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May 29, 2020

VIA EMAIL DELIVERY
(druderman@chwlaw.us)

David J. Ruderman
Yuba County LAFCo General Counsel
420 Sierra College Dr, Ste 140,
Grass Valley, CA 95945-5091

RE: Protest/Objections to NYWD Application for Reorganization (05/29/20 Special Meeting Agenda Item V(A) LAFCO File No. 2020-0002-North Yuba Water District Detachment.

Dear Mr. Ruderman:

I represent a number of people who live within North Yuba Water District (NYWD)'s current geographical boundaries, including Charles Sharp, the plaintiff in *Sharp v. North Yuba Water District*, Case No. CVPT20-00386.

On behalf of my clients I am writing to object to/protest what appears to be LAFCo's alarmingly rushed adoption, at today's special meeting, of Resolution No. 2020-0006. My clients urge the Board to find that NYWD's detachment application (the "Application") is not complete, to wait until a more careful review takes place to remedy flaws within the Application and otherwise resolve legal and ethical questions surrounding NYWD's efforts to change their boundaries before voting on and passing LAFCo Resolution 2020-0006, and/or to continue the hearing on this matter pursuant to Government Code § 56824.14(c).

OVERVIEW:

BVID Process Comparison.

In 2011, the Browns Valley Irrigation District ("BVID") applied to LAFCo to annex parcels

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within both NYWD and BVID's spheres of influence. My clients watched this annexation process with great interest, and appreciated LAFCo's thoughtful, careful consideration of BVID's annexation application – a process that took months of careful study to complete.

The issues of public concern pertaining to BVID's annexation application nearly a decade ago and NYWD's sudden Application are similar. My clients, and the public in general, want LAFCo to exercise the same careful, objective, unbiased consideration when considering NYWD's application that LAFCo applied to BVID's – even if that expected careful process isn't as fast as NYWD prefers.¹

There is reason for my clients to be concerned that the ordinary LAFCo process for evaluating an application have been changed for the singular and focused purpose of speeding up approval of NYWD's application. For example, in a document LAFCo provided to Mr. Sharp in response to a records request for documents illustrating LAFCo's application approval process, LAFCo, stated:

“When the LAFCO fee deposit is paid, and the proposal is complete meaning all the required information is correct and has been submitted, LAFCO prepares an informational referral letter for circulation to affected agencies and initiates the AB-8 tax exchange process (This process may take up to 105 days).”

My clients believe that LAFCo initiated the AB-8 process prior to deposits being paid and prior to a LAFCo finding that NYWD's application is complete. Instead, LAFCo's meeting was postponed for the purpose of contacting Yuba County with a request to expedite the AB-8 process, and, in response, Yuba County held an expedited special meeting.

¹ Heightened scrutiny and care is warranted because NYWD's application seeks to make LAFCo a party to NYWD's dispute with Mr. Sharp, who alleges in his complaint naming NYWD as a defendant, that NYWD is attempting to unlawfully “pack” and “crack” the voting strength of its irrigation water customers by unlawfully redrawing its internal director division boundaries – which NYWD cannot accomplish without first obtaining LAFCo's approval of NYWD's Application.

Although NYWD may be in a hurry, LAFCo has no responsibility to remedy the problems associated with NYWD's last-minute application by abbreviating the application approval process. It is not LAFCo's fault that NYWD waited literally until the last moment to seek a change in organization - nearly 10 years after BVID annexed these parcels – while NYWD collected tax dollars from the affected residents without providing services.

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My clients ask LAFCo to evaluate NYWD's Application carefully and objectively in the exact same manner as it would evaluate any other reorganization application.

Limits of NYWD's General Manager's Authority.

On January 23, 2020, the NYWD Board adopted Resolution No. 20-740, directing NYWD's General Manager, Jeff Maupin, to do the following:

"The General Manager is authorized to submit a proposal, application, and all necessary documents and information required to initiate detachment proceedings for the parcels identified in Exhibit A..."

This is not a grant of discretionary decision making authority – such as the decision to pay or promise to pay money – that can only be made by a NYWD's governing board majority during a public meeting.² This is a very narrowly drafted instruction to perform ministerial, nondiscretionary tasks, and, as drafted, the resolution limits Mr. Maupin's authority to submit documents and provide information.³

Limited Scope of Letter.

This letter is not intended to present a comprehensive list of errors associated with NYWD's Application. This letter only describes those errors of which my clients are currently aware. My clients will inform LAFCo if and when further scrutiny identifies additional errors.

² See *California School Employees Assn. v. Personnel Com. of Pajaro Valley Unified School Dist.* (1970) 3 Cal.3d 139, 144 -145 ["[P]ublic agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action"].

³ *Id.* ["As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization"].

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DISCUSSION:

The Application is Incomplete.

Simply put, NYWD's Application is incomplete and cannot be completed without further action by the NYWD board. Each of the failures described below is an independent reason to either reject the Application outright, or continue the public hearing to a future date when the NYWD Board can meet to correct these errors.

Before any application there must be a Resolution of Application adopted by the NYWD Board. (Government Code § 56069.) A Resolution of Application is ineffective unless LAFCo has issues a "Certificate of Filing." (*Id; see also*, Government Code § 56651.) There is no evidence in the record showing that a Certificate of Filing issued, with no mention of this within the Staff Report or the documents attached to the Staff Report.

Government Code § 56824.12(b) mandates that "[t]he clerk of the legislative body adopting a resolution of application ***shall file a certified copy*** of that resolution with the [LAFCo] executive officer." (Emphasis added.) There is no indication that the Clerk of NYWD's Board filed a certified copy of NYWD's Resolution of Application with LAFCo's Executive Officer, and the copies attached to both the application and the Staff Report don't appear to be certified.

There's more. The application itself states:

Applications will not be accepted *without the signature* of one or more of the following: 1) the legal owner(s) or official agents with Power of Attorney or written authorization to sign (a copy of which must be attached); 2) Chief Petitioners; 3) Chair of the Legislative Body submitting a Resolution of Application.

Applicants must also sign and date Agreement to Pay; *the Application will be considered incomplete until that form is submitted.*

(Emphasis added.)

The application currently before LAFCo is not signed. No signed and dated Agreement to Pay is attached or known to exist, and none is mentioned in the Staff Report.

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The Application is not typical because NYWD's Application, if approved, divests NYWD of the power to serve a particular function or class of service – *i.e.*, supplying domestic water to the affected parcels.

NYWD provides domestic/residential and irrigation water. (Staff Report, page 2.) BVID, on the other hand, does not and cannot provide domestic water services (Staff Report, page 2). The Staff report states that NYWD cannot provide domestic/residential water to the detached properties. (Staff report, page 2.) This is not true. NYWD is empowered to provide this service should NYWD so desire, whereas BVID cannot because it is solely an irrigation water district.

The point is that the properties NYWD seeks to detach can get domestic water from NYWD. But if these properties are detached and placed solely in BVID's sphere of influence, these properties cannot obtain domestic water because BVID is not empowered to provide it.

Government Code § 56654(a) states that the governing board of a special district cannot apply for a boundary change that involves the “divestiture of the power to provide particular functions or classes of services” unless the special district includes a plan for services prepared pursuant to Government Code § Section 56653 (see Government Code § 56824.12(a)).

Consequently, the Application is incomplete because (1) NYWD did not address, at a public meeting, the fact that the de-annexation it proposes will result in the inhabited parcels subject to NYWD's de-annexation losing the possibility of receiving domestic water, and (2) the Application does not include a plan prepared pursuant to Government Code § 56653.⁴

LAFCo Resolution Requires Revision:

Resolution 2020-0006 finds “[t]he North Yuba Water District... does it have the ability to provide [water] service.” LAFCo cannot make this finding because there is nothing in the

⁴ My clients anticipate that NYWD may attempt to side-step this error by arguing that they should be excused from providing a Section 56653 plan because they do not presently provide domestic water to the parcels affected by the Application. My clients respectfully point out that LAFCo is always concerned with “the present and future needs of each county and its communities” (*see* Government Code § 56301) and for this reason the issue of the loss of the opportunity to receive domestic water if NYWD's application is approved should be considered at a hearing as part of LAFCo's consideration of the Application.

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record that supports this conclusion. At this point no one knows what services NYWD can or cannot provide. All we know is that it is empowered to provide both agricultural *and* domestic water to parcels it seeks to de-annex, whereas BVID is empowered to provide only agricultural water.

Resolution 2020-0006 does not include a finding that NYWD has signed and dated an Agreement to Pay – a condition necessary for the Application to be complete.

The Agendized Hearing is Insufficient:

As discussed above, the detachment NYWD proposes involves NYWD's divestiture of the opportunity to provide domestic water to the parcels affected by the Proposal because NYWD is empowered to provide that service, whereas BVID is not.

When a reorganization proposal involves such a divestiture, the law reasonably requires LAFCo to conduct a special, separate hearing to talk about and discuss it before such a proposal is approved. (Government Code § 56824.14.) At the bare minimum, LAFCo's agenda item for this matter at the pending special meeting should be continued to provide the opportunity to schedule and notice a hearing to address the loss of the possibility of obtaining domestic water when parcels currently within NYWD's sphere of influence end up exclusively within BVID's geographical boundaries.

CONCLUSION:

My clients request that, when LAFCo evaluates NYWD's Application, LAFCo invests the same procedural care and consideration LAFCo uses when evaluating any other reorganization application. My clients hope that this letter provides sufficient reason to slow down, continue the hearing on this matter, and allow NYWD to supplement its Application to correct deficiencies and address the issues described in this letter.

Sincerely,

PAUL NICHOLAS BOYLAN

A handwritten signature in black ink that reads "Paul N. Boylan". The signature is written in a cursive, flowing style.

Paul Nicholas Boylan

cc Yuba LAFCo Board Members