A Joint Statement from Eric Hammesfahr and Chad Murphy
August 2, 2024

Community Members,

This week's hearing on the TRO prompted us to reflect on how we communicate, and we have realized that we do not want to do it through the Court for various reasons, including the expense to the community and the time it takes away from making a difference for our community. For transparency, if anyone would like to read the judge's order on the TRO, it can be found attached at the bottom of this message.

Since the hearing, we have had the opportunity to sit down and discuss how we can work together to keep the community informed and engaged in decisions within the Crowfoot Valley Ranch Metropolitan District No. 2 (the "District") while ensuring that the District can continue to operate and provide services to the community. Our discussions centered on creating a structure of communication, and this is that structure:

1. Before the District's Board of the Directors (the "Board") makes a determination on significant items, which includes: (a) debt refinancing, (b) significant land use changes, (c) entering any new consulting or contracting agreements that are greater than 40% of the District's approved 2024 general budget amount, or (d) changes to the District's overall general budget greater than 40% of the District's approved 2024 general budget amount (each a "Significant Matter"), they will notify the community of a work session meeting to discuss such Significant Matter at least one week prior to the work session meeting and provide materials for the community to review. Community members may send in questions and comments to the District Manager at least two business days in advance of the work session meeting, which the District consultants will address during the work session meeting. No action will be taken by the Board during the work session meeting.

2. The Board will discuss such Significant Matter and ask both their own questions and the community's questions within the time constraints during the work session meeting.

3. The community will then have seven business days to send their thoughts on the information provided at the work session meeting to the District Manager. If during that time at least 35 homeowners write to the Board in disagreement with the proposed action related to the Significant Matter, the Board will hold another information work session meeting to discuss residents' concerns before making any determination to hold a public meeting to consider approval of such proposed action related to the Significant Matter. If there is not a sufficient

amount of concern raised during the time period, the Board may hold a public special meeting to consider approval of such proposed action related to the Significant Matter.

Additionally, we agree to work together to keep each other informed of actions and efforts being taken to support the community. It is anticipated that a work session meeting will also be held to discuss maintenance of public improvements within the community, namely open space and current and future trails.

Regardless of how the Court has ruled regarding the TRO, we have agreed to move forward collaboratively in the manner described above. We look forward to better communication and are proud that this agreement could be reached.

Best,

Eric Hammesfahr and Chad Murphy

Note: This agreement does not in any way, shape, or form impact the current recall process outside of the TRO.

Note: If the above is determined to in any way conflict with state law, the Board will follow state law.

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way Castle Rock, Colorado 80109 (720) 437-6200	DATE FILED: August 2, 2024 11:56 AM CASE NUMBER: 2002CV1018
In the Matter of: CROWFOOT VALLEY RANCH METRO DISTRICT NO2	**▲COURT USE ONLY▲** Case Number: 2002CV1018 Division: 6

ORDER AFTER HEARING ON TEMPORARY RESTRAINING ORDER

A Recall Committee ("the Committee") seeks recall of five members of the board of directors of the Crowfoot Valley Ranch Metro District No. 2 ("the District"). As part of the current actions in the instant case, the Committee filed a Motion for a Temporary Restraining Order on July 29, 2024. The Court held a hearing on July 31, 2024, where both the Committee and the District presented exhibits and made arguments for their respective positions. The sole issue was whether the current board of directors can continue to hold meetings during the recall process, in particular a proposed information meeting on a proposed bond and refinance plan for the District.

A. Law on the Recall Process

1. C.R.S. 32-1-909 lists the requirements for a recall petition and the initial actions of the designated election official. It does not list any restrictions on the board's ability to meet if a recall petition is properly filed or a designated election official is appointed.

2. C.R.S. 32-1-910(3) and (4) discusses the designated election official's duties to determine whether a recall petition is sufficient or not and the procedures to follow after that determination. It also describes the process for an eligible elector to file a protest of the recall petition and the actions taken thereafter, including a judicial review. It does not list any restrictions on the board's ability to meet if a recall petition is properly filed or a designated election official is appointed.
3. If the designated election official deems a petition is sufficient, then under C.R.S. 32-1-910(4)(a)(I), the official shall submit the petition to the board of directors at a regular or special meeting of the board. If there is no request for judicial review of the sufficiency determination, then subsection 4(a)(II) requires a board to hold the regular or special meeting by a certain deadline (the exact deadline is not relevant here). Subsection 4(a)(II) sets a separate deadline for the regular or special meeting if a request for judicial review is filed. Whenever the board holds a meeting, it must order and fix a date for the recall election to be held within 75 to 90 days after the date of the meeting. From the use of "regular" meeting, this statute makes clear that a board may hold meetings while a recall petition is pending and before the recall election occurs. Nothing else in C.R.S. 32-1-910 prohibits the board from holding a meeting during the recall process.
4. C.R.S. 32-1-903 discusses meetings of the board of directors for a special district. It requires a board to meet regularly at a time and place designated by the board. It authorizes special meetings as often as the needs of the special district require, upon notice to each director. These special meetings can include study sessions at which information is presented but no official can be taken by the board. This statute does not state that a board cannot hold any of these meetings during the recall process.

5. The Court finds that nothing in the statutes governing the recall process prohibits the board of directors from holding meetings and conducting business during the pendency of a recall petition. In fact, the statute specifically authorizes meetings in order to set the election date and mentions the board can set the date at a "regular" meeting. This language shows that the legislature intended a board be able to continue meeting during the recall process.

B. The District's Ability to Issue Bonds and Refinance

1. C.R.S. 32-1-1101 sets forth common financial powers of a special district. These powers include to levy and collect ad valorem taxes (subsection (1)(a)) and to levy taxes and collect revenue (subsection (1)(b)).
2. Per C.R.S. 32-1-1101(1)(c), the special district may issue negotiable coupon bonds of the special district subject to certain limits set out in that subsection.
3. C.R.S. 32-1-1101(1)(d) authorizes a special district to issue revenue bonds without approval of eligible electors in certain circumstances.
4. Subsection (1)(e) sets forth procedures for the special district to collect delinquent fees, rates, tolls, penalties, charges, or assessments via the county treasurer.
5. C.R.S. 32-1-1101(2) empowers a board to order the submission of a proposition of issuing general obligation bonds or creating other general obligation indebtedness at an election. The bonds or indebtedness are for the acquisition, construction, installation, or completion of any works or other improvements or facilities or the making of any contract with the United States or other persons or corporations to carry out the objects or purposes of the district.

6. Under C.R.S. 32-1-903(1), the board for the District here may hold an information meeting about the plan to refinance as part of its regular course of business.
7. Thus, the District here does have general powers regarding bonds and, contrary to the Committee's Motion for TRO, a meeting to discuss $78 million in bonds and authorizing the hiring of key board advisers is within the regular course of business of the District.

C. Notice Required for Meetings

1. For special meetings where information is presented and the board can take no official action, notice must be per C.R.S. 32-1-903(2) or 24-6-402(2)(c). Under C.R.S. 32-1-903(2), notice is provided in accordance with C.R.S. 24-6-402.
2. Notice under C.R.S. 24-6-402(2)(c)(I) must be public, full, and timely.
    a. This is done by posting notice of the meeting in a designated public place within the boundaries of the local public body no less than 24 hours prior to the holding of the meeting. The public place for posting such notice must be designated annually at the local public body's first regular meeting of each calendar clear. The posting for the special meeting must include specific agenda information where possible.
    b. Subsection (2)(c)(II) expresses the intent of the legislature for local public bodies to post notices online and encourages those bodies to do so.
    c. Subsection (2)(c)(III) applies after July 1, 2019, and says a local public body is deemed to have given full and timely notice of a public meeting if the body posts the notice on the body's public website, with specific agenda information if available, no less than 24 hours prior to the holding of the meeting. The notice must be accessible to the public at no charge. The body shall consider, but is not required to, link the

notice to its social media accounts. A public body who posts notices on its website may in its discretion post a notice via other means such as subsection (2)(c)(I).

3. The Committee claims proper notice was not given and submitted Exhibit A. But Exhibit A is a re-post on a community site of the District's original notice. The District posted the agenda for the bond meeting on July 24, 2024, well before the required 24 hours for the July 30, 2024, meeting date. See Exhibit H. Also, Exhibit G is the District's board resolution under C.R.S. 24-6-402(2)(c)(I) and (III) designating https://crowfootmd1-2.colorado.gov/ (the District's website) as the location for posting notices of all types of meetings (regular, special, and work/study sessions). The District posted notice of the July 30, 2024, meeting on this website 6 days prior to the meeting date. The Court finds the District gave more than adequate notice of its July 30, 2024, meeting and its notice complied with C.R.S. 24-6-402(2).

D. Ruling on Temporary Restraining Order

1. The legal standard for injunctive relief is well established. The six elements a court must consider in issuing a preliminary injunction are: (1) whether there is a reasonable probability of success on the merits; (2) whether there is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (3) whether there is a plain, speedy, and adequate remedy at law; (4) whether the granting of a preliminary injunction will disserve the public interest; (5) whether the balance of equities favors the injunction; and (6) whether the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982); *Dallman v. Ritter*, 225 P.3d 610, 620 (Colo. 2010).

The Plaintiff bears the burden of proving each of the elements by a preponderance of the evidence.

2. Whether there is a reasonable probability of success on the merits. As the Court stated at the hearing, this TRO ruling is not focused on the appropriateness or reasonableness of the District's plan to refinance or issue of bonds. Nor is the Court ruling on whether or not the designated board members should be recalled. Neither of these areas are relevant for the reasonable probability of success factor. Rather, the Court focuses on the reasonable probability of success that the Committee can prohibit the District from continuing to hold meetings, including meetings about the refinance and bond plan. Given the above law and findings about the District's financial powers and ability to hold meetings during the recall process, the Court finds the Committee has not met this factor.
3. Whether there is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief. The Court finds that here there is no such danger. The District is authorized by law to hold this type of meeting regardless of whether or not there is a pending recall petition. Further, counsel for the District made clear that the initial meeting will present information to the community only, and, based on the community's reaction, the District may or may not call a further meeting to approve the refinance and bond plan. There is no danger of real, immediate, and irreparable injury if the District follows this process.
4. Whether there is a plain, speedy, and adequate remedy at law. Here, there is. Even if the District moves forward and brings the refinance plan to an action meeting, it must follow C.R.S. 32-1-1101(2), which requires an election. The eligible electors of the community would then be able to vote to approve or disapprove the plan and/or issuance of bonds.

Furthermore, the District is a quasi-governmental body, and the community could petition for relief under C.R.C.P. 106, which provides them another avenue for remedy.

5. Whether the granting of a preliminary injunction will disserve the public interest. The Court finds a temporary restraining order or preliminary injunction would disserve the public interest. If the Court were to grant it, it would not only run contrary to the law cited above, but would also set a precedent where a small, disgruntled amount of citizens could stop the regular and necessary business of local public bodies like special districts. (The Court makes clear it does not think this is what is happening in the instant case; rather this is only the Court's proposed "worst case scenario."). While citizens certainly have the right to object to governmental actions, they must follow the proper process and act in accordance with the laws by not seeking relief that is not allowed for in the law such as stopping a special district's ability to hold meetings during a recall process.
6. Whether the balance of equities favors the injunction. For all the reasons stated above in the other factors, which the Court adopts here, the Court does not find the balance of equities favors injunctions. The District is legally able to continue to hold meetings and has proposed a reasonable course of action to present the refinance and bond plan and to move forward or reject the plan based on the community's reaction.
7. Whether the injunction will preserve the status quo pending a trial on the merits. There is no trial on the merits, but there is a pending recall petition. To the extent the recall process could be a pending trial on the merits, injunction would not preserve the status quo, rather it would significantly upset it. Under the law cited above, a special district's board of directors is not only authorized to continue to hold meetings, it is in some circumstances required to hold meetings to complete the recall process. Further, as noted

by the cases submitted by the District's counsel, the Colorado Supreme Court has prevented judicial interference with a function properly delegated to the executive branch of state government by ruling that a district court does not have jurisdiction to restrain an administrative agency from performing its statutory duties. *T & S Leasing, Inc. v. District Court, City and Cnty. of Denver*, 728 P.2d 729, 731 (Colo.,1986). Furthermore, because injunctive relief against a branch of government constitutes a form of judicial interference, courts are generally reluctant to grant such relief, and any such grant should be done sparingly and with full conviction of its urgent necessity. *Board of Cnty. Com'rs, Cnty. of Eagle, State of Colo v. Fixed Base Operators, Inc.*, 939 P.2d 464, 466 (Colo.App.,1997), *Friends of Denver Parks, Inc. v. City and Cnty. of Denver*, 327 P.3d 311, 316, 2013 COA 177, ¶ 39 (Colo.App., 2013). The status quo is for a special district to be able to hold regular and special meetings. Any type of injunction would upset that.

CONCLUSION

The Court **DENIES** the Committee's request for a temporary restraining order and any further injunctive relief aimed at stopping the District from holding meetings during the pendency of the Committee's recall petition. The District may continue to hold meetings provided they give the proper notice required under C.R.S. 32-1-903 and 24-6-402 and otherwise follow applicable law.

SO ORDERED August 2, 2024

BY THE COURT:

Andrew Baum
District Court Judge