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Via Email to verne.ball@sonomacounty.gov

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RE: Legal Deficiencies of May 6, 2026 Resolution Rejecting Petition for Formation of Alexander Valley Water District (File No. 2025-03)

Mr. Ball:

Alexander Valley Water District (AVWD or District) Petitioners have submitted timely requests for reconsideration of the Sonoma Local Agency Formation Commission (Commission or LAFCO) denial of the Petition for Formation. I provide this legal analysis in hopes that you reconsider your advice that the Commission can deny a proposal for any reason, including that the Commission was justified to deny the Petition if it preferred a registered voter district.

A. Purpose of the Commission

"[B]eing a creature of the Legislature exercising legislative functions [citation], [a LAFCO] has only such powers as are bestowed upon it by the Act." (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 883.) The CKH Act provides for the establishment of a LAFCO in each county "to encourage orderly growth and development and the assessment of local community services needs." (*Antelope Valley-East Kern Water Agency v. Local Agency Formation Com.* (1988) 204 Cal.App.3d 990, 994.) The purpose of LAFCOs includes the encouragement and planning of "well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within such patterns." (Gov. Code §§ 54774, 54774.5; *City of Santa Clara v. Local Agency Formation Com.* (1983) 139 Cal. App. 3d 917, 928.) "LAFCO was created by the Legislature for a special purpose, i.e., to discourage urban sprawl and to encourage the orderly formation and development of local governmental agencies. In short, LAFCO is the 'watchdog' the Legislature established to guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies." (*City of Ceres v. City of Modesto* (1969) 274 Cal. App. 2d 545, 552.) Neither the CKH Act nor related case law declares a preference that a special district be formed as a registered voter district. By basing its rationale for denial of the Petition on a preference for a registered voter district, the Commission acted outside the powers bestowed upon it by the CKH Act and contrary to the purpose of the Act.

B. Commission Powers and Factors for Consideration

The CKH Act gives LAFCO Commissioners discretion to approve, approve with conditions, or disapprove a proposal according to factors consistent with the Act. (Gov. Code § 56373.) Factors to be considered by the Commission in reaching a decision are enumerated in Government Code section 56668. (Section 56668 is provided in Exhibit A.) With regard to landowner voting districts, the Commission has the power "to determine the numbers of owners of land and assessed value of their land." (Gov. Code § 56375(f).) With regard to registered voter districts, the Commission has the power to calculate the number of "registered voters" using the most recent report to the Secretary of State. (Gov. Code § 56375(f).)

The CKH Act does not confer the Commission with unfettered discretion. LAFCO has only those express or necessarily implied powers that are specifically granted to it by statute. (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545, 550.) Further, LAFCO may not amend a proposal in a way that changes the fundamental nature of the proposal. (*Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.* (1989) 208 Cal. App. 3d 753, 765 ("[T]he alteration made by LAFCO cannot be said to have changed the general purpose or effect of the incorporation proposal.").)

LAFCO must consider all relevant factors, and demonstrate a rational connection between those factors, the choice made, and the purposes of the CKH Act. (*McBail & Co. v. Solano County Local Agency Formation Com.* (1998) 62 Cal. App. 4th 1223, 1230 (hereafter, *McBail & Co.*; citing *California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal. 3d 200, 212).) "The reviewing court thus has the obligation at the inception of its analysis to determine whether the agency has demonstrated a rational connection between the basis for its decision and the purposes of the enabling statute." (*McBail & Co.* at p. 1230.)

C. Commission Abused its Discretion Rejecting the Petition based on a Preference for a Registered Voter District

Here, the Commission's denial of the Petition on the basis that the Commission will accept only district proposals that are formed and governed by registered voters fundamentally changes the nature of the Petition. (*Fallbrook Sanitary Dist.*, 208 Cal. App. 3d at 765.) The Petition was intentionally brought under the California Water District Law because Petitioners conclude it is the model that would best fulfill the goals and objectives, provide necessary services, and generate revenue from special benefit assessments on land. A California Water District was chosen because Petitioners concluded that a registered voter district is not viable in the proposed boundary. The Petition proposes a California Water District to provide primarily *property-related services* to lands within the boundary funded through special benefit assessments *on lands.* Petitioners presented their analysis and rationale for selecting a California Water District at both the November 1, 2023 LAFCO Study Session and November 1, 2024 Ad Hoc meeting.

The Commission cannot demonstrate a rational connection to its reason for denial of a landowner district to the CKH Act because the CKH Act expresses no judgment on district governance options. (*McBail & Co.* at p. 1230.) The CKH Act limits the Commission's role on the matter of a petitioner's chosen form of district governance to counting numbers of landowners and assessed land

value (in the case of a landowner voter district) and numbers of registered voters (in the case of a registered voter district). None of the factors in Government Code section 56668 relate to the enabling legislation for a proposal or the electoral and governance factors of a proposal before LAFCO.

Not only did the Commission base its denial of the Petition solely on a factor absent from the list enumerated in section 56668, the Commission failed to consider all relevant factors and to connect those factors to the purposes of the CKH Act. Per Government Code section 56001, the purpose of the CKH Act is to balance orderly development with three state interests: (1) discouraging urban sprawl, (2) preserving open space and prime agricultural lands, and (3) efficiently extending (needed) government services. Further, the California Legislature "recognizes the critical role of many limited purpose agencies, *especially in rural communities*" and finds that "responsibility should be given to the agency or agencies that can *best* provide government services." (Gov. Code § 56001 (emphasis added).) The Commission neither during the hearing on the Petition nor in the resolution denying the Petition connected its reason for denial to the Act's purpose.

"Orderly development" is not defined in the CKH Act. The online Merriam-Webster Dictionary defines "orderly" as "arranged or disposed in some order or pattern;" "governed by law," or "methodical." The same dictionary defines "development" as, "the act, process, or result of developing," and "developing" as "to work out the possibilities of;" "to create or produce especially by deliberate effort over time." The Commission's denial of the Petition did not contain any explanation why a California Water District is not an appropriate form of government for overseeing the "orderly development" of water for the purposes described in the Petition, or how a registered voter district would be more appropriate for doing so. That is because there is none. In fact, a California Water District is not only appropriate for the orderly development of Alexander Valley, it is the best form of government for doing so given the services proposed in that rural community.

Moreover, a mere preference for a registered voter district has no bearing on the adequacy of a landowner voter district authorized by statute as the means for advancing orderly development. As a creature of the Legislature (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 883), LAFCO has a duty to put the personal preferences of the commissioners and staff aside and carry out the intent of the Legislature: to allow for "limited purpose agencies, especially in rural communities" and to give "responsibility . . . to the agency . . . that can best provide government services." (Gov. Code § 56001.) AVWD is the answer to Alexander Valley's water service needs, and the CKH Act agrees.

When failing to connect its reason for denial to the purpose of the CKH Act, the Commission did not explain how a registered voter district would discourage urban sprawl or preserve open space and agriculture or how a landowner voter district would fall short of such objectives. So, the Commission failed to balance these interests with orderly development, as the Act requires.

With regard to balancing orderly development with the efficient extension of government services, the Commission neither identified nor proposed, let alone evaluated, an alternative means of delivering the services of the California Water District described in the Petition. This glaring omission from the Commission's denial is not only a failure to tie the reason for the denial to the purpose of the CKH Act, but reflects a willful ignorance of the fact that all of the potentially affected or responsible

existing agencies support AVWD formation and have expressed no interest in providing the services proposed in the Petition.

An assertion by the Commission that its expressed desire for a registered voter district somehow relates to the CKH Act's purpose of balancing orderly development with efficiently extending government services is nothing but a straw man fallacy. In expressing that preference, the Commission did not indicate how a registered voter district would more efficiently extend the services described in the Petition. The Commission only suggested that a registered voter district would be more democratic and less likely to disenfranchise registered voters. But—setting aside Petitioner's disagreement with the premise—the degree to which a proposed district is democratic in nature or likely to disenfranchise registered voters does not have any bearing, one way or the other, whether a proposed district would provide for the efficient extension of needed government services.

In sum, the Commission's denial of the Petition involved zero attempt on the part of the Commission to relate the form of governance of AVWD not being a registered voter district (the reason for the denial) to the balance of orderly development with (1) discouraging urban sprawl, (2) preserving open space and prime agricultural lands, and (3) efficiently extending needing government services (the purpose of the CKH Act). Accordingly, the Commission's denial of the Petition was an abuse of discretion warranting rescission.

D. No Facts Support a Finding that a Registered Voter District is a Viable Alternative to the Proposed California Water District

If LAFCO had authority to reject the Petition because it preferred a registered voter district, which it does not, there is still no factual or legal information in the record that an alternative district governance model would meet the objectives of the Petition or be able to provide the services. Nor is there information that there are sufficient registered voters to support such a district. In essence, the Commission's preference for a registered voter district not only exceeds the Commission's authority by foisting a fundamental change upon the nature of the proposal, its feasibility is not supported by any evidence.

E. Facts Indicate that a Registered Voter District Would Disenfranchise Landowners

As described in the Request for Reconsideration, the unincorporated lands within the proposed AVWD boundary are predominately agricultural and commercial lands. While there are about 1,800 registered voters across 28,000 acres, residential property comprises only 7% of the total land area. Residentially zoned property comprises only 29% of assessed land value and 25.7% of total property value. There would be no proposed district without landowners organizing and agreeing to tax themselves through a landowner-voter special district. A district for Alexander Valley probably would not happen by registered voter petition because of the disproportionate burdens facing registered voters who are predominantly residential property owners or tenants served by private or public drinking water systems, compared to the owners of most of the acreage who are predominantly self-supplied agricultural and commercial water users. Residential property owners and tenants do not have a financial stake in the water supply for agricultural and commercial properties. Landowner voting is appropriate for "a special limited-purpose district that disproportionately affects landowners as a group,"

especially for districts like AVWD that would not be created without the assent of landowners who will bear the costs. (*Ball v. James* (1981) 451 U.S. 355 ("the subscriptions of land which made the Association and then the District possible might well have never occurred had not the subscribing landowners been assured a special voice in the conduct of the District's business"); *Salyer Land Co. v. Tulare Water Dist*. (1973) 410 U.S. 719.)

F. Conclusion

You made the comment at the May 6 hearing suggesting that my position is that I "can litigate [my] way into the district." That is not my position. I stated: "We have to consider litigation. I don't know that a registered voter process is viable." The Petitioners who have met with hundreds of landowners, voters and local officials over five years on the California Water District proposal are convinced that a registered voter district is not feasible. I am convinced that the Commission's denial was unlawful. If the Commission does not rescind its denial, litigation is the only option I see to prevent five years of work from being wasted.

I am hopeful the Commission will reconsider its denial. At your convenience, I am available to discuss the governance structure for a California Water District in Alexander Valley that both suits Petitioners' objectives and assuages the Commission's concerns.

Sincerely,

LAW OFFICE OF PETER KIEL PC

Peter J. Kiel