Staff Report

Meeting Date:	August 5, 2026
Agenda No.	Item 4.2
Agenda Item Title:	Request for Reconsideration of Denial of Proposal for Formation of the Alexander Valley Water District, a California Water District. (File No. 2025-03)
Staff recommendation:	Deny the request for reconsideration
Environmental Determination:	None (disapproval is not subject to CEQA)
Staff Contacts:	Mark Bramfitt

Agenda Item
Request for Reconsideration of Denial of Proposal for Formation of the Alexander Valley Water District, a California Water District. (File No. 2025-03)

Staff Recommendation
Staff strongly recommends the denial of the request for reconsideration because the legal standard for reconsideration has not been met, and reconsideration cannot legally be granted. The proposal is also riddled with problems that require time to resolve. Staff therefore recommends the adoption of the proposed resolution denying reconsideration.

Summary of Reasons for Recommendation
- The legal standard for reconsideration by the Commission is demanding, and it clearly has not been met.
- A one-year bar applies to filing substantially similar applications. Instead of granting reconsideration, the Commission may want to give direction to Staff to conduct a Municipal Service Review of water services in the vicinity of Alexander Valley. Alternatively, the Commission could provide additional guidance as to what applications it would consider to not be substantially similar.
- The legal objections to the Commission's decision are all baseless.
- The proponents' proposed revised resolution continues to raise important questions regarding the appropriateness of the proposal, including questions regarding governance, geography, powers, and services, and all of these concerns warrant greater consideration in the context of a new and different proposal.
- In the unlikely event that the Commission elects to grant reconsideration, it must specify the contents of the revised resolution within 35 days.

I. The legal standard for reconsideration.

The LAFCO reconsideration statute requires a request to "state the specific modification to the resolution being requested and … what new or different facts that could not have been presented previously are claimed to warrant the reconsideration." (Government Code section 56895) The statute tracks the language in the reconsideration statute that applies for motions for reconsideration in California trial courts. While the timing requirements are different, it is obvious that the Legislature intended the same substantive standard to apply, and there is extensive case law explaining the standard.

Pursuant to this legal standard, the proponent for reconsideration must present new or different fact that were not previously considered, and there must be a showing that the facts could not have been presented earlier with reasonable diligence. The framework is generally that of "newly discovered evidence," and re-argument of the same facts is not permitted. The request for reconsideration must make a satisfactory

explanation for not presenting the new or different facts earlier. Disagreement with the outcome at the prior hearing is not a new fact that can support reconsideration. The Commission does not have legal discretion to reconsider its decision where this standard and the timeliness requirements are not met.

The statute requires that "[t]he request … shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration." The statute does not allow for conclusory statements in the request that there are new facts. The new facts must actually be stated.

II. The legal standard for reconsideration of the denial has not been met.

Various proponents submitted four timely letters requesting reconsideration:

- A letter from the Russian River Property Association and two petitioners, dated June 2, 2026 (Attachment A), with a cover from Mike Martini that also states: "The Request for Reconsideration is allowed under the Knox-Cortese Act and presents new information that addresses the concerns expressed by the Commission related to governance and powers."
- A letter from the Alexander Valley Association, undated, but received on June 3, 2026 (Attachment B)
- A letter from Walter Kieser, dated May 29, 2026 (Attachment C), accompanied with a cover email that states in relevant part "Since the May 6th Hearing new conditions that can mitigate Commissioner concerns have been more fully developed by the Applicant that will subsequently be submitted."
- A letter from Peter Kiel, dated June 2, 2026 (Attachment D)

None of this correspondence contains new facts that could not have presented previously. While there are two conclusory claims of new facts in the cover emails for Attachment A and C, it is not clear what those facts are claimed to be, and there is not even a claim that the facts could not have been presented previously. A new request for a different outcome does not meet the reconsideration standard.

There are, to put it another way, no surprises in any of this correspondence, and this is not a curable defect, as the new or different facts that could not have been stated previously must be stated in a timely request.

III. A legal alternative to reconsideration.

Should the Commission wish to expedite consideration of alternatives, it may want to direct staff to conduct a Municipal Service Review of water services in the vicinity of Alexander Valley. This would allow the Commission to consider the interests of all stakeholders.

Alternatively, the Commission also has far more leeway to make a preliminary determination that a new application could be filed within the one-year statutory bar for "substantially similar" proposals, giving additional guidance as to what it would not consider to be substantially similar.

IV. The legal allegations in the reconsideration correspondence are all baseless.

The proponents make several legal arguments that the Commission violated the law in disapproving the proposal. These arguments have no basis. They are all addressed, followed by a discussion of the actual policy issues presented by the new proposal.

A. The Commission has discretion to consider democratic representation and norms as part of its consideration of governance.

The proponents essentially argue that if the Legislature wanted the Commission to consider democratic governance, the Legislature would have included different language in the statute. According to the proponents' counsel, considering whether the proposed district would be of the people, by the people, and for the people is categorically off limits. This is a bold, jarring, and also incorrect legal argument.

LAFCOs, in the broadest of terms, are charged by the Legislature with the job of creating, destroying, and reconfiguring the boundaries and services of cities and special districts. The reason for this legislative charge is to remediate chaos and provide holistic oversight in efforts to provide local governmental services. LAFCOs are given the "quasi-legislative" discretion to deny proposals that come before the Commission. The overarching standard that Commissioners must utilize is "**independent judgment on behalf of the interests of residents, property owners, and the public as a whole**." Government Code section 56331.4.

There are many different statutory entities that can be created to provide water services. The Commission is entitled to consider whether undemocratic governance models are in the interests of residents, property owners, and the public as a whole. The proponents' argument appears to be that democratic governance is unrelated to the statutory list of factors in Government Code section 56668. First, this is not true, and second, the Legislature also made the statutory factors to be considered non-exclusive. A legal memorandum from counsel is attached responding to this argument.

The Commission was not required to agree with the proponents' conclusion that supporting agriculture requires undemocratic districts, nor that undemocratic districts are in the interest of all landowners. There is no technocratic requirement to ignore intuitive governance concerns about the effects of undemocratic governance. The potential problems with landowner districts are legion, and the Commission was not required to agree with the proponents' categorical rejection of alternative governance models, nor to conclude that service costs and governance are separate issues.

Professors Mason Gaffney and Merrill Goodall have made the following observations regarding the lived experience of landowner districts in California's central valley:

> In stark contrast to the democratic orientation of irrigation districts, [California] water districts were set up in a way that guaranteed they would be controlled by an oligopoly of large landowners in each district. This instrument has given large landowners the means to not only control a great deal of local politics, but it has inserted them into state water politics as well.
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> One-person one-vote districts exhibit competitive electoral performance in combination with relatively stable fiscal performance to a far greater degree than do districts with property-weighted electoral systems. Property-weighted districts continually show a greater variance in financial performance measures than do popularly elected districts. Democracy may sometimes be messy, but it turns out to merit a higher bond rating than oligarchy.
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> Imagine, then, an investment by a water district in projects that almost exclusively benefit the land held by the few members of the governing board. In such districts the burden of increased assessments will fall on all future owners, including the small-scale owners who cannot participate in the district's decision making. The decisions of the district may lead to a situation in which benefits accrue to a narrow band of owners, whereas costs are carried by all owners in the district. Where the governing body, as in property-weighted districts, is drawn from an unrepresentative group with parochial interests we observe irregular, volatile patterns of financial performance.
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> Where power and ownership are dispersed among all segments of the community, and opinions that are drawn from a wide membership are made available to a district board, we find that the financial transactions of the board fall within moderate, relatively constant limits. Diversity is important to biological communities, and to political communities as well. Where there is community-wide participation and cooperation, there is a basis for equity in growth, not merely growth first, with the prospect of fuller shares later on. We shape our irrigation systems, someone once said, and after that our irrigation systems shape us.
> Mason Gaffney, Merrill Goodall, New Life for the Octopus: How Voting Rules Sustain the Power of California's Big Landowners, The American Journal of Economics and Sociology / Volume 75, Issue 3 (May 2016)

Fundamentally, it is simply not the case that *only* landowners have an interest in the management of groundwater in the underlying basin, and it is not the case that the Commission cannot consider whether undemocratic governance is appropriate.

B. The Commission considered the required factors and was not required to agree with the proponents about which factors should be weighed in any particular manner.

The Commission expressly found that it had considered all of the required factors in its resolution denying the proposal. The proponents' counsel asserts that the Commission should have done more, and should have deferred to the proponents' conclusions and weighed the factors differently.

LAFCO Commissioners are required to consider proposals, but they are not required to defer to proponents. Instead, LAFCO Commissioners are required by law to use their own independent judgment.

The proponents suggest that the only issues considered by the Commission was undemocratic governance. While that is a significant issue, the assertion is simply incorrect. It also ignores the fact that governance is related to many other issues, including the proposal to have an undemocratic district provide extraterritorial services in the entire Russian River Watershed.

The proponents' counsel argues that landowners will be disenfranchised with any other model. This argument only applies to absentee landowners, and of course to legal entities that are not people. The argument ignores that this issue could be potentially addressed by a different entity (for one example, a County Service Area) or a more appropriate district geography. A central theme of the landowner petition was that water users in Alexander Valley are "currently not enfranchised." The Commission was not required to agree with this premise.

C. The Commission was not required to adopt an alternatives analysis based on the proponents' conclusions about the need for services.

The proponents' counsel briefly argues that there is a lack of evidence that an alternative governance model would be "feasible." The Commission was not required to make a finding that other governance models for this proposal are feasible or infeasible.

Instead, among the factors that the Commission is required to consider, stated in plain language, are the need for services; the cost, adequacy, and adequacy of governance; the future needs for services and governance; the probable effects of proposals; and alternatives to the proposal. Again, Commissioners are required to use their independent judgment, not to defer to the petitioners, as seems to be the suggestion. The overall argument is a bit puzzling. One thing California definitively has is an abundance of statutory types of local agencies that are empowered to provide water. Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Calif. L. Rev. 223, 256 (2012).

Among the facts that the Commission considered are the facts that the proponents have no near term plans to construct infrastructure or obtain and sell water; the proposed water district is not legally required to be formed for a Groundwater Sustainability Agency (GSA) under the Sustainable Groundwater Management Act (SGMA) for the Alexander Valley basin; and the GSA is not currently legally required to be formed at all based on the current Department of Water Resources designation of the basin.

D. Mr. Kieser's correspondence makes several errors.

Mr. Kieser makes sweeping comments, the gist of which is that he feels that approval of the proposal was necessary to support agriculture. Staff respects Mr. Kieser's sentiments. Staff observes that some others, including the Community Alliance of Family Farmers, as well as the City of Cloverdale, disagreed with Mr. Kieser's conclusions on the appropriateness of the governance model, and that Mr. Kieser focusses more on the challenges faced by agriculture than on how a proposal for an undersized, underfunded district, that lacks water, will address those challenges.

Beyond these issues, however, Mr. Kieser also makes several errors that warrant correction.

First, Mr. Kieser accuses the Executive Officer of having a "tacit policy of absolutely no special district formation in Sonoma County." There is no such policy. That said, State law does not favor the creation of new districts without sufficient justification, and it certainly does not allow new districts to be created simply on the grounds that landowners need representation. To the contrary, a component of LAFCO's express statutory mandates is to try and reduce unneeded institutional clutter and scrutinize, in particular, new districts. State law ***mandates*** that: "When the formation of a new government entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services." (GovernemntCode, section 56301)

Second, Mr. Kieser says "Sonoma Water can only legally represent their water contractors for potable water and is legally restricted from representing Alexander Valley water users." Pursuant to statute, Sonoma Water provides wholesale water and flood control services, and also sanitations services in specific districts and zones. To the extent that Mr. Kieser is simply referencing that Sonoma Water does not provide retail water services, this is true. This is not because it is legally barred from doing so, but rather because doing so would forfeit financial advantages for wholesalers that do not provide retail water service.

Finally, Mr. Kieser suggests there is a right to approval by LAFCO, and a "right" to a protest proceeding. There is no right to a protest proceeding for a denied proposal.

V. Other issues also suggest that reconsideration is inappropriate at this time. The proponents' Proposed Resolution continues to raise important questions regarding the appropriateness of the proposal, including questions regarding governance, geography, powers, and services, and all of these issues warrant greater consideration in the context of a new and different proposal.

A request for reconsideration must include "the specific modification to the resolution being requested," and the proposed modifications were attached to the letter from the Russian River Property Association and two petitioners, dated June 2, 2026 (**Attachment A**).

A. Non-landowners remain unrepresented under the revised proposal, and the proposal to dictate whom the Board of Supervisors appoints to the initial board has no effect on the long-term board. The proposed requirement for the district board to adopt bylaws on representation is too vague to be meaningful.

The proponents insist on a type of district that will be controlled by large landowners under the following rule. and the Commission does not have authority to change this election rule**: "Each voter shall have one vote for each dollar's worth of land to which he or she holds title."** (Water Code section 35003.)

But to try and address concerns, the proponents' proposed resolution dictates that the Board of Supervisors will appoint the new board, and that the following rule will apply:

> "At least one director shall be a domestic well user on a parcel of 10 acres or less. At least one director shall be a farmworker residing in the District. At least three directors shall be registered voters residing within the District, who may also qualify for the domestic well user and farmworker seats. The first election shall create three (3) directors shall serve four-year terms and two (2) directors shall serve two-year terms."

This proposal omits non-landowners. The criteria changes to a requirement to adopt bylaws for the initial board within a year, which also excludes non-landowners:

> "The initial Board of Directors of the District shall, within one year of formation, adopt bylaws and take other appropriate action under the provisions of the Principal Act to ensure that the District Board represents a diversity of landowner and registered voter interests in the Alexander Valley. The Board shall adopt director qualification criteria that require a majority of the Directors to be registered voters residing within the District. The Board may adopt other director qualification criteria including land ownership size, land use or water use type (e.g., residential, hospitality,

retail services), landowner type (e.g., water supplier entity, tribal, nonprofit, etc.), and occupation."

This requirement is vague, non-binding on the board over the long term, unenforceable by LAFCO without litigation (a concern raised by Commissioners), and sets up a dynamic where large owners will dictate who will be on the board even if the board sets criteria for board membership. Landowner boards, as a general matter, also tend to have low public participation.

B. The proposed advisory committee in the revised proposal does not meaningfully address the representation issues posed by the proposal, because the committee lacks any authority.

Staff appreciates that the proponents' have acknowledged the representation issues, and proposed an advisory committee to be appointed by the initial board, as follows:

District Board Appointed Members	Other Appointed Members
• Agricultural interests • Business community interests • Environmental interests • Rural residential well-owners	• City of Cloverdale appointee • City of Healdsburg appointee • County of Sonoma appointee • Dry Creek Rancheria appointee • Independent Water Systems appointee • Lytton Rancheria appointee • Sonoma County Water Agency appointee • Sonoma Resource Conservation District appointee

However, this advisory committee has no authority, and the proposed district is not required to maintain the committee into the future. The Commission should consider whether it would be surprising if advisory committee members lose interest in attending meetings in which they have no legal authority.

C. The revised proposal continues to involve extraterritorial services over a large territory, with no representation on the board for this larger territory.

The proponents' resolution continues to allow the proposed district to provide a Russian River Water Sharing Program in the entire Russian River Watershed. Democratic accountability is not served by allowing extraterritorial services in the entire Russian River Watershed from a small district in which votes are apportioned only to district landowners based on the value of their land.

The water sharing program also presupposes a State Water Resources Control Board regulatory action that has not yet occurred, and prior water sharing efforts in the context of water rights curtailments occurred without the creation of a district such as the one proposed.

D. As noted by many commenters, the proposed district's geography omits large parts of the geography of the underlying groundwater basin, and is not needed to create a Groundwater Sustainability Agency.

As several commenters noted, the geography of the proposed district does not track the geography of the groundwater basin. The geography of the proposed district is not appropriate from a resource management perspective, and creation of the district is not legally necessary to have a GSA with an appropriate geography relative to the groundwater basin.

E. The proposed limitation on Sustainable Groundwater Management Act (SGMA) Groundwater Sustainability Agency (GSA) powers for the proposed district sunsets as soon as there is an agreement with other agencies over the whole groundwater basin, including in the case where a separate GSA entity is not created, resulting in the possibility that the District will have regulatory powers without a board elected based on the principle of "one person, one vote."

The three existing GSAs in Sonoma County (Petaluma Valley, Santa Rosa Plain, and Sonoma Valley) are Joint Power Authorities, which are separate legal entities from the agencies that formed them.

The proponents propose to allow this district to be a GSA on its own, without forming any agreements with other agencies. In addition, the proponents propose to address the Commission's concerns about an undemocratic board having regulatory authority under SGMA by limiting the SGMA powers of the district until there is an agreement concerning the remainder of the basin that the proposed district does not cover. However, the proposed resolution allows that agreement to not follow the model of the other GSAs in Sonoma County, and to not form a separate legal entity through a Joint Power Agreement.

In sum, notwithstanding the proposed changes, under the proposed resolution, the proposed district could end up having an undemocratic board with regulatory powers. This is a policy issue the Commission should consider.

F. At the April 1, 2026 meeting, proponents' counsel suggested that the proponent's insistence on allowing the proposed district to be a GSA without forming a separate legal entity (i.e., a JPA) was in part based on water rights conflicts with Sonoma Water that are not present with the

other GSAs in Sonoma County. This concern should be transparently discussed with the Commission in future proceedings.

At the April 1, 2026, with respect to issue of what kind of GSA should be formed in for Alexander Valley, counsel for the proponents resisted the idea of creating a new entity (a JPA), stating:

> "And also note that a JPA isn't necessarily the best model, especially in Alexander Valley where these landowners… these water rights holders have direct conflicts of interest with Sonoma Water's water rights. There is an incredible tension there that you don't have with the three other county GSAs."

This statement suggests that this district is being created, at least partially, to commence a fight with Sonoma Water about water rights. Sonoma Water supplies drinking water to nine cities and water districts that serve more than 600,000 residents. The Commission should exercise caution.

G. The proposal involves the creation of a water district with only speculative plans to obtain and convey any significant amount of water, potentially revisiting the experience of the North Bay Water District.

The purpose of a water district is to provide water and water infrastructure, not to say things about water or lobby. However, a great deal of discussion about this district has been about "representation."

The main experience with landowner water districts in Sonoma County has been the North Bay Water District in southern Sonoma County. That district was formed in 1963 when there was discussion of the possibility of connecting southern Sonoma County to the State Water Project via the North Bay Aqueduct Project. Shortly after formation, Sonoma and Marin Counties elected not to pursue this aqueduct because of cost. The aqueduct terminates in eastern Napa and Solano Counties.

> In A 2004 Municipal Services Review for the District stated:
> "The North Bay Water District is a 'paper agency' and has no facilities and provides no service. It was formed in 1963 and no major changes have been made since. Revenues are from interest on cash only. Expenditure budget for FY 2002-2003 was $850, only $449 of which was spent. FY 2003-2004 expenditure budget is $1,500. The District Board of Directors meets once a year and hires one contract bookkeeper/secretary."

The North Bay Water District has existed for 63 years without providing water or infrastructure to customers. It is the only water district in the county that does not provide water or water infrastructure to customers. It persists mainly to "represent" landowners on two GSAs, and its website discusses "influence" and "agriculture's voice." It also participates in extraterritorial endangered species take permitting for vineyards, which is an activity that has no connection to its jurisdiction and authority.

The North Bay Water District experience suggests that the Commission should exercise caution where the proponents themselves are stating, at least for the time being, that their purchase of water from the Eel-Russian Project Authority is speculative.

H. The exclusive focus on assessments, and the categorical rejection of taxation is in tension with the acknowledged need to fund infrastructure and acquire water rights, raising questions regarding both the purpose and the viability of the District.

The fiscal needs of any district that is going to meet the water challenges faced by the prospect of less water diverted from the Eel River to the Russian River are substantial. Staff has concerns that this long-term financial has never been addressed by the proponents, while the short-term projects of the proposed district are barely funded under the plan for services. At the same time, the short-term projects actually do not require a new district. More time is warranted in discussing this proposal and alternatives that will benefit agriculture.

I. The proponents acknowledge that the geography is not yet final. Although not addressed by the proposed resolution, the reconsideration request involves the proposal to modify the District's boundaries outside of LAFCO's approval process, which is not in compliance with the Cortese Knox Hertzberg Act.

The proponents incorrectly state that the California Water District law allows the modification of their proposal's geography through an "inclusion and exclusion" hearing under the Water Code (which by statute would be conducted by the Board of Supervisors), after the district has been (hypothetically) approved by the Commission. The problem is that the cited Water Code procedures do not apply at all.[1]

Although a technical legal issue, the error shows that more discussion about the geography of the district is acknowledged to be needed by the proponents.

VI. In the unlikely event that the Commission elects to grant reconsideration, it must specify the contents of the revised resolution within 35 days.

[1] In essence, the old Water Code petition provisions that preceded LAFCO still exist, and LAFCO's statues (the Cortese Knox Hertzberg Act) simply says that notwithstanding these old procedures, LAFCO's procedures control. The Water Code procedure that the proponents cite (Water Code sections 34300 and 34305) conflicts with and is superseded by LAFCO's procedures. The post-approval amendment procedure is not a LAFCO procedure at all, and on issues of district formation LAFCOs must follow LAFCO procedures. (Gov't Code section 56100(b))

In the unlikely event that the Commission elects to grant reconsideration, “the commission may approve with or without amendment, wholly, partially, or conditionally” the changes to the resolution that the proponents have requested. (Gov’t Code section 56885, subd. (g)) The Commission must make its final decision within 35 days from the noticed reconsideration meeting (i.e., by September 9, 2026).

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Attachments

1. Attachment A: A letter from the Russian River Property Association and two petitioners, dated June 2, 2026
2. Attachment B: A letter from the Alexander Valley Association, undated, but received on June 3, 2026
3. Attachment C: A letter from Walter Kieser, dated May 29, 2026
4. Attachment D: A letter from Peter Kiel, dated June 2, 2026
5. Attachment E: LAFCO Counsel response to arguments made by Mr. Kiel
6. Attachment F: Proposed Resolution
7. Attachment G: Correspondence from the City of Cloverdale, Friends of Jenner Creek, and the Rural Alliance
8. Attachment H: Other Public Comment