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January 29, 2021

**SUBMITTED VIA LAFCO WEBSITE UPLOAD AND  
EMAIL TO KEENE.SIMONDS@SDCOUNTY.CA.GOV AND ERICA.BLOM@SDCOUNTY.CA.GOV**  
Keene Simonds, Executive Officer  
San Diego County Local Agency Formation Commission  
9335 Hazard Way, Suite 200  
San Diego, CA 92123

Re: Comment Letter regarding Item 6a and related items on SD LAFCO  
February 1, 2021 Agenda

Dear Mr. Simonds

Best Best & Krieger LLP serves as general counsel to the Pauma Valley Community Services District (PVCSD). We submit these comments in reference to the Municipal Service Review on Resource Conservation Districts being considered by the San Diego Local Agency Formation Commission at its February 1, 2021 meeting. PVCSD writes in support of expanding the language in the Municipal Service Review for RCD's to explicitly recognize that Upper San Luis Rey Resource Conservation District's (USLRCD) currently active powers include water conservation, water management and other water-related powers based upon its history of providing these services in the Pauma Valley.

History and Purpose of RCD's

The Commission's current staff report as well as the report and presentation from the LAFCO Special Advisory Committee meeting in December 2020 provide a broad and well-described overview of the history and general purposes of resource conservation districts. We take this opportunity to provide more background on that subject. Because our firm serves as legal counsel to more than a dozen RCD's around California, we have further information about RCD's and their unique relationship to landowners, farmers, soil, water and natural resources. We also do or have represented a number of the RCD's that are currently acting as groundwater sustainability agencies (GSA) in basins across the state.

As ably described in the Commission's staff report:

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In response to the national “Dust Bowl” crisis of the 1930s, the federal government passed legislation in 1937 establishing the Soil Conservation Service (SCS). Shortly after the formation of the SCS, conservationists realized that a federal agency in Washington might not be sufficiently responsive to local needs. Soil Conservation Districts were then formed under state law to be controlled by local boards of 5 directors. In 1938, California generated legislation authorizing the formation of Soil Conservation Districts under Division 9 of the Public Resources Code. These districts assisted landowners with erosion and flood control problems (primarily on agricultural lands), functions originally envisioned by the formation of the SCS. Under Division 9, Soil Conservation Districts were empowered to manage soil and water resources for conservation. These powers were expanded in 1971 to include related resources including fish and wildlife habitat. This expansion of power was reflected in the change of name from “Soil” Conservation District to “Resource” Conservation District.”

<https://www.conservation.ca.gov/dlrp/RCD/Documents/DirectorsHandbookWEBSITELargePageVersion.pdf> (pp. 3-4.)

Because RCD’s were formed, in large part, to interface between local landowners and the state and federal governments, RCD’s have unique relationships with the Department of Conservation of the State of California (DOC) and the federal Natural Resources Conservation Service (NRCS), which is an arm of the United States Department of Agriculture. These relationships were designed to provide a permanent link between landowners, RCDs and the state and national governments, to carry out the primary purposes of RCD’s, which are focused on soil, water, water management and water conservation activities.

As described by DOC:

“Public Resources Code Division 9 established Resource Conservation Districts (RCDs) to conserve soil and *water*, control *runoff*, prevent and control soil erosion, manage *watersheds*, protect *water* quality, and develop *water* storage and distribution.

RCDs are special districts of the State of California, set up to be locally governed agencies with their own locally appointed or elected, independent boards of directors. California RCDs implement projects on public and private lands, and educate landowners and the public about resource conservation.

RCDs are a vital link between federal, state, and local programs, helping these agencies meet their conservation goals. RCDs conduct:

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- *Watershed* planning and management
- *Water conservation*
- *Water quality* protection and enhancement
- Agricultural land conservation
- Soil and *water management* on non-agricultural lands
- Wildlife habitat enhancement
- *Wetland* conservation
- Recreational land restoration
- *Irrigation* management
- Conservation education
- Forest stewardship
- Fuels management
- Urban resource conservation”

<https://www.conservation.ca.gov/dlrp/rcd> (emphasis added).

And, DOC does not limit its description and emphasis of RCDs’ water and water management activities and powers to a generic page on the DOC website. Rather, the description and structure of RCDs’ permanent and ongoing powers and duties are focused on water and water resource management. For example, in its Guidebook for Collaboration and Consolidation (2019), DOC explains that RCDs “are created by the community to meet a specific need. . . the protection and wise management of critical agricultural and natural resources: *water* and soil. . . [RCD’s] are the go-to partners for agencies like the U.S. Department of Agriculture’s Natural Resources Conservation Service and for private landowners seeking to conserve wildlife or improve *water quality* or soil productivity.” (p. 5.)

<https://www.conservation.ca.gov/dlrp/RCD/Documents/CDOC-guidebook-2019%20Final.pdf>

Further, the DOC-produced RCD “Directors’ Handbook” (2015-2016) even further emphasizes the focus on water. As just one example, for those RCD’s whose directors are appointed by the County, rather than directly elected by the voters, the Directors’ Handbook recites that “It is the intent of the Legislature that the Supervisors only appoint applicants with a ‘demonstrated interest in soil and *water conservation*.’ (citing Pub. Res. Code, § 9314.)” Director’s Handbook, p. 9.

<https://www.conservation.ca.gov/dlrp/RCD/Documents/DirectorsHandbookWEBSITELargePageVersion.pdf> Thus, water resources and water conservation are the heart of the work of RCD’s across the state and country.

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The RCD focus on water, water conservation, soil and similar natural resources issues is not surprising given the original intent of the Federal Government in supporting the establishment of soil conservation districts.

[https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/rca/?&cid=nrcs143\\_014208](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/rca/?&cid=nrcs143_014208) (“State Conservation District Laws Development and Variations” (July 1996).) Indeed, in 1937, the Federal Government sent a model act for states to adopt to establish soil conservation districts. That model act focused on “soil conservation, flood prevention, *water management*, recreation and other purposes[.]” *Id.*

Given the above purposes of RCD’s, and in view of the model RCD act the Federal Government distributed to the states, it is not surprising that Division 9 of the Public Resources Code is written to provide broad powers to RCD’s regarding water issues. For example, the RCD Law (Public Resources Code, Division 9) provide as follows:

Section 9408.

- (a) The directors may cooperate and enter into contracts or agreements with the state, the United States, any county, any city, any other resource conservation or other public district in this state, any person, or the commission, *in furtherance of the provisions of this division*, and to that end may use any funds available to the district as provided in this chapter, and may accept and use contributions of labor, money, supplies, materials, or equipment useful for accomplishing the purposes of the district.
- (b) Districts may cooperate with counties and cities on resource issues of local concern. It is the intent of the Legislature to encourage districts to facilitate cooperation among agencies of government to address resource issues of local concern.
- (c) Districts may cooperate with federal, state, and local agencies and owners of private lands under the agreement between the California Association of Resource Conservation Districts and various public and private entities known as the coordinated resource management and planning memorandum of understanding.

9409.

The directors may make improvements or conduct operations on public lands, with the cooperation of the agency administering and having jurisdiction thereof, and on private lands, with the consent of the owners thereof, in furtherance of the prevention or control of soil erosion, *water conservation and distribution*, agricultural enhancement, wildlife enhancement, and erosion stabilization, including, but not limited to, *terraces, ditches, levees, and dams* or other structures, and the planting of trees, shrubs, grasses, or other vegetation.

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9414.

Directors may accept, by purchase, lease, or gift, and administer any soil conservation, *water conservation, water distribution, erosion control, or erosion prevention* project located within the district undertaken by the United States or any of its agencies, or by this state or any of its agencies.

9415.

The directors may manage, as agents of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, *water conservation, water distribution, flood control, erosion control, erosion prevention, or erosion stabilization project*, within or adjacent to the district; and may act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, *water conservation, water distribution, flood control, erosion control, erosion prevention, or erosion stabilization* project within or adjacent to the district.

9417.5

It is the intent of the Legislature that concerned state agencies, in cooperation with resource conservation districts and other appropriate local entities, work with the agencies of the United States Department of Agriculture and the Department of the Interior, the Environmental Protection Agency, and other federal agencies, to maximize cooperative opportunities for federal, state, and private funding for competitive grants and contracts for *watershed* protection, *restoration*, and *enhancement* programs of resource conservation districts.

9419

...

(c) A district may conduct workshops on the relationships between soil and related resource problems and their effects on other resources, such as wildlife and *water quality*.

(d) A district may sponsor programs that address land use practices which reduce *water and wind erosion*, soil contamination, soil salinity, agricultural land conversion, loss of soil organic matter, soil subsidence, and soil compaction and associated poor water *infiltration*.

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And, as has been described in the accompanying comment letter submitted by Mr. Jungreis, the USLRRCD has been engaging in activities related to water management, watershed protection, soil and water enhancement, erosion control, and related work since the 1940's.

It also bears mention that in recent years, the Legislature has placed even further emphasis on local watershed and water-management processes, and explicitly referenced RCD's as a critical part of those processes, thus implicitly recognizing RCD's broad powers with respect to local water conservation and management issues. (*E.g.*, Water Code, § 7049 (adopted 2017 and amended 2018) (directing the California Department of Water Resources to implement watershed-based riverine and riparian stewardship improvement programs which "shall include all of the following elements: (1) Support for partnerships with . . . resource conservation districts"); AB 2377 (2018) adding Food and Agriculture Code, § 570 (naming resource conservation districts as technical assistance providers to California ranchers and farmers to address climate change, constrained water resources, and related issues, through implementing strategies such as "increased water retention in soils, groundwater recharge, and energy and water conservation savings[.]"); *see also* AB 252 (2021 pending bill) (Multibenefit Land Repurposing Incentive Program Act proposed to improve water quality, increase water supplies or water supply reliability, reduce groundwater demand, preserve, enhance, or restore wildlife habitat, improve flood protection, and other activities to address potential harm to or loss of agricultural lands from implementing SGMA and designating "a local agency, including a resource conservation district" to receive funding in support of the program).

#### Other RCD Purposes

One of the sometimes overlooked aspects of RCD's is their ability to give voice to agricultural and landowner interests in rural areas across California. Frequently, RCD's are at the forefront of the most important issues in rural communities—water, soil and resource protection, not simply because they have the power to do so, but because they are the most direct link to farmers and ranchers, and perhaps the only public agency representatives working on these issues at the local level. The Pauma Valley is no exception. While the service areas of agencies like PVCSD and Yuima Municipal Water District include many farmlands in the Valley, numerous other agricultural lands and landowners are outside those agencies' boundaries. Those landowners are represented exclusively at the local level by the USLRRCD, particularly with regard to the Sustainable Groundwater Management Act (SGMA) process. Without the RCD available to protect their interests, these farmers and landowners would be left unrepresented in a variety of local resource-oriented processes, including development and implementation of the groundwater sustainability plan (GSP).

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SGMA

It appears from some of the comment letters submitted to the Commission that a limited number of political interests in the Pauma Valley—and not a single one of the farmers the RCD represents—object to a LAFCO recognition of the water conservation and water management powers the USLRRCD has been actively implementing for decades. We would encourage the Commission to disregard these comments for a number of reasons.

Before the last several months, these entities have never objected to the work of the USLRRCD. Indeed, many have enjoyed the fruits of the RCD’s labors in bringing federal and state funds to the area and implementing water conservation, water management and other watershed-benefitting projects. These commenters also did not object to the RCD’s inclusion as one of the signatories to and direct participants in the SGMA planning process and SGMA MOU’s in the Pauma Valley, in their earlier phases. Thus, the commenters’ last-minute objections ring hollow and, at bottom, having nothing to do with what powers the USLRRCD lawfully utilizes. Rather, they seek to utilize the Commission as a pawn to try to disenfranchise local farmers and the local community in the SGMA process. We suggest the Commission should not be improperly used in this way or uphold such cavalier assertions.

By its terms, SGMA was drafted to strongly encourage, and effectively require, that local public agencies step up to manage groundwater so that sustainability can be reached within local groundwater basins within 20 years of adoption of a GSP. A GSA does not and cannot legally control any groundwater pumping that occurs on sovereign lands, as these are beyond the jurisdiction of the local agencies and the State of California. At the same time, the GSP development and implementation process does accommodate wide public participation. And, that process has been and will continue to be observed in the Pauma Valley, to the full extent of the law. Thus, the commenters have had and will continue to have plentiful opportunity to make their views known. They also have the ability to legally and otherwise object to any GSP or action by the groundwater sustainability agency they do not favor or that actually impedes on their interests. Thus, their rights are and will be protected. What these commenters are doing now is objecting in advance to a GSP still in preparation nobody has yet reviewed in anticipation of it potentially not meeting their needs or protecting their rights. This makes little sense. Their objections are premature.

What the commenters fail to reveal in their claims of a “sham” process is what the results would be to the local agricultural community if the commenters’ insincere objections to the RCD’s powers are achieved and the RCD can no longer represent the interests of the agricultural-majority in the Valley in the SGMA process. The State Water Resources Control

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Board would likely deem the Basin “probationary” under SGMA due to the lack of local agency service area coverage. (Water Code, §§ 10735(c), 10735.2.) Immediately after making such a determination, and perhaps even earlier, the State Board would begin to impose very costly per acre foot pumped annual fees on farmers across the Valley pumping groundwater. [https://www.waterboards.ca.gov/water\\_issues/programs/sgma/reporting\\_and\\_fees.html](https://www.waterboards.ca.gov/water_issues/programs/sgma/reporting_and_fees.html) These annual fees would increase even further if the State Board elected to produce an “interim plan” for management of the Subbasin. (Water Code, § 10735.8.) The legal and other costs to farmers will even more dramatically rise if, as expected, they individually or through their representatives participate in any of the ensuing State Board processes. At the end of the day, these fees and costs are sufficiently large that there is a very real danger of some farmers going out of business before any state-level SGMA processes could even be completed.

According to the State Board, “[a]n interim plan is intended to be a temporary measure to protect groundwater until effective local management is in place.” [https://www.waterboards.ca.gov/water\\_issues/programs/sgma/docs/sgma/sgma\\_probation.pdf](https://www.waterboards.ca.gov/water_issues/programs/sgma/docs/sgma/sgma_probation.pdf) (page 3). Thus, perhaps most ironically, even after paying annual fees to the State Board and the development of a costly interim plan, the State Board will return the plan to the local agencies to implement. Simultaneously, the local agencies will likely be pursuing development of a final groundwater plan to replace the interim plan. Thus, after the expected years of effort and incredible expense, the Subbasin will end up in the same place it is in today, namely, the local agencies will be charged with developing and implementing a final groundwater sustainability plan.

We hope that the Commission will not let itself be used to achieve political ends that have nothing to do with the underlying question of what water conservation and management powers the USLRCD has implemented for decades, particularly given the potentially disastrous consequences to the Pauma Valley and its farmers were the Commission to intervene unnecessarily. As explained in the accompanying comment letters, the State Board has already determined that resource conservation districts are qualified to act as GSA’s, and numerous RCDs around the state are doing so, without any—to our knowledge—having confronted an issue with their local LAFCOs. Thus, any question about RCD eligibility to be a GSA has been definitively resolved.





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Conclusion

The Pauma Valley CSD appreciates the efforts undertaken by the San Diego LAFCO in preparing the Municipal Service Review on Resource Conservation Districts. We encourage LAFCO to expressly recognize in the finally-adopted MSR that the Upper San Luis Rey Resource Conservation District's active powers include water management, water conservation and other water-related authority.

Thank you for your attention to this important matter.

Sincerely,

Steve M. Anderson  
of BEST BEST & KRIEGER LLP

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