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June 26, 2020

VIA EMAIL and FAX DELIVERY

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John Benoit, Executive Officer  
915 8th Street, Suite 130  
Marysville, CA 95901

**RE: LAFCO File No. 2020-0002-North Yuba Water District Detachment;  
Request for Reconsideration of LAFCo Resolution 2020-0006**

Dear Mr. Benoit:

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 (the "Requesting Parties").

On behalf of the Requesting Parties, I am writing to request that the Yuba County LAFCo ("LAFCo") reconsider Resolution 2020-0006. This letter, and the attached Declaration of Gretchen Flohr, present new facts supporting this request for reconsideration. Also attached is a copy of Resolution 2020-0006 with suggested revisions.

## **Controlling Law:**

Any person can request reconsideration of a LAFCo resolution making determinations and, when a request delivered to the Executive Officer within 30 days of adoption of the resolution states modifications to the resolution and provides new facts that could not have been presented prior to the adoption, then a hearing on the request is mandatory (Government Code § 56895).

The hearing on the request cannot take place sooner than 21 days after the Executive Officer provides the public with notice of the reconsideration hearing. (Government Code § 57002.) LAFCo is prohibited from taking any action pertaining any “conflicting petition or resolution of application. (Government Code § 57003.)”<sup>1</sup> At the hearing, written and oral testimony will be received and considered. (Government Code § 56895(f).)

**Discussion:**

Resolution 2020-0006 (the “Resolution”) was voted upon and adopted on May 29, 2020. Therefore, this request, delivered to LAFCo’s Executive Officer, is timely.

The request is based on new and different facts that the Requesting Parties could not have reasonably known prior to May 29, 2020 (*see* Declaration of Gretchen Flohr, attached).<sup>2</sup> As Dr. Flohr’s declaration points out, notice of the May 29<sup>th</sup> meeting/hearing was mysteriously ineffective, even though the Resolution itself stated that notice was provided. Also, as Dr. Flohr declares, it was LAFCo’s action itself to pass the Resolution approving what appeared to be a flawed and incomplete detachment application that spurred Dr. Flohr and her constituents to investigate the facts behind the application and LAFCo’s notice to those persons affected by the detachment application and Resolution as well as the factual claims made in the application itself. (*See* Declaration of Gretchen Flohr, attached.)

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<sup>1</sup> Although in the context of Section 57003 the terms “conflicting petition or resolution of application” are ambiguous, the Requesting Parties believe that statutory context Legislative history weigh in favor of a judicial interpretation that Section 57003’s injunction prohibiting actions during the pendency of a reconsideration request apply to any actions that could be taken pertaining to any request for reorganization, including but not limited to the pending protest hearing in this case scheduled prior to the time allowing a reconsideration request lapsed.

If LAFCo decided to proceed with the currently scheduled protest hearing – despite knowing that those affected by the Resolution were not notified of that proceeding – that will conclusively indicate that there is an actual and present controversy relating to the legal rights and duties of the respective parties as to the construction and application of Section 57003 to these particular circumstances.

<sup>2</sup> Requesting Parties hereby incorporate by reference Dr. Flohr’s declaration in its entirety into this Request for Reconsideration.

John Benoit RE: LAFCo File No. 2020-0002-North Yuba Water District Detachment;  
Request for Reconsideration.

June 26, 2020

Page 3

Attached is a copy of the Resolution with clearly indicated revisions that the Requesting Parties suggest.<sup>3</sup>

Finally, review of records detailing LAFCo's May 29<sup>th</sup> meeting demonstrate that, although some LAFCo Board Members were aware of Mr. Sharp's letter of the same date opposing the Resolution, the Board did not consider the reasons Mr. Sharp's letter detailed demonstrating why the LAFCo Board should not have adopted the Resolution as written until substantive and procedural errors in NYWD's application were addressed via hearing. The Requesting Parties incorporate Mr. Sharp's May 29, 2020, letter into this request for reconsideration as additional reasons to reconsider the Resolution.

**Conclusion:**

This request for reconsideration is timely. It specifies new, very troubling facts that could not have reasonably been known prior to May 29<sup>th</sup>. Requesting Parties provide LAFCo with a Resolution with suggested revisions.

For these reasons, LAFCo must notice and conduct a hearing to take written and oral testimony supporting reconsideration of Resolution 2020-0006 and must not take any action pertaining to NYWD's application until the reconsideration hearing takes place.

Sincerely,

PAUL NICHOLAS BOYLAN

A handwritten signature in black ink, appearing to read "Paul N. Boylan", written in a cursive style.

Paul Nicholas Boylan

cc David J. Ruderman

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<sup>3</sup> Requesting Parties hereby incorporate by reference the attached Resolution with suggested revisions in entirety into this Request for Reconsideration.

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Attorney for CHARLES SHARP

**BEFORE THE YUBA COUNTY  
LOCAL AGENCY FORMATION COMMISSION**

IN THE MATTER OF LAFCO FILE  
NO. 2020-0002 - NORTH YUBA  
WATER DISTRICT DETACHMENT:  
CHARLES SHARP REQUEST FOR  
RECONSIDERATION

**DECLARATION OF GRETCHEN  
FLOHR IN SUPPORT OF CHARLES  
SHARP'S REQUEST FOR  
RECONSIDERATION**

[Government Code § 56895, *et seq.*]

1 I, GRETCHEN FLOHR, declare:

2 1. I am a resident and agricultural water customer of the North Yuba Water District. I  
3 make this declaration in support of Charles Sharp’s request for reconsideration of Yuba  
4 County LAFCo’s adoption of a resolution approving the North Yuba Water District  
5 (“NYWD”)’s application to detach parcels within NYWD and change the NYWD’s  
6 geographical boundary map which NYWD needs before it can change the political  
7 boundaries for its internal director divisions (*see* LAFCo File No. 2020-0002 - North Yuba  
8 Water District Detachment) (the “Resolution”). I make this declaration from my own  
9 knowledge. I could and would competently testify as to the statements I make in this  
10 declaration if called upon to do so.

11 2. My educational background is:

- 12 a. Ph.D. Herpetology, Southern Illinois University-Carbondale, Carbondale,  
13 Illinois, 2009
- 14 b. B.S. and M.S. Organismal and Conservation Biology, San Jose State  
15 University, San Jose, California, 1996; 1999 respectively.

16 3. My Employment background is:

- 17 a. Principal Scientist, Surf to Snow Environmental Resource Management  
18 2018-Present
- 19 b. President and Owner, Senior Wildlife Biologist, Californian Environmental  
20 Services, LLC, 2011-2018
- 21 c. Associate Senior Wildlife Biologist, Live Oak Associates, 2000-2010
- 22 d. Wildlife Biologist, H.T. Harvey & Associates, 1995-1999

23 4. NYWD seeks to alter its geographical map via an application to detach land parcels  
24 currently within NYWD, leaving them within the Browns Valley Irrigation District  
25 (“BVID”) sphere of influence for the purpose of providing those parcels with water that  
26 NYWD does not and cannot provide to those parcels (the “Application”). The Application  
27 states that it was presented for “Boundary Reorganization” and seeks to detach 8,328.77  
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1 acres belonging to 403 parcels.

2 5. On November 6, 2018, I was elected to a four-year term as the NYWD Director for  
3 Division 4. The vast majority of parcels NYWD seeks to detach reside in Division 4.

4 6. I was alarmed when, on May 29, 2020, LAFCo approved and passed Resolution  
5 2020-0006 (the “Resolution”) approving the Application even though it was painfully  
6 apparent that the Application was flawed and needed to be resubmitted. We were  
7 flabbergasted when LAFCo approved the Application, unsigned, when the Application  
8 form itself – prepared by LAFCo stated that unsigned applications would not be approved.  
9 This heightened my concern and the concerns of my constituents that LAFCo was showing  
10 favoritism for NYWD’s effort to reorganize its director divisions. Adopting the Resolution  
11 based on what should have been an invalid application alerted the public to the question of  
12 what other process irregularities might be happening behind the scenes that were not  
13 apparent.

14 7. We noticed that none of the landowners affected by the Application and the  
15 Resolution were present at on May 29<sup>th</sup> to observe or participate in LAFCo’s meeting when  
16 it passed the Resolution. We decided to canvas the affected landowners.

17 8. It wasn’t easy getting in contact with them because of the remote places where they  
18 live. Many of the phone numbers we called were either disconnected or did not answer.  
19 But we were able to contact approximately 14 of them, randomly chosen, and this is what  
20 we learned:

- 21 a. None of them received any notice whatsoever of LAFCo’s May 29<sup>th</sup> meeting.
- 22 b. None of them received notice that, during that meeting, LAFCo could approve  
23 the Application and/or pass the Resolution.
- 24 c. None of them receive any notice of their right to protest LAFCo’s approval  
25 of the Application and/or the Resolution.
- 26 d. Many of the people listed as property owners on Application don’t own that  
27 property any more. They have moved, and new people who are not identified  
28 in the Application now reside on the parcels affected by the Application and

1 Resolution.

2 9. My investigation also revealed the following new and troubling facts:

- 3 a. The stated purpose for the Application is to detach those parcels that are not  
4 receiving water from NYWD (because of lack of infrastructure and the remote  
5 location of the parcels) so that they can receive water services from BVID.  
6 b. Many of these same parcels will not receive any water from BVID because  
7 of the same remoteness and lack of infrastructure.  
8 c. Not all of the parcels that are in NYWD but within BVID's sphere of  
9 influence that are not receiving any water are included in the Application;  
10 therefore, the Application is incomplete.  
11 d. When BVID annexed parcels from NYWD prior to the Application and  
12 Resolution, BVID annexed 34 parcels – but none of these parcels are included  
13 in NYWD's detachment/reorganization Application.  
14 e. This means that, if this reorganization is completed as currently configured in  
15 the Application and the resolution, there will still be parcels paying taxes to  
16 NYWD that are not receiving water or any services from NYWD.

17 10. These new facts mandate that LAFCo hold a hearing to reconsider the Resolution. I  
18 am continuing to investigate these matters and will update the LAFCo Board when the  
19 hearing takes place – and, fortunately, there is time for investigations to continue during the  
20 21 days that must elapse from notice of the hearing to the date of the hearing itself  
21 (Government Code section 56895(e) and (f) and 57002.)

22 11. One of the things LAFCo needs to consider at the reconsideration hearing is why  
23 there is such a huge amount of acreage listed in the Application but so few parcels. This  
24 supports other information and findings listed above that there are far more parcels that  
25 must be included in the detachment in addition to those that the Application lists. The  
26 information exists, but wasn't provided, but can be verified during the time between notice  
27 of the reconsideration hearing and the hearing itself.

28 12. The second and more important thing LAFCo needs to consider at the

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reconsideration hearing is why so many of those affected by the Application and Resolution did not receive notice. I will do all I can to make sure all of those who are affected by the Application and Resolution receive notice.

I declare under penalty of perjury under the laws of California that the foregoing is true and that this declaration was executed in Oregon House California on June 26, 2020.



GRETCHEN FLOHR



LEGEND:

Orange text Indicates notes.

Red text indicated suggested additions

Strikeout indicates suggested deletions.

**AMENDED Resolution 2020-0006 of the**

**Yuba Local Agency Formation Commission**

*A Resolution Making Determinations and Approving the detachment of 8,328.77-acres more or less of lands in Yuba County from the North Yuba Water District (NYWD)*

WHEREAS, a Resolution of Application for detachment of 8,328.77-acres from the North Yuba Water District (NYWD) has been filed with the Executive Officer of the Yuba Local Agency Formation Commission; and,

WHEREAS, the proceedings for this detachment are governed by the Cortese-Knox-Hertzberg Local Government Annexation Act, Section 56000 *et seq.* of the Government Code; and

WHEREAS, at the time and in the manner provided by law, the Executive Officer gave notice of the date, time, and place of a public hearing by the Commission upon said application to detach the territory from the NYWD; and

[This language is acceptable in any amended resolution, but only after the Board hears evidence during a hearing for reconsideration that notice was ineffective, and decides whether to provide new and more effective notice to the parcel owners affected by the proposed detachment.

WHEREAS, the Executive Officer has reviewed the application submitted by the NYWD and has prepared a report including staff recommendations thereon within the time required by law and has furnished copies of said report to the Commission and to all other persons required by law to receive it; and

WHEREAS, Yuba LAFCo policies do not allow similar services provided by multiple providers. In this case, the North Yuba Water District and the Browns Valley Irrigation District are both authorized to provide agricultural irrigation water. The North Yuba Water District has never provided water to the territory to be detached nor does it have the ability to provide that service.

WHEREAS, at a hearing on May 29<sup>th</sup> 2020, the Commission considered the proposal and the report of the Executive Officer; the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Section 56668; and all other relevant evidence and information presented at said hearing, including the comments of all interested parties desiring to be heard;

WHEREAS, after YUBA LAFCo reconsidered Resolution 2020-0006, the North Yuba Water District submitted an amended application that corrected procedural and substantive errors, and after a hearing by the LAFCO Board to consider the North Yuba Water District's amended application with

all current owners of the parcels subject to detachment notified of the Board's meeting/hearing to consider the North Yuba Water District's new application that identifies all parcels subject to detachment, all parcels that will be provided water by BVID after detachment, that identifies the current owners of all parcels that will be detached, and that attaches an updated map that identifies all parcels that will be detached and will receive water from BVID after detachment.

NOW THEREFORE, the Yuba Local Agency Formation Commission does hereby resolve and order the following:

1. The foregoing recitals are true and correct.
2. The territory comprises includes ~~8,328.77~~ [this is subject to change to correct the errors the Requesting Parties identify in their request for reconsideration] -acres more or less.
3. The change of organization is assigned the following distinctive short-term designation:  
*LAFCO 2020-0002 - North Yuba Water District Detachment*
3. The proposal is consistent with the sphere of influence of both the Browns Valley Irrigation District and the North Yuba Water District, since the territory is within the Browns Valley Irrigation District Sphere and not within the North Yuba Water District Sphere.
4. The Commission has considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, General Plan consistency, and other factors specified in Government Code Section 56668 and as described in the staff report dated May 29, 2020.
5. The Commission adopts the determinations regarding consistency with LAFCO Policies contained in the staff report for this project and incorporates them by reference herein.
6. The purpose of this detachment is to put to beneficial use the water available under BVID's water rights and not conflict in any way with the NYWD. [As the request for reconsideration argues, many of the parcels subject to NYWD's application will not receive any water from BVID after detachment.]
7. In reviewing this application, the Commission finds that a one-eighth page notice has been published in the paper. [As the request for reconsideration argues, notice was ineffective and requires examination, investigation and reconsideration.]
8. In reviewing this application, the Commission affirms that irrigation water services will be provided by the Browns Valley Irrigation District and not the NYWD. [As the request for reconsideration argues, many of the parcels subject to NYWD's application will not receive any water from BVID after detachment.]
9. In reviewing this application, this Commission has considered each of the factors required by Government Code Section 56668 and LAFCO's adopted policies.

10. The LAFCO Executive Officer's Staff Report including attachments and recommendation for approval of the proposal are hereby incorporated by reference and hereby adopted.

[As shown in the Requesting Parties' request for reconsideration, all of the attachments will need to be revised as part of NYWD's amended application due to the errors identified in the request for reconsideration.]

11. The maps and boundary descriptions shall comply with the State Board of Equalization requirements. The boundary descriptions and maps, if rejected by the State Board of Equalization or amended by LAFCO, will be revised at the expense of the applicant. The applicant shall be responsible for all associated costs. The boundary descriptions and maps if amended by action of the Commission will be revised and checked by the Yuba County Surveyor at the expense of the applicant, prior to filing of the Certificate of Completion.

12. The boundaries, as set forth in the proposal and amended by action of the Commission, are hereby approved as submitted and are as described in Exhibit "A" Boundary Descriptions and "B" Maps attached hereto and by this reference incorporated herein subject to the terms and conditions included.

13. As stated in the LAFCO Staff Report dated May 29, 2020, the amount of base property tax and tax increment transferred shall be in accordance with Yuba County Resolution Vd Q" (L, Li attached hereto as Exhibit "C". Property Tax currently generated for the NYWD and future increment shall be transferred to the County of Yuba.

14. Said detachment territory is found to be inhabited.

[As noted in As shown in the Requesting Parties' request for reconsideration, it is unknown whether all of the territory subject to detachment is inhabited. What is known is that many of those listed as owners/residents have moved and new people – who are not identified or included in any attachments – may now live on those parcels.]

15. All Yuba County, Yuba LAFCO and State of California fees must be paid in full prior to filing the Certificate of Completion. LAFCO will forward invoices and (or) a list of required fees prior to filing the Certificate of Completion for direct payment to the agency by projectproponent.

16. Further protest proceedings may not be waived and the Commission orders the detachment of 8,328.77-acres more or less from the North Yuba Water District pursuant to Part 4 commencing with Section 57000 subject to a Conducting Authority Proceeding .

17. The Commission has reviewed and considered the information contained in the Notice of Exemption prepared for this detachment and makes a specific determination that this detachment is exempt from CEQA and affirms the

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district's resolution stating this detachment is exempt from CEQA. The Commission hereby adopts a notice of exemption, which will not change the nature of any land use or intensity of land use or cropping patterns of these areas, which are currently in agricultural production and use.

18. The Commission directs the Executive Officer to file a Notice of Exemption as provided under Section 15094 of Title 14 of the California Code of Regulations upon LAFCo approval of this detachment. The applicant shall be responsible for payment of any documentary handling fees required by the Yuba County Clerk.
19. The project proponent (s) shall provide proof of payment to LAFCO of any required detachment fees, as applicable.
20. All North Yuba Water District previously authorized assessments; taxes, fees and charges, if applicable, shall no longer apply to any detached territory upon recordation of the Certificate of Completion.
21. One electronic copy in PDF, five large copies and three 8 1/2 x 11 reductions of all maps along with five copies of the final LAFCO approved boundary descriptions shall be submitted to LAFCO and wet stamped by a Surveyor licensed in California prior to recordation of the Certificate of Completion. In addition, GIS shape files for the boundary and Sphere of Influence, as amended shall be provided to YubaLAFCo.

[As shown in the Requesting Parties' request for reconsideration, the maps attached to the application and incorporated by reference in Resolution 2020-0006 are inaccurate.]

22. The maps and geographic descriptions for the area to be detached from the NYWD shall include the following title "LAFCO 2020-0002 - North Yuba Water District Detachment"
23. Approval of this change of organization is conditioned upon the applicant's obligation to defend, indemnify, and hold harmless the Yuba Local Agency Formation Commission and its agents, officers and employees from any claim, action or proceeding against the Commission or its agents, officers, and employees; including all costs, attorney's fees, expenses and liabilities incurred in the defense of such claim, action, or proceeding to attack, set aside, or void the approval or determinations of this Commission concerning this annexation. The Yuba Local Agency Formation Commission shall promptly notify the applicant of any such claim, action, or proceeding and be entitled to representation by counsel of its choosing.
24. The Executive Officer of this Commission is instructed to mail a certified copy of this resolution to those persons so indicated on the application and as required by Government Code Section 56882.

[As shown in the Requesting Parties' request for reconsideration, many of those listed as owners/residents have moved and new people – who are not identified or included in any attachments – may now live on those parcels.]

25. The Executive Officer is directed to record a Certificate of Completion for this

proposal upon completion of all proceedings.

26. Completion of proceedings shall be concluded within one year after adoption of this resolution. If the proceedings are not concluded within one year after passage of this resolution, all proceedings shall be terminated.

PASSED AND ADOPTED by this Yuba Local Agency Formation Commission on the 29<sup>th</sup> day of May 2020 by the following vote:

**AYES:**

NOES:

ABSENT:

**ABSTAINS:**

Signed and approved by me after its passage this 29th day of May 2020.

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Andy Vasquez, Chair - Yuba Local Agency  
Formation Commission

Attest:

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John Benoit, Executive Officer  
Yuba Local Agency Formation Commission

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David Ruderman, Counsel  
Yuba Local Agency Formation Commission