

April 2, 2012

Via U.S. Mail and Facsimile

Michael LeBrun, General Manager  
Nipomo Community Services District  
148 South Wilson Street  
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Nipomo, California 93444-5320  
Facsimile: 805-929-1932

**Re: NCS D's Ballot-related Brochure**

Dear Mr. LeBrun:

As you know, I represent Mesa Community Alliance ("MCA"), a group of Mesa residents deeply concerned about the NCS D's proposed Assessment District that is intended to finance the so-called Supplemental Water Project.

MCA believes the NCS D has violated state law by spending public funds producing and mailing to potential voters a self-serving, one-sided and factually dubious brochure clearly intended to persuade property-owners to vote in favor of the Assessment.

As our Supreme Court has explained, it is well-settled that "in the absence of clear and unmistakable language specifically authorizing a public entity to expend public funds for campaign activities or materials, the entity lacks authority to make such expenditures." Vargas v. City of Salinas (2009) 46 Cal.4<sup>th</sup> 1, 24 (citations omitted.) Because "the line between unauthorized campaign expenditures and authorized informational activities" is not always clear", "the determination of the propriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication, . . ." Id. "[I]t is not essential that [a] publication expressly exhort the voters to vote one way or another' in order for the publication to constitute improper activity." Id., citing Keller v. State Bar (1989) 47 Cal.3d 1152, 1171, fn. 22.

As the constitutional proscription against expenditure of public funds on campaign materials applies to Special Assessment Ballots, we believe the brochure the NCS D mailed out to the voting landowners on the Mesa was improper and unauthorized campaign material. The timing of the mailer -- sent out only days before the release of Assessment ballots -- was clearly intended to directly influence the vote. The brochure, moreover, refers directly to the ballot, contains voting instructions, describes payment options and ballot procedures, and includes a "question and answer" section.

**RECEIVED**

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April 2, 2010  
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Although the brochure is intended to provide ballot information, it is clearly biased and fails to convey balanced and accurate "information".

The tone and tenor of the brochure is clearly intended to persuade the reader to vote in favor of the Assessment largely by fear mongering and making dubious factual claims. The brochure contains purported statements of fact that are either actually false or at least misleading. The brochure claims, for example, that the court has "ordered water providers to secure an additional source of fresh water." This claim is not strictly true, as the Court merely ratified and incorporated the private agreement among NCS D and other water purveyors to secure and import water from Santa Maria. Contrary to the brochure's claim, the Court did not "order that supplemental water be brought in to make up for excessive pumping . . ."

The brochure also attempts to portray the pipeline to Santa Maria as a *fait accompli*, claiming that unless the pipeline is funded by an Assessment District, the District would find another, more expensive, source of funding. As far as we can tell, there is no factual basis for the NCS D's claim that the construction of the pipeline is simply a foregone conclusion. We note, for example, the severability clause of the Stipulation (which was incorporated by reference in the Court-issued judgment) and the provisions which anticipate a need for alternative action in the event that the pipeline is not constructed. We believe these provisions undermine the NCS D's claim that the pipeline is a foregone conclusion. We therefore believe that the brochure's unfounded insistence that the pipeline would be paid for one way or another amounts to fear mongering intended to scare the residents into voting in favor of the Assessment.

Contrary to the brochure's claim, there is no evidence to suggest that even without any new development, "fresh water levels on the Mesa will continue to drop . . . if a supplemental source of water is not secured." This claim is contradicted by information contained in the Nipomo Mesa Management Area ("NMMA") 2010 Report, which to the contrary, shows that that water levels have stabilized and are no longer dropping. Likewise, the brochure's claim that "most of the City's groundwater flows underground to the ocean without any benefit" is contradicted by the 2010 Report, which to the contrary, states that there is a net inflow of groundwater into the Nipomo Mesa area from the Santa Maria Valley.

Based on the foregoing, the voting on the Assessment District must be suspended because the process has been tainted by the District's illegally funded and inappropriate campaign materials. Please be advised that unless the NCS D formally suspends the election and recalls all outstanding votes by Thursday April 5, 2012, we would be compelled to seek immediate judicial intervention.

Sincerely,



Babak Naficy

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cc: Jon Seitz, Esq.