San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

7b

AGENDA REPORT
Business | Discussion

August 3, 2020

TO: Commissioners

FROM: Keene Simonds, Executive Officer
Robert Barry, Chief Policy Analyst

SUBJECT: **Advisory Committee Update |**
Proposed Rainbow MWD and Fallbrook PUD Reorganizations

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will receive an update on the Advisory Committee formed for the Rainbow MWD and Fallbrook PUD reorganization proposals. The 10-member Advisory Committee was established by the Commission in June 2020 and tasked with advising LAFCO staff in the evaluation of the proposals with respect to statutory factors as well as local considerations. The update is being provided at the request of the Commission and includes addressing agenda topics and related discussion from the Advisory Committee's July 6th meeting as well as agenda topics set for the next meeting scheduled for the afternoon on August 3rd. Item is for information and discussion only.

BACKGROUND

Reorganization Proposal Filings by Fallbrook PUD and Rainbow MWD | County Water Authority Applications for Alternative Conducting Authority Proceedings

San Diego LAFCO received separate reorganization proposals in March 2020 from Fallbrook PUD and Rainbow MWD seeking Commission approval to concurrently (a) detach from the County Water Authority and (b) annex to Eastern MWD. The stated purpose of the reorganizations as detailed in the proposal materials is to achieve cost-savings for the

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agencies by transitioning the purchase of wholesale supplies. Staff currently anticipates an approximate 15 to 20-month timeline to process the reorganization proposals and this includes soliciting input from Riverside LAFCO based on an earlier agreement with the Commission.[1] Copies of both Fallbrook PUD and Rainbow MWD's proposals are available on the Commission website. Also available on the website are two responding applications from the County Water Authority to apply alternative conducting authority proceedings for both proposals, which were subsequently approved by the Commission at its May 2020 meeting.[2]

Establishment of an Advisory Committee

San Diego LAFCO established the Advisory Committee on the Fallbrook PUD and Rainbow MWD reorganization proposals at its June 2020 meeting. The Advisory Committee includes 10-members and tasked to directly advise LAFCO staff in real-time on both statutory factors as well as local considerations and done so in recognition of the complexities and controversies underlying both proposals. The Commission also requested staff to provide regular updates on the Advisory Committee in step with ensuring timely and constructive proceeding/. The Advisory Committee roster was subsequently finalized by the Executive Officer following the June meeting and identified below.

Advisory Committee | Rainbow MWD and Fallbrook PUD Reorganization Proposals		
Member	**Title**	**Agency**
Jack Bebee	General Manager	Fallbrook PUD (Subject Agency)
Tom Kennedy	General Manager	Rainbow MWD (Subject Agency)
Nick Kanetis	Assistant General Manager	Eastern MWD (Subject Agency)
Sandy Kerl	General Manager	County Water Authority (Subject Agency)
Lydia Romero	City Manager	City of Lemon Grove (Cities Advisory Committee)
Kimberly Thorner	General Manager	Olivenhain MWD (Districts Advisory Committee)
Gary Croucher	Board Member	Otay WD (County Water Authority Member)
David Cherashore	Mayor Appointee	City of San Diego (County Water Authority Member)
Brian Albright	Park and Recreation Director	County of San Diego (At-Large Representative)
Rachel Cortes	Senior Researcher	SANDAG (At-Large Representative)

[1] In October 2019, San Diego and Riverside LAFCOs entered into an agreement to delegate all processing approvals for the Fallbrook PUD and Rainbow MWD reorganization proposals – including associated sphere amendments – to San Diego LAFCO. The agreement specifies San Diego LAFCO shall actively consult with Riverside LAFCO in processing the reorganizations and this includes providing input on all related recommendations.

[2] Approval of the alternative process was based on the County Water Authority meeting certain criteria under statute and substantively means any approval of the reorganization proposals will bypass standard protest proceedings and directly proceed to a confirmation election of registered voters. The Commission separately took no action involving two related requests by the County Water Authority to suspend work on the reorganization proposals due to COVID-19 and condition any future approvals on an expanded vote in all 24 member agencies' jurisdictions.

DISCUSSION

This agenda item is for San Diego LAFCO to receive its scheduled update on the Advisory Committee on the Fallbrook PUD and Rainbow MWD reorganization proposals. This includes reviewing the below summary of agenda topics covered at the Advisory Committee's first meeting held on July 6th as well as scheduled topics for the next August 3rd. Copies of written correspondence received relating to the Advisory Committee and commencing with its first meeting are also attached for Commission review.

Initial July 6th Meeting

The Advisory Committee's initial meeting on July 6th was held by videoconference with full attendance. The meeting was purposefully set by the Executive Officer to focus on non-substantive issues and marked by providing a primer on processing boundary changes under statute as well as discussing the status of the two reorganization proposals. The subject agencies' representatives also were given the opportunity to discuss their agencies' core interests and objectives in participating in the Advisory Committee. A copy of the agenda is attached and a video recording of the meeting is available on the LAFCO website.

Scheduled August 3rd Meeting

The next meeting of the Advisory Committee is scheduled for August 3rd at 1:00 P.M. and will be held by videoconference and live-stream online. Agenda topics for the meeting are intended to cover more substantive topics and include the following:

- Commission Counsel Overview
  - LAFCOs' responsibility under the California Environmental Quality Act
  - LAFCOs' authority (scope and scale) to condition proposals

- Need and Role of Outside Consultants
  - Water reliability
  - Water rate impacts
  - Potential exit fees

- Addressing Outside Input/Comments
  - Other County Water Authority members

ANALYSIS

San Diego LAFCO's first meeting of the Advisory Committee on the Fallbrook PUD and Rainbow MWD reorganization proposals proceeded as planned and proved productive in covering baseline review factors and generating consensus on future topics. This consensus is reflected in the agenda set for the next meeting and – importantly – highlighted by commencing discussions on key service and financial issues informing the potential merits/demerits of the reorganization proposals. Nonetheless, staff is in receipt of

correspondence from the County Water Authority outlining their concerns with certain representations made by staff during the July 6th meeting (Attachment Five). Staff respectfully disagrees with the County Water Authority and believes the referenced comments were appropriate overall given their specific context but will remain mindful of the underlying concerns going forward.

RECOMMENDATION

It is recommended San Diego LAFCO discuss the item and provide feedback.

ALTERNATIVES FOR ACTION

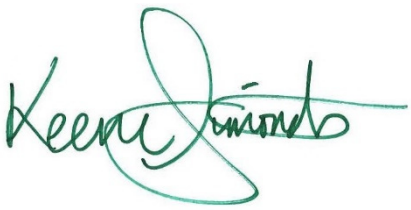
No action; discussion and feedback only.

PROCEDURES

This item has been placed on San Diego LAFCO's agenda for discussion as part of the business calendar. The following procedures, accordingly, are recommended in the consideration of this item:

1) Receive verbal presentation from staff unless waived.
2) Invite comments from interested audience members (voluntary).
3) Discuss item and provide any feedback as appropriate.

Respectfully,



Keene Simonds
Executive Officer

Attachments:

1) Agenda from Advisory Committee's July 6th Meeting
2) July 2nd Letter from County Water Authority
3) July 6th Email Submittal from Mark Muir
4) July 6th Email Submittal from Rodney T. Smith
5) July 15th Letter from County Water Authority
6) July 23rd Letter from Fallbrook PUD (Best Best & Krieger)
7) July 25th Letter from Rainbow MWD (Nossaman LLP)

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SPECIAL MEETING AGENDA

AD HOC ADVISORY COMMITTEE
- Rainbow MWD & Fallbrook PUD Reorganization Proposals -

Monday, July 6, 2020 at 9:00 A.M.
Videoconference Attendance Only

Live Public Viewing Available on San Diego LAFCO's YouTube Channel

Moderator Keene Simonds
San Diego LAFCO Executive Officer

1. CALL TO ORDER & WELCOMING

2. INTRODUCTIONS & COMMITTEE ROLL CALL

3. PUBLIC COMMENT
This is an opportunity for any member of the public to provide comments on a non-agenda topic germane to the Advisory Committee. The public may submit comments by emailing erica.blom@sdcounty.ca.gov. Comments received prior to the conclusion of public comment period will be read and/or summarized by the Committee and posted online.

4. BUSINESS ITEMS

a) LAFCO Process Overview (10 minutes)
The Advisory Committee will receive a presentation from LAFCO staff summarizing baseline procedures in the evaluation of jurisdictional change proposals under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. The presentation will also summarize LAFCO's responsibilities under other germane statutes, including the California Environmental Quality Act. Information only.

b) Current Status of Reorganization Proposals (5 minutes)
The Advisory Committee will receive an update from LAFCO staff on the current processing status of the reorganization proposals filed by Fallbrook PUD and Rainbow MWD separately requesting concurrent detachments from County Water Authority and annexations to Eastern MWD. Information only.

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BUSINESS ITEMS CONTINUED…

c) Expectations for Advisory Committee (10 minutes)
LAFCO staff will discuss the Commission's expectations for the Advisory Committee and related tasks in the evaluation of the Fallbrook PUD and Rainbow MWD reorganization proposals. Information only.

d) Expectations from Subject Agencies (10 minutes)
Representatives from the four subject agencies – Fallbrook PUD, Rainbow MWD, Eastern MWD, and San Diego County Water Authority – will be asked to share their expectations and interests in the work of the Advisory Committee. Information only.

e) Agenda Setting for Next Meeting (5 minutes)
The Advisory Committee will provide input on scheduling the next meeting along with identifying agenda items.

5. ADJOURNMENT

Attest to Posting

Tamaron Luckett
Commission Clerk

Any person with a disability under the Americans with Disabilities Act (ADA) may receive a copy of the agenda or a copy of all the documents constituting the agenda packet for a meeting upon request. Any person with a disability covered under the ADA may also request a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting. Please contact the LAFCO office at least three (3) working days prior to the meeting at 858-614-7755 or lafco@sdcounty.ca.gov for any requested arraignments or accommodations.

Our Region's Trusted Water Leader
San Diego County Water Authority

July 2, 2020

VIA EMAIL AND U.S. MAIL

Mr. Keene Simonds
Executive Officer
San Diego County LAFCO
9335 Hazard Way, Suite 200
San Diego, CA 92123
E-Mail: Keene.Simonds@sdcounty.ca.gov

Re: CEQA Process for Rainbow Municipal Water District ("Rainbow") and Fallbrook Public Utilities District ("Fallbrook") Applications for Detachment and Annexation

Dear Mr. Simonds:

As its General Counsel, I send this letter on behalf of the San Diego County Water Authority (the "Water Authority") in connection with the above-referenced applications by two of its member agencies to detach from the Water Authority, and LAFCO's June 16, 2020 "Preliminary Staff Reports" regarding these applications.

The LAFCO Staff Reports for the applications each assert that consideration of the applications "is expected to be exempt from the California Environmental Quality Act 'CEQA') per State CEQA Guidelines Section 15320." This "expectation" has no stated basis and is erroneous. The exemption cited does not apply to these applications, both facially and as a result of the circumstances arising from the facts underlying the detachments proposed by these applications. This letter therefore constitutes an objection by the Water Authority to LAFCO's potential attempt to use the Section 15320 exemption, and to avoid proper compliance with CEQA.

There are potentially significant environmental impacts arising from the proposed detachments by Rainbow and Fallbrook from the Water Authority and the proposed annexations of Rainbow and Fallbrook to Eastern Municipal Water District (the "Project"). LAFCO must therefore, in connection with its review and determination of whether the Project will proceed, perform a full environmental review of these projects under CEQA. This will include LAFCO, as the lead agency for these projects, producing a detailed initial study and, thereafter, an environmental impact report ("EIR") that fully evaluates all potential environmental impacts of the Project.

Because LAFCO is required to investigate the basis for, review, and approve or reject the applications of Rainbow and Fallbrook based upon the record before it, it is uniquely positioned to perform a full environmental review of each Project and the cumulative effects of the Projects together. LAFCOs are particularly equipped to perform an analysis of the regional, and in this case potentially statewide, environmental impacts of annexations and detachments, as opposed to the entities seeking changes in their own

jurisdictions. The Supreme Court, in *Bozung v. LAFCO (Ventura County)* (1975) 13 Cal. 3d 263, a case involving LAFCO action on an annexation to a city, recognized this fact:

> "A vital provision of the Guidelines (Cal. Admin. Code, tit. 14, Sec. 15142) stresses that an EIR must describe the environment from both a local 'and regional' perspective and that knowledge of the regional setting is critical to the assessment of environmental impacts. It directs special emphasis on environmental resources peculiar to the region and directs reference to projects, existent and planned, in the region so that the cumulative impact of all projects in the region can be assessed. While, of course, a city is not necessarily incompetent to prepare and evaluate an EIR complying with section 15142, obviously a LAFCO must be presumed to be better qualified on both scores…. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations. At the very least, however, the People have a right to expect that those who must decide will approach their task neutrally, with no parochial interest at stake." (*Bozung*, 13 Cal. 3d. at 283.)

Any previous "environmental review" performed by Rainbow or Fallbrook was related only to their submission to LAFCO of applications for detachment and annexation, not as to the potential impacts of the detachment or annexation themselves. Neither Rainbow[1] nor Fallbrook[2] performed an environmental review that can be relied upon in connection with consideration of the Project, and neither agency seriously considered any potential regional or statewide impacts of the Project. Indeed, Rainbow and Fallbrook provided very limited information to the public as to precisely how their detachments would work, focusing only on the narrow questions required to simply submit their applications to LAFCO. Even in that limited context, they ignored comments made during the process of submission of the applications, and the entities claimed that the approvals sought were exempt from CEQA review or did not constitute a project at all. These assertions do not have any factual basis and are incorrect.

Earlier this year, Otay Water District ("Otay") filed separate petitions for writs of mandate against Rainbow and Fallbrook in the San Diego Superior Court seeking a determination that the agencies failed to comply with CEQA in that they failed to perform a sufficient environmental analysis of potential environmental impacts associated with the approval to file the applications for detachment and annexation. Those suits in the

[1] Rainbow's Notice of Exemption ("NOE") describes the project as "Resolution of Application Authorizing the GM to Prepare and Submit an Application to San Diego LAFCO to Detach from SDCWA and Annex to EMWD."

[2] Fallbrook's NOE identifies the project as "The Fallbrook Public Utility District (FPUD) adopted a resolution of application requesting the San Diego County Local Agency Formation [sic] (LAFCO) to commence proceedings for a reorganization to include detachment/exclusion of territory from San Diego County Water Authority (SDCWA) and annexation to Eastern Municipal Water District (EMWD)."

alternative sought a declaration that the notices of exemption could not be used to avoid review of the environmental impacts of the changes that were being sought at LAFCO. The agencies had filed Notices of Exemption that asserted that their actions in filing those applications were exempt from CEQA.

Rainbow and Fallbrook, however, each stipulated that their approvals of Notices of Exemption did not bind LAFCO and are not applicable to LAFCO's obligations under CEQA. These stipulations were incorporated in the Court's order of dismissal in each of these cases, entered on May 28 and June 2, respectively. In each case, the parties stipulated, in relevant part, that:

> "[t]he NOE may not be utilized or relied upon by San Diego LAFCO or any other agency for the purpose of that agency's CEQA compliance in connection with any potential detachment by Respondent [Rainbow or Fallbrook] from the San Diego County Water Authority, or for any potential annexation by Respondent into Eastern Municipal Water District. Nothing in this Stipulation and Order for Judgment is intended to limit the discretion of any agency to independently determine the appropriate level of CEQA review required for any potential detachment by Respondent from the San Diego County Water Authority, or for any potential annexation by Respondent into Eastern Municipal Water District."

Rainbow's and Fallbrook's stipulations, and the Court's orders, mean that Fallbrook and Rainbow have admitted that their Notices of Exemption are insufficient to substitute for a full and complete CEQA analysis by LAFCO, acting as lead agency with respect to the detachment and annexation applications.

To the extent that substantial evidence exists, in light of the whole record before LAFCO, that the Project may have a significant effect upon the environment, it must prepare an EIR. (CEQA § 21080(d).) "Substantial evidence" means that "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." This means, in this case, that there is substantial evidence to support a fair argument that the Project may have a significant effect on the environment. (14 Cal. Code of Regs., Division 6, Chapter 3 ["Guidelines"], § 15384(a).) As explained below, there are clearly potential impacts on the environment from the proposed detachments and annexations.

The Project is Not Exempt from CEQA Review

LAFCO's stated "expectation," prior to any environmental review, that the Project is exempt from CEQA under Section 15320 is without merit.

The categorical exemption cited in the Preliminary Staff Reports is located in CEQA Guidelines Section 15320, "Changes in Organization of Local Agencies," also known as "Class 20." This exemption encompasses projects that consist of "changes in the organization or reorganization of local governmental agencies where the changes *do*

not change the geographical area in which previously existing powers are exercised." (Emphasis added.) Among the examples cited are the establishment of a subsidiary district, consolidation of two or more districts having identical powers, and merger with a city of a district lying entirely within the boundaries of the city.

Categorical exemptions are to be interpreted narrowly in order to maximize the protection of the environment provided by CEQA. The examples provided by these exemptions are not just illustrative but also significant. Generally, courts have upheld the application of exemptions to activities that are similar to the listed examples and have rejected the use of exemptions where the activity is not similar to the listed examples. (*Practice Under the California Environmental Quality Act* (2d ed. Cal CEB) § 5.69.) "This principle of interpretation is embodied in the Guidelines, which state that CEQA should be interpreted to 'afford the fullest possible protection to the environment within the reasonable scope of the statutory language. [Citation.]'" (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, 52 Cal.App. 4th 1165, 1193).

None of the Class 20 examples in the CEQA Guidelines apply to this Project. The Project is not the creation of a subsidiary district, a consolidation of districts with identical powers, or a merger of a district into a city which encompasses it. Instead, the Project seeks detachment of two districts from a county water authority that encompasses both of them, and their annexation into an entity located in a different county than the detaching entities. By seeking detachment from the Authority and annexation by the Riverside County-based Eastern, Rainbow and Fallbrook will *change the geographical areas* in which the Authority, by subtraction, and Eastern, by addition, *exercise their powers*. If Rainbow and Fallbrook are detached, the Authority will no longer exercise its powers within the boundaries of these two districts, and Eastern will have the new right to exercise its powers within the boundaries of these two districts. This Project is not a mere consolidation, creation of a new subsidiary district, or a merger. The Class 20 exemption is facially inapplicable to the Project, and there is no factual evidence to support any determination that the Project is exempt from a full CEQA analysis.

Categorical exemptions are also inapplicable if an exception to the exemption applies to the projects. This exception applies where a reasonable possibility exists that the project may have significant impacts because of unusual circumstances. (CEQA Guidelines § 15300.2(c).) An "unusual circumstance" is some feature of the project which distinguishes it from others in the exempt class. (*Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1105-1106.)

The Project will impact the environment in ways not previously considered by Rainbow or Fallbrook. Rainbow has conceded, for example, in its "Supplemental Information Package for Reorganization Application," that the detachment and annexation will require it to accelerate the construction of "improvement projects" for which the cost estimates total $10-$15 million. (See pp. 5-6.) Although these projects are generally described in that package as necessary to serve some higher elevation areas in the southern part of Rainbow's service area, no substantial details or environmental analysis was identified with respect to these projects. Among these projects is construction that will provide service to an area of "new development," but there is no consideration of potential impacts regarding future development at that location or elsewhere. No analysis

has been disclosed by Rainbow about the impacts of construction, operation or growth inducement, among other potential environmental impacts, regarding these projects. Neither Rainbow nor Fallbrook has apparently undertaken or presented any environmental analysis of the potential cumulative impacts of their simultaneous detachments and annexations. The existence of these potential impacts is an unusual circumstance for projects covered by the Class 20 exemption.

Importantly, the Project may also increase the reliance of Fallbrook and Rainbow upon water imported from the Bay-Delta, a unique ecosystem, in direct contradiction to the Delta Reform Act (Water Code § 85000, *et seq*.). That Act established a state policy calling for reduced reliance on the Bay-Delta through the development of regional supplies, conservation, and water use efficiency, and the Project's variance from these goals requires a full environmental analysis. By moving to complete reliance on imported water from a wholesaler which has high dependence on the Bay-Delta (MWD), and away from a wholesaler that has a much lower reliance on Bay-Delta water (the Water Authority), there is a likelihood of overall increased Bay-Delta reliance. Neither Fallbrook nor Rainbow provided a full analysis of this issue, and LAFCO must do so. These types of impacts are not part of the usual "reorganization" project covered by Class 20, and constitute "unusual circumstances" under CEQA Guidelines section 15300.2(c).

Since these circumstances of the Project are "unusual," this exception prevents use of the Class 20 Exemption so long as substantial evidence exists in the record to support a "fair argument" that the "exempt" project has a "reasonable probability" of creating a significant environmental impact as a result of the unusual circumstances. (*Berkeley Hillside Pres.*, 60 Cal. 4th at 1115; *Respect Life S. San Francisco v. City of S. San Francisco* (2017) 15 Cal.App.5th 449, 458). The unusual circumstances described above have a reasonable probability of creating significant environmental impacts, both direct and indirect. Substantial evidence has been shown and will be further developed to support a fair argument that such impacts are reasonably probable. Therefore, the Class 20 exemption cannot apply, and LAFCO must produce an EIR to perform a full environmental analysis of the Project.

Though we realize that the recent notices from LAFCO simply informed the recipients that LAFCO was anticipating use of Section 15320, and that LAFCO has not yet formally applied the exemption, we believed it important to provide this information and objection at an early stage so that LAFCO has an opportunity to fully review its position before mistakenly applying an improper exemption. LAFCO must perform a full environmental analysis of the Project that complies with CEQA. LAFCO has no basis to support its preliminary contention that the Project is exempt from CEQA, and it must begin a full environmental analysis beginning with an initial study of potential impacts. Thank you for consideration of these important issues.

Very truly yours,

Mark J. Hattam
General Counsel

cc via email:

Dianne Jacob, Chair, San Diego LAFCO
Holly Whatley, Commission Counsel
Aleks Giragosian, Deputy Commission Counsel
Robert Barry, Chief Policy Analyst
Gary Thompson, Executive Officer, Riverside LAFCO
Sandra L. Kerl, General Manager, San Diego County Water Authority
Kristina Lawson, Counsel, San Diego County Water Authority
Jack Bebee, General Manager, Fallbrook PUD
Paula C. P. de Sousa, Counsel, Fallbrook PUD
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

San Diego County LAFCO
Rainbow MWD and Fallbrook PUD Reorganization Proposals
Monday, July 6, 2020 at 9:00 AM
Public Comment by Mark Muir

- Good morning, Mr. Simonds and members of the Ad Hoc Advisory Committee. My name is Mark Muir. I am a retired former Encinitas Fire Chief and City Councilmember.

- I am also the last past Chairman of the San Diego County Water Authority, where I represented the City of Encinitas. Prior to that time, I was an elected member of the board of directors of the Olivenhain Municipal Water District, which I also represented at that time on the Water Authority Board of Directors.

- As a former Fire Chief, I've been involved with a number of high-level reorganizations, consolidations, and other types of organizational studies. Most reorganizations are focused on cutting costs, promoting growth, cultural change, and/or shifting strategic focus. Whatever the specific objectives, reorganizations almost always involve making major structural changes in pursuit of better performance.

- Despite the fanfare that usually invites or accompanies a reorganization movement, most create fallout that is unanticipated and unproductive to one or more parties. Prior to making any recommendations, I would strongly suggest that subject matter experts be retained who are accountable to LAFCO and the public to independently assess the facts and claims about detachment benefits.

- Given the nature of the water business and long term planning horizons, the guiding principles and structural review of detachment cannot focus on short term issues or the next rate increase but must also focus on the long term financial impacts and complex future water service and delivery needs of our region. This is consistent with the requirements of the State of California to provide 20-25 year assessments in Urban Water Management Plans.

- I believe San Diego LAFCO, like the Water Authority, has a responsibility to evaluate how the proposed detachments will impact all member agency ratepayers within San Diego County, including Fallbrook and Rainbow.

- One final note I would add is that there is no way of knowing whether MWD's costs are fairly allocated, whether its rates are appropriately set or include project implementation costs, without access to the financial planning model MWD uses to set its rates and charges. MWD's position is that it will not allow access to its rate model, claiming it is proprietary and a trade secret. Claims of knowing what MWD's rates will be are for this and other reasons, purely speculative.

- The regional planning process for water supply in San Diego County has been especially strong and successful due to the Water Authority's longstanding collaboration with SANDAG and the board's focus on—and planning for—future generations.

- I wish you the best and look forward to following your work. Please do not hesitate to call upon me if I may be of any assistance to the process.

July 3, 2020

VIA EMAIL

Mr. Keene Simonds
San Diego LAFCO Executive Officer

RE: Ad Hoc Advisory Committee—Rainbow MWD and Fallbrook PUD Reorganization Proposals

Dear Mr. Simonds:

I am submitting a public comment for the July 6th meeting of the Ad Hoc Advisory Committee pursuant to Public Comment item of the meeting's agenda.

I support the Ad Hoc Advisory Committee managing a comprehensive analysis of the merits and consequences of Rainbow's and Fallbrook's proposal. I share my perspective on what analysis would be helpful in reaching a conclusion about Rainbow and Fallbrook's proposal.

I moved to Fallbrook last September and became aware of the Rainbow MWD and Fallbrook PUD plans to detach from the San Diego County Water Authority. As a new homeowner, I am concerned about the future water supply reliability of water service and hitching my water bill to the Metropolitan Water District of Southern California.

I am an expert in water resource matters, including the Colorado River, the State Water Project and Southern California water agencies. My expertise includes water supply reliability, water economics and strategic planning, with four decades of experience on behalf of public and private sector clients. For more information, visit my firm's website (www.stratwater.com) and my blog (www.hydrowonk.com).

The public information I have reviewed is incomplete at best and insufficient for disciplined decision-making. Below, I summarize the key points that I have previously made last October before San Diego LAFCO, last December before the Rainbow MWD board, and last March in a letter to the editor of Village News, all of which are attached for your convenience.

From the perspective of a Fallbrook resident, my objective is that decisions are made with thorough and publicly vetted professional analysis of the future water supply reliability and water rates of the Metropolitan Water District of Southern California versus the San Diego County Water Authority.

As I shared last October with San Diego LAFCO, the reliability of water service will be a key driver of property values. At a minimum, disclosures by real estate developers going forward will need to address the consequences of decisions by governmental agencies, including San Diego LAFCO on the future market value of real estate in their service areas. I urge the Ad Hoc Committee to assess the water supply reliability inherent in the Rainbow and Fallbrook proposals.

Since 2003, Metropolitan's Colorado River water supplies have fallen by 400,000 acre-feet per year. Metropolitan's other major water source, the State Water Project, has been in free

fall for over a decade. It will be another decade at least before we will know whether Governor Newsom's new attempt of resurrecting an improved the State Water Project proves successful.

In comparison, San Diego's Colorado River water supplies secured through its long-term agreement with the Imperial Irrigation District (whom I represented in negotiations) and related Quantification Settlement Agreement are senior to Metropolitan's Colorado River water supplies. Where Metropolitan's non-Colorado River water supplies are claims on a deteriorating hydrologic lottery (the State Water Project), San Diego's non-Colorado River water supplies are the drought-proof desalinated water supply from the Carlsbad Desalination Plant.

By leaving the Water Authority, Fallbrook and Rainbow would be trading senior water rights for junior water rights. Would a responsible provider of municipal water service make this trade?

None of these factors are considered in the Weinberg Water Consulting report on water supply reliability. Instead, he calculates that detachment will result in Rainbow municipal water users facing greater cutbacks in municipal water service when Metropolitan water supplies prove inadequate to meet customer demands. The Weinberg study does not include quantitative risk assessments like that undertaken by the Bureau of Reclamation for Colorado River water supplies and by the California Department of Water Resources for State Water Project supplies. I trust the Ad Hoc Committee will do better.

The existing analysis of future water rates is no better. As I told the Rainbow board last December,

> "What matters is how water rates will evolve in the future. Capital markets are aware of Metropolitan's water rate history: its rates and charges have increased substantially faster than inflation since the 1960s. The experience over the last ten years is no exception. A comparative analysis requires addressing the fundamentals of Metropolitan's future versus the Water Authority. Where Metropolitan is still seeking new water supplies, the Water Authority has secured its investments in Colorado River water and desalinated seawater. Going forward, the 'stubborn dynamics' of Metropolitan rates must be compared with the Water Authority's contractual provisions for its Colorado River water supplies and Carlsbad desalinated water."

One cannot find any of this in Rainbow's materials.

What should the Ad Hoc Committee do? In my letter to the Valley News, I asked which local non-profit will step up and sponsor townhalls to better understand the proposal and "kick the tires hard to assure ourselves that the detachment proposal will not become a 'Fallbrook Folly." The Ad Hoc Committee can develop the analysis and materials to serve that civic function.

I conclude with two points that I have made on previous occasions. COVID-19 threatens to up-end the water industry's economic model and requires "kicking up a notch" the industry's

strategic planning, risk assessment and learning.[1] How the world looks today may be different than how it looked on New Year's Eve. Therefore, the Ad Hoc Committee's assessment of the future must consider the new challenges facing the water industry from COVID-19.

Second, the Ad Hoc Committee will best serve the public interest by a disciplined and timely process. Develop up front a written scope of work and assignment of responsibilities acceptable to the public agencies that includes a timeline for key milestones to assure that the analysis is conducted within a defined time period. I recommend an expeditious schedule measured in months because (1) I believe it should be feasible, (2) provides enforceable incentives for the parties, and (3) avoids a protracted dispute among the parties.

Regarding the latter point, as a former resident of the City of Claremont in Los Angeles County, I have witnessed personally and professionally how poorly thought out proposals can divide a community politically and, at least in the case of Claremont, the ultimate failure of an ill-conceived venture cost city taxpayers $10 million spent on lawyers and consultants advocating the condemnation and a multi-million liability to the local water utility (whom I have represented) after the city lost in superior court.

Please feel free to contact me if you have questions or seek further input. I stand ready to help that, whatever the ultimate outcome, the full consequences of the proposals are fully and properly understood.

Sincerely,

Rodney T. Smith

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Cell: (951) 201-5603

[1] See my blog posts, "COVID-19 Will Change the Water Industry: A Trilogy—The Industry's Economic Model is Dead", https://hydrowonk.com/blog/2020/04/20/covid-19-will-change-the-water-industry-a-trilogy-the-industrys-economic-model-is-dead/, and "COVID-19 Will Change the Water Industry: A Triology Engage in Strategic Planning, Risk Assessment and Learning" https://hydrowonk.com/blog/2020/05/19/covid-19-will-change-the-water-industry-a-trilogy-engage-in-strategic-planning-risk-assessment-and-learning/

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Our Region's Trusted Water Leader
San Diego County Water Authority

July 15, 2020

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.

[1]Given 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

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 discussion[3] 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.

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.

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 Albrght, 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
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July 23, 2020

Via U.S. Mail and Email to: Keene.Simonds@sdcounty.ca.gov

Keene Simonds
Executive Officer
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San Diego, CA 92123

Re: CEQA Process for Fallbrook Public Utility District's Reorganization Application

Dear Mr. Simonds:

Best Best & Krieger LLP represents Fallbrook Public Utility District ("FPUD") as general counsel. We submit this letter to the San Diego County Local Agency Formation Commission ("LAFCO") in response to the San Diego County Water Authority's ("SDCWA") July 2, 2020 letter to LAFCO ("SDCWA Letter"). Because the SDCWA Letter misstates both the law and the facts, we felt compelled to provide LAFCO with this response.

1. The stipulated judgment between FPUD and Otay Water District explicitly affirms the validity of FPUD's exemption determination.

In the SDCWA Letter, SDCWA appears to argue that a settlement negotiated between FPUD and Otay Water District somehow binds LAFCO and requires LAFCO to prepare an environmental impact report ("EIR") for FPUD's Reorganization Application ("Reorganization Application"). This argument grossly misstates the facts.

On December 9, 2019, FPUD adopted Resolution No. 4985, which determined that the Reorganization was exempt from CEQA review and authorized FPUD's General Manager to submit a Reorganization Application to LAFCO to detach from SDCWA and annex to Eastern Municipal Water District ("Eastern") (the "Reorganization"). The purpose of the Reorganization Application and the effect of the Reorganization, if approved, would be to change FPUD's wholesale water provider from SDCWA to Eastern. FPUD filed a Notice of Exemption on December 24, 2019. SDCWA, for whatever reason, did not bring a legal challenge to either FPUD's CEQA determination or FPUD's decision to pursue Reorganization.

Otay Water District, however, did bring a lawsuit contending that FPUD's exemption determination and Notice of Exemption violated CEQA. Soon after the lawsuit was filed—before the record was certified and merits briefing commenced, and in order to not needlessly spend FPUD ratepayer funds in defending a lawsuit that in FPUD's opinion was baseless and vexatious—FPUD and Otay Water District settled the lawsuit through a stipulated judgment. The stipulated judgment effectively affirms the actions taken by FPUD at its December 9, 2019 meeting, and restates that which the law already requires.

The stipulated order for judgment states: FPUD's "*CEQA Finding and the 2019 NOE are valid* . . . ." Accordingly, contrary to SDCWA's assertion, the stipulated order thus expressly affirms the validity of FPUD's exemption determination. The stipulated order also states that FPUD's exemption determination and Notice of Exemption do not apply to "any other agency's action on any potential detachment or annexation" and that other agencies, including LAFCO, may not rely on FPUD's exemption determination in connection with FPUD's Reorganization Application. In the SDCWA Letter, SDCWA argues that this language means that FPUD "admitted that" its Notice of Exemption is "insufficient to substitute for a full and complete CEQA analysis by LAFCO, acting as lead agency with respect to the detachment and annexation application[. . .]." This argument is specious. SDCWA was not a party to Otay's lawsuit nor a signatory to the stipulated order and thus is not qualified to speak to the stipulated order's meaning. Further, this language in the stipulated order recognizes that LAFCO: (1) was not a party to Otay's lawsuit; (2) had not yet taken any action on FPUD's Reorganization Application; and (3) retains full discretion regarding FPUD's Reorganization Application consistent with state law.

Indeed, the stipulated order expressly states that it does not limit LAFCO's discretion to "*independently determine the applicability of CEQA, or what level of CEQA review may or may not be required*" in connection with FPUD's Reorganization Application. (emphasis added.) The stipulated order thus simply contemplates, as LAFCO is fully aware, what the law requires—that in processing FPUD's Reorganization Application, LAFCO would independently determine whether CEQA applied to the Reorganization; if it did apply, whether the Reorganization was exempt; and if it was not exempt, what level of CEQA review was required. As such, SDCWA's suggestion that FPUD admitted an EIR would be required has no basis in fact.

2. The proposed Reorganization is not subject to CEQA.

CEQA only applies to discretionary actions that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Resources Code § 21080, subd. (a), and § 21065.) As detailed in FPUD's March 17, 2020 Reorganization Application, the Reorganization will not cause *any* physical

change to the environment, either direct or indirect. The Reorganization will not require the construction of any new or additional infrastructure that would not otherwise be needed if LAFCO denied the Reorganization Application and FPUD remained a member of SDCWA. Further, the Reorganization would not result in any change in the manner in which FPUD receives its water supplies—or change the source of water for such supplies. FPUD currently receives Metropolitan Water District water by purchase through SDCWA, which water is delivered directly from Metropolitan Water District facilities—a fact that will not change if the Reorganization is approved. If the Reorganization is approved, FPUD would receive Metropolitan Water District water by purchase through Eastern. Thus, if the Reorganization Application is approved, FPUD will continue to receive the same water, through the same infrastructure, that it currently receives as a member of SDCWA. FPUD will simply pay less for that water. As LAFCO knows, CEQA does not apply to purely economic issues. (CEQA Guidelines, § 15131.)

3. The proposed Reorganization is exempt from CEQA.

The proposed Reorganization is also exempt from CEQA, meaning that no CEQA review is required. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817.) Section 15320 of the CEQA Guidelines exempts "changes in the organization or reorganization of local government agencies where the changes do not change the geographical area in which previously existing powers are exercised." (CEQA Guidelines, § 15320.) Here, the Reorganization proposes a change in FPUD's organizational structure that will not will not result in any change to the geographic area in which FPUD exercises its previously existing powers. As such, the proposed Reorganization fits squarely within Section 15320 and is exempt from CEQA.

Apparently, SDCWA disagrees. First, in the SDCWA Letter, SDCWA argues, that Section 15320 is inapplicable because the proposed Reorganization would "change the geographical areas in which" SDCWA, "by subtraction, and Eastern, by addition, exercise their powers." (emphasis omitted.) This argument fails. As discussed above, the proposed Reorganization proposes a change to FPUD's wholesale water provider and that change will not result in any modification to the geographic area in which FPUD exercises its existing powers, and will not change the geographic area in which wholesale water services are provided. Moreover, the argument ignores the fact that the examples listed in Section 15320—creation of a subsidiary district, consolidation of two or more districts, and merger of a district with a city where the district is located entirely within the city—all contemplate some sort of "subtraction" and "addition." For example, if two or more districts are consolidated, the geographic area of one district would necessarily be subtracted while the other's is increased.

Second, citing *Azusa Land Reclamation Co. v. Main San Gabriel Watermaster* (1997) 52 Cal.App.4th 1165, SDCWA contends that categorical exemptions like Section 15320 should be narrowly interpreted. But given that the Reorganization clearly fits within Section 15320's parameters, SDCWA's interpretation is not narrow. Instead its interpretation nullifies Section 15320 by ignoring its plain language. Further, *Azusa Land Reclamation* is factually different because it involved a proposal to dump 3.2 million tons of garbage into an 80-acre unlined solid waste landfill overlying a groundwater basin that provided water to over one million people. (*Ibid*, at p. 1175-1176.) In contrast to those facts, the Reorganization only proposes a change in what entity will deliver wholesale water supplies to FPUD. It does not propose any infrastructure construction or change in the amount of water supplied or source of the water.

Third, SDCWA asserts that the proposed Reorganization is not specifically listed as an example in Section 15320 and as such, the exemption does not apply. Section 15320, however specifically states that "[e]xamples include *but are not limited to*" the examples listed in subdivisions (a), (b) and (c) to Section 15320. (CEQA Guidelines § 15320)(emphasis added).) Section 15320 thus expressly states that other types of changes in organization structure will fit within the exemption.

Finally, citing CEQA Guidelines section 15300.2, subdivision (c), SDCWA argues that there are "unusual circumstances" that preclude use of the Section 15320 exemption here. The "unusual circumstances" exception to the applicability of an exemption only applies where the *proposed activity itself* is unusual as compared to the class of activities normally covered by the exemption. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 241 Cal.App.4th 943, 955-956.) The "unusual circumstances" exception would apply here only if there was substantial evidence showing there was something unusual about the Reorganization as compared to governmental organizations or reorganizations in general, or annexations or detachments in particular. SDCWA has presented no evidence, much less substantial evidence, of anything unusual about the proposed Reorganization. "Argument, speculation, unsubstantiated opinion, or narrative" do not constitute substantial evidence. (CEQA Guidelines, § 15384, subd. (a).)

4. SDCWA does not present any substantial evidence that the Reorganization might have a significant effect on the physical environment.

On June 16, 2020, LAFCO's staff prepared a Preliminary Staff Report stating that the Reorganization Application is "expected to be" exempt from the CEQA under Section 15320.

SDCWA opposes this preliminary determination but the SDCWA Letter does not present any substantial evidence sufficient to call the validity of the preliminary determination into question.[1]

In the SDCWA Letter, SDCWA argues that an initial Study and an EIR are required. As LAFCO is aware, an initial study is only required when the lead agency finds, after preliminary review, that the activity is subject to CEQA. (CEQA Guidelines, §§ 15061, 15063, subd. (a).) As FPUD explains above and in its Reorganization Application, the Reorganization is not subject to CEQA because the Reorganization will not result in any direct or indirect change to the physical environment.

An EIR is only required where there is a fair argument—based on substantial evidence—that the proposed activity may have a potentially significant impact on the environment. (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 685.) SDCWA's vague allegations of environmental impacts do not meet this test.

For example, SDCWA speculates that the Reorganization would increase reliance on the Sacramento-San Joaquin Bay Delta. However, Eastern's technical memorandum (included as part of FPUD's Reorganization Application) states: "The de-annexation of FPUD and RMWD from the SDCWA would not result in Metropolitan, as a State Water Contractor, increasing its reliance on the Sacramento-San Joaquin Delta (Delta) since FPUD and RMWD would continue to be supplied from Metropolitan's Robert A. Skinner Water Treatment Plant. . . . There would be no net increase in imported water to the region." The change in wholesale water suppliers from SDCWA to Eastern will not change the source of water supplied to FPUD. As such, there is no evidence that the Reorganization would have any significant impact on the Delta.

SDCWA also posits that an EIR is necessary to analyze cumulative impacts resulting from FPUD's proposed Reorganization in combination with Rainbow Municipal Water District's proposed detachment and annexation, which LAFCO is also considering. A "'cumulative impact of a project is an impact to which that project contributes and to which other projects contribute as well. [¶] *The project must make some contribution to the impact; otherwise, it cannot be characterized as a cumulative impact of that project*.'" (*Sierra Club v. West Side Irrigation Dist.* (2005)128 Cal.App.4th 690, 700 [citing Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2003) § 13.36, p. 533])(emphasis added.) As explained above, the proposed Reorganization would not have any impact on the physical environment. By definition, therefore, the Reorganization cannot result in cumulative environmental impacts.

[1] We note that many, if not all, of the assertions included in SDCWA's July 2, 2020 letter were also included in SDCWA's December 9, 2019 letter to FPUD, received the morning of FPUD's December 9, 2019 Board Meeting at which the FPUD Board would consider initiating the Reorganization. Contrary to SDCWA's recent assertions, FPUD did not ignore SDCWA's comments—in fact as part of its staff presentation, FPUD responded to each of SDCWA's comments.

Finally, SDCWA complains that FPUD refused to engage with stakeholders, provided only limited information to the public and ignored comments from other agencies. This is false and, in addition to being false, these complaints do not constitute substantial evidence that the Project might result in significant impacts to the physical environment. Specifically, during the months preceding the December 9, 2019 decision to authorize submittal of the Reorganization Application, FPUD gave the public and interested parties extensive information regarding the proposed Reorganization and provided many opportunities for the public to comment. Further, FPUD has been attempting since Spring of 2019 to engage with SDCWA, as a "subject agency" under the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH"), regarding the Reorganization, to no avail.[2] (Gov. Code §56077 ["'Subject Agency' means each district or city for which a change of organization or reorganization is proposed or provided in a plan of reorganization"].) FPUD has also reached out to numerous SDCWA member agencies to discuss its Reorganization Application—while not "subject agencies," "interested agencies," or "affected agencies," as defined by CKH, FPUD desired to provide a forum to discuss any concerns these agencies may have.[3] Again, as stated above, these complaints do not constitute substantial evidence that the Project might result in significant impacts to the physical environment.

FPUD's Reorganization Application provides substantial evidence demonstrating that the Reorganization would not have any direct or indirect physical impact on the environment. SDCWA does not offer any evidence to rebut this and instead proffers only speculation, argument and unsubstantiated opinion. This is insufficient as a matter of law to require an EIR.

5. Conclusion

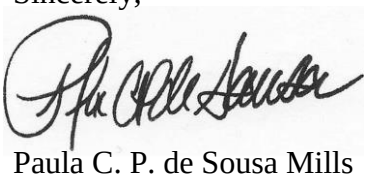
The law and the evidence fully support LAFCO Staff's preliminary determination that FPUD's proposed Reorganization is exempt from CEQA. SDCWA opposes Reorganization but it misstates the facts, misinterprets the law, and fails to present any substantial evidence that would support reconsidering LAFCO Staff's preliminary determination.

[2] See October 10, 2019 letter to SDCWA Chair, Jim Madaffer, delineating the various attempts to engage SDCWA and SDCWA member agencies in meaningful dialogue regarding the proposed Reorganization.

[3] SDCWA has regularly included agenda items related to the proposed Reorganization on its Board agendas, where representatives from all SDCWA member agencies receive updates on the Reorganization from SDCWA. In addition, SDCWA also provides regular updates to the general managers of each of its member agencies during the SDCWA monthly "GM Meetings." In both of these forums, FPUD has continued to identify that it is willing to have more detailed discussion or provide any information at the request of any SDCWA member agency. The idea that other interested parties are not aware of this process or have not had the opportunity to provide input is baseless.

We appreciate the work that LAFCO and its Staff is undertaking to review the FPUD Reorganization Application, and ask that this letter be distributed to the members of the Ad Hoc Advisory Committee on the RMWD and FPUD Reorganization Proposals. We remain available to provide LAFCO Staff with further information not only regarding the content of this letter, but also regarding the FPUD Reorganization Application itself.

Sincerely,



Paula C. P. de Sousa Mills
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cc: Jack Bebee, FPUD General Manager
Holly Whatley, Commission Counsel
Mark Hattam, General Counsel SDCWA
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Refer To File # 501668-0005

VIA EMAIL AND U.S. MAIL

July 15, 2020

Mark Hattam
General Counsel
San Diego County Water Authority
4677 Overland Avenue
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Re: Response to San Diego County Water Authority's ("SDCWA") July 2, 2020 Objection to the Proposed Eastern Municipal Water District Wholesale Water Reorganization and Annexation to Eastern Municipal Water District for Wholesale Water Service with Concurrent Detachment from SDCWA

Dear Mr. Hattam:

Nossaman LLP is general counsel to the Rainbow Municipal Water District ("RWMD"). This letter responds to SDCWA's meritless objection to the above-referenced reorganization, detachment and annexation.

To the degree that SDCWA's objection is based on the San Diego County Local Agency Formation Commission ("SD LAFCO") staff's preliminary determination that the Proposed Eastern Municipal Water District Wholesale Water Reorganization and Annexation to Eastern Municipal Water District for Wholesale Water Service with Concurrent Detachment from San Diego County Water Authority (collectively, "Project") is exempt from the California Environmental Quality Act ("CEQA"), SDCWA fails to identify any evidentiary, legal, or policy grounds for SD LAFCO staff to revisit the preliminary determination. SDCWA's objection also attempts to rehash CEQA claims that have already been resolved through a settlement that validated RMWD's decision to exempt the Project from CEQA review under CEQA Guidelines section 15320 (changes in the organization of local agencies).

SDCWA's assertion that RMWD failed to engage with SDCWA badly misstates the facts. Included for your reference as **Attachment 1** to this letter, is a listing of RMWD's repeated efforts to engage specifically with SDCWA and its member agencies in connection with RMWD's proposed detachment from SDCWA.

I. The Settlements That Resolved Otay Water District's CEQA Challenges Expressly Affirmed the Validity of RMWD's Decision to Exempt the Project From CEQA Review.

On December 3, 2019, the RMWD Board of Directors determined that the Project was exempt from CEQA review and authorized RMWD's General Manager to submit an application to SD LAFCO to detach from SDCWA and annex to Eastern Municipal Water District. In finding the

application exempt from CEQA review, RMWD's Board of Directors was legally required to consider the environmental consequences of the whole of the detachment and annexation, and not the specific governmental approval before it (i.e., the application). (See CEQA Guidelines, §§ 15060-15061.) This is because CEQA and the CEQA Guidelines define the term "project" broadly as the underlying "activity which is being approved and which may be subject to several discretionary approvals by governmental agencies." (CEQA Guidelines, § 15378, subd. (c); see also Pub. Resources Code, § 21065.) As such, RMWD considered as part of its CEQA screening process the reorganization, detachment, and annexation that are pending SD LAFCO's review.

SDCWA did not challenge RMWD's CEQA determination, or RMWD's decision to pursue the detachment and annexation to which SDCWA now objects. RMWD's actions were, however, challenged under CEQA by Otay Water District ("Otay") on the grounds that categorical exemption 15320 does not apply to the Project and that RMWD was required, but failed to consider the Project's potentially significant infrastructure, Sacramento-San Joaquin Bay Delta, and cumulative impacts when taken together with Fallbrook's proposed detachments from SDCWA.

Otay and RMWD executed a settlement agreement mere months after Otay filed its action – and before RMWD filed any responsive pleading or dispositive motion -- whereby the parties stipulated as follows:

> On December 3, 2019 Respondent approved the "Resolution of Application Authorizing the GM to Prepare and Submit an Application to San Diego LAFCO to Detach from SDCWA and Annex to EMWD" and Respondent's related Notice of Exemption ("NOE"), which was posted and filed with the County Clerk on December 5, 2019. ***Prior to the approval, Respondent examined the aforementioned Resolution and Application to determine whether they were subject to the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and determined that they were exempt. The NOE is valid*** *. . . .*

Because SD LAFCO was not a party to Otay's suit, and had not yet rendered any decision regarding RMWD's application, the settlement expressly reserved SD LAFCO's discretion, consistent with state law, "to independently determine the appropriate level of CEQA review required for any potential detachment . . . or any potential annexation . . . ." The stipulation does not preclude SD LAFCO from reaching the exact same determination that was reached by RMWD.

The stipulation also recites what is already expressly provided for under state law; that SD LAFCO would be required to file its own notice of exemption, if it determined to exempt the Project from CEQA review and, subsequently, elect to shorten the period for CEQA litigants to challenge SD LAFCO's own future CEQA determination.

CEQA does not require public agencies to file notices of exemption when deciding to exempt activities from CEQA review. (See Pub. Resources Code, § 21152, subd. (b); CEQA Guidelines, § 15062, subd. (a).) The chief purpose of a notice of exemption is to start the

running of a shorter statute of limitations than would otherwise apply. "A notice of exemption ordinarily has no significance other than to start the statute of limitations running." (Kostka & Zischke, Practice Under the California Environmental Quality Act, § 5.116, citing *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1385.)

The settlement agreement, in relevant part, provides:

> The NOE [Notice of Exemption] may not be utilized or relied upon by the San Diego LAFCO or any other agency for the purpose of that agency's CEQA compliance in connection with any potential detachment by Respondent from the San Diego County Water Authority, or for any potential annexation by Respondent into Eastern Municipal Water District.

It is quite clear that SD LAFCO would file its own notice of exemption, with or without the settlement agreement, if SD LAFCO were to determine its action on the reorganization exempt from CEQA review.

SDCWA was not a party to the settlement agreement. Yet, SDCWA purports to be best-positioned to interpret the settlement's meaning. SDCWA's interpretation fails on the plain language of the settlement. Rather than operating as an admission of insufficiency of RMWD's CEQA review, as SDCWA claims, the settlement clearly and expressly states that RMWD's exemption determination in the "NOE is **valid**." (See CEQA Guidelines, § 15062, subd. (a)(4) [a notice of exemption is required to include "a brief statement of reasons to support the finding" of exemption].)

SDCWA makes much of the settlement's reservation of SD LAFCO's CEQA discretion which, as discussed above, could not bind SD LAFCO in any event. It is understood that SD LAFCO will exercise its discretion, consistent with the law and the evidence, when it acts on the proposed reorganization, detachment and annexation.

II. The Proposed Reorganization, Detachment and Annexation are not Subject to CEQA.

CEQA applies only to discretionary "activities which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (See Pub. Resources Code, §§ 21080, subd. (a) and 21065 [defining project].) As is documented in RMWD's March 18, 2020 Reorganization Application to SD LAFCO, the water lines that convey water to RMWD do not coincide with the delineation of County lines. RMWD currently has connections directly to Metropolitan Water District's distribution system, which will remain in place and will continue to remain the source of RMWD's water supply under Project implementation. The Project neither includes nor contemplates any new water service connections or divestitures from service. Accordingly, RMWD's annexation to Eastern Municipal Water District and concurrent detachment from SDCWA involves a paper change of boundaries that results in no direct or reasonably foreseeable indirect changes to the environment, and is therefore not subject to CEQA.

Changes in the organization or reorganizations of local governmental agencies are also recognized by the California Natural Resources Agency as a category of activities that are presumptively exempt from CEQA review. (See Pub. Resources Code, § 21084, subd. (a); CEQA Guidelines, § 15320.) If a project is found to be subject to a categorical exemption, no formal environmental review is required. (*City of Pasadena v. State* (1993) 14 Cal.App.4th 810, 820.) A project that is categorically exempt "may be implemented without any CEQA compliance whatsoever." (*Association for Protection of Environmental Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 726.)

CEQA Guidelines section 15320 applies where there is no change in the geographical area in which previously existing powers were exercised, and is facially applicable to the reorganization, detachment and annexation. RMWD currently receives Metropolitan Water District water through SDCWA and, if the reorganization, detachment and annexation are accomplished, would continue to receive Metropolitan Water District water from Eastern Municipal Water District using existing connections and distribution system. As discussed above, RMWD's service area will not change as a result of the proposed detachment and annexation. As such, the proposed reorganization affects no physical changes to previously rendered governmental services.

Citing *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1193, SDCWA argues that categorical exemptions are to be applied narrowly in order to maximize the protection of the environment provided by CEQA. *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* concerned a decision to exempt from CEQA review a proposal to dump 3.2 million tons of garbage into an 80-acre unlined municipal solid waste landfill overlying a groundwater basin that supplied the water needs of approximately 1,000,000 people. (See *id*. at p. 1175-1176.) This decision is factually distinguishable from RMWD's proposed change of wholesale water suppliers. However, because the reorganization, detachment, and annexation result in no "direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" CEQA's environmental protections do not apply in the first instance. (See Pub. Resources Code, §§ 21080, 21065.)

SDCWA next argues that none of the illustrative examples listed in CEQA Guidelines section 15320 describe the specific circumstances of RMWD's application, because "[b]y seeking detachment from the Authority and annexation by the Riverside County-based Eastern . . . [RMWD] will *change the geographical areas* in which the Authority, by subtraction, and Eastern, by addition *exercise their powers*." (Emphasis in original.) SDCWA is wrong. Indeed, each of the examples listed in CEQA Guidelines section 15320 contemplate the "subtraction" and "addition" of a geographic service area in various circumstances. (See CEQA Guidelines, § 15320, subds. (a)-(c).)

The courts have liberally construed categorical exemptions to effectuate their obvious purpose. (Kostka & Zischke, Practice Under the California Environmental Quality Act, § 5.126, citing *Save the Plastic Bag Coalition v. County of Marin* (2013) 218 Cal.App.4th 209, 219.) The proposed annexation and detachment are functionally identical to the examples listed in CEQA Guidelines section 15320, and are likewise exempt from CEQA review, because they involve no physical changes in service. (See CEQA Guidelines, § 15320, subd. (a)-(c); see also *Walters v.*

City of Redondo Beach (2016) 1 Cal.App.5th 809, 818 [holding that car washes are functionally similar to the commercial enterprises expressly listed in categorical exemption and, therefore, exempt].)

Finally, CEQA Guidelines section 15320 expressly provides that the examples listed therein are nonexclusive. Accordingly, the mere fact that the specific circumstances of RMWD's application are not described in the regulation is not dispositive.

For all of the above reasons, the reorganization, detachment, and annexation are not subject to CEQA and are facially exempt from CEQA review under CEQA Guidelines section 15320.

III. SDCWA Has Failed to Present Any Legally Relevant Argument or Evidence That Warrants SD LAFCO Staff Revisiting the Preliminary CEQA Determination.

SDCWA asserts that the Project may result in potentially significant environmental impacts and that, therefore, SD LAFCO must conduct a full environmental review, including the preparation of an Initial Study and an Environmental Impact Report. SDCWA's objection then states that "***to the extent that substantial evidence exists***" that the Project may have a significant effect, SD LAFCO will be required to prepare an EIR. (Emphasis added.) SDCWA's objection identifies no such evidence.[1] (See CEQA Guidelines, § 15384, subd. (a) ["Argument, speculation, unsubstantiated opinion, or narrative" do not constitute substantial evidence."]) Indeed, SDCWA's objection is based on the very same allegations that Otay abandoned shortly after filing its CEQA suit against RMWD.

A. RMWD's Proposed Detachment and Annexation Do Not Involve Unusual Circumstances.

Categorical exemptions do not apply where there is a reasonable possibility that an activity will have a significant effect on the environment due to "unusual circumstances." (See CEQA Guidelines, 15300.2, subd. (c).) This exception applies in the limited situation where the activity itself is unusual, or atypical, as compared to the classes of activities normally covered by the categorical exemption. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 241 Cal.App.4th 943.)

The possibility that an activity may result in potentially significant environmental effects does not make a project unusual for purposes of the unusual circumstances exception. (See *id.* at pp. 1104-1105.) RMWD's request to change wholesale water suppliers is a routine matter. SDCWA's vague and unsupported allegations of environmental impacts are legally irrelevant to

[1] Notably, an Initial Study is required only where a project is found to be subject to CEQA in the first instance. (CEQA Guidelines, § 15063, subd. (a).) As discussed above, the Project is not subject to CEQA review. An Environmental Impact Report is required only where there is a fair argument, based on substantial evidence, that the project may result in a potentially significant impact. (CEQA Guidelines, § 15063, subd. (b).) SDCWA has failed to provide a fair argument of a potentially significant impact.

the question of whether RMWD's application presents unusual circumstances. SDCWA fails to identify any aspect of RMWD's application that renders it atypical, as compared to annexation and detachment actions that are normally considered by SD LAFCO.

B. The Infrastructure Improvements Referenced in RMWD's Application Are Not New Information, Were Specifically Considered by RMWD When it Determined the Project was Exempt from CEQA Review, and Would Be Undertaken With or Without the Project.

SDCWA asserts that RMWD's application to SD LAFCO reveals not previously considered infrastructure improvements and a development project with unexamined growth inducing effects. As stated in RMWD's application, all of the improvements identified in RMWD's application were included in previous Water Master Plans and other Capital Improvement Project forecasts, and are needed to maintain RMWD's aging infrastructure with or without the proposed reorganization, detachment and annexation. The identified improvements are also not new information. The RMWD Board of Directors considered these improvements when it found the Project exempt from CEQA review. The Rice Canyon Tank pipeline that is referenced in RMWD's application is proposed to interconnect to a development project that was environmentally cleared and approved by the County of San Diego nearly a decade ago and will, therefore, not result in any new or unanalyzed growth-inducing effects.

C. The Project Will Not Increase Reliance on the Sacramento-San Joaquin Bay-Delta.

RMWD's application documents that the Project will not result in any impact on the Delta. This documentation includes, but is not limited to, a technical memorandum prepared by Eastern Municipal Water District, which concludes: "The de-annexation of FPUD and RMWD from the SDCWA would not result in Metropolitan, as a State Water Contractor, increasing its reliance on the Sacramento-San Joaquin Delta (Delta) since FPUD and RMWD would continue to be supplied from Metropolitan's Robert A. Skinner Water Treatment Plant . . . . **There would be no net increase in imported water to the region.**" (Emphasis in original.) The water supply will be from the exact same blend of imported water sources whether RMWD is a member of SDCWA or Eastern Municipal Water District and thus the change in wholesale suppliers, by definition, cannot have any impact on the environment. Claims related to impacts on the Sacramento-San Joaquin Bay Delta lack any factual validity.

D. RMWD's Application Does not Result in Cumulative Impacts That Preclude Reliance on CEQA Guidelines Section 15320.

An action that results in no environmental impacts cannot result in cumulative environmental impacts. (See *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832.) As discussed above, the proposed reorganization, detachment and annexation will result in no changes in the physical environment.

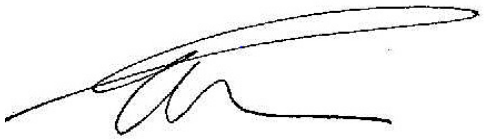
IV. SDCWA's Claim That RMWD Did Not Engage With SDCWA and Other Stakeholders in Connection with its Proposal to Detach from SDCWA is False.

SDCWA asserts that RMWD provided "very limited information to the public," "ignored comments" and refused to engage with stakeholders. These accusations are patently false. RMWD offered multiple opportunities for interested parties to provide comments and obtain information for months leading up to the RMWD Board of Directors' decision to authorize RMWD's General Manager to file an application for detachment from SDCWA and annexation to Eastern Municipal Water District. (See, e.g., Attachment 1.) Further, as detailed in RMWD's application, RMWD had been attempting to engage specifically with SDCWA since May 2019.

V. Conclusion.

For the above reasons, SD LAFCO staff's preliminary determination to exempt RMWD's proposed reorganization, detachment and annexation is fully consistent with the law and supported by the record evidence. SDCWA's latent CEQA objection, which meanders through issues that have already either been resolved in RMWD's favor or fully addressed by technical documentation, is testament of SDCWA's deliberate obstruction of RMWD's application.

Sincerely,



Elizabeth Klebaner
Nossaman LLP

LK:

Cc: Keene Simonds; Jack Bebee

Attach.

ATTACHMENT 1

The following discussion is excerpted from the Rainbow Municipal Water District's Supplemental Information Package for Reorganization Application, included as part of the District's March 18, 2020 Reorganization Application. The complete Reorganization Application is available at https://www.sdlafco.org/home/showdocument?id=4830

The District, in accordance with SDLAFCO Policy L-107, began its outreach with the primary affected agency, SDCWA, on May 21, 2019. On that day, RMWD General Manager Tom Kennedy met with Sandra Kerl, Acting General Manager of SDCWA and later in the day with SDCWA Board Chairman Jim Madaffer and Vice Chairman Gary Croucher. In these meetings, the District indicated that it was exploring this process and requested that we meet formally to discuss the County Water Authority Act's provisions related to detachment. At the conclusion of the meeting with SDCWA Chair and Vice Chair, we agreed to meet in a few weeks to discuss the matter.

Prior to that meeting, SDCWA served RMWD with a Public Records Act request for information, communications or other documents related to our exploration of the detachment. The meeting that was discussed in May was never set as SDCWA wanted to review the PRA information prior to holding a meeting. Those documents were produced to SDCWA in June 2019. The following is a chronology of the Districts efforts to comply with SDLAFCO Policy L-107:

- June 27, 2019 – at the Regular SDCWA Board meeting, both Jack Bebee (GM at FPUD) and Rainbow GM Tom Kennedy notified all SDCWA Board Members in open session about our desire to meet with any of them to discuss this matter.
- July/August 2019 – both Jack Bebee and RMWD GM Tom Kennedy met with several SDCWA member agencies to discuss the matter. There were also discussions at the SDCWA Member Agency Manager meeting that is attended by nearly every agency.
- July 30, 2019 – Representatives from staff and legal counsel from SDCWA, FPUD, and RMWD met at the SDCWA offices to discuss the potential detachment. While FPUD and RMWD came prepared to discuss the provisions of the County Water Authority Act, SDCWA staff and counsel deferred from any such discussion, indicating that they were not up to speed on the Act.
- August 22, 2019 – SDCWA held a closed session meeting on the detachment discussion and excludes both RMWD and FPUD from the discussion on the grounds of "risk of litigation". To be clear, neither FPUD nor RMWD has any basis for litigating anything with SDCWA, so our exclusion was questionable. RMWD and FPUD were allowed to make a statement, but each was only afforded three minutes to address the Board from the lectern where public comments are received. In his comments, RMWD GM Kennedy reiterated his willingness to discuss the detachment with any interested party. At this closed session, the SDCWA Board authorized a contract for $1 Million for legal services related to the detachment.
- September 16, 2019 – RMWD GM Kennedy and FPUD GM Bebee met at FPUD's offices with Sandra Kerl, SDCWA Acting GM and consultant Juanita Hayes to discuss detachment issues without their respective legal counsels present. This was a productive meeting at which we all agreed to meet again with our finance staff present to talk about specific details as to how the detachment would impact financial issues with the goal of finding a common ground.
- September 26, 2019 – At the SDCWA regular Board meeting, FPUD's Bebee again informed the entire SDCWA Board in open session that both FPUD and RMWD would like to meet with any interested party to discuss the matter.
- October 9, 2019 – FPUD GM Bebee and RMWD Gm Kennedy, along with FPUD CFO Shank, met with Sandra Kerl and Juanita Hayes at the SDCWA offices. This meeting was the follow up from

the September 16, 2019 meeting and was intended to dig into the details of financial matters. At this meeting, when no SDCWA finance staff was present, SDCWA's Kerl indicated that we would not be having the discussion we had all agreed to a few weeks before. Ms. Kerl indicated that instead of discussions with SDCWA directly, their position was that we needed to meet with the other 22 member agencies. This outcome was memorialized in an email from Ms. Kerl to GM's Kennedy and Bebee on October 10, 2019.

- October 16, 2019 – in an email communication to SDCWA and all member agencies, RMWD GM Kennedy again invited any interested party to meet with the District to discuss the detachment matter. As of the beginning of February 2020, RMWD and FPUD have met with at least 12 member agencies directly with more meetings still scheduled.
- November 6, 2019 – RMWD sent out formal letters to SDCWA and all member agencies notifying them of the District's intent to consider a Resolution of Application at RMWD's December 3, 2019 Board meeting. This letter fulfilled the requirement to provide at least 21 day's written notice in advance of the meeting.

There were a great deal more informal communications regarding the detachment between the District and affected agencies at various meetings over the months, but this summary demonstrates that the District has greatly exceeded the minimum requirements of SDLAFCO Policy L-107.

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