

MEMBER AGENCIES

July 15, 2020

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
Municipal Water District

Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

**OTHER
REPRESENTATIVE**

County of San Diego

Keene Simonds
Executive Officer
San Diego LAFCO
9335 Hazard Way
San Diego, CA 92123

Re: LAFCO Detachment Special Advisory Committee July 6 Meeting and Next Steps

Dear Keene:

San Diego County Water Authority is pleased to participate as a member of LAFCO's special Advisory Committee to the Executive Officer in connection with the detachment proposals of Rainbow Municipal Water District and Fallbrook Public Utility District. With Committee members drawn from high-level staff and appointed and elected officials from the applicants and other regional and affected entities,¹ we believe the Committee has the potential to provide great value as LAFCO staff begins its review of the Fallbrook and Rainbow applications. It is in this spirit that I write to express some concerns we had regarding the Committee's initial meeting on July 6.

First, the Water Authority was informed that the purpose of the initial July 6 meeting was to provide a procedural overview of the detachment processes at San Diego LAFCO. Given that initial comments on the applications have not yet been filed and are not due until September 18, we specifically discussed that it would not be possible to talk about substantive issues at this meeting. In other words, at this early stage of the process, only one party has spoken.

At the July 6 meeting, you provided a portion of the procedural overview, which we found to be succinct and consistent with our expectations. However, the presentation by LAFCO Chief Policy Analyst Robert Barry ventured far beyond procedural issues. Moreover, his comments included incorrect statements of fact, purported legal analyses and even certain conclusions he has apparently reached on the merits of the issues pending before LAFCO—all unsupported by facts and prior to the filing of initial comments.

¹Given comments made by Eastern Municipal Water District (Riverside County) at the meeting, we would like to discuss as part of the next meeting agenda how "parties" or "subject agencies" (July 6 Ad Hoc Advisory Committee agenda item 4-d) are identified and defined for purposes of these proceedings. Eastern has been identified by LAFCO staff as a "subject agency" (and was therefore called upon especially with the Water Authority, Fallbrook and Rainbow to state their "expectations and interests" in the work of the Advisory Committee), while the Otay Water District and City of San Diego were not—even though any financial impacts of detachment will fall on the Water Authority's member agencies, not the Water Authority itself. We appreciate Mr. Kanetis stating that Eastern has "no skin in this game;" however, that is not entirely accurate. It is correct in the sense that Eastern will not make any of its independent water supplies and facilities available to the applicants, and is for all practical purposes, simply a "middle man" so that the applicants may purchase water directly from Metropolitan (which they would otherwise be unable to do because they are not Metropolitan member agencies). But under the applicants' proposals, San Diego County would lose voting rights and Eastern would gain voting rights at the Metropolitan Water

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Mr. Barry is not an attorney and to our knowledge, does not have experience in either California water law or CEQA. In spite of this fact, Mr. Barry opined on many substantive issues including CEQA-related issues during his presentation.² He described a number of preliminary conclusions he had drawn after looking only at the record that was before him, consisting of admittedly incomplete applications and no responsive comments by the Water Authority or any other affected party. Mr. Barry did not include in his comments that the Water Authority had recently submitted a detailed CEQA letter to LAFCO, stating why it believes the exemption does not apply and full CEQA review is not required. He also failed to mention the lawsuits by the Otay Water District against each applicant, challenging the applicants' Notice of Exemption; or, that a stipulation has been entered in that litigation that LAFCO may not rely on the Notices of Exemption filed by the applicants.

With respect to Local Policy L-107, Mr. Barry correctly informed the Committee that LAFCO requires the applicants to discuss their proposals with the affected agencies; however, he also went on to state that the applicants have been "rebuffed" in their attempts to do so. Mr. Barry did not describe his understanding of the facts or what efforts he believes the applicants have made, nor did he identify what parties he believes have "rebuffed" those efforts.

To the extent Mr. Barry was referring to the Water Authority in his comments on Local Policy L-107, the statement is incorrect. There has in fact been correspondence and communications between the parties. We will not burden this letter or the Committee members with all of the details at this point; however, we are willing to compile a complete summary of the facts in this regard to the extent it is deemed still relevant to the process going forward. Suffice it to say that from the beginning and even now, the proposals have remained incomplete in material respects and both lack and misstate material facts. As a result, it has been difficult for the Water Authority or its member agencies to have the kind of substantive discussion³ Local Policy L-107 requires. We hope that the LAFCO process will afford all parties an opportunity to have a more meaningful dialogue once all of the facts and issues are on the table.

Pending your response on whether such a detailed factual summary would be helpful, it is at best inappropriate for Mr. Barry to accept a bald assertion by one or more of the applicants as truth, and then recite it to the Committee and public record as a matter of fact. LAFCO's role in assisting the parties to discuss a potential solution after more information is presented will be greatly benefited by it staying neutral.

District. With its lower assessed valuation, Riverside County benefits when Metropolitan's costs are recovered by property taxes in lieu of higher volumetric water rates based on usage. Eastern has consistently supported higher property taxes while the Water Authority has consistently opposed them when they are voted on annually at Metropolitan board meetings. Eastern is also an adverse party in litigation that has been pending for more than 10 years and remains pending in San Francisco Superior Court, in which the Water Authority has (successfully) challenged unlawful water rates imposed by the Metropolitan Water District (Los Angeles) (the Water Authority and Eastern are both member agencies of Metropolitan).

² For example, Mr. Barry stated that there were "very compelling arguments both facially and factually as to why Class 20 [exemption] would apply to this proposal for LAFCO's use" and later stated that the applicants' evidence was "substantial and compelling" and that "a fair argument can be made that Class 20 applies" and "doesn't require LAFCO action" under CEQA. The terms "substantial evidence" and "fair argument" are technical legal terms in CEQA. He also opined on CEQA's approach to the financial implications of the proposals and made conflicting statements about the role of LAFCO in the CEQA process, appearing to suggest that LAFCO would serve both as a responsible and lead agency.

³ Consistent with their approach to CEQA, the applicants have failed to address a wide range of issues that are critical to consideration of these applications, contending that relevant issues and concerns simply "do not apply," and with a principle focus on the potential payment (or more accurately stated, the non-payment) of an "exit fee." However, there is no "exit fee" that can address such issues as voting rights and environmental impacts on the California Bay-Delta that are presented by these applications.

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Turning again to the substantive issues, Mr. Barry was on the right track when he acknowledged that the applications present “complex proposals;” but then, he went on to say that they are “very straightforward.” Given these statements by Mr. Barry, we would like to share directly with the Committee members now, as we have shared with you, our perspective as a regional planning agency that these applications are not “very straightforward.” In fact, they are unprecedented before LAFCO and involve substantially complex water supply, legal, financial and governance issues at the local, regional, state and federal level. The Water Authority looks forward to providing information LAFCO will need to begin to evaluate these issues on or before the September 18, 2020 filing deadline.

Finally, I wanted to remind you of my inquiry prior to the July 6 meeting, and my subsequent request after receiving the meeting agenda, that future Committee meetings include an opportunity for public comment consistent with LAFCO, Water Authority and other public agency procedures. The Water Authority Board’s culture and practice is committed to hearing from, understanding and considering not only technical, legal, policy and financial issues, but also the passionate perspectives held by communities, water agencies and stakeholders across California. With respect, we do not believe that a process “summarizing” public comment such as occurred at the last Committee meeting is sufficient. While we realize that some challenges are presented in the current COVID-19 environment, the Water Authority is conducting meetings with a 36-member board of directors, with a full opportunity for real-time public comment. My staff would be happy to work with LAFCO staff on the technical arrangements we have made if that would be helpful.

In closing, we appreciate the experience and deep knowledge of LAFCO that you and your staff possess, and that there are unique challenges presented by these unprecedented applications. Over time, and with the support of the parties and with the assistance of independent and qualified consultants and counsel, we are confident of finding a resolution that meets the needs of all parties, water ratepayers and land owners in San Diego County. We are deeply grateful to the Committee members who have agreed to serve on the Committee and will do everything possible to make this process efficient. As a first step and by way of background, we attach copies of the documents listed at the end of this letter.

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Best regards,



Sandra L. Kerl, General Manager
San Diego County Water Authority

Attachments:

San Diego County Grand Jury 2012-2013 (filed May 15, 2013), *Reduce Dependence on Imported Water*
[San Diego County Grand Jury 2012-2013 \(filed May 15, 2013\)](#)

SANDAG (October 2015), *SAN DIEGO FORWARD THE REGIONAL PLAN*
[SAN DIEGO FORWARD THE REGIONAL PLAN](#)

2002 SANDAG and Water Authority Agreement

https://www.sandag.org/uploads/projectid/projectid_216_1018.pdf

2008 SANDAG Publication

https://www.sandag.org/uploads/publicationid/publicationid_1364_8010.pdf

cc:

Dianne Jacob, Chair, San Diego LAFCO

Holly Whatley, Commission Counsel

Aleks Giragosian, Deputy Commission Counsel

Robert Barry, Chief Policy Analyst

Kristina Lawson, Counsel, San Diego County Water Authority

Gary Croucher, Vice Chair SDCWA Board of Directors/ President Otay Water District Board

David Cherashore, Director SDCWA Board and City of San Diego Representative

Brian Albright, Director of Parks and Recreation San Diego County

Rachel Cortes, SANDAG Regional Model Analyst

Gary Thompson, Executive Officer, Riverside LAFCO

Jack Bebee, General Manager, Fallbrook PUD

Paula C. P. de Sousa, Counsel, Fallbrook PUD

Kim Thorner, LAFCO Special Districts Advisory Committee/Olivenhain General Manager

Lydia Romero, LAFCO Cities Advisory Committee/Lemon Grove City Manager

Paul Jones, General Manager, Eastern MWD

Nick Kanetis, Deputy General Manager, Eastern MWD

Tom Kennedy, General Manager, Rainbow MWD

Alfred Smith, Counsel, Rainbow MWD

Water Authority Board of Directors