



## Nacimiento Project Commission Notice of Meeting and Agenda

**Thursday, February 28, 2008 – 4:00 pm**  
**Templeton Community Services District Offices**

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- I. Call to Order, Roll Call, and Flag Salute
- II. Public Comment  
This is the opportunity for members of the public to address the Commission on items that are not on the agenda, subject to a three minute time limit.
- III. Meeting Notes from October 11, 2007  
(RECOMMEND APPROVAL)
- IV. COMMISSION INFORMATION ITEMS – written reports with brief verbal overview by staff or consultant. No action is required.
  - a. Project Management Report
  - b. Project Schedule
  - c. Project Budget
- V. PRESENTATIONS – no action required.
  - a. (none)
- VI. COMMISSION ACTION ITEMS  
(No Subsequent Board of Supervisors Action Required)
  - a. Nomination and Election of Officers
- VII. COMMISSION ACTION ITEMS  
(Board of Supervisors Action is Subsequently Required)
  - a. Execution Memorandum of Agreement Regarding the Clean Water Act Section 404 Permit
- VIII. FUTURE AGENDA ITEMS DESIRED BY COMMISSION

Commissioners

**Harry Ovitt, Chair**, SLO County  
Flood Control & Water  
Conservation District

**Dave Romero, Vice Chair**, City of  
San Luis Obispo

**David Brooks**, Templeton CSD

**Grigger Jones**, Atascadero MWC

**Frank Mecham**, City of El Paso  
de Robles

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**Next Commission meeting scheduled for  
Thursday, April 24, 2008, at 4:00 pm at  
Templeton Community Services District offices**

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Nacimiento Project Commission  
February 28, 2008  
**Agenda Item III – Meeting Notes from October 11, 2007<sup>1</sup>**

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**I. Call to Order, Roll Call and Flag Salute**

Chairman Ovitt convened the meeting at 4:00 pm.

Commissioners Present: Chairman Harry Ovitt, SLO County Flood Control & Water Conservation District  
Vice Chairman Dave Romero, City of San Luis Obispo  
Frank Mecham, City of el Paso de Robles  
David Brooks, Templeton CSD  
John Neil, Atascadero MWC (alternate)

**II. Public Comment – None.**

**III. Meeting Notes from August 23, 2007, Meeting**

Commissioner Mecham moved approval of the August 23, 2007, meeting notes; Commissioner Brooks seconded the motion; passed unanimously.

**IV. Project Management Report**

John Hollenbeck reported that the Nacimiento bond sale has been nominated for US Bank’s “Deal of the Year” award.

Alliant Insurance Services quoted Builder’s Risk coverage for the Project at a premium of \$137,000 for the term of the project.

Chairman Ovitt reported that Camp Roberts has a new commanding officer that we may interface with for construction coordination.

With regard to proceeding with the larger diameter pipe for Units A and A1, Black & Veatch confirmed that the hydraulic benefit translates into a 200 Hp reduction for the intake pump station motors. John Hollenbeck confirmed his intent to proceed as laid out in the Project Manager’s report.

Settlement agreements with two more property owners have been reached for easement acquisitions. Possessory hearings begin on October 17, 2007, with Price, Postel & Parma representing the District.

In response to Commissioner Brooks inquiry about the Templeton CSD turnout, Mr. Hollenbeck confirmed that Black & Veatch is preparing concept drawings of sufficient detail that Whitaker may provide a construction cost estimate. If favorable, will proceed with issuance of a construction change order for the turnout relocation. John Hollenbeck reminded Christine Halley to address any alignment changes in the appropriate environmental determination.

Ed Weyrauch, Jacobs Engineering Group, was introduced as the new Project Construction Manager. Ed anticipates the start of construction in December/January 2008. Commissioner Mecham asked about concurrent construction headings and Mr. Weyrauch replied that he expects nine concurrent headings for the Project.

**V. Presentations – (none)**

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<sup>1</sup> The Commission did not meet in December 2007. Rather, the Project Manager distributed a status report in December.



**VI. Commission Action Items** (No Subsequent Board of Supervisors Action Required) – (none)

**VII. Commission Action Items** (Subsequent Board of Supervisors Action Required)

Christine Halley reported on the recommended amendment to ESA’s permitting contract primarily to keep pace with the expanding cultural resource requirements. She described the nature of archaeological work done to date and the team’s recent response to requests from both the California National Guard and the State Historic Preservation Office. In total, 17 locations will require detailed “Phase II” exploration and possibly “Phase III” data recovery, involving careful archaeological digs in advance of pipeline installation. A qualified archaeologist and Native American monitor are to observe construction at an additional 10 locations. Mrs. Halley’s recommendation is to amend ESA’s contract to authorize them to provide the additional cultural resource services and other related pre-construction services for a base fee of +\$332,000 as outlined in the staff report. She expressed some concern regarding the recommended contingency amount, sensing that it may be low when compared to ongoing regulatory demands. John Hollenbeck echoed Mrs. Halley’s thoughts about the contingency amount.

Commissioner Romero asked if this situation might delay construction on Camp Roberts and Christine Halley replied that we might be okay if we proceed with the Phase II/III advance work while the many signatures associated with the Section 106 consultation are being gathered. If we must wait for a fully executed memorandum of agreement, then construction will be delayed. Commissioner Neil observed that the ESA amendment question is one of schedule adherence and advised that we authorize sufficient funds to keep progressing. Commissioner Romero moved to authorize up to an additional \$582,000 for the recommended ESA contract amendment, an amount representing +\$50,000 over the contingency amount stated in the staff report; Commissioner Mecham seconded the motion; passed unanimously.

**VIII. Future Agenda Items Desired by Commission** – John Hollenbeck described plans for the October 25, 2007, groundbreaking ceremony and asked for Commissioners and other Participant representatives to please respond to the invitation.

Chairman Ovitt adjourned the meeting at 4:54 pm.

*Submitted by Christine Halley*



Nacimiento Project Commission  
February 28, 2008  
**Agenda Item IV.a– Project Management Report**  
(Information Only – No Action Required)

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**PROJECT ISSUES**

**Commissioner Disclosure Statements**

It is time to file Form 700 regarding conflict of interest disclosures for both Commissioners and their alternates. Expect receipt of the form and submittal instructions from the Nacimiento Project Manager in a separate communication.

**Construction Status**

Two of the five contractors are mobilized at this point, Fowler and Whitaker:

- Fowler’s work at the intake structure includes site clearing and grubbing and excavation of the vertical intake shaft to a depth of approximately 20 feet. Liner plates and ring beam installation is underway. A contractual issue regarding substitution of a Fowler subcontractor has been settled along with regulatory dialogue regarding performance of the erosion control system during early January storms.
- Whitaker laid the first 2,400 feet of pipe in Rocky Canyon Road during January.

Environmental monitors found an “isolate” (i.e. an archaeological artifact not associated with a broader site) on January 10, 2008. It was found during a site walk on a staging area located near the Salinas Booster Station property outside of Santa Margarita. The artifact is a granite handstone fragment that appears to have been culturally modified by moderate grinding and pecking. Work on the site was suspended and the find was reported to the Army Corps of Engineers and State Historic Preservation Office per the terms of the pending MOA. (Refer to Agenda Item VII.a.) The booster station site is now cleared for use and ESA is authorized to inspect-and-clear additional staging areas along the Project corridor.

**Environmental Permitting/Camp Roberts**

Briefly, the status of the right to construct on Camp Roberts is:

- The Washington, D.C. National Guard Bureau is now reviewing the Environmental Assessment. They already approved the Environmental Baseline Survey
- The State Historic Preservation Office accepted the archaeological data recovery/treatment plan



- The Army Corps of Engineers and the California Army National Guard are in agreement as to the terms of the “memorandum of agreement” (Agenda Item VII.a), but are still settling the Native American consultation.
- The easement appraisal is underway

In summary, the Project Section 106 consultation is nearing completion. This consultation deals with potential impacts to archaeological and historic artifacts, the District’s plan to deal with finds during construction, and Native American participation in the process.

Once executed, the memorandum of agreement (MOA) allows two important activities to proceed. One is that it completes the NEPA package allowing that determination to be made for the portion of the Project impacting Camp Roberts. Second is that it completes one remaining element of the “Report of Availability” for the Camp. The Report of Availability is the document necessary for the military to release the requested easement across Camp to the District and, of a more immediate concern, allows the District to proceed with the archaeological digs that clear the path for installation of the pipe.

The MOA is not all that is needed for the Report of Availability. The other remaining element is the appraised value of the easement sought. For some months, the District was under the impression that the Army Corps of Engineer’s real estate division was underway with the appraisal. We learned in late December that not only was the appraisal not underway, but a qualified appraiser had yet to be retained.

The Army Corps’ real estate division suggested that the District retain an appraiser directly, authorization for which was given to Schenberger, Taylor, McCormick & Jecker on February 1, 2008.

While the paperwork processing was underway, an “isolate” (an archaeological artifact not associated with a more extensive deposit) was uncovered on the Project. Refer to the construction status report for more information.

On February 12, 2008, (3 years after initiating consultation with Camp representatives) the Army Corps of Engineers reported to the Project Manager that the Report of Availability is started at Camp Roberts. The report contains all of the environmental documents related to the project on Camp Roberts, the EBS, NEPA, CERCLA and archeological documents. It also includes the plans, easement legal descriptions, construction easements, etc.

The Report of Availability moves through the National Guard chain to the Corps of Engineers chain and through that chain to the Sacramento District. As of the 12<sup>th</sup> of this month, the Report of Availability was not at the Corps, and our contact estimated that it was “months away”. All work is held up on Camp Roberts until that document is approved.

The Project Manager plans to meet with military personnel in Sacramento to usher this along and expects to seek Commission assistance with outreach to elected officials.



## Water Code Section Revision

Paso Robles expresses an interest in sponsoring a legislative amendment to the State Health and Safety Code and would like to bring the Project Commission into the discussions. Paso Robles also seeks letter of support from Participants on this topic.

California Health and Safety Code Section 115825 states that bodily contact recreation (i.e. swimming, waterskiing, etc.) is not allowed in reservoirs used for drinking water. Such an approach was valid decades ago before water treatment reached today's level of reliability and sophistication. Many reservoirs have since been exempted from this section of the Code. In fact, Nacimiento Reservoir was granted a similar exception years ago. At that time, it was understood that full conventional water treatment would be needed to kill/remove pathogens prior to use as drinking water. The actual Nacimiento code language calls for "coagulation, flocculation, sedimentation, filtration, and disinfection" which, at the time, constituted full conventional treatment.

Today, alternative treatment technologies are recognized as meeting the intent of the Code, without necessarily including the coagulation, flocculation, and sedimentation steps listed above.

The City of el Paso de Robles is designing a surface water treatment plant to treat Nacimiento Reservoir water and plans to construct a membrane treatment plant. There was some debate as to whether the solids removal steps listed above were necessary to treat this water, and proposals were considered to eliminate these costly treatment steps. One impediment to following a simplified membrane treatment approach is the wording of Health and Safety Code Section 115841 such that an amendment to the code section would be needed for the Dept. of Public Health to approve an alternative treatment process.

In more recent discussions with the City's treatment plant design team at Black & Veatch, it was decided to maintain the solids removal steps for taste and odor and disinfection by-product formation purposes. Nonetheless, **the City and other Nacimiento Participants could benefit in the future from having the flexibility to by-pass or eliminate costly pretreatment steps.**

Draft proposed language for Section 115841 is:

"115841. Recreational activity in which there is bodily contact with the water by any participant shall continue to be allowed in Nacimiento Reservoir in accordance with all of the following requirements :

"(a) Any agency that removes water from the reservoir for domestic use shall comply with any, or at a minimum, one of the following with regard to the water removed:

"(1) The water subsequently receives complete water treatment in compliance with all applicable department regulations, including coagulation, flocculation, sedimentation, filtration, and disinfection, or alternative treatment that complies with all applicable department regulations and requirements before being used for domestic purposes. Such treatment shall, at a minimum, comply with all state laws and department regulations and all federal laws and regulations, including, but not limited to, the federal Environmental Protection Agency Long-Term 2 Enhanced Surface Water Treatment regulations. Nothing in this division shall limit the state or the department from imposing more stringent treatment standards than those required by federal law."



Amending the Health and Safety Code to allow alternative treatment would provide flexibility to each Nacimiento Participant that treats Nacimiento deliveries. The City of San Luis Obispo’s treatment plant complies with the current Code wording and could be a candidate for more of a direct filtration mode with future plant upgrades or operations. Similarly, at the time that Atascadero Mutual Water Company or Templeton CSD considers construction of a treatment plant, they, too, could pursue less-costly treatment technologies.

At this point, Paso Robles proposes a treatment process that complies with the current language, but foresees benefits in operating in a direct filtration mode in years ahead. Other Participants and perhaps other County water agencies may gain similar benefits. Kurt Souza, our Dept. of Public Health District Engineer, supports amending the language and has provided examples of wording accepted for other reservoirs.

Paso Robles seeks a letter of support from the Commission at a point when the proposed amendment is under consideration.

**Status of Project Delivery Team Activities**

**Right of way** – The District has easement agreements or rights of possession in place for all but one of the 42 affected private properties. Negotiations with the remaining property owner are going well. Although possessory rights are in place, agreement on compensation is in question with ten private property owners plus MCWRA. A series of mandatory settlement conferences, mediation events, and court dates with the remaining ten owners are being managed by eminent domain counsel, Price, Postel & Parma.

<b>Date</b>	<b>Number of Identified Parcels</b>	<b>Agreements Signed</b>	<b>Eminent Domain Proceedings</b>
As of February 8, 2008	54 (42 private + 12 public)	35 private owners settled	8 7 private; 1 public

Hamner-Jewell & Associates drafted the Construction Restoration Report for Jacobs’ and the contractors’ use in understanding easement terms when constructing on private property. They are also wrapping up easement negotiations with affected public properties such as Cal Poly and the U.S. Army Corps of Engineers (Santa Margarita Booster Station).

**Construction Management Activities** – Jacobs is managing contractors’ requests for information, material submittals, and reviewing proposed construction schedules. They prepared the overall construction schedule included in a later section of this meeting packet and are working on an acceptable format for regular Project status reporting.

Resident engineer and environmental monitors are mobilized as-needed to observe Fowler’s intake construction activities and Whitaker’s initial crew activities on the Pipeline Central. The horizontal directional drilling subcontractor is making preparations, too.

**Environmental Permitting Activities** - ESA's permitting activities center on the Section 106/cultural resource work and assisting Fowler in securing permits for the discharge of dewatering water associated with the shaft construction.

On February 5, 2008, the District Board of Supervisors approved Addendum No. 1 – Revised November 2007 to the Final Environmental Impact Report and Required Findings for the Nacimiento Water Project. That action addressed minor technical changes to the Project since the Board's certification of the Final EIR in 2004, including expanded and updated archaeological issues.

### **Outside Agency Issues**

**River Road Sewer** – Paso Robles has long planned to install a gravity sewer line and a reclaimed waterline in River Road parallel to the proposed Nacimiento waterline. The current approach is for the City to advertise for bids for that utility work such that construction could be complete in advance of Teichert's mobilization into that area.

**PG&E** – The District alerted PG&E that construction contracts have been awarded and reinforced the schedule requirements for power arrangements at the intake. Fowler and Jacobs recently met with PG&E to coordinate service planning at the intake.

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Nacimiento Project Commission  
February 28, 2008  
**Agenda Item IV.b– Project Schedule**  
(Information Only – No Action Required)

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The accompanying construction schedule summarizes the time frame for active construction associated with each construction contract. Fowler is has completed clearing, grubbing, and rough grading and is underway with intake shaft construction. Whitaker is mobilizing onto the Pipeline Central corridor along Rocky Canyon Road. Teichert, Southern California Pipeline, and Mountain Cascade are engaged in pre-construction steps at this point.

One important schedule issue at this point remains gaining access onto Camp Roberts and the associated go-ahead to clear the identified archaeological sites all along the Project corridor.

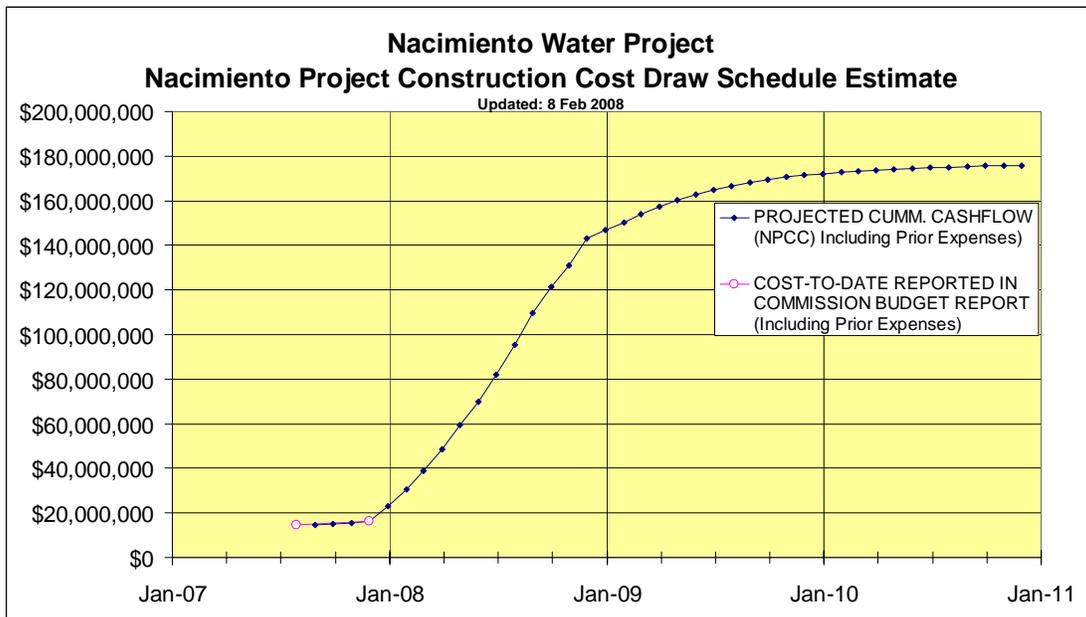
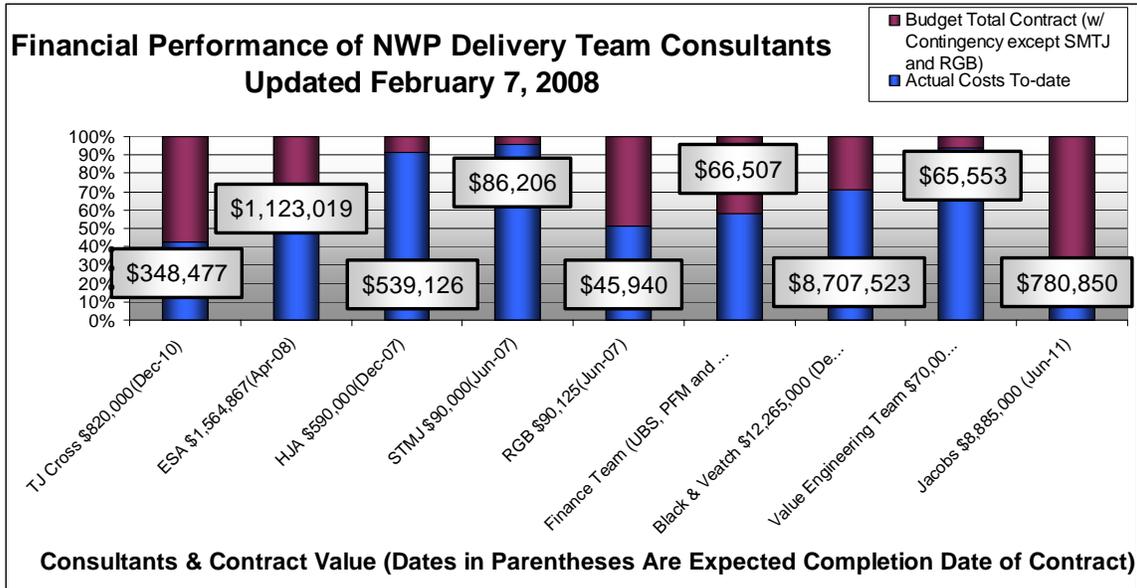




**Nacimiento Project Commission**  
**February 28, 2008**  
**Agenda Item IV.c– Project Budget**  
 (Information Only – No Action Required)

Attached is the most recent Project Budget Report.

The Financial Performance and cash flow status are illustrated in the following graphics.



**Nacimiento Water Project  
Project Budget Reporting  
Report Ending Period: 01/31/08**

	Revised Budget Approved AUGUST 2007	Cost to Date thru 01/31/08	Remaining Budget	Projected Total Cost as of 8/8/07	Projected Variance (Budget Vs. Projected Cost)	Comments
<b>Design Phase Costs</b>						
Project Management	\$2,341,564	\$2,298,385	\$43,178	\$2,341,564	\$0	Includes County Project Manager, VE, support staff, TJCross support, finance team, legal fees, and County overhead allocation during Design Phase. Adjusted to better align with actual costs to date.
AD-15 Process (Preparation for Bidding)	\$93,000	\$137,358.95	(\$44,359)	\$93,000	\$0	Reproduction and mailing of Contract Docs, addenda, and other bid phase correspondence, utilizing ASAP Reprographics.
Environmental	\$1,415,000	\$1,117,730.12	\$297,270	\$1,415,000	\$0	ESA-Includes design assistance, permit applications, agency coordination. Amendments authorized for EIR Addendum and extended cultural resource efforts.
PG&E Service Extension	\$100,000	\$5,170.00	\$94,830	\$100,000	\$0	Estimate to extend power to proposed facilities. Load-shedding approach less capital costly.
Right of Way Consulting Services	\$1,375,000	\$863,722	\$511,278	\$1,375,000	\$0	Hamner-Jewell contract plus allowance for appraisal, title reports by others, and Special Counsel. Includes court hearings for orders of possession.
Property Acquisition	\$2,500,000	\$442,155.84	\$2,057,844	\$2,500,000	\$0	8/06-Revised acquisition budget.
Construction Mgt/Constructability Review	\$650,000	\$627,080.80	\$22,919	\$650,000	\$0	Initial CM services authorization est Nov 2006 @ \$735,000. Reduced to \$650,000 Aug 2008 as est of expenditures during the Design Phase
Engineering Design (Includes geotechnical, survey & Design CM)	\$9,088,800	\$9,090,872.11	(\$2,072)	\$9,088,800	\$0	Black and Veatch Corporation 11/06-Revised projected total. 8/07-revised back up to original budget pending Design Amendment
Finance	\$0	\$-	\$0	\$0	\$0	PFM, UBS, and Fulbright & Jaworski support services coded to Project Management line item above.
New Participant Contribution	(\$50,000)	(\$49,040)	(\$961)	(\$50,000)	\$0	11/06-CSA 10A buy-in fee per Article 29 of the WDEC.
				Total Variance=	\$0	
Design Phase Budget Reserve (NOTE 1)	\$1,386,637		\$1,386,637	\$1,386,637		
<b>SUMMARY - DESIGN PHASE</b>	<b>\$18,900,000</b>	<b>\$14,533,435</b>	<b>\$4,366,565</b>	<b>\$18,900,000</b>		
<b>Construction Phase Costs</b>						
Project Management	\$4,688,563	\$365,719.05	\$4,322,844	\$4,688,563	\$0	Includes District staff, County Counsel, intern support, TJCross support, and operator support during construction. Also includes premium for District-provided Builder's Risk Insurance and County overhead allocation
Environmental Mitigation	\$4,500,000	\$20,310.75	\$4,479,689	\$4,500,000	\$0	Estimated as \$100,000 per mile for pipeline realignments, special construction techniques, and other costs incurred due to unforeseen environmental issues.
Construction Management, including Materials Testing & Surveying	\$5,835,000	\$79,187.78	\$5,755,812	\$5,835,000	\$0	Based on Jacobs construction management services fees.
Post-Design Services by Designer	\$3,200,000	\$-	\$3,200,000	\$3,200,000	\$0	Black & Veatch's construction phase services.
Environmental Monitoring (this work is added into Jacob's CM Agreement)	\$2,400,000	\$-	\$2,400,000	\$2,400,000	\$0	Includes cost for cultural and biological monitors during construction including Jacobs' mgt fee. Value negotiated with ESA per revised memo from TJ Cross 8-16-07
Construction Contracts	\$123,876,769	\$270,000.00	\$123,606,769	\$123,876,769	\$0	BASED ON CONSTRUCTION BIDDING
District Controlled Contingency Construction Phase Contingency and Reserve (NOTE 1)	\$11,113,363	\$0	\$11,113,363	\$11,113,363	\$0	Recommended contingency for construction change orders, prof service changes, and other Project reserve. Excludes the carryover of unused Design Phase reserves.
<b>SUMMARY - CONST. PHASE</b>	<b>\$155,613,695</b>	<b>\$1,005,218</b>	<b>\$154,878,477</b>	<b>\$155,613,695</b>	<b>\$0</b>	
<b>Prior Expenses</b>						
Advance Expenditures	\$513,000	\$513,000	\$0	\$513,000	\$0	
Cuesta Tunnel	\$1,031,000	\$1,031,000	\$0	\$1,031,000	\$0	Includes construction of Nacimiento Water Project pipeline section through Cuesta Tunnel and cost for 2003 EIR.
			\$0	\$0	\$0	
<b>TOTAL PROJECT</b>	<b>\$176,057,695</b>	<b>\$17,082,653</b>	<b>\$159,245,042</b>	<b>\$176,057,695</b>	<b>\$0</b>	

Positive Projected Variance indicates costs are under the revised line item budget.  
Recent Update: February 25, 2008

NOTES 1. When the Design Phase is closed, the reserves will be transferred to the Construction Phase Reserves.

# Nacimiento Project Commission

February 28, 2008

## **Agenda Item VI.a – Nomination and Election of Officers**

(Commission Action Item – No Subsequent Board of Supervisors Action Required)

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**TO:** Nacimiento Project Commission

**FROM:** Christine Halley, Nacimiento Project Engineer

**DATE:** February 28, 2008

In accordance with the Commission's adopted Rules of Procedure, the Commission is to elect a Chair and Vice-Chair at the first meeting of each year. Terms of office are for one year.

Supervisor Harry Ovitt now serves as Committee Chair and Mayor Dave Romero as Committee Vice-Chair. Elections for the coming year will be held at the February 28, 2008, Commission meeting.

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## Nacimiento Project Commission

February 28, 2008

### **Agenda Item VII.a – Execution Memorandum of Agreement Regarding the Clean Water Act Section 404 Permit** (Commission Action Item – Subsequent Board of Supervisors Action Required)

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**TO:** Nacimiento Project Commission

**FROM:** Christine Halley, Nacimiento Project Engineer

**DATE:** February 28, 2008

#### **Recommendation**

Forward a recommendation to the Board of Supervisors to execute the “Memorandum of Agreement Among and Between the U.S. Army Corps of Engineers, the California Army National Guard, the National Guard Bureau, the San Luis Obispo County Flood Control & Water Conservation District, and the California State Historic Preservation Officer Regarding the Issuance of a Permit Under Section 404 of the Clean Water Act (33 USC. § 1344) for the Nacimiento Water Project, San Luis Obispo, California”.

#### **Discussion**

On April 25, 2007, the District received authorization from the Army Corps of Engineers for use of Nationwide Permit 12 *Utility Line Discharges*, pursuant to the Clean Water Act Section 404 for the Nacimiento Water Project. The Section 404 authorization requires that the District complete its Section 106 consultation with the State Historic Preservation Officer regarding archaeological artifacts.

The District succeeded in gaining approval of the Project archaeological approach and NEPA determination at a staff level, but the Section 106 consultation must be completed to gain access for construction anywhere in Camp Roberts or in any known archaeological site along the Project corridor. This consultation affects construction on approximately 11 miles of the 45 mile long main pipeline route.

#### **Other Agency Involvement**

Completion of the District’s Section 106 consultation is evidenced by execution of a “memorandum of agreement” among the affected agencies. Because the Project traverses a military facility (Camp Roberts), many agencies from San Luis Obispo, to Sacramento and on to Washington, D.C are affected.

The terms of the memorandum of agreement have been in circulation among staff at these agencies for months and the most current version is attached. While it is possible that our local Board or other signatories could request changes to the document, the review has advanced to the point where substantive edits are unlikely.



Nacimiento Project Commission is affected by execution of the memorandum of agreement as its completion bears directly on construction scheduling.

### **Financial Considerations**

Executing the memorandum of agreement in and of itself does not trigger any fees or expenditures. However, delay in executing this agreement would further delay construction of approximately 11 miles of the Project corridor, including all of Camp Roberts, a delay that could translate into construction claims.

### **Results**

Executing the memorandum of agreement satisfies the required Section 106 consultation, thereby setting the framework for the handling of archaeological artifacts and the involvement of Native American tribal representatives. It will allow construction to proceed with agreed-upon protocols.

\* \* \*

Attachments: Memorandum of Agreement dated December 17, 2007.



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**DRAFT**

**MEMORANDUM OF AGREEMENT**

AMONG AND BETWEEN

THE U.S. ARMY CORPS OF ENGINEERS, THE CALIFORNIA ARMY NATIONAL GUARD, THE  
NATIONAL GUARD BUREAU, THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE ISSUANCE OF A PERMIT UNDER SECTION 404 OF THE

CLEAN WATER ACT (33 USC. § 1344) FOR THE  
NACIMIENTO WATER PROJECT,  
SAN LUIS OBISPO COUNTY, CALIFORNIA

13 **WHEREAS**, the U. S. Army Corps of Engineers, San Francisco District (USACE) issued a permit on  
14 April 25, 2007 (Undertaking), under File No. 22374S pursuant to Section 404 of the Clean Water Act (33  
15 U.S.C. § 1344) to the San Luis Obispo County Flood Control and Water Conservation District (District),  
16 for the Nacimiento Water Project (Project); and

17 **WHEREAS**, the California Army National Guard (CAARNG) and the National Guard Bureau (NGB)  
18 the land on Camp Roberts owned by the USACE; and

19 **WHEREAS**, the actions proposed for the Project will adversely affect sites CA-SLO-1169, CA-SLO-  
20 2215, CA-SLO-1180 and CA-SLO-2210 on Camp Roberts; and

21 **WHEREAS**, previous evaluations have determined that the above sites possess integrity of location,  
22 setting, and association and have yielded, or are likely to yield, information important to prehistory and are  
23 therefore eligible for inclusion in the National Register of Historic Places (NRHP) under 36 CFR 60.4  
24 (Criterion d); and

25 **WHEREAS**, the USACE, CAARNG, NGB, and the District agree that sites CA-SLO-1169, CA-SLO-  
26 2215, CA-SLO-1180, CA-SLO-2210 within the boundaries of Camp Roberts are not affiliated with any  
27 federally-recognized Indian Tribe; therefore, no Indian Tribes will be consulted with respect to sites  
28 located on Camp Roberts Property; and

29 **WHEREAS**, the actions proposed may also affect unevaluated archaeological sites CA-SLO-2216, CA-  
30 SLO-1827, CA-SLO-2047, CA-SLO-2213, Dairy Site #1, CA-SLO-1920/H, CA-SLO-2087/H, CA-SLO-  
31 2086/H, CA-SLO-2214, CA-SLO-1386, CA-SLO-1387, CA-SLO-2212, and CA-SLO-587 located on  
32 private and publicly-owned property outside of the boundaries of Camp Roberts; and

33 **WHEREAS**, previous analysis has determined that the above sites require further evaluation to determine  
34 NRHP eligibility and Project impacts; and

35 **WHEREAS**, the USACE, CAARNG, NGB, and the District have consulted with the California State  
36 Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, and notified the Advisory Council on  
37 Historic Preservation (ACHP) of USACE's effect finding for the Undertaking; and

38 **WHEREAS**, the USACE, CAARNG, NGB, and the District in consultation with the SHPO, are  
39 complying with Section 106 of the National Historic Preservation Act of 1966 (NHPA) for the  
40 Undertaking through execution and implementation of this MOA so that the process of identifying  
41 properties eligible for the NRHP that may be affected by the Project, determining the nature and scope of  
42 any such effects, and resolving any adverse effects of the Project on historic properties may proceed in the  
43 phased manner authorized by 36 CFR 800.4 (b)(2) and detailed in the *Archaeological Research Design*

44 *and Treatment Plan of the Evaluation and Data Recovery for the Nacimiento Water Project (ARD/TP)*  
45 (Attachment A); and

46 **WHEREAS**, the District has participated in the consultation and is invited to be a signatory to the MOA;  
47 and

48 **WHEREAS**, the USACE, CAARNG, NGB, and the District agree that the Santa Ynez Band of Chumash  
49 Indians, a federally-recognized Indian Tribe, is affiliated with portions of the Project area outside of the  
50 boundary of Camp Roberts and will be consulted with respect to such areas and will be invited to be a  
51 signatory to this MOA; and

52 **WHEREAS**, USACE, CAARNG, NGB and the District have consulted with the Northern Chumash and  
53 Salinan Tribes, and will ensure that these groups and individuals continue to be consulted about the  
54 Project; and

55  
56 **NOW, THEREFORE**, the USACE, CAARNG, NGB, and the District shall ensure that the Undertaking  
57 is implemented in accordance with the following stipulations in order to take into account the effects of  
58 the Project on historic properties, and that these stipulations shall govern the Project and all of its parts  
59 until this MOA expires or is terminated.

60  
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## STIPULATIONS

62 The USACE, CAARNG, NGB, and the District shall ensure that the following measures are carried out:

### I. PROJECT DESCRIPTION AND AREA OF POTENTIAL EFFECTS

64 **A.** A description of the Nacimiento Water Project is provided in Attachment B. The USACE,  
65 CAARNG, and NGB have established the Area of Potential Effect (APE) for the Undertaking, in  
66 consultation with the District and SHPO. The established APE is depicted in maps contained in  
67 Attachment C. Any changes to the APE shall be in accordance with section (B) of this stipulation.  
68 The APE for this Undertaking shall include all Project development areas and account for all  
69 Project activities related to the Undertaking.

70 **B.** The District shall promptly notify the USACE, CAARNG, and NGB if it becomes necessary to  
71 revise the APE. Upon receipt of notification, the USACE, CAARNG, NGB, and the District shall  
72 have 14 days to consult with the SHPO to revise the APE. Failure of SHPO to respond within this  
73 timeframe shall constitute concurrence with the proposed APE revision.

### II. IDENTIFICATION OF HISTORIC PROPERTIES

74 **A.** The District shall ensure that cultural resources within the established APE and within any revised  
75 APE are identified and evaluated according to the provisions of the ARD/TP appended to the  
76 MOA as Attachment A, or pursuant to any successor ARD/TP that is developed through  
77 consultation among signatories following execution of this MOA.  
78  
79

80 **B.** Determinations of eligibility shall conform to requirements set forth in 36 CFR 800.4 (c) (1-2).  
81

### III. DETERMINATION AND TREATMENT OF EFFECTS

82

83 A. USACE, CAARNG, NGB and the District will ensure effects on historic properties identified  
84 pursuant to Stipulation II are avoided. Where such avoidance is ensured, USACE, CAARNG, and  
85 NGB may authorize the District to proceed with the Project.

86 B. If USACE, CAARNG, and NGB, in consultation with the District, determine that effects on  
87 historic properties cannot be avoided, and that such effects will be adverse, then the adverse  
88 effects will be resolved by implementing and completing the data recovery program prescribed  
89 and set forth in the ARD/TP, or any successor ARD/TP that is developed. The USACE,  
90 CAARNG, and NGB may authorize the District to proceed with the Project after the adverse  
91 effect on the historic property has been resolved to the satisfaction of the USACE, CAARNG,  
92 and NGB by completion of the fieldwork phase of ARD/TP.  
93

94 **IV. AMENDING THE ARD/TP**

95  
96 A. At any time following the implementation of the MOA any signatory or invited signatory may in  
97 writing propose to the other signatories that the ARD/TP be amended. The signatories shall have  
98 30 days following receipt to review and comment on proposed amendment. Should any signatory  
99 propose modifications or object to modifications within the stipulated time frame, the signatures  
100 shall consult for no more than 20 days following receipt of the proposed modifications or of the  
101 objection to consider the modifications or to resolve the objection. If at the end of this time  
102 frame, if any party objects to the proposed modifications or if the objection is not resolved, the  
103 USACE, CAARNG, NGB, and the District shall proceed in accordance with **Stipulation VII (C)**  
104 **Resolving Objections.**

105  
106 B. Amendment of the ARD/TP will not require amendment of the MOA.

107 **V. REPORTING REQUIREMENTS**

108 A. Reporting requirements as stated in the ARD/TP, **Attachment A**, shall be completed by the  
109 District within twenty-four (24) months of completion of the proposed fieldwork.

110 B. Within the twenty-four month period, a draft technical report will be prepared by the District and  
111 distributed for review to signatory parties to this MOA. Signatory parties will have 30 days from  
112 receipt of draft technical report to submit written comments to the District. At the end of the 30  
113 day comment period, the District will take into account comments received and issue the final  
114 technical report. Failure of reviewing signatory parties to submit written comments within the  
115 established timeframe will be construed as acceptance of the document.

116 **VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

117  
118 A. The parties to this MOA agree that Native American burials and related items discovered during  
119 the implementation of the MOA and the Project will be treated in accordance with the  
120 requirements of 7050.5 (b) of the California Health and Safety Code. If, pursuant to 7050.5 (c) of  
121 the California Health and Safety Code, the county coroner/medical examiner determines that the  
122 human remains are or may be of Native American origin, then the discovery shall be treated in  
123 accordance with the provisions of 5097.98 (a)-(d) of the California Public Resources Code. To  
124 the extent permitted under 5097.98 and 5097.991 of the California Resources Code, human  
125 remains and related items resulting from the work stipulated in this MOA will be curated in  
126 accordance with 36 CFR Part 79 standards.

127  
128 B. No federally recognized Indian Tribe that claim affiliation to the land that is now Camp Roberts  
129 have been identified; if in the event that human remains, associated or unassociated funerary

130 objects, sacred objects, or objects of cultural patrimony as defined by the Native American  
131 Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001), are encountered during  
132 work conducted at Camp Roberts (including known sites CA-SLO-1169, -2215, -1180, and -  
133 2210), those remains shall be documented and removed from the site and placed in a repository  
134 that meets 36 CFR 79 standards until a federally recognized Indian Tribe is identified.

## 135 **VII. DISCOVERIES AND UNANTICIPATED EFFECTS**

136

137 **A.** If the USACE, CAARNG, NGB, and the District determine that implementation of the ARD/TP or  
138 the Project will affect a previously unidentified property that may be eligible for the National  
139 Register, or affect a known historic property in an unanticipated manner, the USACE, CAARNG,  
140 NGB, and the District will address the discovery, or unanticipated effect, in accordance with those  
141 provisions of the ARD/TP that relate to the treatment of discoveries and unanticipated effects. The  
142 USACE, CAARNG, NGB, and the District at their discretion may hereunder assume any  
143 discovered property to be eligible for inclusion in the National Register, compliance with this  
144 stipulation shall satisfy the requirements of 36 CFR § 800.13(a)(2).

## 145 **VIII. ADMINISTRATIVE STIPULATIONS**

146

### 147 **A. STANDARDS**

148

- 149 1. *Professional Qualifications.* All activities prescribed by Stipulations II, III, V, VI, and VII. of  
150 this MOA shall be carried out under the authority of the USACE, CAARNG, NGB, and the  
151 District by or under the direct supervision of a person or persons meeting at a minimum the  
152 Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-39) (PQS) in  
153 the appropriate disciplines. However, nothing in this stipulation may be interpreted to  
154 preclude the USACE, CAARNG, NGB, the District or any agent or contractor thereof, from  
155 using the properly supervised services of persons who do not meet the PQS.  
156
- 157 2. *Historic Preservation Standards.* All activities prescribed by Stipulations II, III, V, VI and  
158 VII of this MOA shall reasonably conform to applicable standards and guidelines established  
159 by the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic*  
160 *Preservation* (48 FR 447 16-44740) and SHPO.  
161
- 162 3. *Curation and Curation Standards.* The USACE, CAARNG, NGB, and the District shall  
163 ensure that, to the extent permitted by applicable federal law, the materials and records  
164 resulting from the activities prescribed by Stipulations II, III, V, and VII of this MOA are  
165 curated in accordance with 36 CFR Part 79.  
166

### 167 **B. CONFIDENTIALITY**

168

169 The parties to this MOA acknowledge that historic properties covered by this MOA are subject to  
170 the provisions of Section 304 of the National Historic Preservation Act of 1966 relating to the  
171 disclosure of archaeological site information and having so acknowledged, will ensure that all  
172 actions and documentation prescribed by this MOA are consistent with Section 304 of the  
173 National Historic Preservation Act of 1966.  
174

### 175 **C. RESOLVING OBJECTIONS**

176

- 177 1. Should any party to this MOA object at any time to the manner in which the terms of this  
178 MOA are implemented, or to any action carried out or proposed with respect to  
179 implementation of the MOA (other than the Project itself), or to any documentation prepared

180 in accordance with and subject to the terms of this MOA, the USACE shall immediately  
181 notify the other parties to this MOA of the objection and consult with the objecting party, the  
182 other parties to the MOA for no more than 14 days to resolve the objection. The USACE  
183 shall reasonably determine when this consultation will commence. If the objection is resolved  
184 through such consultation, the action in dispute may proceed in accordance with the terms of  
185 that resolution. If, after initiating such consultation, the USACE determines that the objection  
186 cannot be resolved through consultation, then the USACE shall forward all documentation  
187 relevant to the objection to the ACHP, including the USACE's proposed response to the  
188 objection, with the expectation that the ACHP will, within thirty (30) days after receipt of  
189 such documentation:

- 191 a. Advise the USACE that the ACHP concurs in the USACE's proposed response to the  
192 objection, whereupon the USACE's will respond to the objection accordingly; or
- 193
- 194 b. Provide the USACE with recommendations, which the USACE will take into account in  
195 reaching a final decision regarding its response to the objection; or
- 196
- 197 c. Notify the USACE that the objection will be referred for comment pursuant to 36 CFR §  
198 800.7(a) (4), and proceed to refer the objection and comment. The USACE shall take the  
199 resulting comments into account in accordance with 36 CFR § 800.7(c) (4) and Section  
200 110(1) of the NHPA.
- 201
- 202 2. Should the ACHP not exercise one of the preceding options within 30 days after receipt of all  
203 pertinent documentation, the USACE may assume the ACHP's concurrence in its proposed  
204 response to the objection.
- 205
- 206 3. The USACE shall take into account any ACHP recommendation, or comment, provided in  
207 accordance with this stipulation with reference only to the subject of the objection. The  
208 USACE responsibility to carry out all other actions under this MOA that are not the subject  
209 of the objection will remain unchanged.
- 210
- 211 4. The USACE shall provide all parties to this MOA and the ACHP, when the ACHP has issued  
212 comments hereunder, with a copy of its final written decision regarding and objection  
213 addressed pursuant to this stipulation.
- 214
- 215 5. The USACE may authorize any action subject to objection under this stipulation to proceed  
216 after the objection has been resolved in accordance with the terms of this stipulation.
- 217
- 218 6. At any time during implementation of the measures stipulated in this MOA, should an  
219 objection pertaining to such implementation be raised by a member of the public, the USACE  
220 (and CAARNG and NGB if Federal land is involved) shall notify the parties to the MOA in  
221 writing of the objection and take the objection into consideration. The USACE (and  
222 CAARNG and NGB if Federal land is involved) shall consult with the objecting party and, if  
223 the objecting party so requests shall also consult with SHPO, for no more than 15 days.  
224 Within ten (10) days following closure of this consultation period, the USACE (and  
225 CAARNG and NGB if Federal land is involved) will render a decision regarding the  
226 objection and notify all consulting parties of its decision in writing. In reaching its decision,  
227 the USACE (and CAARNG and NGB if Federal land is involved) will take into account any  
228 comments from the consulting parties regarding the objection, including the objecting party.  
229 The USACE (and CAARNG and NGB if Federal land is involved) decision regarding the  
230 resolution of the objection will be final.
- 231

- 232 7. The USACE (and CAARNG and NGB if Federal land is involved) may authorize any action  
233 subject to objection under this paragraph to proceed after the objection has been resolved in  
234 accordance with the terms of this paragraph.  
235

236 **D. AMENDMENTS**

- 237  
238 1. Any party to this MOA may propose that this MOA be amended, whereupon the parties to  
239 this MOA will consult for no more than 30 days to consider such amendment. The  
240 amendment process shall comply with 36 CFR § 800.6(c) (1) and 800.6(c) (7). This MOA  
241 may be amended only upon the written agreement of the signatory parties. If it is not  
242 amended, this MOA may be terminated by either signatory party in accordance with  
243 Stipulation VIII.E.  
244  
245 2. The ARD/TP may be amended through consultation among the parties without amending the  
246 MOA proper.  
247

248 **E. TERMINATION**

- 249  
250 1. If this MOA is not amended as provided for in Stipulation VIII.D., or if any signatory party  
251 proposes termination of this MOA for other reasons, the signatory party proposing  
252 termination shall, in writing, notify the other parties to this MOA, explain the reasons for  
253 proposing termination, and consult with the other parties for at least 30 days to seek  
254 alternatives to termination. Such consultation shall not be required if the USACE, CAARNG,  
255 NGB and the District proposes termination because the Undertaking no longer meets the  
256 definition set forth in 36 CFR § 800.16(y).  
257  
258 2. Should such consultation result in an agreement on an alternative to termination, then the  
259 Parties shall proceed in accordance with the terms of that agreement.  
260  
261 3. Should such consultation fail, the signatory party proposing termination may terminate this  
262 MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder  
263 shall render this MOA without further force or effect.  
264  
265 4. If this MOA is terminated hereunder, and if the USACE, CAARNG, NGB, and the District  
266 determine that the Project will nonetheless proceed, then the USACE, CAARNG, NGB, and  
267 the District shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA or  
268 request the comments of the ACHP pursuant to 36 CFR Part 800.  
269

270 **F. DURATION OF THE MOA**

- 271  
272 1. Unless terminated pursuant to Stipulation VIII.E., or unless it is superseded by an amended  
273 MOA, this MOA will be in effect following execution by the signatory parties until the  
274 USACE, CAARNG, NGB, and the District in consultation with the other parties, determines  
275 that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have  
276 no further force or effect on the day that the USACE, CAARNG, NGB, and the District  
277 notifies the other parties in writing of its determination that all stipulations of this MOA have  
278 been satisfactorily fulfilled.  
279  
280 2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the date  
281 of execution by SHPO. If the USACE, CAARNG, NGB, and the District determine that this  
282 requirement cannot be met, the parties to this MOA will consult to reconsider its terms.  
283 Reconsideration may include continuation of the MOA as originally executed, amendment or

284 termination. In the event of termination, the USACE will comply with Stipulation VIII.E.4 if  
285 it determines that the Project will proceed notwithstanding termination of this MOA.  
286

287 3. If the Project has not been implemented within five (5) years following execution of this  
288 MOA by SHPO, this MOA shall automatically terminate and have no further force or effect.  
289 In such event, the USACE, CAARNG, NGB, and the District shall notify the other parties in  
290 writing and, if it chooses to continue with the Project, shall reinitiate review of the Project in  
291 accordance with 36 CFR Part 800.

292  
293 **G. EFFECTIVE DATE**  
294

295 This MOA shall take effect on the date that it has been executed by SHPO.  
296

297 **EXECUTION** of this MOA by the USACE, CAARNG, NGB, the District and SHPO, its transmittal by  
298 the USACE to the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation  
299 of its terms, shall evidence that the USACE has afforded the ACHP an opportunity to comment on the  
300 Project and its effect on historic properties and that the USACE, CAARNG, NGB, and the District have  
301 taken into account the effects of the Project on historic properties.

302 **SIGNATORIES:**

303 U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

304 By: \_\_\_\_\_ Date: \_\_\_\_\_

305 Craig W. Kiley  
306 Lieutenant Colonel, U. S. Army  
307 Commanding

308 CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

309 By: \_\_\_\_\_ Date: \_\_\_\_\_

310 Milford Wayne Donaldson, FAIA  
311 State Historic Preservation Officer

312 CALIFORNIA ARMY NATIONAL GUARD

313 By: \_\_\_\_\_ Date: \_\_\_\_\_

314 Title: \_\_\_\_\_

315 NATIONAL GUARD BUREAU

316 By: \_\_\_\_\_ Date: \_\_\_\_\_

317 Title: \_\_\_\_\_

318  
319

320 **INVITED SIGNATORIES:**

321 SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION  
322 DISTRICT

323

324 By: \_\_\_\_\_

325 Chairperson of the Board  
326 San Luis Obispo County Flood Control  
327 and Water Conservation District  
328 State of California

329

330 **ATTEST:**

331

332 \_\_\_\_\_

333 Clerk and Ex-Officio Clerk of the Board of Supervisors  
334 San Luis Obispo County Flood Control  
335 and Water Conservation District  
336 State of California

337

338 **APPROVED AS TO FORM AND LEGAL EFFECT:**  
339 JAMES B. LINDHOLM, JR.  
340 District Counsel

341  
342 By: \_\_\_\_\_  
343 Deputy District Counsel

344  
345 Date: \_\_\_\_\_  
346

347

348 SANTA YNEZ BAND OF CHUMASH INDIANS

349 By: \_\_\_\_\_ Date: \_\_\_\_\_

350 Title: \_\_\_\_\_

351

352 Attachments:

353 A. *Archeological Research Design and Treatment Plan for the Evaluation and Data Recovery for*  
354 *the Nacimiento Water Project*, dated November 2007

355 B. Project Description

356 C. Area of Potential Effect Maps