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Court rules in favor of board member suing North Yuba Water District

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The North Yuba Water District is planning on building a pipeline in its Forbestown Ditch to help improve conveyance in the antiquated open ditch that farmers and residential customers throughout the district rely on.

After being elected in 2018, one board member, Gretchen Flohr, asserted that the board wasn't forthcoming with information related to the project, neither to her nor the public, which prevented the public's input during the planning process. She filed a California Public Records Act lawsuit and a Yuba County judge ruled in her favor, ordering the water district to produce the requested documents.

"Denying the public access to records relating to the conduct of the public's business is against the law," Flohr said in a press release. "So my only choice was to ask a judge to order NYWD to give me access to the records and information the public needs to find out what is going on and to be able to exercise their constitutional rights to participate in the pipeline planning process."

Flohr said the proposed pipeline doesn't actually improve the district's conveyance system because it would be made of plastic and only designed to contain approximately 3,700 acre feet of water, even though the district is entitled to approximately 23,000 acre feet of water.

The lawsuit was filed against the district on March 31 to gain access to what the court described as all drafts, preliminary and final engineering plans related to the Forbestown Ditch Pipeline Project. The district subsequently filed a cross-complaint against Flohr.

On July 30, Yuba County Superior Court Judge Stephen Berrier ordered the district to produce the records requested by Flohr, as well as dismissed the cross-complaint.

Jeffrey Maupin, general manager of the North Yuba Water District, said that a hearing on objections for the court's decision is scheduled for later this month. If the court upholds its decision, Maupin said the district will likely appeal the decision as it is proper to withhold draft documents from disclosure under the California Public Records Act – Flohr contends that the district had until Aug. 24 to appeal the judgement and since they failed to do so, the decision became final and enforceable.

“The preliminary, draft engineering plans are the engineers’ work-product, and the district has never possessed them. The district does not have the right to own, use, distribute and reproduce the engineering firm’s files,” Maupin said. “The district properly responded to Dr. Flohr’s CPRA request for the preliminary, draft engineering plans and informed her that the preliminary drafts are exempt from disclosure.”

In his statement of decision, Berrier wrote that preliminary drafts were not exempt from disclosure.

Maupin asserted that the lawsuit filed by Flohr had nothing to do with obtaining information about the project.

He said the final engineering plans were unanimously accepted by board members when presented during a hearing in 2019 – the final plans can be viewed at <https://www.nywd.org/publications>.

“This lawsuit is Dr. Flohr’s attempt to one-up her fellow board members and embarrass the district’s administration,” he said. “Dr. Flohr has sued the very district which she was elected to serve to obtain records that she already has.”

Next steps

Both parties will return to court later this month to determine if the district will be on the hook for Flohr’s \$65,560 worth of attorney fees, as well as fees incurred preparing the motion and multipliers that combine to total \$43,185.

The hearing is scheduled for Sept. 28 at 10 a.m. at Yuba County Superior Court.

Flohr said she is hoping the district produces the documents her team has requested and that her attorney is compensated for the work up to this point.

“Fighting against the public’s right to know resulted in a huge waste of time and money,” Flohr said in a press release. “I cringe when I think of how much public tax money the district spent trying to defend the decision to keep the public in the dark about the pipeline project. But the public’s right to know what is going on is an important right worth enforcing. I hope that the board majority and Mr. Maupin learn from this huge mistake and start conducting the public’s business more transparently. All they have to do is what the law says they are supposed to do, and this won’t happen again.”
