

July 11, 2008

11

BY HAND DELIVERY

Honorable Chair Salud Carbajal and Members
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101



Steven A. Amerikaner

805.882.1407 tel
805.965.4333 fax
SAmerikaner@bhfs.com

*RE: Your July 15, 2008 Agenda, Item #11
AB 2686: Myths and Facts*

Dear Chair Carbajal and Members of the Board of Supervisors:

Brownstein Hyatt Farber Schreck (formerly Hatch & Parent) has served as General Counsel to the Santa Ynez River Water Conservation District, Improvement District No. 1 ("ID #1") since it was created in 1964 to distribute water from the new Cachuma Project. Today, the District continues to deliver high quality water at reasonable prices to nearly 10,000 residents, farms and businesses in Santa Ynez, Ballard, Los Olivos, Solvang and other communities in the Santa Ynez Valley. Over the past four decades, it has diversified its sources of supply, and now receives water from the State Water Project and groundwater wells as well as from the Cachuma Project.

In recent years, it became clear to ID #1, Supervisor Firestone's office, LAFCO, County Counsel and others that there were good reasons to reorganize the District under new legislation. That legislation has been under discussion and formulation since 2006, and hundreds of hours of meetings, discussions and drafting resulted in AB 2686, introduced in February 2008 by Assembly Member Pedro Nava. It has been unanimously approved by nearly every legislative committee that has considered it, and unanimously passed by the Assembly. It is scheduled for a hearing before the State Senate Appropriations Committee on July 14 and may be heard on the Senate Floor on second reading on July 17. Final action by the Senate could occur as early as the first week in August. We note that the Board of Supervisors is not scheduled to meet again until August 19, which is likely to be after the close of the legislative session since a number of legislators are scheduled to be in Denver for the Democratic National Convention.

Supervisor Firestone has been involved in the development of AB 2686 since its early stages, and has always been supportive of this legislation. Supervisors Wolf and Centeno voted on July 3 to support the bill as LAFCO Commissioners (Supervisor Firestone was absent for that vote). County Counsel participated in the drafting of the first version of the bill, and has reviewed every successive draft. In addition, each draft of the bill has been thoroughly analyzed by LAFCO staff, and changes have been incorporated into the bill reflecting the views of both LAFCO staff and County Counsel.

Recently, a few residents of neighborhoods outside of ID #1's boundaries have raised questions about the legislation's purpose and effect, most of which have been answered before. In this letter, we hope to dispel the myths about AB 2686 so that the full Board of Supervisors can confirm the prior LAFCO vote to support it.

- **Fact - What AB 2686 Does.**

- AB 2686 creates the Santa Ynez Valley Water District (SYVWD), a new special district that will replace ID #1. It eliminates the problems caused by the fact that ID #1's official name is nearly identical to the name of another special district that exists in the Santa Ynez Valley, leading to public confusion.
- AB 2686 maintains the powers ID#1 currently holds and transfers them to SYVWD. Those powers include some that are actively exercised, such as retail water deliveries, and others that are currently latent, such as providing recreation or wastewater services, or imposing a groundwater extraction charge.
- AB 2686 empowers SYVWD with new authority to act as a water replenishment district to recharge and maintain a healthy groundwater aquifer. This is the same power held by water agencies throughout California.
- AB 2686 imposes a new system of checks and balances on SYVWD. It requires SYVWD to receive public input and LAFCO approval prior to exercising a new or latent power.
- AB 2686 eliminates a unique exemption from LAFCO's authority currently held by ID #1. Under current law, ID #1 can annex territory without LAFCO approval. No other independent special district in the county has this authority. Under SB 2686, the new water district could only annex territory with LAFCO approval, thus providing for more orderly planning for the expansion of utility services.

- **Fact - What AB 2686 Does Not Do.**

- AB 2686 does not expand ID#1's territory. SYVWD's boundaries will be identical to ID#1's.
- AB 2686 does not change the services ID #1's customers receive. The customers of SYVWD will receive identical services, at the same rates.
- AB 2686 does not create a new level of government. It simply replaces one special district with a new special district to better serve the public. No new governmental expenditures will result.
- AB 2686 does not confer on the District a new power to impose a groundwater extraction charge. In fact, ID #1 already has the authority to impose such a charge, but has never done so.

- **Myth #1 – There was little or no public input into or notice about AB 2686.**

- AB 2686 has been collaboratively developed in open and public meetings by ID #1 and LAFCO.
- LAFCO has held numerous public meetings about efforts to reorganize ID #1. The issue was on LAFCO'S agenda or discussed in staff reports three times in 2006¹, four times in 2007²; and three times in 2008³. Interested parties and the general public had opportunities at each of those ten meetings to provide input and ask questions about the legislation.
- ID #1 has held twenty-two public meetings about its efforts to reorganize the District and resolve its jurisdictional issues with LAFCO. The issue was on ID #1's agenda and discussed openly at

¹ August 3, September 25, and October 6, 2006.

² July 27, October 11, November 1, and December 7, 2007.

³ March 6, May 1, and July 3, 2008.

each of ID #1's six monthly meetings this year⁴, at eleven meetings in 2007⁵, and five meetings in 2006⁶.

- AB 2686 was discussed at public meetings of the County of Santa Barbara's Legislative Committee, the City of Solvang, the Santa Ynez River Water Conservation District (SYRWCD), and the Santa Ynez Community Services District (SYCSD).
- A letter describing the legislation was sent to **2,560 ratepayers** of ID #1 on May 22, 2008.
- **Myth #2 – AB 2686 is based on a false premise and creates a bad precedent.**
 - The very knowledgeable committee consultant for the Senate Local Government Committee suggested that special legislation was the most appropriate way to reorganize ID #1. No other entity in California is organized the way ID #1 is. And, since ID #1 is expressly exempt from LAFCO jurisdiction, it cannot reorganize in the same way nearly every other special districts does, via the Local Government Reorganization Act. That is why AB 2686 is necessary.
 - General legislation was not appropriate because water conservation districts are created via antiquated law and have no authority to exercise modern water conservation services, such as groundwater replenishment.
 - Since the facts stated above are unique solely to ID #1, AB 2686 will not create any precedent for other local agencies in the county or the state to reorganize or take on additional powers. Indeed, that is the whole point of "special legislation."
- **Myth #3 – AB 2686 was fast-tracked through the California Legislature.**
 - AB 2686 has followed the traditional procedures for approval of legislation. It was introduced nearly six months ago, on February 22, 2008.
 - Over the past six months, the bill was heard in four separate state legislative committees, where it received support from SYRWCD, LAFCO, Solvang and the Association of California Water Agencies, among others.
 - AB 2686 was approved by the Assembly on a 76-0 vote and has received unanimous support in nearly every state legislative committee hearing.
- **Myth #4 – AB 2686 drastically expands ID #1's powers such as sewer, recreation and eminent domain.**
 - ID #1 currently has authority to collect and treat wastewater and storm water⁷, to provide recreational facilities⁸, and to take property through eminent domain⁹. Over the past forty-four years, ID#1 has not exercised any of those powers, and so they remain latent. Under current law, if ID #1 decided to exercise those powers, it could do so without approval from any outside agency.
 - AB 2686 retains those latent powers, but adds a new requirement: prior to exercising one of its latent powers, SYVWD must first receive LAFCO approval.

⁴ January 15, February 19, March 18, April 22, May 20 and June 19, 2008.

⁵ February 20, March 20, April 17, May 15, June 19, July 17, August 21, September 18, October 16, November 20, and December 18, 2007.

⁶ July 18, August 15, September 19, October 17, and November 21, 2006.

⁷ Water Code §74593.

⁸ Water Code §74540.

⁹ Water Code §74550, 74553.

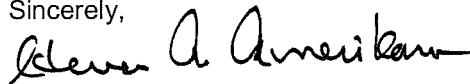
- In drafting the provisions that will transfer these latent powers to SYVWD, the legislature used modern drafting techniques. As such, the language used to empower SYVWD is not the identical to the 1931 law that empowers ID #1, but the intent and the effect is the same.
- **Myth #5 – AB 2686 did not comply with CEQA.**
 - CEQA does not apply to “proposals for legislation to be enacted by the State Legislature”, like AB 2686.¹⁰
 - It is logical to exclude this legislative activity where a special district is being reorganized within the same boundaries, since there is no potential for this to have a significant effect on the environment.¹¹
- **Myth #6 – AB 2686 should be delayed to be reviewed by special water counsel and resolve community concerns.**
 - Since AB 2686 relates to a special district reorganization, it is most logical to have it analyzed by an attorney experienced in local agency functions and operations. That is exactly what has occurred here. Santa Barbara County Counsel’s local agency law specialist, Deputy County Counsel William Dillon, has been deeply involved in drafting and reviewing AB 2686 since its conception. The County can and should rely on its in-house expert on public agency formation and reorganization issues.
 - The community has participated in the development of AB 2686 since 2006. The collaborative public process that developed this legislation should not be delayed, simply to satisfy the curiosity of a few individuals from outside of ID #1’s territory. Since this is the second year of the Legislative Session, the District would be required to start all over again next year with a new bill if the legislation is not signed into law this year. It is difficult to justify such a waste of resources by the District and all of the other agencies that have participated in the development of this legislation over the past two years.

We are confident that when AB 2686 is reviewed on its merits, instead of myths, it will be clear that this bill will accomplish positive change for the Santa Ynez Valley.

If you have any additional questions about AB 2686, please do not hesitate to contact me directly. Of course, I will attend your meeting on Tuesday, July 15, and will be available to answer questions at that time.

Thank you for your kind attention.

Sincerely,



Steven A. Amerikaner

cc Michael Brown, Chief Executive Officer, County of Santa Barbara
Robert Braitman, Executive Officer, Santa Barbara LAFCO
William Dillon, Deputy County Counsel
Board of Trustees, Santa Ynez River Water Conservation District,
Improvement District No. 1
Assembly Member Pedro Nava

¹⁰ CEQA Guidelines § 15378(b)(1).

¹¹ CEQA Guidelines §§15319, 15320.