

## APPENDIX

1. **Folsom and Surrounding Area Annexation to Sacramento Municipal Utility District (Kelsey) (5-82). City of Folsom Annexation to Sacramento Municipal Utility District (7-82).** Proposals merged. From Executive Officer John O'Farrell's Staff Report dated June 16, 1982.
2. **In the Supreme Court of the State of California: S023805, Ct. App. C006792, Super. Ct. No. 358798, Board of Supervisors of Sacramento County et. Al., Plaintiffs and Appellants, v. Sacramento Local Agency Formation Commission, Defendant and Appellant; Citrus Heights Incorporation Project, Real Party in Interest and Appellant,** Filed Nov. 9, 1992.
3. **Initiative Measure to be Submitted Directly to the Voters of the Sacramento Municipal Utility District.**
  - a. **Notice of Intention to Circulate Initiative Petition**
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4. **Letter dated October 20, 2005, to Arlen Orchard, General Counsel, Sacramento Municipal Utility District, regarding "Improper Use of Public Funds to Influence Advisory Vote Initiative," from Marguerite Mary Leoni, Law Firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor.**

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### Commission Election Practice

I am forwarding this information in the belief that the following is relevant to the proposed SMUD Annexation of Territory in Yolo County. Typically, the issue of who votes is raised and questioned routinely in controversial proposals. The issue of who votes was dealt with extensively by your Commission in a similar annexation proposal during the 1982 SMUD Annexation of the City of Folsom (Kelsey).<sup>1</sup> At that time, SMUD was the Conducting Authority and the SMUD Board of Directors had the responsibility of calling the election. However, your Executive Officer did make the following recommendation to your Commission:

**"If LAFCo sends the Kelsey annexation proposal on to SMUD for further proceedings, it should not abdicate its authority to determine where the election on the question is to be held. LAFCo would be avoiding its responsibility as a regional decision-maker by remaining mute on the issue. LAFCo is charged with the authority to render technical decisions based upon the need and adequacy of public services and policy decisions regarding such matters as urban sprawl, agricultural preservation and orderly governmental boundaries. The question of the area in which the election should be held is the corollary policy decision to the technical decision the Commission would have made in approving the proposal.**

**The Sacramento LAFCo has never evaded this responsibility in past decisions when an election has been required. LAFCo has always designated an area in which an election should be held; and, the Commission has called elections only for the proposal area involved and not the entire city or special district involved (except in the case of a consolidation of two or more special districts)."<sup>2</sup>**

Numerous arguments were made in support of a districtwide election, during the 1982 SMUD Annexation of Kelsey/City of Folsom, however, the staff report concluded that those arguments would only have merit if Sacramento County and its cities had adopted a no-growth, or static policy regarding growth.

**"If the existing territory within the SMUD system was static--e.g., no change or potential change in service requirements because a no growth policy was in effect--then the preceding arguments would have merit. However, SMUD and Sacramento County are not in a "no growth mode." Sacramento County is actively attempting to attract clean new industry to the region.**

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<sup>1</sup> Folsom and Surrounding Area Annexation to Sacramento Municipal Utility District (Kelsey) (5-82). City of Folsom Annexation to Sacramento Municipal Utility District (7-82). Proposals merged.

<sup>2</sup> Executive Officer John O'Farrell, Staff Report on both previously cited proposals, dated June 16, 1982, pp. 39-40.

The cumulative demands of future new development within the existing boundaries could have the same or greater impact than the proposed annexation on SMUD's present and future ability to provide service. Your Commission and the SMUD Board are faced with the question: Because of its potential impact on existing SMUD customers, should any new major development within the existing service area be subject to districtwide referendum? Along this line of reasoning, even though the loss of the Kelsey territory will negligibly impact P.G. & E.'s ability to provide service to the balance of its service area, should not P.G. & E. stockholders and/or customers be given the option to vote on the issue?

Case law is very clear with respect to LAFCo's responsibility and authority to call an election (when required) either in the proposal area only or the proposal area and the territory of the district. In Simi Valley vs. Ventura Local Agency Formation Commission (51 C.A. 3d 648; 124 Ca Reporter 635), the court held that the Ventura LAFCo had the authority to order the election to be held on a detachment of district territory only in the area proposed for detachment and not the remainder of the district. The park district argued that the election should have been held districtwide. The court noted "an election which included the residents of the remainder of the district would have been one in which the selfish interests of such residents involved would wholly determine the result." The court noted LAFCo's legislative mandate (as set forth in the Knox Nisbet Act) to determine boundary changes on the basis of the "logical and reasonable development ... of local governmental agencies so as to advantageously provide for the present and future needs of each county and its communities."

It is your staff's belief that a districtwide election on the Kelsey annexation could be resolved in the fashion the court notes above. The reaction to the question of the annexation on a districtwide basis would be very emotional. The "drawbridge syndrome," or "life boat" attitude could certainly influence the outcome of the election. If staff could conclusively prove that there would be a need to develop new energy resources as a direct result of the approval of the Kelsey annexation proposal, staff would recommend districtwide election. That does not seem to be the case. For that reason, LAFCo staff recommends approval of the Kelsey annexation proposal subject to confirmation of the electorate in the proposal area only."<sup>3</sup>

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<sup>3</sup> Ibid., pp. 42-43.

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2. **In the Supreme Court of the State of California: S023805, Ct. App. C006792, Super. Ct. No. 358798, Board of Supervisors of Sacramento County et. Al., Plaintiffs and Appellants, v. Sacramento Local Agency Formation Commission, Defendant and Appellant; Citrus Heights Incorporation Project, Real Party in Interest and Appellant, Filed Nov. 9, 1992.**

Over the years, your Commission has been challenged on this issue related to fire district annexations as well as the Incorporation of Citrus Heights. In 1989, the County of Sacramento sued Sacramento LAFCo for calling the election exclusively within the territory proposed for incorporation, taking the position that all of the residents of Sacramento County should vote on the proposed incorporation because of the potential impacts to County residents.<sup>4</sup> The Supreme Court of the State of California upheld the trial court decision that **it is constitutional to hold the election for a change of organization only within the boundaries of the territory proposed for the change of organization.**

In the Sacramento County Board of Supervisors v. Sacramento LAFCo and Citrus Heights Incorporation proponents, the issues raised by the plaintiffs were also related to the financial impacts of forming a new government, i.e., plaintiffs believed that the financial benefits related to forming a new city of 80,000 residents could negatively impact the remaining 550,000 residents living in the unincorporated area.

The California Supreme Court rendered the following:

**"The case before us illustrates the tension between California's financially beleaguered counties and the desire of residents of unincorporated areas to form cities and draw local government closer to home. ... Acknowledging the tension between fiscal concerns and their desire for self-government, the Legislature enacted the Cortese-Knox Local Government Reorganization Act of 1985.**

**In section 56001, the Legislature announced a policy "to encourage orderly growth and development . . . essential to the social, fiscal, and economic well-being of the state," and stated that "the logical formation and determination of local agency boundaries is an important factor in promoting orderly development. . . . The Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies."**

**The foregoing sufficiently shows a legitimate purpose in enacting section 57103. And we conclude that section 57103 is fairly related to the Legislature's declared purpose, for if large, relatively disinterested majorities could veto incorporations decided through the Cortese-Knox Act's elaborate process, the result might well hinder orderly growth and development. Thus, there is no invidious discrimination of the type referred to in Lockport, supra, 430 U.S. 259, 268.**

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<sup>4</sup> At the trial court, Sacramento LAFCo prevailed; at the Appellate Court, the County of Sacramento prevailed. In the California State Supreme Court, the justices overturned the decision of the Court of Appeals, and upheld the trial court decision.

Unlike in Fullerton, *supra*, 32 Cal.3d 779, which involved a discretionary agency decision to hold an election, the Cortese-Knox Act was constructed with a mighty bulwark against the exercise of arbitrary discretion. The act accommodates competing local governmental and private interests, narrowly channeling the commission's ultimate determination before the territory's voters consider the decision. The election merely asks the affected residents to confirm that they desire self-government. To deny the Legislature the authority to let the potentially incorporating territory's voters have the final say in the matter would be to lessen political participation, not increase it. We do not believe that result is required by our federal and state Constitutions. As we said in Curtis v. Board of Supervisors (1972) 7 Cal.3d 942, 965-966, "The ideal of maximum participation in democratic decision-making particularly applies to participation in the affairs of the city. One of the most striking and encouraging phenomena of our times has been the deep and renewed interest of citizens in local community matters. To frustrate the endeavor of individuals to fix the unit of their local governance . . . would be to stifle that self-determination. The seeds of democracy lay in the Greek city-state; we would be reluctant to stay the fruition of that democratic expression in the city of today. Neither the state nor federal Constitution sanctions such negation. . . ."

The act's accommodation of competing local interests may be imperfect, but that is not enough, by itself, to offend constitutional principles. As counsel remarked at oral argument, "It's not a question of what would be the perfect arrangement as a matter of political science; it's what the Constitution requires."

We hold that section 57103's limitation does not violate the equal protection clause of the United States or the California Constitution, either on its face or as applied to this proposed incorporation.

The Court of Appeal's judgment is reversed with instructions to direct the trial court to enter judgment for defendant with respect to the constitutionality of section 57103."<sup>5</sup>

I hope the discussion cited above will be helpful to your Commission concerning the territory in which the election will be called.

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<sup>5</sup> In the Supreme Court of the State of California: S023805, Ct. App. C006792, Super. Ct. No. 358798, Board of Supervisors of Sacramento County et. Al., Plaintiffs and Appellants, v. Sacramento Local Agency Formation Commission, Defendant and Appellant; Citrus Heights Incorporation Project, Real Party in Interest and Appellant, Filed Nov. 9, 1992, pp. 1-3, 31-33.

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