# LAW OFFICE OF DON DETISCH

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May 24, 2017

**VIA US MAIL**
Gina M. Austin
3990 Old Town Ave., Ste. A-112
San Diego, CA 92110

**Re: Your letter dated May 9, 2017 regarding 1405 Oak Forest Road, Santa Ysabel.**

Dear Ms. Austin:

Your May 9th letter was referred to me for response. Your letter was threatening, inflammatory, ill-conceived and counter-productive. If you want to resolve a dispute, you have taken the wrong approach.

The factual background set out in your letter is flawed and omits many facts. On January 17, 2017, the County Department of Environmental Health (DEH) inspected the WWD (WWD) public water system. As part of that inspection the inspector noted several discrepancies including the following:

"WELL 11" - The main producing well of 5 active wells at WWD. Well 11 is not protected in a secure enclosure and is therefore subject to vandalism. Within 60 days provide a secure enclosure for Well 11…." Well 11 is located in WWD's easement on your clients' property.

In the Report published January 17th (a copy of which was provided to your clients) in the Summary of Action Items required for the WWD, Paragraph 3 importantly provided:

"Within 60 days receipt of this report, provided [sic] documentation (email photographs) that Well 11 is maintained within a secured enclosure. If 60 days is not enough time, please request an extension from DEH."

Item C, Section 10 of the California Water Well Standards provides as follows:

**Enclosure of Well and Appurtenances.**
**"In community water supply wells, the well and pump shall be located in a locked enclosure to exclude access by unauthorized persons."**

WWD was required to obtain approval from the DEH of the enclosure as to the level of security/protection. WWD was advised that a 4-foot-high picket fence was not adequate protection.

On February 13, 2017, Mr. Taschler informed the Young's that "We've been instructed by DEH, that we have to put a fence around Well 11, as there is around all the other wells. The report is attached for reference. Once we have a quote from the fence company I will be in touch. We will make it as small as possible (the enclosure)."

On February 21, 2017, DEH advised Mr. Taschler:

"I hope this email will provide some clarity on the security required at Well 11. We would like to see a secured enclosure around Well 11, similar to the enclosures you have around all your wells."

On the same day, your clients asked if they could camouflage the proposed fence with lattice which they were advised was okay. The layout of the fencing proposed by WWD was eventually approved by your clients on March 1, 2017. At that time WWD believed your clients were okay with proceeding and in reliance, thereon, WWD had "Dig alert" on the property and obtained quotes, planning, etc. with Ramona Fence. On the 13th of March, DEH phoned to advise WWD that your clients had contacted them to stop the fencing and that they were going to gate their driveway. Your clients never contacted WWD after giving the "go-ahead" nor thanking WWD for reducing the footprint as small as possible.

On March 13th, WWD advised:

"DEH called looking to verify that the fence does not create some issue with safety. The fence post will be less than 1 foot away from the MAIN supply line of the well. Better someone hit the fence post than the well taking out supply from our largest producing well.

The fact that there has not been a fence for 12 years doesn't change the fact that the well needs to be secured today. It only points out that for 12 years someone hasn't been doing their job (but that isn't surprising). There is 480 volts of power along with the ability to tamper with the well at stake, exposure that WWD does not need. 10 of 11 wells are completely and securely enclosed, all with the same fence, as well be installed around Well 11."

Your clients then raised the issue of a fire truck getting by the fence. The fire chief was contacted and he advised that the fence was not a problem. The chief further advised that your clients' driveway did not meet current fire codes.

Your clients were also advised at or about that time "not having a secure enclosure around Well 11 is a violation of both state and federal regulations, so we will be getting this done now to alleviate any regulatory violations, as well as potential risk to

our customers. As you probably saw, Dig Alert was out marking all the high-voltage wires, another reason that getting the panels behind a secure fence is important with 480v wiring out there. Once the fence is up, you will be able to decorate it as you see fit as long as there is no threat to the security." Your clients then advised WWD that DEH said it was okay to use a wooden enclosure for the well, which was their preference. WWD advised that the wood fence would actually stick out further than a metal post but that a quote would be obtained and that your clients could pay any difference. At this time, Mr. Van Den Bergh, Rural Community Assistance Corporation, Community and Environmental Services, states in correspondence to WWD: "In relation to the fence: Your responsibility is to provide safe clean water for your community. A chain link fence can last 30-40 years. A wooden fence will last less than half that length of time. I would suggest you talk to the property owner and offer to put up a chain link fence around the well, which they can hide with shrubs to make it look better. It is safer for you, cheaper for them, and better looking for the neighborhood."

On the 18th of March your clients advised WWD that "We do not give our permission for you to proceed with this fence until we get other quotes for the wood well fence." WWD advised that it was going to proceed with the chain link fence. "WWD customers need to know that the water supply is protected and we have a responsibility and liability to get this done now." After this exchange, your clients kept mentioning contracts and documents, but refused to produce anything after being asked numerous times to forward a copy to WWD to review. Your clients refused to do so and stated, "meet us at the well" and we will show you. On or about March 22nd your clients were asked to again provide what they said they had but refused to do so. After two months of going back and forth, WWD advised that it had to explore other avenues to ascertain the status of this issue, including engaging a lawyer, obtaining title reports and recorded documents. Keep in mind that WWD was under a directive to comply with DEH's orders within 60 days with which WWD wanted to comply.

On March 20, 2017, your clients were advised that:

"I have put in a call into the attorney to handle this going forward. I have asked them to:

1. Get a court order allowing us to proceed with fencing the well with a chain link fence similar to all the other wells;
2. File suit against you for the costs involved as well as the wasted time;
3. Seek a restraining order against you to stay away from the WWD well and personnel."

The foregoing is a summary of most of the major events leading up to today. Your clients have engaged in a series of manipulative actions designed to confuse and sidetrack any meaningful conclusion. Wynola is a water district, which has serious obligations to the members of the community, which it serves. It is charged with providing safe clean portable water to its constituents in a prompt manner at a reasonable cost.

Addressing the Williams Agreement, it is not the "end all-be all" that is alleged. First, it is an agreement that in some respects is of questionable validity especially since it purports to set standards in a private contract, which may be in conflict with state law. It is called a letter agreement dated September 23, 2003 and declares that "This agreement covers the proposed drilling by the District of a District water well on the Williams Property." Of interest are Paragraphs 8 and 10, which provide inter alia the following: that the Williams will agree to sign over a formal easement to the District for the District pipes, utility lines, and well site and to grant the District access to the wellsite for the purposes of occasional inspection, maintenance, and repair (usually about once each month). The well site itself (and any above ground equipment used to pump water) will be placed in a wooden box (or **equivalent materials**) of approximately 4'x 4"x 3". The William's will approve materials and reasonable plantings necessary to minimize impact on the property and its sight-lines". Paragraph 15 advises that this "Agreement and all easements will be recorded with the County of San Diego". It is clear that the Williams did not sign a formal easement as purportedly required by the Agreement and importantly the Agreement itself was never recorded as allegedly required. In ascertaining the intent of Paragraph 8 it seems clear that the contemplated easement was for "pipes, utility lines and a well site. The Williams, also had to grant access to the well site for purposes of occasional inspection, maintenance and repair (usually once a month). This language includes the right to maintain, inspect and repair, which includes replacement of parts, structures and related actions. Paragraph 10 uses the words "equivalent materials" for the well site. This provision does not preclude the use of appropriate materials, which serve the function of providing security to the site for protection of a community's water supply. These provisions must be read in consonance with the intent of the state water code and Department of Water Resources Regulations and Bulletins. It is believed that this agreement could easily be in conflict with the State and Federal regulations. An agreement that includes provisions, which are in conflict with the law, are of no force and effect.

Most importantly, an easement signed by the Young's was recorded on March 14, 2006 and granted to WWD the following:

"Parcel 1" – An easement for a water well, appurtenances and access thereto to WWD.

Additionally, the following was specifically stated:

"No contaminants shall lie within a 100,000-foot radius from the center of the easement."

This demonstrates the importance of the protection of the water supply from vandalism and other encroachments. Notably absent is any language about the type of structure in which the well site is to be placed. Parcel 2 of the easement is for ingress and egress, water lines, power and other utility purposes together with the right to install and maintain the same along a 12-foot strip of land. Importantly the language of Paragraphs 8 and 10 of the Williams' agreement were never included in the actual easement

language. Moreover, to the extent that Paragraphs 8 and 10 of the Williams' agreement were in conflict with state law, they are invalid and unenforceable.

We believe that the DEH demand conjoined with the foregoing allowed the District to move forward and install the type of fencing that is currently in place. The District was merely complying with a legal mandate from the County of San Diego Department of Environmental Health and a time requirement included for compliance. The District not only desired to comply with this instruction but felt obligated to protect their consumers/lot owners of Wynola Estates. The actions of the Young's were intended to frustrate and interfere with the District's ability to execute and comply with DEH's mandate. By their actions they cost the District a loss of time and expense when this matter was of easy resolution. Title reports were necessary, legal expenses incurred and simple cooperation was required of them by the rules. The District's Rules and Regulations anticipate a willingness on the part of the lot owners/consumers because of the common public good, which should be the goal of each lot owner.

The By Laws of the District approved by the County Board of Supervisors authorize the District to adopt and periodically revise the Rules and Regulations. The Rules and Regulations of note are as follows: **Enforcement of Rules and Regulations**: "The Board shall have the right to enforce, by any proceeding at law or in equity, all provisions, conditions, restrictions, covenants, easements, reservations liens, and charges now or thereafter imposed by the Rules and Regulations provisions. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other. The Board shall have the power to establish fines for violations of the provisions of these Rules and Regulations and to collect the same in a legal proceeding. **Parties must use their best efforts to resolve matters informally, including use of alternative dispute resolution, prior to institution of legal action, provided however that in cases of emergency, immediate legal action is appropriate. Each Customer, tenant, occupant, licensee, invitee or guest with the District shall comply with the provisions of these Rules and Regulations enacted by the Board, and decisions and resolutions of the Board or its duly authorized representative. Each Customer shall be responsible for insuring that his or her tenant, occupant, licensee, invitee or guest within the District complies with the terms of the Rules and Regulations. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages, for injunctive relief, for declaratory relief, for legal fees, or such other relief as is just and proper**."

To respond to your accusations: It is our belief that you did not have all of the facts in your possession when you wrote your letter. Many, if not all of the events that have been outlined herein would not have occurred but for the actions of your clients. They could have resolved many of these issues early on had they simply cooperated and provided the documents they represented they had but never produced. The WWD representatives asked for the contract several times, but the Young's would never provide the same. This failure to provide the documents caused WWD to hire legal counsel to sort through the various documents and factual background. My client believes that the

Young's could have provided WWD with the easements and the Williams agreement at the very outset of contacting them instead of attempting to shunt matters off to the side hoping that WWD would just go away. A great deal of staff time as well as attorney time and costs were incurred chasing this issue down when in fact all WWD was trying to do was obey the law and the DEH Directive. The commodity that the District is selling is a precious supply of water for consumption and fire protection.

The actions of your clients led to costs, which would have not been necessary if they had simply cooperated with WWD. The district was simply trying to enforce its rights under the easement granted to it and in doing so incurred these costs. According to its rules and regulations it is entitled to recover these costs. The parties are required to use their best efforts to resolve matters informally, which your clients refused to do. These are some of the reasons WWD forwarded a cost invoice to the Young's for payment and for which the District will continue to seek reimbursement. If you and your clients have an issue with the payment of this invoice then pursuant to the Rules and Regulations of the District a mediation should be scheduled. If not, the District will consider all of its options including legal action.

In your letter of the 9th you used the phrase "illegally extort" and are treading on a very precarious ground. Your use of this phrase is defamatory, wherein you are accusing Mr. Taschler of a crime. You obviously are aware of Sections 44 and 46 of the California Civil Code which prohibit such behavior. In addition to your letter's content, apparently your clients have also used similar language (i.e. "lied"; "tried to extort") in an email dated March 9, 2017 to Mr. Taschler and the Board. Also, there are reports of your clients' conduct at a public meeting wherein they made similar statements about the board and Mr. Taschler. While civil discourse often may become heated, there is no reason in these proceedings for the slanderous conduct that your clients apparently have embarked upon. This conduct must be stopped immediately otherwise more serious action will be considered. The statements referenced herein may have been made in haste but as indicated they must stop.

In conclusion, the District is prepared to move forward. Your clients have acted improperly in this matter and this behavior has caused the District a loss of time and expense. The District would like to be compensated for the expenses incurred. Your clients have violated the Rules and Regulations of the District and have also slandered the good names of Mr. Taschler and the other board members. If you would like to meet in an effort to resolve this situation, please advise me. The Rules contemplate this type of action and could lead to a resolution of any remaining issues. Please call me if you would like to schedule such a session.

Sincerely,

Don Detisch

cc: Client