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December 15, 2015

Board of Directors
Baca Grande Water and Sanitation District
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228

RE: Objections to Mill Levy Increase

Board of Directors,

We have looked over the comments provided from Facebook and the various emails from Lisa Cyriacks and Diane Dunlap objecting to the mill levy increase. The comments and emails assert that increased mill levy either exceeds the approved voter authorization in violation of TABOR, or that raising the mill levy is somehow in violation of State statute. Neither of these assertions is correct.

50 Mill Cap/Voter Authorization

The comments and emails have asserted that a total mill levy of 54 mills is in violation of the District's voter authorization and therefore in violation of TABOR. We addressed this issue in our response letter to Lisa Cyriacks. At the November 4, 2008, election, the electors of the District approved an increase in the District's operations and maintenance taxing authority allowing it to collect up to \$700,000 in tax revenues in 2009 and, in years after 2009, whatever revenues are generated by a mill levy not-to-exceed 50 mills. This 50 mill cap is applicable only to the operations and maintenance expenses and is not applicable to the District's debt. There is no limitation on the mill levy that can be imposed by the District for debt service purposes. Therefore, the District can impose up to 50 mills for general fund purposes and an unlimited mill levy to retire debt. The budget adopted by the Board for 2016 imposes 37 mills for the general fund and 17 mills for the debt service fund, both of which are within the legally permitted amounts. No further election is required if the District continues to remain within the limits which have already been approved by the voters.

Statutory Questions

The first statute Lisa Cyriacks referenced was § 29-1-106(2), C.R.S., which we also responded to in our first response letter, but we address again here so our comments are all in one place. § 29-1-106(2), C.R.S., requires that the notice of budget hearing contain language

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notifying the public that the District intends to increase its mill levy but only if that increase would exceed the mill levy limitations set forth in § 29-1-302(1), C.R.S. The referenced sections are applicable where a District has not otherwise waived the 5.5% limitation imposed in § 29-1-301, C.R.S. The 5.5% limitation is applicable only to the general fund and where not otherwise waived by voters. At the November 4, 2008, Coordinated Election, the electors of the District voted to waive the referenced statutory revenue limitations, and, therefore, the additional notice cited above does not apply.

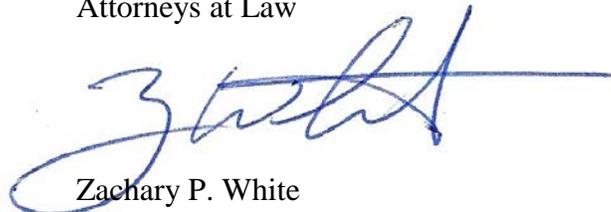
The second statute Lisa Cyriacks referenced was § 32-1-1201, C.R.S., provides that each year the District certify the mill levy for the next year by December 15. She seems to be implying that because § 32-1-1201(1), C.R.S., uses the term “annually” in relation to the Board’s consideration of revenues and the imposition of a mill levy to pay the District’s expenses that the Board cannot engage in financial planning for the future. However, there is no prohibition in the sections referenced from creating reserve funds for future capital or operational needs, or for payment of bonds; special districts, cities and counties do this kind of financial planning all the time. Furthermore, the District is required by loan and bond documents to have certain amounts in the funds as well. Raising the mill levy this year was a fiduciary planning decision that was made by the Board to lessen the impact on users in the event of a breakdown and known future costs rather than doing a special assessment for an unanticipated cost, taking out a loan or doing a huge hike in a year or two.

County Review

We would also like to address briefly the County’s review of the mill levy certification. The County does not have jurisdiction to approve the District’s mill levy certification or to not impose the full amount of mill levy certified by the District. It is our understanding at this point that the County Attorney is in agreement that a review of the District’s mill levy certification is outside the County’s jurisdiction.

Sincerely,

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



Zachary P. White

cc: Lisa Johnson, District Manager
Jennifer Gruber Tanaka, District General Counsel