TO: LAFCO Commissioners
FROM: Verne Ball, LAFCO Counsel
DATE: July 28, 2026

RE: **Response to legal contentions made by Mr. Kiel**

In Attachment D, Mr. Kiel makes several legal arguments that the Commission violated the Cortese Knox Hertzberg Local Government Reorganization Act (the "Act"), none of which are correct. This brief memorandum addresses these legal arguments.

First, Mr. Kiel argues that the Commission was not entitled to consider the fact that the proposed California Water District would not allow registered voters to vote because, according to Mr. Kiel, "[n]one 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." This is an aggressive argument. Mr. Kiel bases this argument, mainly, on his own narrow interpretation of the term "orderly development," but he fails to consider appellate decisions that consider statutory language regarding LAFCO's authorities.

Mr. Kiel's exact argument has been roundly rejected by the Court of Appeal. In *Oxnard Harbor Dist. v. Local Agency Formation Com.* (1993) 16 Cal.App.4th 259, 271, the court stated:

> [A]ppellants cite no authority for the proposition that … ["accountability of the District to the voters of the most affected territory"] is improper or beyond [the Commission's] powers. LAFCO is an agency with large discretionary powers. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 288.) Of the many factors LAFCO is to consider, one is "[t]he effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county." [citation to prior statute with same language as current statute] Responsiveness of the District to the voters within its boundaries is related to these factors.

Considerations of democratic governance are naturally and obviously part of the Commission's discretionary consideration of governance. The Act requires the Commission to consider governance (i.e., "controls" for services), "[t]he effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county," (Gov't Code § 56668, subd. (b)(1) and (c)), and in the case of new districts, the Commission must also consider the extent to which the district would be "accountable." (Gov't Code, § 56301) Issues of democratic accountability are *well* within the Commission's required considerations. (Gov't Code § 56668, subd. (b)(1), (c), and (q)) Further,

even if these considerations were not explicitly found in the Commission's governing statutes – and they obviously are, as the Court of Appeal found – the Legislature quite deliberately gave the Commission additional discretion by making the factors that the Commission can consider *non-exclusive*. (Gov't Code, § 56668)

Mr. Kiel then jumps from his central error to the argument that the Commission ignored all other factors set forth in Government Code section 56668. In reality, the Commission's resolution of denial explicitly reflects that the Commission considered all of the statutory factors. The Commission has a great deal of discretion – or as multiple courts put it, "large discretionary powers." (*Oxnard Harbor District*, 16 Cal.App.4th at 271; *City of Agoura Hills v. Local Agency Formation Comm'n* (1988) 198 Cal.App.3d 480, 489 [same].) It is certainly true that LAFCO lacks unlimited discretion, and it is also true that the Commission's discretion must be exercised within its statutory powers. However, Mr. Kiel's statutory argument is simply wrong. The Commission entertained hour upon hour of discussion of relevant considerations and then made a discretionary decision to deny the proposal based on considerations that are squarely within its statutory mandate. The statute requires that the Commission "consider" the statutory factors. It did so. It does not require the Commission to balance the statutory factors in any particular manner, as Mr. Kiel suggests. Also, contrary to Mr. Kiel's suggestion, Commissioners are required to use their independent judgement and are not permitted to defer to petitioning landowners. (Gov't Code, § 56331.4) The Act explicitly gives the Commission discretion to deny proposals. (Gov't Code, § 56375, subd. (a)) Had the Legislature wanted to compel the formation of this district, it would not have given the Commission discretion to deny it, and it might well have formed the district itself. Instead, it gave the Commission a discretionary power of denial that the Commission was well within its statutory powers to exercise.

Mr. Kiel then argues that the Commission is "foisting a fundamental change upon the nature of the proposal," and that the "feasibility" of a registered voter district "is not supported by any evidence." The Commission did not "change" the proposal, it denied it. It did not need to find that a specific alternative was feasible. That said, legally, it is self-evident that there are many different types of legal entities and geographies that a different proposal could address. The Commission was not required to concur to the petitioner's arguments about a lack of alternatives.

Finally, Mr. Kiel argues that a registered voter district would "disenfranchise" landowners. One can readily understand why Mr. Kiel's clients would want him to make this argument, simply as a matter of political power and the control of shared natural resources. However, this is a policy and not a legal argument. There is no legal right to the proposed district in the first place, and there is certainly no legal right to governance that favors the interests of absentee landowners.