

Oroshi Public Utility District

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TO: County of TulareFROM: O P U DFAX: 559-615-3009*PAGES: 5

PHONE

559-528-4262

DATE:

9-9-2024

RE:

CC:

9-10-24 Agenda item

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

Thank you

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Orosi Public Utility District

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Honorable Larry Micari, Chairperson, Board of Supervisors
COUNTY OF TULARE
2800 West Burrel Avenue
Visalia, California 93291
559-636-5000

September 9, 2024
Via Personal Delivery and fax:
559-615-3009

RE: Public Hearing Written Testimony for September 10, 2024 AGENDA ITEM 6 and Closed-Session ITEM A.

Dear Honorable Chairperson Micari:

On behalf of the Orosi Public Utility District (“**OPUD**”) please accept the following written testimony to the entire Board of Supervisors (“**BOS**”) of the County of Tulare (“**COUNTY**”), in connection with the items specified above.

First of all, it is important to note and understand that the agenda item is entirely unnecessary because it purports to further a physical consolidation order issued by the State Water Resources Control Board (“**SWRCB**”) pertaining to the water systems of the East Orosi Community Services District (“**EOCSD**”) and the OPUD. Such physical consolidation project is moving forward with or without any political boundary consolidation by LAFCo. The SWRCB's order does not require any political boundary consolidation because the SWRCB has no jurisdiction over political boundaries or local agency governance. The SWRCB's jurisdiction is over water quality. The OPUD and the EOCSD have for decades been parties to a joint powers agreement for wastewater treatment services and LAFCo has never consolidated the two districts boundaries for sewer services, and consolidation of their boundaries for water service is equally not legally required nor necessary.

According to the Staff Report presented to the BOS on June 4, 2024, staff is asking the BOS to “**Substitut[e] the voluntary consolidation agreement with an annexation through LAFCo...**”, and in so doing refusing to negotiate a voluntary consolidation agreement with the OPUD. This unilateral action is not only unprofessional, but likely illegal and certainly is a denial of due process, and should have been discussed with the legislative bodies of the East Orosi Community Services District (“**EOCSD**”) and the OPUD but COUNTY staff never mentioned an annexation application until notices of the June 4, 2024 BOS meeting

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were formally issued.¹ The OPUD on both 7/1/2024 and again on 8/15/2024 wrote to Reed Schenke, Tulare County RMA Director, to request public records and to request confirmation of whether the County has abandoned negotiations on a voluntary consolidation agreement. As of the present time, Mr. Schenke has refused to provide any response whatsoever.

Please be aware that under Government Code §§ 56824.12 and 56654(b) the County of Tulare does not have the legal authority to submit the proposed application to the Local Agency Formation Commission (“LAFCo”) because the proposed annexation includes the divestiture of the power to provide domestic water services from the EOCSD. The cited provision expressly indicates that in this circumstance, the LAFCo application can only be initiated by the governing body of the special district which is being divested of powers. The scope of the proposal which was noticed for a public hearing clearly shows that it would divest the EOCSD of its power to provide potable water service within its own jurisdictional boundaries. Although, COUNTY staff informed the BOS that the COUNTY is the SWRCB's appointed “Administrator” over the EOCSD and as such has authority over “administrative, technical, operational, legal, financial and managerial control of the EOCSD public water system”, this “administrator” role, which is an executive function, should **not** be confused with supplanting the authority of the EOCSD's publicly elected governing body. The State legislature has never given any executive branch agency like the SWRCB the power to override and disregard the People and their elected public officials who were democratically elected to a legislative body of a public entity. To do so would be a violation of the separation-of-powers doctrine, which is also codified in the California Constitution. Accordingly, the BOS should not approve the proposed resolution to proceed with a LAFCo application and any LAFCo action to proceed with such application would be ultra vires.

The political-boundary consolidation like the one proposed by the COUNTY would also create inefficiencies, confusion to residents, vote dilution and other problems, since it would create overlapping boundaries of two special districts because the EOCSD will continue to exist for its other enterprise activity such as sewer service. Under the COUNTY's political-boundary consolidation, the residents of the EOCSD would have the power to elect OPUD board members for the OPUD's wastewater enterprise even though EOCSD residents will also elect the EOCSD board members for the EOCSD wastewater enterprise. The electoral influence of the EOCSD would be overbroad and dilute the votes of the residents of the OPUD who have the sole right to elect representatives over their wastewater enterprise. Conflicting ordinances could also be enacted by EOCSD and the OPUD, creating confusion

¹ The COUNTY's response in #6 of the LAFCo Proposal Questionnaire is misleading in that it implies that this proposal was discussed during monthly teleconferences hosted by the SWRCB, which it was not. The COUNTY could have but failed to ever disclose to the OPUD that it was working on a LAFCo proposal during the time the COUNTY was supposed to be working on proposed revisions to a voluntary consolidation agreement.

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as to which is applicable.

According to staff from the SWRCB, earlier this year the SWRCB approved over \$13 million to fund the physical consolidation of water systems, which will physically connect approximately 103 residences to the OPUD's water system. Thus, over \$125,000.00 in public dollars will be spent on each home within EOCSD, which in some cases exceeds or is comparable to the total value of some of the residences. This does not include the SWRCB's prior expenditures on this physical water systems consolidation project, which includes further reliance upon contaminated groundwater rather than other, and more reliable, sources of clean drinking water. This grossly inefficient use of public funds by the SWRCB and those agencies who partner with it is of questionable legality.

As the Staff Report to the BOS discloses, the COUNTY will seek reimbursement from the State Water Resources Control Board ("SWRCB") to proceed with a political boundary consolidation which the SWRCB has no power to undertake or fund. Thus, the COUNTY's reimbursement claim would come within the scope of the California False Claims Act.

It should also be noted that legal counsel who advises the BOS and COUNTY agencies is also legal counsel to LAFCo, which is unlawful because of the potential for conflicts-of-interest, as well as for serving as an advocate for the applicant COUNTY, through its service to COUNTY staff, and then also acting as an advisor who influences both the BOS and the LAFCo Commissioners when voting to take official action. This requires that the entire process for BOS Agenda Item #6 be re-initiated with appropriate legal representation to each agency. The mere appearance of impropriety arising from such biased arrangement prohibits LAFCo and the BOS from utilizing the same legal services office, namely the Office of the Tulare County Counsel.

The political boundaries of local government entities are formed under legislative acts such as the Public Utility District Act [Gov. Code §§ 15501 et seq.] in the case of the OPUD and the Community Services District Law [Gov. Code §§ 61000 et seq.] in the case of the EOCSD, which allow the People to decide to form special districts to self-govern themselves. For COUNTY staff to propose to the BOS to override the will of the People by proposing to change political boundaries of special districts, in order to avoid the negotiation of a voluntary consolidation agreement, is legally inappropriate, especially after **Ross W. Miller, P.E.**, of the **Tulare County Resource Management Agency** received and then sat on the proposed consolidation agreement from **October 1, 2023** and failed to respond to it until **May 13, 2024**, when he provided written comments but dishonestly failed to disclose that he was secretly working with LAFCo (who is funded by the COUNTY and has a conflict-of-interest) and SWRCB personnel to try to backdoor an annexation instead of negotiating a voluntary consolidation agreement as publicly ordered by the SWRCB.

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It is respectfully requested that the foregoing be accepted and be incorporated into the administrative record as: written testimony; public comment; and an opposition and objections in connection with the agenda items specified above, including each resulting COUNTY resolution(s) and application(s) to LAFCo. In addition, the OPUD requests that if the BOS approves a resolution of application, that the LAFCo proceedings include a protest process which will allow the voters of Orosi to weigh in on the matter at a public election.

Respectfully submitted,


Maria Elena Vidana, OPUD District Manager

Enclosures: (None)
CC: (None)