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May 6, 2014

Via Federal Express

Honorable Tani G. Cantil-Sakauye, Chief Justice
and the Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: ***Douglas Vagim, et al. v. City of Fresno and Douglas Sloan***
Supreme Court of the State of California, Case No. S217668

LETTER OF CALIFORNIA SPECIAL DISTRICTS ASSOCIATION SUPPORTING PETITION FOR REVIEW

To the Honorable Chief Justice Cantil-Sakauye and Associate Justices of the Supreme Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the California Special Districts Association, a California nonprofit public benefit corporation (hereinafter "CSDA") submits this letter in support of the Petition for Review which the City of Fresno has filed with the Supreme Court in the matter *Vagim, et al. v. City of Fresno, et al.*, Supreme Court of the State of California, Case No. S217668.

I. The Interest of CSDA

CSDA is a nonprofit association representing approximately 1,000 special districts throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including water supply, treatment and distribution; wastewater, sewage and storm water collection treatment and disposal; solid waste collection, transfer, recycling and disposal; fire suppression and emergency medical services; park facilities, open space and recreation services; road construction and maintenance; mosquito and vector control; and airport, harbor and port services.

Members of CSDA have a significant interest in this case which involves specification of the circumstances under which pre-election review of fiscal initiatives to reduce or repeal property-related fees and charges levied by such special districts to finance the provision of core local public services, are appropriate. The core public services provided by special districts and other local government agencies funded by fees and charges paid by customers of such services include water treatment and distribution; wastewater, storm water, and sewage collection, treatment and disposal; and solid waste collection, transfer, recycling and disposal. Of the total membership of CSDA, 448 districts are characterized as "enterprise districts," which are defined as those special districts which are dependent upon rates and charges levied upon customers as that district's sole revenue source for paying the expenses of construction, improvement, maintenance and operation incurred in providing such core public services. The provision of these core local services by special districts and other local government agencies are necessary to ensure public health and safety.

This case involves a proposed ballot initiative to reduce water rates previously established by the city after complying with the procedural and substantive requirements of Article XIII D of the Constitution regarding property-related fees and charges. The purpose of the increased rates was to finance needed capital improvements to the city's aging water infrastructure to ensure adequate, clean and reliable water supplies to its residents.

In response to the initiative, the city filed suit to challenge the initiative as invalid before submission to the voters. Despite the recent decision of the Court of Appeal in *Mission Springs Water District v. Verjil* (2013) 218 Cal.App.4th 892 (*Mission Springs*) which held that a public agency may seek pre-election review of a proposed initiative from the judicial branch where the validity of a ballot measure is concerned, the city's attempt to obtain such a judicial ruling on the invalidity of the proposed initiative in this case was denied without a ruling on the merits. Such denial results in delay and uncertainty in the operations of those enterprise special districts and other local government agencies that provide water distribution and treatment, wastewater and sewage collection and treatment and refuse collection and disposal, all of which vital services are funded through such service rates, fees and charges.

Special districts and other local public agencies obligated to design, construct, operate and maintain public infrastructure to provide efficient and reliable water, wastewater, sewage and solid waste services have a compelling interest in the outcome of this case and support granting the Petition for Review. Such public agencies require guidance and certainty from the Court regarding the circumstances governing pre-election review of rate reduction initiatives such as this, to avoid the pervasive impairments in the provision of vital public services resulting from the delays and uncertainty caused by a post election determination.

II. Why This Court Should Grant Review

The petition for review in this case asks this Court to answer a broader version of the question that this Court reserved in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205 (*Big Horn*) which this Court articulated as follows:

> "[W]e are not determining whether the electorate's initiative power is subject to the statutory provision requiring that water service charges be set at a level that 'will pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due. [Citations.] That issue is not currently before us."

Although the Court of Appeal of the Fourth District in *Mission Springs* resolved this issue by holding that the electorate's initiative power under Article XIII C section 3 **is** subject to the statutory provision requiring that rates be set at a level sufficient to recover such costs, and the city cited *Mission Springs* in its arguments to the Court of Appeal, the city, nonetheless, has been denied a ruling on the merits in this case.

This delay in providing pre-election judicial review of a proposed initiative to reduce rates for a property-related service will directly impact all of CSDA's enterprise district members because all such members rely **solely** on a single revenue stream consisting of rates, fees and charges levied on customers in order to finance the provision of water, wastewater, sewage and solid waste services. All enterprise districts throughout the state that provide such critical local public services funded solely through rate revenue are affected by the delays and uncertainty which result from the lack of a clear rule providing guidance on the circumstances and timing permissible for pre-election initiative review of rate reduction initiatives under Article XIII C section 3.

The delay and uncertainty surrounding the issue of pre-election judicial review of such rate reduction initiatives severely impairs the ability of enterprise special districts and other public agencies to provide efficient, safe, clean and reliable public services such as water, wastewater, sewage collection and treatment and solid waste collection and disposal. Such uncertainty impairs the delivery of such essential governmental services, each of which impact public health and safety.

Such uncertainty stems from the mere existence of a proposed initiative to reduce rates. The existence of such an initiative campaign and the uncertainty of its success cause an unpredictable revenue stream for the affected public agency. An unpredictable revenue stream, in turn, severely impairs the ability of such a public agency to perform critical functions necessary to provide such vital public services. For example, without a predictable revenue stream, a local public agency is unable to access capital markets to finance construction or acquisition costs of any improvements to existing water, sewer,

wastewater, or refuse collection infrastructure. Such financing becomes impossible because local public agencies possess only one source of security for investors who wish to purchase public agency bonds or certificates of participation, and that security is a local agency's pledge of its net revenues. The amount of such net revenues which can be pledged is uncertain in the face of a proposed initiative to reduce rates. Investors will not purchase local public agency bonds in the face of such revenue unpredictability. Similarly, leases of real property or equipment necessary to provide services cannot be entered into or complied with because a public agency cannot make the required covenant in the lease that the governing body of the agency appropriate sufficient funds each year to meet the required rental payments when revenues are unpredictable. The result is the inability of a public agency to finance needed repairs, replacements and improvements of public utility infrastructure, including vehicles or other equipment necessary to maintain that infrastructure This inability to finance necessary infrastructure extends to infrastructure improvements which may be mandated by state regulatory authorities such as the Regional Water Quality Control Boards with respect to improvements to or alterations in wastewater collection and treatment facilities in order to comply with the requirements of the Clean Water Act; or mandates issued by the Department of Public Health with respect to water distribution and treatment facilities and processes.

An unpredictable revenue stream resulting from the prospect of such an initiative and the delays attendant with waiting for an election also impair the ability of special districts and other local public agencies to budget accurately and plan for the construction of infrastructure and the allocation of resources in the future. Such public agencies are faced with the dilemma of either reducing budget expenditures and service levels in the interim in order to plan for contingencies in the event the initiative passes; or budgeting as needed to provide adequate services and facing the prospect of budget deficits in the event the initiative is adopted.

Of further concern, in the face of unpredictable revenues, many public agencies elect to conserve funds and defer needed maintenance of infrastructure. Such deferred maintenance inevitably leads to increased future repair and replacement costs and constitutes an obviously inefficient method for maintaining the operational integrity of critical infrastructure.

In addition, an unpredictable revenue stream leads to uncertainly in human resource management. Unpredictable future revenue makes it more difficult for local public agencies to recruit and hire the highly trained staff required to coordinate the efficient, safe and reliable delivery of water, wastewater and solid waste services to the public. Unpredictable future revenues also affect the ability of local agencies to retain existing employees who may legitimately fear career disruption due to a local public agency's uncertain economic future.

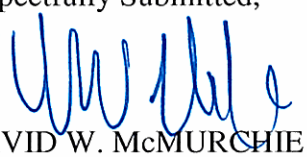
Finally, an unpredictable revenue stream pending a rate reduction initiative election, has a direct effect on the outstanding contractual obligations of local public agencies, including rate covenants on outstanding bond debt, many of which may be adversely affected in a myriad of ways depending on the nature, scope and duration of such contracts. Such uncertainty inevitably leads to contractual disputes and the potential for increased litigation. Such contractual litigation costs are unbudgeted, not covered by insurance, and must be borne by the agency's unpredictable revenue stream.

The uncertainty and delay in failing to ensure timely pre-election judicial review of such rate reduction initiatives impairs all of the critical functions of a local public agency, i.e., financing, borrowing, employment, maintenance, response to state regulatory mandates, accurate and effective budgeting, and management of contractual obligations and relationships. No purpose is served in delaying judicial review until after an election on a rate reduction initiative when the uncertainty resulting from such delay can seriously impair essential governmental functions impacting public health and safety such as water, wastewater and solid waste services.

III. Conclusion

This case merits review to settle important questions of law and to secure uniformity of decision. (Cal. Rules of Court 8.500 subd. (b)(1).) CSDA joins in petitioner's request that this Court review the substantive legal issues the Court of Appeal has avoided in its summary dismissal of the city's appeal. For the reasons detailed above, neither the parties, nor the hundreds of special districts providing enterprise services who are members of CSDA, nor the multiple other public agencies providing such services throughout the state, nor the public that receives those services, are served by any further delay in litigating these issues regarding the timing and circumstances under which pre-election judicial review of rate reduction initiatives is appropriate. As discussed above, special districts and all other local government agencies providing a wide variety of public utility services that are financed exclusively through customer rates and charges seek the guidance of this Court, have a compelling interest in the outcome of this case, and support the petition for review.

Respectfully Submitted,



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California Special Districts Association

DWM:sjm

Attachment: Proof of Service

PROOF OF SERVICE

Douglas Vagim et al., v. City of Fresno and Douglas Sloan
Court of Appeal Case No. F068569, Trial Court Case No. 13CECG03206

I, the undersigned, declare that I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action. My business address is 2130 E. Bidwell Street, Suite 2, Folsom, California 95630.

On May 6, 2014, I served the foregoing document described as: **LETTER OF CALIFORNIA SPECIAL DISTRICTS ASSOCIATION SUPPORTING PETITION FOR REVIEW** on the interested parties in this action as follows:

[X] **BY MAIL:** By placing the document(s) listed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Folsom, California, addressed as set forth.

SEE ATTACHED SERVICE LIST

[X] **BY OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed overnight envelope, for deposit in the designated box or other facility regularly maintained by FEDERAL EXPRESS for overnight delivery, caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for, addressed to:

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 6, 2012, at Folsom, California.

Saundra J. McPhail

SERVICE LIST
Douglas Vagim et al., v. City of Fresno and Douglas Sloan
Court of Appeal Case No. F068569, Trial Court Case No. 13CECG03206

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