



April 20, 2015

Michael Ott
Executive Officer
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Subject: Response to Fallbrook Public Utility District letter regarding California Voting Rights Act

Dear Mike:

In an email dated April 13, 2015, you requested that Rainbow Municipal Water District (RMWD) review the letter that was submitted by the Special Counsel for Fallbrook Public Utility District (FPUD) on April 10, 2015 and provide comments as necessary. This letter is intended to provide RMWD's comments on the FPUD letter.

The letter from FPUD begins its argument with the California Voting Rights Act (CVRA) and how it is applied. As you are aware, the statute prohibits the use of at-large election systems in areas where racially polarized voting exists. FPUD has two primary arguments that attempt to show that racially polarized voting does not exist. Both are seriously flawed.

In the first argument, FPUD presents a subset of Census data which dilutes the actual population of a protected class, in this case Latinos, in their service area. Using this subset of data which is altered based on voting age, FPUD contends that the actual percentage of Latinos in their area is closer to 24% rather than the 43% provided in the population as a whole. FPUD's letter goes on to suggest that there is no racially polarized voting because "...we were unable to conclude that any class of minority voters could influence an election..."

We are unclear how this argument has any relevance. The CVRA has no statutory threshold for a minimum percentage that a protected class needs to meet before racially polarized voting can exist. The CVRA does not mandate that a protected class be able to "influence" the outcome of an election. The CVRA simply says that where racially polarized voting exists you may not use at-large elections.

Further, even if the Latino population is somewhat lower using FPUD's method of parsing Census data, the result is the same. If we apply the same reduction in percentage population that FPUD proposes and compare election results, the same racially polarized voting pattern is present. Exhibit A attached shows the outcome of the 2014 Primary Election for Superintendent of Public Instruction where the percentage populations of Latinos were adjusted downward using FPUD's statistical reductions. Racially polarized voting exists when the preferred candidate of the protected class does better in areas with a higher percentage of members of the protected class.

The second argument related to the CVRA that FPUD puts forth relates to the fact that based on a surname analysis, they could not document a case where a Latino candidate has run for the FPUD board. While this may be correct, it is irrelevant when considering the statutory language of the CVRA. Elections Code 14028(b) defines racially polarized voting using voting patterns not only for the political subdivision in question but also "...elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class." That it appears that no Latino candidates have run for the FPUD board in recent years does not mean that racially polarized voting is not present.

*Michael Ott
San Diego LAFCO
April 20, 2015
Page 2*

FPUD concludes its letter with a discussion related to the constraints on their ability to change their election system due to statutory requirements of the Public Utilities Code. We do not disagree that FPUD is required under this statute to retain at-large elections. FPUD argument that somehow this would absolve them from being in violation of the CVRA is inaccurate. FPUD claims that charter cities could choose to have at-large elections if they desired but, as our letter of April 10, 2015 points out, case law in this regard has shown that the CVRA trumps the desire of charter cities to use at-large elections where racially polarized voting exists.

We concur with a statement that FPUD includes at the end of their letter. We agree that LAFCO does not have the authority to unilaterally change FPUD from their current system of elections to a district based election system. We see only two ways this could change – from changes in the Public Utilities Code or through a judicial process.

In summary, data from just the most recently held elections show clear evidence of racially polarized voting in the FPUD area. It is probable that a review of earlier elections, as preferred under the CVRA, will show additional supporting evidence. Therefore their at-large election system is inconsistent with the requirements of the CVRA. This argument has been made by RMWD for well over a year on a consistent basis and we believe it is grounds for LAFCO to reject FPUD's application to project an election system that is inconsistent with State law onto an agency whose election system is well within the law.

Sincerely,

RAINBOW MUNICIPAL WATER DISTRICT



Tom Kennedy
General Manager

Enclosure: Exhibit A

cc: Dennis Sanford, President RMWD Board of Directors
Adriana Ochoa, RMWD General Counsel
Lloyd W. Pellman, RMWD Special Counsel

2014 Primary Superintendent of Public Instruction - FPUD Data

