

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Ontario
(909) 989-8584



BEST BEST & KRIEGER
ATTORNEYS AT LAW

500 Capitol Mall, Suite 1700, Sacramento, CA 95814
Phone: (916) 325-4000 | Fax: (916) 325-4010 | www.bbklaw.com

Riverside
(951) 686-1450
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

Kara K. Ueda
(916) 551-2822
kara.ueda@bbklaw.com
File No. 60065.00000

April 28, 2015

VIA EMAIL AND U.S. MAIL

Michael D. Ott
Executive Officer
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 220
San Diego, CA 92123

Re: Response to Rainbow Municipal Water District's April 9, 2015 Letter
Regarding Applicability of the California Voting Rights Act

Dear Mr. Ott:

This law firm represents the Fallbrook Public Utility District ("FPUD") and provides comments in response to the Rainbow Municipal Water District's April 9, 2015 letter to you regarding the application of the California Voting Rights Act ("CVRA") to FPUD. San Diego LAFCO previously requested evidence regarding the presence or absence of racially polarized voting from both FPUD and Rainbow by April 9, 2015. Both FPUD and Rainbow submitted letters to you, and you asked for responses to those letters to be submitted by today.

As we noted in our April 9, 2015 letter to you, the FPUD reviewed both citizen voting age population (CVAP) data and past FPUD board elections and could not conclude that racially polarized voting was present in past FPUD board elections. As Rainbow's counsel states, one method of analyzing whether the CVRA has been violated is to examine "the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision." Elections Code § 14028(b). As we explained in our April 9, 2015 letter, we were unable to find any such evidence. Unlike the *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781 (2014) case where the court found racially polarized voting in city council elections, we believe it would be difficult to find evidence of racially polarized voting in FPUD board elections.

This letter provides comments on three issues that stand out in Rainbow's April 9, 2015 letter: (1) Rainbow's motivations; (2) the lack of legal authority for FPUD to change its election system; and (3) Rainbow's comments that it did not hire an expert to analyze the data.



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First, Rainbow makes clear that it is actually not motivated by protecting minority voting rights but, rather, by preserving communities of interest that are not protected under the CVRA. Rainbow, in the second paragraph of its letter, states that its position has “been less about racial disparity or racial issues in particular” and more about the disenfranchisement of communities of interest, including Rainbow’s agricultural base. An agricultural base or community is not considered a protected class of voters under the CVRA.

Second, Rainbow has yet to provide any case law, statute, or other legal authority for its position that either FPUD or LAFCO may independently change FPUD’s election system in the absence of a specific statute. Rainbow’s counsel’s letter, on page 6, twice states its unsupported belief that the CVRA will trump the PUD Act. The letter also includes a rather insulting remark about “FPUD’s feigned reliance upon the PUD Act.” The letter, however, cites no authority for its “belief” and simply ignores the fact that FPUD as a special district has only the specific powers and authority granted to it in its enabling act.

Moreover, *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781 (2014), cited by Rainbow’s counsel, only illustrates this point. In *Jauregui*, the court of appeal held that the City of Palmdale’s at-large election system violated the CVRA and that the City of Palmdale needed to change to a district election system. The City of Palmdale had the requisite legal authority to change to a district election system as a charter city but did not want to do so. Here, however, the FPUD does not have the legal authority to independently change to a by-district election system, and Rainbow has not submitted any legal authority to the contrary.

Third, Rainbow submitted a voluminous amount of documents regarding voter data and voting behavior from past statewide races involving candidates with Latino surnames. FPUD neither verified the accuracy of any of the data submitted nor hired a demographer or other expert to analyze it. Rainbow also did not incur the expense of having an expert regression analysis performed, as it has no assurances of having its costs recovered. *See* Ochoa letter, p. 4. Rainbow’s counsel also states that it “would need additional resources and time to continue searching for [the] type of historical data that establishes racially polarized voting in FPUD.” *Id.*, p. 5. Thus, without the benefit of an expert and a regression analysis, we are similarly unable to conclude, based on the documentation Rainbow provided, whether that data demonstrates racially polarized voting within FPUD. We are also unable to conclude whether “geographical compactness” for Latinos of citizen voting age exists. As the *Jauregui* court noted, while the CVRA does not require a “majority-minority” district to be created, “geographical compactness remains a consideration in developing a remedy.” *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781, 789 (2014).

After reviewing all of the data submitted to LAFCO thus far, we are unable to conclude that there is racially polarized voting and the impairment of a protected class to elect a chosen



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candidate(s) within the Fallbrook Public Utility District. Thus, we are not convinced that a protected class would be able to influence elections under a different election system. However, the FPUD remains open and willing to consider other information that may be provided by Rainbow or others. Please contact me at the above phone number or email address if you have questions or would like to further discuss these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kara K. Ueda'.

Kara K. Ueda
of BEST BEST & KRIEGER LLP

cc: Brian Brady, FPUD General Manager
Robert James, FPUD Counsel
Paula de Sousa, Esq.
Michael Colantuono, San Diego LAFCO Counsel