken by the requesting Party or its representative at reasonable times and in conformance with generally accepted auditing standards. The audited Party shall fully cooperate with any such audit, the cost of which shall be paid by the requesting Party. The right to audit a billing shall extend for a period of three (3) years

following the rendering of the bill. Each Party shall retain all necessary records or documentation for the entire length of such three (3) year period and shall, to the extent permitted by law, take all steps reasonably available to assure the confidentiality of the audited Party's accounting records and supporting documents.

**XVII. THIRD PARTY BENEFICIARIES:**

There are no third Party beneficiaries to this Agreement. This Agreement shall not confer any right or remedy upon any person or entity other than the Parties and their respective successors and assigns permitted under Section XVIII. This Agreement shall not release or discharge any obligation or liability of any third party to any Party or give any third party any right of subrogation or action over or against a Party.

**XVIII. ASSIGNMENT OF INTERESTS:**

A. No Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Each Water Company expressly understands and agrees that it shall not be unreasonable for NCSD to withhold or delay its consent to any proposed or purported assignment to any person or entity ("Assignee") that has not demonstrated to NCSD's reasonable satisfaction that NCSD's interests as contemplated herein will not be adversely affected thereby.

B. Any assignment by a Party of its interest in this Agreement which is made without the prior written consent of the other Parties shall not relieve the assigning Party from primary liability for any of its duties and obligations under this Agreement, and in the event of any such assignment, the assigning Party shall continue to remain primarily liable for payment of any and all money due the other Parties as provided under this Agreement, and for the performance and observance of all covenants, duties and obligations to be performed and observed under this Agreement by the Party to the same extent as though no assignment had been made.

C. Whenever an assignment of a Party's interest in this Agreement is made with the written consent of the other Parties, the assigning Party's assignee shall expressly assume in writing the duties and obligations under this Agreement of the assigning party and, within thirty (30) days after any such assignment and assumption of duties and obligations, the assigning Party shall furnish, or cause to be furnished, to the other Party a true and correct copy of such assignment and assumption of duties and obligations. Upon the effective date of such assignment, the assigning Party shall be relieved of its obligations and duties under this Agreement.

D. Subject to the foregoing restrictions on assignment, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**XIX. NO DEDICATION OF FACILITIES:**

Any undertaking by a Party to another Party under this Agreement shall not constitute the dedication of the system, or any portion thereof, of that Party to the public or to another Party, nor affect the status of that Party as an independent system.

**XX. COMPLETE AGREEMENT:**

This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and supersedes all prior commitments, representations and discussions between the Parties.

**XXI. CONSTRUCTION OF AGREEMENT:**

Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when this Agreement was executed and is consistent with the nature of the rights and obligations of the Parties with respect to the matter being construed.

**XXII. NON-DISCRIMINATION:**

During the performance of this Agreement, no Party shall deny the Agreement's benefits to any person, nor shall any Party discriminate unlawfully against any employee or applicant for employment, on the grounds of or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, marital status or disability, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto. Each party shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

**XXIII. EVENTS OF DEFAULT:**

In the event that a Party shall materially default in the performance of its obligations under this Agreement, the Authorized Representatives of the non-defaulting Parties may give written notice of the default to the Authorized Representative of the defaulting Party. If within thirty (30) days after the non-defaulting Parties' Authorized Representative shall have given such written notice to the defaulting Party's Authorized Representative, the defaulting Party shall have failed to cure the default in its performance of this Agreement, or if such default requires more than thirty (30) days to cure and the defaulting Party fails to commence such cure and diligently prosecute such cure to completion, in addition to any other remedies provided by law, the non-defaulting Parties may terminate this Agreement by written notice of termination as provided for in Section **XXVIII**. In addition to any other cause of default arising hereunder, a Party shall be in a default if:

- A. It becomes insolvent; or

B. It makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws; or

C. It has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed within sixty (60) days after it is filed.

D. In the event of a default and termination of the Agreement as to the defaulting Party, the non-defaulting Parties shall use commercially reasonable best efforts to negotiate any revisions to this Agreement that are necessary or appropriate in light of such termination, which revisions shall be consistent with the purpose and intent of this Agreement and shall preserve, to the maximum extent possible, all material consideration to the remaining parties. Termination of this Agreement, either in its entirety or as to one or more Parties, shall not affect the validity or enforceability of the Stipulation and Judgment or the rights and obligations of any Party thereunder.

#### **XXIV. AMENDMENTS:**

This Agreement may be modified, supplemented or amended only by a writing duly executed by the Parties.

#### **XXV. WAIVERS:**

A. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter arising in connection therewith. Any delay, short of the statutory period of limitation in asserting or enforcing any right, shall not be deemed a waiver of such right.

B. Nothing in this Agreement shall limit, nor act as a waiver, of any Party's rights or defenses in pursuing or defending against any legal or equitable claim or remedy that may be asserted regarding each Party's rights and obligations to participate in the NSWP and bear its percentage allocation of the Costs of the NSWP (as presented in Recital K ).

#### **XXVI. SECTION HEADINGS:**

All captions and headings appearing in this Agreement are inserted to facilitate reference and shall not govern, except where logically necessary, the interpretations of the provisions hereof.

#### **XXVII. GOVERNING LAW:**

**NSWP Supplemental Water Management and Groundwater Replenishment Agreement**

Page 18 of 20

This Agreement shall be interpreted, governed by and construed under the laws of the State of California or the laws of the United States as applicable, as if executed and to be performed wholly within the State of California.

**XXVIII. NOTICES:**

A. Any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person, by email or sent by United States mail, postage prepaid, to the persons specified below, unless otherwise provided for in this Agreement:

Nipomo Community Services District  
Attention: General Manager  
P.O. Box 326  
Nipomo, California 93444-326  
generalmanger@ncsd.ca.gov

Golden State Water Company  
Attention: Senior Vice President of Regulated Utilities  
630 East Foothill Blvd  
San Dimas, CA 91773

Rural Water Company  
c/o Frank B. & Associates  
Attention: Frank Brommenschenkel  
134 Davis Street  
Santa Paula, CA 93060

Woodlands Mutual Water Company  
c/o Wallace Group  
Attention: Robert S. Miller  
612 Clarion Ct.  
San Luis Obispo, CA 93401

B. Any Party may at any time, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

[signatures on following page]

**XXIX. SIGNATURE CLAUSE:**

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

NIPOMO COMMUNITY SERVICES DISTRICT

*Michael S. LeBrun*  
Date: October 16, 2015  
By: MICHAEL S. LEBRUN  
GENERAL MANAGER

GOLDEN STATE WATER COMPANY

Date: \_\_\_\_\_, 2015  
BY: \_\_\_\_\_

RURAL WATER COMPANY

Date: \_\_\_\_\_, 2015  
BY: \_\_\_\_\_

WOODLANDS MUTUAL WATER COMPANY

Date: \_\_\_\_\_, 2015  
BY: \_\_\_\_\_

**XXIX. SIGNATURE CLAUSE:**

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

**NIPOMO COMMUNITY SERVICES DISTRICT**

Date: \_\_\_\_\_, 2015  
By: MICHAEL S. LEBRUN  
GENERAL MANAGER

**GOLDEN STATE WATER COMPANY**

Date: Robert J. Spronks  
September 10, 2015  
BY: Robert J. Spronks  
President & CEO

**RURAL WATER COMPANY**

Date: \_\_\_\_\_, 2015  
BY:

**WOODLANDS MUTUAL WATER COMPANY**

Date: \_\_\_\_\_, 2015  
BY:

**XXIX. SIGNATURE CLAUSE:**

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

**NIPOMO COMMUNITY SERVICES DISTRICT**

Date: \_\_\_\_\_, 2015  
By: MICHAEL S. LEBRUN  
GENERAL MANAGER

**GOLDEN STATE WATER COMPANY**

Date: \_\_\_\_\_, 2015  
BY:

**RURAL WATER COMPANY**

Date: Charles M Baker  
Sept 9, 2015  
BY: Chuck Baker

**WOODLANDS MUTUAL WATER COMPANY**

Date: \_\_\_\_\_, 2015  
BY:

**XXIX. SIGNATURE CLAUSE:**

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

**NIPOMO COMMUNITY SERVICES DISTRICT**

Date: \_\_\_\_\_, 2015  
By: MICHAEL S. LEBRUN  
GENERAL MANAGER

**GOLDEN STATE WATER COMPANY**

Date: \_\_\_\_\_, 2015  
BY:

**RURAL WATER COMPANY**

Date: \_\_\_\_\_, 2015  
BY:

**WOODLANDS MUTUAL WATER COMPANY**

Date: Don R. Go \_\_\_\_\_, 2015  
10 / 15 \_\_\_\_\_, 2015  
BY: \_\_\_\_\_

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# Appendix D: Final Santa Maria River Valley Groundwater Basin Judgement

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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.

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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           **A. Recognition of Priority of Overlying Rights**

2           Except as expressly modified by the settlement agreement among the Northern Parties  
3 (Exhibit “E”), all Overlying Owners that are also Stipulating Parties have a prior and paramount  
4 Overlying Right, whether or not yet exercised.

5           **B. Prescriptive Rights**

6           As to the Stipulating Parties, no Party has proved prescriptive rights to any Native  
7 Groundwater. Future use by the Stipulating Parties will not be adverse and will not ripen into a  
8 prescriptive right as between the Stipulating Parties.

9           **C. Appropriative Rights**

10           Consistent with the specific provisions governing each Management Area, the Stipulating  
11 Parties owning and exercising Appropriative Rights have the right to the reasonable and bene-  
12 ficial use of Native Groundwater that is surplus to the reasonable and beneficial uses of the  
13 Stipulating Parties that are Overlying Owners. New appropriative uses shall be subordinate to  
14 existing appropriations and shall be prioritized on a first in time, first in right basis.

15           **D. Developed Water Rights**

16           The Stipulating Parties owning Developed Water or New Developed Water have the right  
17 to its reasonable and beneficial use, consistent with the specific provisions governing each  
18 Management Area. The right to use Developed Water is a right to use commingled Groundwater  
19 and is not limited to the corpus of that water.

20           **E. Rights to Storage Space**

21           The Court shall reserve jurisdiction over the use of the Storage Space, and any Party may  
22 apply to the Court for the approval of a project using Storage Space. The Court must approve any  
23 project using Storage Space before any Party can claim a right to stored water from that project.  
24 The Stipulating Parties agree that Groundwater derived from Developed Water is exempt from  
25 the Court approval requirements of this Paragraph.

26           **F. Other Surface Water Rights**

27           Nothing in this Stipulation affects or otherwise alters common law riparian rights or any  
28 surface water rights, unless expressly provided in this Stipulation.

1           **IV.    PHYSICAL SOLUTION – ALL MANAGEMENT AREAS**

2           **A.    Authority**

3           Pursuant to Article X, section 2 of the California Constitution, the Stipulating Parties  
4 agree that the Court has the authority to enter a judgment and physical solution containing the  
5 terms and conditions of this Stipulation. Unless the Court imposes this physical solution, poten-  
6 tial changes in water use could affect Basin adequacy and integrity. The Declaration of Rights is  
7 a component of this physical solution.

8           **B.    Purposes and Objectives**

9           The terms and conditions of this Stipulation are intended to impose a physical solution  
10 establishing a legal and practical means for ensuring the Basin’s long-term sustainability. This  
11 physical solution governs Groundwater, SWP Water and Storage Space, and is intended to ensure  
12 that the Basin continues to be capable of supporting all existing and future reasonable and  
13 beneficial uses. This physical solution is: 1) a fair and equitable basis for the allocation of water  
14 rights in the Basin; 2) in furtherance of the mandates of the State Constitution and the water  
15 policy of the State of California; and 3) a remedy that gives due consideration to applicable  
16 common law rights and priorities to use Groundwater and Storage Space, without substantially  
17 impairing any such right.

18           **C.    Basin Management Areas**

19           Development and use of Groundwater, SWP Water and Storage Space have historically  
20 been financed and managed separately in three Management Areas. For example, only the  
21 Northern Parties have paid for, managed, and benefited from the Lopez Project; whereas only  
22 Santa Maria Valley parties have paid for, managed, and benefited from the Twitchell Project. In  
23 contrast, the Nipomo Mesa parties have not been involved in the funding or management of either  
24 the Twitchell or Lopez Projects.

25           The Stipulating Parties agree that Groundwater, SWP Water and Storage Space can be  
26 more efficiently allocated and managed in three Management Areas, given the physical, geo-  
27 graphical, political, economic, and historic conditions. The three Management Areas, as shown  
28 on Exhibit “C,” are as follows: Northern Cities Management Area; Nipomo Mesa Management

1 Area; and Santa Maria Valley Management Area. The Stipulating Parties intend that manage-  
2 ment through three Management Areas will preserve the Basin's integrity.

3 **D. Groundwater Monitoring**

4 1. Monitoring Program. A Monitoring Program shall be established in each  
5 of the three Management Areas to collect and analyze data regarding water supply and demand  
6 conditions. Data collection and monitoring shall be sufficient to determine land and water uses in  
7 the Basin, sources of supply to meet those uses, groundwater conditions including groundwater  
8 levels and quality, the amount and disposition of Developed Water supplies, and the amount and  
9 disposition of any other sources of water supply in the Basin. The Northern Cities Management  
10 Area shall not be required to include in its Monitoring Program or Annual Reports quantification  
11 of groundwater recharge from the Lopez Project or storm water percolation ponds, unless the  
12 Court orders inclusion of this information.

13 Within one hundred and eighty days after entry of judgment, representatives of the Moni-  
14 toring Parties from each Management Area will present to the Court for its approval their  
15 proposed Monitoring Program. The Management Area Engineers shall freely share available well  
16 data, groundwater models, and other products and tools utilized in monitoring and analysis of  
17 conditions in the three Management Areas, consistent with the confidentiality provisions of this  
18 Stipulation.

19 Absent a Court order to the contrary, all Stipulating Parties shall make available relevant  
20 information regarding groundwater elevations and water quality data necessary to implement the  
21 Monitoring Program approved for their respective Management Area. The Monitoring Parties  
22 shall coordinate with the Stipulating Parties to obtain any needed data on reasonable terms and  
23 conditions. Metering may only be imposed on Stipulating Parties upon a Court order following a  
24 showing that such data is necessary to monitor groundwater conditions in the Basin, and in the  
25 case of an Overlying Owner, that Overlying Owner has failed to provide information comparable  
26 to that provided by other Overlying Owners. The confidentiality of well data from individual  
27 owners and operators will be preserved, absent a Court order or written consent.

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2. Monitoring Parties. The Monitoring Parties are as follows:

- (a) Santa Maria Valley Management Area – The Twitchell Management Authority.
- (b) Northern Cities Management Area – The Northern Cities.
- (c) Nipomo Mesa Management Area – The NMMA Technical Group.

3. Annual Reports. Within one hundred and twenty days after each Year, the Management Area Engineers will file an Annual Report with the Court. The Annual Report will summarize the results of the Monitoring Program, changes in groundwater supplies, and any threats to Groundwater supplies. The Annual Report shall also include a tabulation of Management Area water use, including Imported Water availability and use, Return Flow entitlement and use, other Developed Water availability and use, and Groundwater use. Any Stipulating Party may object to the Monitoring Program, the reported results, or the Annual Report by motion.

4. Management Area Engineer. The Monitoring Parties may hire individuals or consulting firms to assist in the preparation of the Monitoring Programs and the Annual Reports. Except as provided below for the Santa Maria Valley Management Area, the Monitoring Parties, in their sole discretion, shall select, retain and replace the Management Area Engineer.

**E. New Developed Water**

1. Stipulating Parties in each Management Area may prepare and implement plans to develop, salvage or import additional water supplies.

2. The Stipulating Parties that pay, or otherwise provide consideration, for New Developed Water are entitled to use it to the extent the New Developed Water augments the water supplies in that Management Area. If more than one Stipulating Party finances or participates in generating New Developed Water, rights to the supply of New Developed Water shall be proportional to each Stipulating Party's financial contribution or other consideration, or as otherwise mutually agreed to by the participating Stipulating Parties. This paragraph does not apply to Return Flows.

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1                   3.       The Stipulating Parties who desire to claim New Developed Water supplies  
2 must bring a motion, and obtain an order from the Court, quantifying and allocating the rights to  
3 the New Developed Water, before they have the prior right to the New Developed Water.

4                   **F.       Severe Water Shortage Response**

5                   This physical solution sets forth a Severe Water Shortage Plan for each Management Area  
6 which is intended to provide an effective response to Severe Water Shortage Conditions that may  
7 develop within each or all of the Management Areas. The specific Severe Water Shortage Plans  
8 for each Management Area are incorporated herein and made a part of the physical solution.

9                   **V.       PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO SANTA MARIA VALLEY**  
10                   **MANAGEMENT AREA**

11                   As supplemented by the provisions of this Stipulation that apply to all Management Areas,  
12 the following terms govern rights to Groundwater, SWP Water and Storage Space in the Santa  
13 Maria Valley Management Area.

14                   **A.       Water Rights to Sources of Supply**

15                   1.       Overlying Rights. The Stipulating Parties who are Overlying Owners  
16 within the Santa Maria Valley Management Area each have the prior and paramount right to use  
17 Native Groundwater. Subject to Paragraph V(C)(2)(b)(vi), all Overlying Rights are appurtenant  
18 to the overlying land and cannot be assigned or conveyed separate or apart from those lands.

19                   2.       Appropriative Rights. The Parties listed in Exhibit "A" are the owners of  
20 Appropriative Rights exercised in the Santa Maria Valley Management Area. Each Appropriative  
21 Right is limited to Native Groundwater that is surplus to reasonable and beneficial uses of the  
22 Stipulating Parties that are Overlying Owners in the Santa Maria Valley Management Area. New  
23 appropriative uses shall be subordinate to existing Appropriative Rights and shall be prioritized  
24 on a first in time, first in right basis.

25                   3.       Developed Water. The Stipulating Parties owning Developed Water have  
26 the right to its reasonable and beneficial use, subject only to the Severe Water Shortage Plan. On  
27 an annual basis, the Stipulating Parties shall have the right to the reasonable and beneficial use of  
28 Developed Water that is surplus to the reasonable and beneficial uses of the owners of that

1 Developed Water. The right to use Developed Water is a right to use commingled Groundwater  
2 and is not limited to the corpus of that water.

3 (a) New Developed Water. The ownership and use of New Developed  
4 Water shall be subject to Court order.

5 (b) Twitchell Water.

6 (i) *Amount*. The Twitchell Project annually provides a variable  
7 amount of Developed Water that augments the Groundwater in the Santa Maria Valley Manage-  
8 ment Area. Twitchell Yield is thirty-two thousand acre-feet per year (“afy”).

9 (ii) *Division of Twitchell Yield*. Twitchell Yield shall be  
10 divided as follows: 80% to Santa Maria, SCWC and Guadalupe, and 20% to the Overlying  
11 Owners within the District who are Stipulating Parties.

12 a. The Twitchell Yield allocated to Santa Maria,  
13 SCWC and Guadalupe is suballocated pursuant to the agreement among Santa Maria, SCWC and  
14 Guadalupe, as attached and incorporated herein as Exhibit “F”.

15 b. The Twitchell Yield allocated to the Overlying  
16 Owners who are Stipulating Parties within the District shall be equally allocated to each acre of  
17 land within the District owned by these Stipulating Parties. Concurrently with the execution of  
18 this Stipulation, each of these Stipulating Parties shall report their acreage of overlying land  
19 within the District on a parcel specific basis. Within one hundred and twenty days of the effec-  
20 tive date of this Stipulation, the Management Area Engineer shall create a list of all the Stipu-  
21 lating Parties and their respective allocation of the Twitchell Yield.

22 (iii) *Recapture of Twitchell Yield*. The right to use Twitchell  
23 Yield is a right to use commingled Groundwater and is not limited to the corpus of that water.

24 (iv) *Transfer of Twitchell Yield*. Twitchell Yield may be trans-  
25 ferred, temporarily or permanently, only between Stipulating Parties and the transfer market shall  
26 be as open and competitive as practical. A memorandum of agreement summarizing each transfer  
27 shall be filed with the Court and provided to the TMA. Any such memorandum of agreement  
28 shall state the Parties to the transfer, the amount of Twitchell Yield transferred, the price per acre-

1 foot, and the Party responsible for the financial obligation associated with the Twitchell Yield.

2 (v) *Carryover.* Any portion of Twitchell Yield that is not used  
3 in a given Year shall not be carried over into the following Year.

4 (c) State Water Project Water.

5 (i) *Import and Use of State Water Project Water.* Santa Maria,  
6 SCWC and Guadalupe all have SWP Contracts. Santa Maria will import and use within the Santa  
7 Maria Valley Management Area not less than 10,000 acre-feet each Year of Available SWP  
8 Water, or the full amount of Available SWP Water if the amount physically available is less than  
9 10,000 acre-feet in a given Year under Santa Maria's SWP Contract. Guadalupe will import and  
10 use within the Santa Maria Valley Management Area a minimum of 75% of its Available SWP  
11 Water. SCWC will import and use within the Basin all its Available SWP Water. Santa Maria,  
12 SCWC and Guadalupe will not voluntarily relinquish or terminate their current SWP Contracts,  
13 and shall seek renewal of these SWP Contracts.

14 (ii) *Return Flows.*

15 a. *Fixed Amount.* The Return Flows available to each  
16 Importer is fixed based on a percentage of the annual amount of SWP Water the Importer uses  
17 within the Basin. The fixed percentage for each importer is as follows: (a) Santa Maria 65%; (b)  
18 SCWC 45%; and (c) Guadalupe 45%. The percentage provided to SCWC and Guadalupe shall  
19 be adjusted through a Court order if: a) either entity increases its use of water imported into the  
20 Basin, b) the applicable method of wastewater treatment and discharge to the Basin is altered, or  
21 c) good cause is shown.

22 b. *Recapture.* The right to use Return Flows does not  
23 attach to the corpus of SWP water deliveries or the treated SWP wastewater discharged into the  
24 Basin but is a right to use the commingled Groundwater. The Importer's right to Return Flows is  
25 assignable in whole or in part, subject to necessary accounting.

26 c. *Quantification of Return Flows.* Return Flows equal  
27 the total amount of SWP Water used by the Importer in the prior five Years, divided by five, and  
28 then multiplied by the Importer's percentage as provided in Paragraph V(A)(3)(c)(ii)(a) above.

1 d. Carryover. Any portion of Return Flows that is not  
2 used in a given Year shall not be carried over into the following Year.

3 **B. Monitoring and Management**

4 1. Status of Management Area. Current Groundwater and SWP Water sup-  
5 plies are sustaining existing water uses. Changes in land and water use and demographic con-  
6 ditions can be expected to occur, possibly resulting in changes in water supply or demand  
7 requirements.

8 2. Need for Monitoring. Monitoring and reporting of changes in land and  
9 water use and demographic conditions are necessary to ensure that water supplies continue to be  
10 sufficient to support water uses.

11 3. Monitoring Program.

12 (a) Annual Report: Content and Processing.

13 The Annual Report shall include an analysis of the relationship between projected water demands  
14 and projected water supplies.

15 (i) The Annual Report shall be prepared and signed by the  
16 Management Area Engineer, and shall be simultaneously submitted to the Court and the TMA.

17 (ii) Within forty-five days of submission, the TMA shall hold a  
18 noticed public hearing to take comments on and consider for adoption the Annual Report. No  
19 later than forty-five days from the date of the public hearing, the TMA shall submit to the Court  
20 its recommendations regarding the Annual Report.

21 (iii) Within one hundred and twenty days of the date of the  
22 submission of the Annual Report to the Court, it shall conduct a noticed hearing on the Annual  
23 Report. Any Party may submit comments on the Annual Report. After the hearing, the Court  
24 shall accept the Annual Report or direct its modification.

25 (b) Management Area Engineer

26 (i) Absent the unanimous consent of the TMA, the Manage-  
27 ment Area Engineer shall not concurrently be employed by any Party holding rights to use  
28 Groundwater in the Santa Maria Valley Management Area.

1 (ii) The Management Area Engineer shall initially be the engin-  
2 eering firm of Luhdorff & Scalmanini. Luhdorff & Scalmanini shall be the Management Area  
3 Engineer for a minimum of the shorter of five years from the date of this Stipulation or the date  
4 upon which Mr. Joseph Scalmanini discontinues full time work for that firm.

5 (iii) The TMA shall employ the following process to replace the  
6 Management Area Engineer:

7 a. The TMA shall solicit candidates for Management  
8 Area Engineer through a public process. All submissions and candidate materials shall be avail-  
9 able to any Party upon request. The TMA shall conduct its interview through a public process to  
10 the extent practical, and include District and Overlying Owner representatives in the candidate  
11 review process.

12 b. Once a short list of candidates (less than five) for  
13 Management Area Engineer is obtained, the TMA shall hold a noticed public hearing to take  
14 comments on and consider the candidates for Management Area Engineer. The TMA shall make  
15 a reasonable effort to select the Management Area Engineer with a unanimous vote. If the TMA  
16 unanimously endorses a candidate, that nominee shall be recommended to the Court. Otherwise,  
17 the short list of candidates shall be submitted.

18 c. The Court shall appoint the Management Area  
19 Engineer following a noticed hearing.

20 4. Funding. The TMA shall pay for the Monitoring Program for the Santa  
21 Maria Valley Management Area, which includes the cost of the Management Area Engineer and  
22 the Annual Report. The cost of the Monitoring Program shall be divided among the Twitchell  
23 Participants on the same basis as the allocation of their Twitchell Yield.

24 **C. Response to Varying Conditions**

25 1. Early Response to Avoid Severe Water Shortage Conditions. If the Man-  
26 agement Area Engineer determines that projected demands are expected to materially exceed  
27 projected water supplies, then the Management Area Engineer may recommend programs and  
28 projects to augment the Management Area's water supplies. The Stipulating Parties will collabo-

1 rate on a response based upon current conditions, but absent Severe Water Shortage Conditions,  
2 implementation of programs and projects will not be mandated.

3 The Stipulating Parties may voluntarily participate in any recommended program or  
4 project, either through financial or other contributions. The Stipulating Parties that contribute to  
5 such a program or project shall have a priority to the water supplies generated by that program or  
6 project with Court approval. The Stipulating Parties agree to aggressively pursue New  
7 Developed Water sources, including necessary funding.

8 2. Severe Water Shortage Conditions and Response.

9 (a) Determination. Severe Water Shortage Conditions shall be found  
10 to exist when the Management Area Engineer, based on the results of the ongoing Monitoring  
11 Program, finds the following: 1) groundwater levels in the Management Area are in a condition of  
12 chronic decline over a period of not less than five Years; 2) the groundwater decline has not been  
13 caused by drought; 3) there has been a material increase in Groundwater use during the five-Year  
14 period; and 4) monitoring wells indicate that groundwater levels in the Santa Maria Valley  
15 Management Area are below the lowest recorded levels.

16 (b) Response.

17 (i) If the Management Area Engineer determines that Severe  
18 Water Shortage Conditions exist within the Santa Maria Valley Management Area, the Manage-  
19 ment Area Engineer shall file and serve, as part of its Annual Report, findings and recommen-  
20 dations to alleviate such shortage conditions or the adverse effects caused by such water shortage.

21 (ii) Upon the filing of the Annual Report, the Court shall hold a  
22 noticed hearing regarding the existence and appropriate response to the Severe Water Shortage  
23 Conditions. If, after that hearing, the Court finds that Severe Water Shortage Conditions exist in  
24 the Santa Maria Valley Management Area, the Court shall first order all use of Groundwater to be  
25 limited to: (a) for Guadalupe, Santa Maria and SCWC, their Developed Water; (b) entitled  
26 Stipulating Parties to their New Developed Water; and (c) for the Overlying Owners, the Native  
27 Groundwater plus any Developed Water to which individual Overlying Owners are entitled.

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1 (iii) The Court may also order Stipulating Parties to address  
2 specific adverse effects caused by the Severe Water Shortage Conditions. The responses may  
3 include, but are not limited to: (a) measures recommended in the Annual Report and the related  
4 Court proceedings; and (b) other measures intended to address localized problems in the Santa  
5 Maria Valley Management Area directly related to the Severe Water Shortage Conditions.

6 (iv) The Court may adjust the Groundwater use limitations  
7 imposed on any Stipulating Party(ies) who implement programs or projects providing additional  
8 water supplies within the Santa Maria Valley Management Area.

9 (v) If the Court finds that Management Area conditions have  
10 deteriorated since it first found Severe Water Shortage Conditions, the Court may impose further  
11 limitations on Groundwater use. If the Court imposes further limitations on Groundwater use, a  
12 Stipulating Party shall be exempt from those limitations to the extent: (a) the Stipulating Party can  
13 demonstrate that it has already implemented limitations in its Groundwater use, equivalent to  
14 those ordered by the Court; or (b) the Stipulating Party can demonstrate that further limitations  
15 would not avoid or reduce the deteriorating conditions.

16 (vi) During Severe Water Shortage Conditions, the Stipulating  
17 Parties may make agreements for temporary transfer of rights to pump Native Groundwater,  
18 voluntary fallowing, or the implementation of extraordinary conservation measures. Transfers of  
19 Native Groundwater must benefit the Management Area and be approved by the Court.

20 **D. Management and Administration of the Twitchell Project**

21 1. Operational Parameters. All Twitchell Project operations (operation and  
22 maintenance and capital projects) will be performed consistent with the following parameters  
23 (Operational Parameters):

24 (a) Maximize recharge of the Santa Maria Valley Management Area  
25 from Twitchell Water, including without limitation, the avoidance of impacts on recharge  
26 resulting from ongoing accumulation of silt to the maximum extent practical.

27 (b) Operate the Twitchell Project in accordance with the requirements  
28 of applicable law including, without limitation, the requirements of the Bureau of Reclamation

1 and Army Corps of Engineers.

2 (c) Operate the Twitchell Project in accordance with industry standards  
3 and best management practices.

4 2. Twitchell Project Manual.

5 (a) The TMA will hire and pay for a professional engineering con-  
6 sulting firm with expertise in dam and reservoir operations and maintenance, acceptable to the  
7 District and the TMA, to develop an integrated operation and maintenance procedure manual  
8 (“Twitchell Project Manual”) and provide recommendations for capital and maintenance projects  
9 that are consistent with the Operational Parameters.

10 (b) The District shall hold one or more public hearings to solicit input  
11 regarding the content of the Twitchell Project Manual.

12 (c) Within eighteen months of entry of the judgment, the TMA and the  
13 District shall adopt a final Twitchell Project Manual.

14 (d) Any disagreement between the District and the TMA regarding the  
15 content of the final Twitchell Project Manual shall be presented for Court review and determina-  
16 tion pursuant to the judicial review provisions provided in this Stipulation.

17 (e) The District will exercise its discretionary authority to conduct all  
18 its operation and maintenance activities for the Twitchell Project in accordance with the Twitchell  
19 Project Manual.

20 3. Twitchell Project Funding.

21 (a) District will maintain its current operation and maintenance (O&M)  
22 assessments. These funds will be used for District staff salaries, property, equipment, rent,  
23 expenses, and other day-to-day operations, and will be expended consistent with the Twitchell  
24 Project Manual to the extent it is applicable.

25 (b) The TMA will separately fund, administer, construct and manage  
26 any additional Twitchell Project expenses or projects, including Capital Improvement Projects  
27 (see below) and O&M, (Extraordinary Project Operations) consistent with the Twitchell Project  
28 Manual. The TMA and the District will make reasonable efforts to work cooperatively to imple-

1 ment Extraordinary Project Operations.

2 (c) Consistent with the provisions of this Paragraph V(D), the District  
3 and the TMA shall be responsible for ensuring the ongoing operational integrity of the Twitchell  
4 Project and the maintenance of the Twitchell Yield. The Stipulating Parties expect that this  
5 ongoing responsibility may involve significant expenditures. Within 120 days of the effective  
6 date of this Stipulation, and annually thereafter, the Twitchell Participants shall establish an  
7 operating budget for the TMA to fund its responsibilities set forth in this Stipulation. For the first  
8 five years following the PUC approval as provided below, the TMA's annual budget shall be  
9 established at an amount between \$500,000 to \$700,000. Following the initial budgeting period,  
10 the TMA shall set its budget in three- to five-year increments, as it deems necessary to meet its  
11 obligations to preserve the Twitchell Yield. Any unused revenues shall be segregated into a  
12 reserve account, for future funding needs of the Twitchell Project. The Stipulating Parties agree  
13 to cooperate and coordinate their efforts to enable the TMA to fulfill its responsibilities as pro-  
14 vided in this Stipulation.

15 4. Twitchell Management Authority.

16 (a) The TMA shall be comprised of one representative of each of the  
17 following parties: Santa Maria, Guadalupe, Southern California Water Company, the District, and  
18 Overlying Landowners holding rights to Twitchell Yield.

19 (b) Only those parties holding an allocation of Twitchell Yield shall be  
20 voting members of the TMA. Voting shall be based on each party's proportionate allocation of  
21 Twitchell Yield.

22 (c) The TMA shall be responsible for all the Extraordinary Project  
23 Operations.

24 (d) The TMA shall be responsible for developing proposals for Capital  
25 Improvement Projects relating to the Twitchell Project. Capital Improvement Projects shall mean  
26 projects involving the expenditure of funds for the improvement or enhancement of the Twitchell  
27 Project, but shall not include normal operation, maintenance or repair activities.

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1 (e) Upon the development of a proposal for a Capital Improvement  
2 Project, the TMA shall, in cooperation with the District, hold one or more public hearings to  
3 solicit input.

4 (f) Following the public hearing process, the TMA may vote on  
5 whether to implement the Capital Improvement Project.

6 (g) The cost of TMA-sponsored Extraordinary Project Operations and  
7 Capital Improvement Projects shall be divided among Twitchell Participants on the same basis as  
8 the allocation of their Twitchell Yield.

9 (h) The District shall assume operation and maintenance responsibility  
10 for any TMA sponsored Capital Improvement Project to the extent practical within the District's  
11 day-to-day operations.

12 5. Regulatory Compliance. The TMA or the District shall provide advance  
13 notice to the Court and all Parties of the initiation of any regulatory proceeding relating to the  
14 Twitchell Project.

15 6. Existing Contracts. The Twitchell Reservoir Project will continue to be  
16 governed by and subject to the terms and conditions of the December 1955 agreement between  
17 the District and the Santa Barbara County Water Agency and nothing in this Stipulation is  
18 intended to modify the rights or obligations provided in that agreement. To the extent that the  
19 approval of Santa Barbara County Water Agency or the United States Bureau of Reclamation is  
20 required in connection with the implementation of this Stipulation, the Stipulating Parties agree to  
21 work cooperatively to obtain such approval(s).

22 **E. New Urban Uses – Santa Maria Valley Management Area**

23 1. New Urban Uses shall obtain water service from the local public water  
24 supplier. The local public water supplier shall provide water service on a reasonable and non-  
25 discriminatory basis.

26 2. New municipal and industrial uses on land adjacent to or within one-  
27 quarter mile of the boundary line depicted in Exhibit D shall comply with any applicable Cor-  
28 porations Code provisions and negotiate in good faith to obtain water service from the local

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 NCSD, 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.       NCSD 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, NCSD, 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 priate 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                   NCS D - 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 Stipu-  
13 lation 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 Para-  
17 graph 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 NCS D, RWC and  
28 SCWC, as provided in Paragraph VI(D)(1-2).

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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/](http://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.

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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) NCSD, 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 NCSD, 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.

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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.

1 **VII. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NORTHERN CITIES**  
2 **MANAGEMENT AREA**

3 These terms, supplemented by the provisions of this Stipulation that apply to all  
4 Management Areas, govern water rights and resources in the Northern Cities Management Area.

5 1. Groundwater Monitoring. Groundwater monitoring in the Northern Cities  
6 Management Area will be conducted by the Northern Cities in the manner described above.

7 2. Lopez Project. The Lopez Project will continue to be managed by the SLO  
8 District. The Northern Cities and Landowners will continue to bear costs of the Lopez Reservoir  
9 and no costs of the Twitchell Reservoir.

10 3. Independent Management Per Settlement Agreement.

11 (a) Existing Groundwater, SWP Water and Storage Space in the  
12 Northern Cities Management Area will continue to be allocated and independently managed by  
13 the Northern Parties in accordance with the Northern Cities and Northern Landowners' 2002  
14 Settlement Agreement (Exhibit "E") for the purpose of preserving the long-term integrity of water  
15 supplies in the Northern Cities Management Area. That Settlement Agreement initially allocates  
16 57% of the safe yield of groundwater in Zone 3 to the farmers and 43% to the cities; and it  
17 provides *inter alia* that any increase or decrease in the safe yield will be shared by the cities and  
18 landowners on a pro rata basis. That Settlement Agreement is reaffirmed as part of this Stipula-  
19 tion and its terms are incorporated into this Stipulation, except that the provisions regarding con-  
20 tinuing jurisdiction (§ 4), groundwater monitoring, reporting, and the Technical Oversight  
21 Committee (§§ 7-20) are canceled and superseded by the provisions of this Stipulation dealing  
22 with those issues.

23 (b) Without the written agreement of each of the Northern Cities, no  
24 party other than Northern Parties shall have any right to:

25 (i) pump, store, or use Groundwater or surface water within the  
26 Northern Cities Management Area; or

27 (ii) limit or interfere with the pumping, storage, management or  
28 usage of Groundwater or surface water by the Northern Parties within the Northern Cities

1 Management Area.

2 (c) For drought protection, conservation, or other management pur-  
3 poses, the Northern Parties may engage in contractual transfers, leases, licenses, or sales of any of  
4 their water rights, including voluntary fallowing programs. However, no Groundwater produced  
5 within the Northern Cities Management Area may be transported outside of the Northern Cities  
6 Management Area without the written agreement of each of the Northern Cities.

7 4. Current and future deliveries of water within the spheres of influence of the  
8 Northern Cities as they exist on January 1, 2005 shall be considered existing uses and within the  
9 Northern Cities Management Area.

10 **VIII. INJUNCTION – ALL MANAGEMENT AREAS**

11 **A. Use Only Pursuant to Stipulation**

12 Each and every Stipulating Party, their officers, agents, employees, successors and  
13 assigns, are enjoined and restrained from exercising the rights and obligations provided through  
14 this Stipulation in a manner inconsistent with the express provisions of this Stipulation.

15 **B. Injunction Against Transportation From the Basin**

16 Except upon further order of the Court, each and every Stipulating Party and its officers,  
17 agents, employees, successors and assigns, is enjoined and restrained from transporting Ground-  
18 water to areas outside the Basin, except for those uses in existence as of the date of this Stipula-  
19 tion; provided, however, that Groundwater may be delivered for use outside the Basin as long as  
20 the wastewater generated by that use of water is discharged within the Basin, or agricultural  
21 return flows resulting from that use return to the Basin.

22 **C. No Third Party Beneficiaries**

23 This Stipulation is intended to benefit the Stipulating Parties and no other Parties. Only a  
24 Stipulating Party may enforce the terms of this Stipulation or assert a right to any benefits of, or  
25 enforce any obligations contained in this Stipulation.

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1 **IX. RESERVED JURISDICTION – ALL MANAGEMENT AREAS**

2 **A. Reserved Jurisdiction; Modifications, Cancellations, Amendments**

3 Jurisdiction, power and authority are retained by and reserved to the Court as set forth in  
4 this Paragraph. Nothing in the Court's reserved jurisdiction shall authorize modification, cancel-  
5 lation or amendment of the rights provided under Paragraphs III; V(A, E); VI(A, B, D); VII(2, 3);  
6 VIII(A); IX(A, C); and X(A, D) of this Stipulation. Subject to this limitation, the Court shall  
7 make such further or supplemental orders as may be necessary or appropriate regarding the  
8 following:

- 9 1. enforcement of this Stipulation;
- 10 2. claims regarding waste/unreasonable use of water;
- 11 3. disputes between Stipulating Parties across Management Area boundaries;
- 12 4. interpretation and enforcement of the judgment;
- 13 5. consider the content or implementation of a Monitoring Program;
- 14 6. consider the content, conclusions, or recommendations contained in an  
15 Annual Report;
- 16 7. consider Twitchell Project operations, including, but not limited to: i) the  
17 content of the Twitchell Project Manual; ii) TMA or District compliance  
18 with the Twitchell Project Manual; iii) decisions to implement Extraor-  
19 dinary Project Operations; or iv) the maintenance of Twitchell Yield;
- 20 8. claims of localized physical interference between the Stipulating Parties in  
21 exercising their rights pursuant to this Stipulation; provided, however,  
22 rights to use Groundwater under this Stipulation shall have equal status;  
23 and
- 24 9. modify, clarify, amend or amplify the judgment and the Northern Parties  
25 Settlement Agreement; Provided, however, that all of the foregoing shall  
26 be consistent with the spirit and intent of this Stipulation.

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1           **B.     Noticed Motion**

2           Any party that seeks the Court’s exercise of reserved jurisdiction shall file a noticed  
3 motion with the Court. Any noticed motion shall be made pursuant to the Court’s Order Con-  
4 cerning Electronic Service of Pleadings and Electronic Posting of Discovery Documents dated  
5 June 27, 2000, attached and incorporated as Exhibit “G”. Any request for judicial review shall be  
6 filed within sixty days of the act or omission giving rise to the claim. Upon a showing of good  
7 cause, the Court may extend the sixty-day time limitation.

8           **C.     De Novo Nature of Proceeding**

9           The Court shall exercise *de novo* review in all proceedings. The actions or decisions of  
10 any Party, the Monitoring Parties, the TMA, or the Management Area Engineer shall have no  
11 heightened evidentiary weight in any proceedings before the Court.

12           **D.     Filing and Notice**

13           As long as the Court’s electronic filing system remains available, all Court filings shall be  
14 made pursuant to Exhibit “G”. If the Court’s electronic filing system is eliminated and not  
15 replaced, the Stipulating Parties shall promptly establish a substitute electronic filing system and  
16 abide by the same rules as contained in the Court’s Order.

17 **X.    MISCELLANEOUS PROVISIONS – ALL MANAGEMENT AREAS**

18           **A.     Unenforceable Terms**

19           The Stipulating Parties agree that if any provision of this Stipulation or the judgment  
20 entered based on this Stipulation is held to be invalid, void, or unenforceable, the remaining pro-  
21 visions shall nevertheless continue in full force and effect; provided, however, any order which  
22 invalidates, voids, deems unenforceable, or materially alters those Paragraphs enumerated in  
23 Paragraph IX(A) or any of them, shall render the entirety of the Stipulation and the judgment  
24 entered based on this Stipulation voidable and unenforceable, as to any Stipulating Party who  
25 files and serves a motion to be released from the Stipulation and the judgment based upon the  
26 Stipulation within sixty days of entry of that order, and whose motion is granted upon a showing  
27 of good cause.

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1           **B.     Water Quality**

2           Nothing in the Stipulation shall be interpreted as relieving any Stipulating Party of its  
3 responsibilities to comply with state or federal laws for the protection of water quality or the  
4 provisions of any permits, standards, requirements, or orders promulgated thereunder.

5           **C.     Duty to Cooperate**

6           The Stipulating Parties agree not to oppose, or in any way encourage or assist any other  
7 party in opposing or challenging, any action, approval, or proceeding necessary to obtain  
8 approval of or make effective this Stipulation or the judgment to be entered on terms consistent  
9 with this Stipulation.

10           **D.     Stipulating Parties Under Public Utilities Commission Regulation**

11           1.       To the extent allowed by law, SCWC and RWC shall comply with this  
12 Stipulation, prior to obtaining California Public Utilities Commission (“PUC”) approval. If the  
13 PUC fails to approve SCWC’s and RWC’s participation or fails to provide approval of the neces-  
14 sary rate adjustments so that SCWC and RWC may meet their respective financial obligations,  
15 including the participation in Developed Water projects, Monitoring Programs, TMA and as  
16 otherwise provided in this Stipulation, shall render the entirety of the Stipulation and those terms  
17 of any judgment based on this Stipulation invalid, void and unenforceable, as to any Stipulating  
18 Party who files and serves a notice of rescission within sixty days of notice by SCWC or RWC of  
19 a final PUC Order.

20           2.       Any Party, or its successors or assigns, agreeing to become a new customer  
21 of SCWC or RWC, or an existing customer proposing to increase its water use through a change  
22 in land use requiring a discretionary land use permit or other form of land use entitlement, that  
23 has not executed reservation contracts for supplemental water as specified in Exhibit F will  
24 provide the following, once approved by the PUC:

25                   (a)     If in the Santa Maria Valley Management Area, a water resource  
26 development fee as specified in Exhibit F or a source of supplemental water sufficient to offset  
27 the consumptive demand associated with the new use as provided in Paragraph V(E); or

28     ///

1 (b) If in the NMMA, a water resource development fee, or a source of  
2 supplemental water sufficient to offset the consumptive demand associated with the new use.

3 3. Any Person who is not engaged in a New Urban Use and who agrees to  
4 become a customer of SCWC or RWC shall retain its right to contest the applicable water  
5 resource development fee, should that fee ever become applicable to that Person.

6 **E. Designation of Address, for Notice and Service**

7 Each Stipulating Party shall designate the name, address and e-mail address, if any, to be  
8 used for purposes of all subsequent notices and service, either by its endorsement on the Stipula-  
9 tion for entry of judgment or by a separate designation to be filed within thirty days after execu-  
10 tion of this Stipulation. This designation may be changed from time to time by filing a written  
11 notice with the Court. Any Stipulating Party desiring to be relieved of receiving notices may file  
12 a waiver of notice on a form approved by the Court. The Court shall maintain at all times a  
13 current list of Parties to whom notices are to be sent and their addresses for purposes of service.  
14 The Court shall also maintain a full current list of names, addresses, and e-mail addresses of all  
15 Parties or their successors, as filed herein. Copies of such lists shall be available to any Person.  
16 If no designation is made, a Stipulating Party's designee shall be deemed to be, in order of  
17 priority: i) the Party's attorney of record; ii) if the Party does not have an attorney of record, the  
18 Party itself at the address specified.

19 **F. No Loss of Rights**

20 Nothing in this Stipulation shall be interpreted to require or encourage any Stipulating  
21 Party to use more water in any Year than is actually required. As between the Stipulating Parties,  
22 failure to use all of the water to which a Stipulating Party is entitled hereunder shall not, no matter  
23 how long continued, be deemed or constitute an abandonment or forfeiture of such Stipulating  
24 Party's rights, in whole or in part.

25 **G. Intervention After Judgment**

26 Any Person who is not a Party or successor to a Party, who proposes to use Groundwater  
27 or Storage Space, may seek to become a Party to the judgment through a petition for intervention.  
28 The Court will consider an order confirming intervention following thirty days notice to the

1 Parties. Thereafter, if approved by the Court, such intervenor shall then be a Party bound by the  
2 judgment as provided by the Court.

3 **H. Stipulation and Judgment Binding on Successors, Assigns, etc.**

4 The Stipulating Parties agree that all property owned by them within the Basin is subject  
5 to this Stipulation and the judgment to be entered based upon the terms and conditions of this  
6 Stipulation. This Stipulation and the judgment will be binding upon and inure to the benefit of  
7 each Stipulating Party and their respective heirs, executors, administrators, trustees, successors,  
8 assigns, and agents. This Stipulation and the judgment to be entered based the terms and condi-  
9 tions of this Stipulation shall not bind the Stipulating Parties that cease to own property within the  
10 Basin, or cease to use Groundwater. As soon as practical after the effective date of this Stipula-  
11 tion, a memorandum of agreement referencing this Stipulation shall be recorded in Santa Barbara  
12 and San Luis Obispo Counties by Santa Maria, in cooperation with the Northern Cities and  
13 SCWC. The document to be recorded shall be in the format provided in Exhibit "H".

14 **I. Costs**

15 No Stipulating Party shall recover any costs or attorneys fees from another Stipulating  
16 Party incurred prior to the entry of a judgment based on this Stipulation.

17 **J. Non-Stipulating Parties**

18 It is anticipated that the Court will enter a single judgment governing the rights of all  
19 Parties in this matter. The Stipulating Parties enter into this Stipulation with the expectation that  
20 the Court will enter, as a part of the judgment, the terms and conditions of this Stipulation. This  
21 Stipulation shall not compromise, in any way, the Court's legal and equitable powers to enter a  
22 single judgment that includes provisions applicable to the non-Stipulating Parties that may  
23 impose differing rights and obligations than those applicable to the Stipulating Parties. As against  
24 non-Stipulating Parties, each Stipulating Party expressly reserves and does not waive its right to  
25 appeal any prior or subsequent ruling or order of the Court, and assert any and all claims and  
26 defenses, including prescriptive claims. The Stipulating Parties agree they will not voluntarily  
27 enter into a further settlement or stipulation with non-Stipulating Parties that provides those non-  
28 Stipulating Parties with terms and conditions more beneficial than those provided to similarly

1 situated Stipulating Parties.

2 **K. Counterparts**

3 This Stipulation may be signed in any number of counterparts, including counterparts by  
4 facsimile signature, each of which shall be deemed an original, but all of which shall together  
5 constitute one and the same instrument. The original signature pages shall be filed with Court.

6 **L. Effective Date**

7 This Stipulation shall be effective when signed by the Stipulating Parties listed on Exhibit  
8 “A” and accepted by the Court.

Party	Signature, title, and date	Parcels Subject to Stipulation
<b>Attorney of Record</b>	<b>Approved as to form:</b> By: _____ Date: _____	

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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is HATCH & PARENT, 21 E. Carrillo Street, Santa Barbara, California 93101.

Pursuant to the Court's Order dated June 28, 2000, I, Gina Lane, did the following:

- Posted the following document at approximately 4:30 p.m. on June 30, 2005.

STIPULATION (JUNE 30, 2005 VERSION)

- Mailed a Notice of Availability to all parties (designating or defaulting to mail service) on the current website's service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 30, 2005, at Santa Barbara, California.

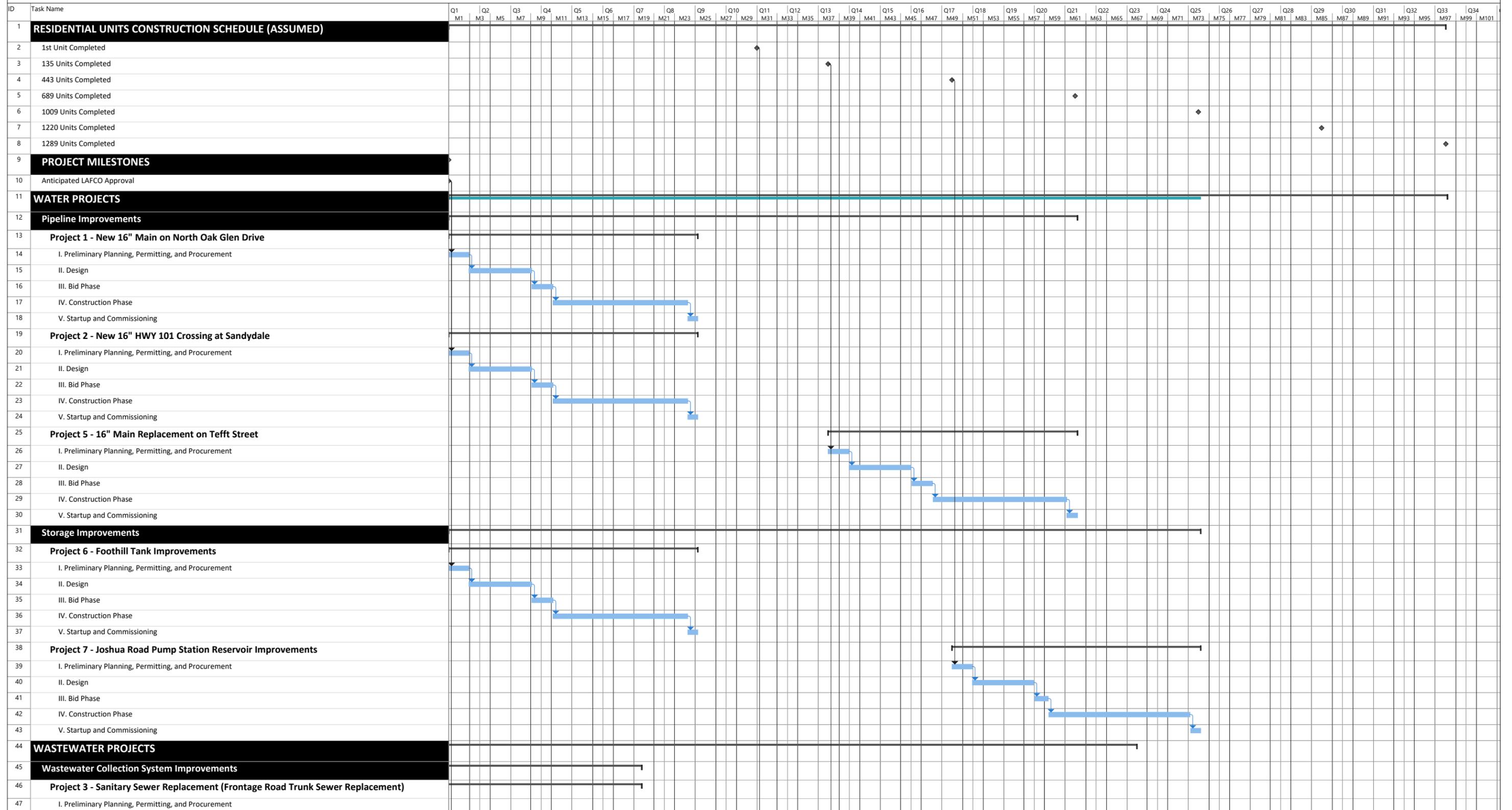
  
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GINA M. LANE

# Appendix E: Implementation Phasing Schedule

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**Figure 5-1**  
**Nipomo Community Services District**  
**Dana Reserve Development**  
**Water and Wastewater Phasing Study**



Project: NCS D Dana Reserve Phasing Schedule  
Date: Fri 4/26/24

Task		Milestone		Project Summary		Inactive Milestone		Manual Task		Manual Summary Rollup		Start-only		External Tasks		Deadline		Manual Progress	
Split		Summary		Inactive Task		Inactive Summary		Duration-only		Manual Summary		Finish-only		External Milestone		Progress			

