

October 9, 2020

**VIA EMAIL**

**MEMBER AGENCIES**

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Otay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

**OTHER  
REPRESENTATIVE**

County of San Diego

Mr. Keene Simonds  
Executive Officer

San Diego County LAFCO  
9335 Hazard Way, Suite 200  
San Diego, CA 92123  
([Keene.Simonds@sdcounty.ca.gov](mailto:Keene.Simonds@sdcounty.ca.gov))

Dear Mr. Simonds:

We watched the October 5, 2020, LAFCO Commission meeting, and were very appreciative of your update to the Commission on the Advisory Committee and expert consultant selection. We agree that some progress is being made. However, we wanted to make a few clarifying points for the record at LAFCO regarding the “exit fee” issue and consultants.

First, any current focus on a potential “exit fee” by detaching agencies to pay for their share of Water Authority obligations is premature. Though your comments on the subject fairly pointed out that this is an open issue and might involve large sums, there is a meaningful danger in repeatedly mentioning the issue (especially to the exclusion of other issues) which we believe may be subconsciously permeating some of these LAFCO discussions. Focusing on an “exit fee” *assumes* approved reorganizations. Being regularly left out of LAFCO’s comments is the possibility that the reorganizations may not be approved at all, for a host of reasons that have nothing to do with an “exit fee.”

As we noted in our recent formal Response, there are many issues of significant concern raised by the proposals, including: (a) reduced water supply reliability for Fallbrook and Rainbow water users; (b) shifting San Diego County voting rights at MWD to Riverside County, thus diminishing local control for our County’s water ratepayers and taxpayers; (c) losing water planning continuity and cohesiveness for our region; and (d) increased water demand on the Bay-Delta. Our Response of course also addressed the “exit fee” issue, but that question may never need to be reached if the reorganization requests are denied by LAFCO on other bases.

As noted by statute, “One of the objects of the commission is to make studies and furnish information to contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities.” (Gov. C. Sec. 56301.) By focusing prematurely on an “exit fee,” we believe that LAFCO may be unintentionally signaling to the public that the only substantive issue here is monetary, and that approval of the reorganizations is a given. Neither is correct. LAFCO must first address the host of vital issues that go to the very heart of whether these unprecedented requests by Fallbrook and Rainbow to move out of San Diego County are consistent with “encouraging the orderly ... development of local agencies based upon local conditions” and will “provide for the present and future needs” of San Diego County and the Rainbow and Fallbrook communities, and thus should even be countenanced at all.

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Second, we wanted to address the issue of consultants with you. As you know, LAFCO is concluding the selection process for the three general areas LAFCO identified: water supply/reliability issues; rate issues; and “exit fee” issues. However, there are two important related matters we want to discuss: (a) the need for further data from the applicants and Eastern; and (b) LAFCO remaining open to further use of consultant expertise.

In regards to the need for further information, the applications have large areas of missing data which are critical for LAFCO, the public, and all parties to have in order to fairly review the applications. Our agency identified a number of such areas in our Response, a summary of which is attached to this letter. We believe it is essential to have answers to our questions as soon as possible, so that the information from the applicants and Eastern is available as the consultants get started on their work. Please inform us as to how, and the timeline, by which this process will be handled by LAFCO.

As to the scope of the LAFCO consulting work, we also attach our letter of June 15, 2020, in which we detailed areas in which we believed consulting work would need to be performed. The Water Authority continues to believe that analysis in all these areas will be necessary, and there may be further areas as we all learn more about the full scope and details of the reorganization proposals. We trust that LAFCO will remain open to additional consulting work, as and if needed, but we would appreciate your confirmation this is the case.

Thank you for your consideration of the above issues. Please feel free to call me if you have any questions. Thank you.

Sincerely,



Sandra L. Kerl  
General Manager

Enclosures

cc via email:

Dianne Jacob, Chair, San Diego LAFCO  
Holly Whatley, Commission Counsel  
Aleks Giragosian, Deputy Commission Counsel  
Robert Barry, Chief Policy Analyst  
Mark Hattam, General Counsel, 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

Mr. Keene Simonds  
October 9, 2020  
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Tom Kennedy, General Manager, Rainbow MWD  
Alfred Smith, Counsel, Rainbow MWD  
Water Authority Board of Directors

## Questions for Rainbow

1. What Williamson Act lands are there in Rainbow's service area? (Note: LAFCO Statutes require certain special processes for such lands. See, for example, Government Code Section 56426.6 and, 56856.5. The applications skipped over the required identification.)
2. What exact infrastructure changes will Rainbow need to implement to fully serve its ratepayers if detachment/annexation request is approved?
3. What environmental review (if any) has been done for changes listed in response to question 2?
4. What are the cost estimates to date (if any) for changes listed in response to question 2?
5. For the \$11 per acre-foot charge, does Rainbow expect Eastern to provide Rainbow with any access to Eastern's non-MWD water, Eastern's water storage, or Eastern-owned water infrastructure? If Rainbow is going to receive any water from Eastern other than MWD water, or use Eastern storage, or receive access to Eastern-owned infrastructure, what are the specific details as to such items?
6. Does Rainbow have any plans for acquiring any access to Eastern's non-MWD water, Eastern's storage, or Eastern-owned infrastructure in the future? If so, what information does it have on any additional costs over \$11 acre-foot charge, and timing, of such access?
7. What specific Water Authority infrastructure would Rainbow need access to after annexation into Eastern?
8. For each item of infrastructure identified in answer to question 7, what are the specific water volumes and timing needed for use of such infrastructure?
9. Has Rainbow assessed the readiness of its facilities to serve its ratepayers after a catastrophic earthquake, if detached? If yes, provide the analysis, document, and projected rate impacts. If not, will Rainbow plan to perform the assessment and improve infrastructures as required?
10. Does Rainbow have access to the MWD 14-day plan it cited in in its application papers for repair of MWD pipelines after an earthquake on the Elsinore Fault? If so, can it be provided to LAFCO and the parties?
11. Have any other Water Authority member agencies discussed with Rainbow potential detachment of their agencies?
12. Have any other Water Authority member agencies discussed with Rainbow whether they could link their infrastructure to Rainbow's once Rainbow is part of Eastern? Conversely, has Rainbow discussed with other Water Authority member agencies any plans to interconnect its system to theirs in order to provide redundancy (such as in an emergency or drought) to serve Rainbow once it has detached?
13. What persons, if any, have discussed annexation into Rainbow in the past two years? What lands were discussed?
14. What specific ad valorem taxes does Rainbow believe the Water Authority should receive after detachment?

15. Please provide all communications Rainbow has had with MWD related to the proposed detachment.

16. What is the exact status of Rainbow's water infrastructure? What needs replacement, and why has this not been done?

### **Questions for Fallbrook**

1. What Williamson Act lands are there in Fallbrook's service area? (Note: LAFCO Statutes require certain special processes for such lands. See, for example, Government Code Section 56426.6 and, 56856.5. The applications skipped over the required identification.)

2. What exact infrastructure changes will Fallbrook need to implement to fully serve its ratepayers if detachment/annexation request is approved?

3. What environmental review (if any) has been done for changes listed in response to question 2?

4. What are the cost estimates to date (if any) for changes listed in response to question 2?

5. For the \$11 acre-foot charge, does Fallbrook expect Eastern to provide Fallbrook with any access to Eastern's non-MWD water, Eastern's water storage, or Eastern-owned water infrastructure? If Fallbrook is going to receive any water from Eastern other than MWD water, or use Eastern storage, or receive access to Eastern-owned infrastructure, what are the specific details as to such items?

6. Does Fallbrook have any plans for acquiring any access to Eastern's non-MWD water, Eastern's storage, or Eastern-owned infrastructure in the future? If so, what information does it have on any additional costs over \$11 acre-foot charge, and timing, of such access?

7. What specific Water Authority infrastructure would Fallbrook need access to after annexation into Eastern?

8. For each item of infrastructure identified in answer to question 7, what are the specific water volumes and timing needed for use of such infrastructure?

9. Has Fallbrook assessed the readiness of its facilities to serve its ratepayers after a catastrophic earthquake, if detached? If yes, provide the analysis, document, and projected rate impact. If not, will Fallbrook plan to perform the assessment and improve infrastructures as required?

10. Does Fallbrook have access to the MWD 14-day plan it cited in its application papers for repair of MWD pipelines after an earthquake on the Elsinore Fault? If so, can it be provided to LAFCO and the parties?

11. What is the projected daily production of SMRCUP accessible to Fallbrook and how does it compare to the daily demand of both Fallbrook and Rainbow?

12. Have any other Water Authority member agencies discussed with Fallbrook potential detachment of their agencies?
13. Have any other Water Authority member agencies discussed with Fallbrook whether they could link their infrastructure to Fallbrook's once Fallbrook is part of Eastern? Conversely, has Fallbrook discussed with other Water Authority member agencies any plan to interconnect its system to theirs in order to provide redundancy (such as in an emergency or drought) to serve Fallbrook once it has detached?
14. What persons or entities, if any, have discussed annexation into Fallbrook in the past two years? What lands were discussed?
15. What specific ad valorem taxes does Fallbrook believe the Water Authority should receive after detachment?
16. Please provide all communications Fallbrook has had with MWD related to the proposed detachment.
17. What is the exact status of Fallbrook's water infrastructure? What needs replacement, and why has this not been done?

### **Questions for Eastern**

1. How will Fallbrook and Rainbow be represented at Eastern? Will they each have seats on the Eastern Board as they do at the Water Authority? Will a new Eastern district be created for them? If not, what district will they go into?
2. Other than via MWD pipes, does Eastern have any water infrastructure connections to either Rainbow or Fallbrook's water delivery systems? Are there any plans for such connections?
3. If Eastern were to try and move its own non-MWD water through MWD pipes to Rainbow or Fallbrook, would Eastern have to pay an MWD wheeling charge?
4. If Eastern were to try and move its own non-MWD water through MWD pipes to Rainbow or Fallbrook, would Rainbow/Fallbrook have to pay an Eastern transportation charge, and if so what would it be?
5. Other than MWD water, what services do Fallbrook and Rainbow receive from Eastern for the \$11 per acre-foot charge?
6. What additional services could Eastern potentially provide to Fallbrook and Rainbow, other than the proposed MWD service for the \$11 per acre-foot charge? What would the charges be for those additional services?
7. Please provide all communications Eastern has had with MWD related to the proposed detachments and annexations.

8. Since MWD preferential rights do not travel with Rainbow and Fallbrook to Eastern, should Eastern need to use its preferential rights at MWD would they be used for Rainbow and/or Fallbrook, or just for Eastern's retail customers?

9. What specific ad valorem taxes does Eastern believe the Water Authority should receive after the detachments and annexations?

June 15, 2020

**VIA E-MAIL AND U.S. MAIL**

MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

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Fallbrook  
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Lakeside Water District

Olivenhain  
Municipal Water District

Otay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

OTHER  
REPRESENTATIVE

County of San Diego

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Re: LAFCO Advisory Committee Re Detachment

Dear Mr. Simonds:

Based on your recent communications regarding the potential first meeting date of the LAFCO Advisory Committee (“Committee”) regarding the detachment applications of Fallbrook Public Utilities District (“Fallbrook”) and Rainbow Municipal Water District (“Rainbow”), we felt it would be helpful to LAFCO, the Committee, and all parties to have an understanding of what the scope of the Committee’s efforts should be, and the types of independent consultants that will be necessary for LAFCO to perform necessary due diligence associated with the applications. In connection with those determinations, the Water Authority writes to provide you with some initial information and input.

First, we wanted to thank you and the LAFCO Commissioners, and Fallbrook and Rainbow, for working to create the Committee. We think a Committee review process will be helpful for all participants to understand the full complexity of the proposed detachments, and to ensure fairness and equity for all San Diego County water ratepayers and property owners.

The Water Authority Board will be meeting on June 25, and at that meeting we will discuss the appointment of the two Water Authority designated Committee members. We will let you and the other parties know then who that will be, with the understanding this timing will allow you to proceed with the first Committee meeting on July 6.

**1. Committee Scope of Work**

Though you previously presented some very general concepts of what the Committee would consider, we think it would be helpful to break down certain issues in a bit more detail to frame what we see as critical areas of inquiry and due diligence. Then, in the next section, we address the subject matters as to which we believe LAFCO will need to engage independent consultants.

As background, my Board of Directors has determined that the scope of work must be sufficient to demonstrate:



- a. By what means Rainbow and Fallbrook can guarantee that all obligations as promised to their own ratepayers are met;
- b. That detachment will not adversely affect other Water Authority member agencies and San Diego County as a region financially or environmentally;
- c. That detachment and then annexation into Riverside County's Eastern Municipal Water District will not increase reliance on the Bay-Delta; and
- d. That detachment will not result in a diminution of the Water Authority's voting power at MWD to represent the interests of all San Diego County ratepayers and property owners.

In order to analyze these issues identified in the Water Authority's Board resolution, we suggest the following subject areas be included in the scope of the Committee's work:

1. Water Supply & Reliability Issues: The Committee must fully examine data analyzing the reliability of the current and projected water supply being provided to Fallbrook and Rainbow customers by the Water Authority, and the current and projected water supply that they would receive from Metropolitan Water District of Southern California ("MWD") via Eastern as an intermediary. (Eastern does not propose making any of its own water supply or infrastructure available to serve Rainbow and Fallbrook customers.) Full transparency as to current and projected water supply needs, sources, challenges and limitations on those sources, and water supply reliability for Rainbow and Fallbrook and the entire County should be critical for LAFCO. This will necessarily require an understanding of California water law and policy, the Colorado River, the State Water Project and Bay-Delta, and numerous other local, state and federal legal, regulatory and political matters.
2. Water Infrastructure Issues: There are a number of engineering issues relating to needed water infrastructure raised by the proposed detachments. Just by way of example, Rainbow's application references at least \$15 million of infrastructure projects it would need to complete immediately if detachment were to occur, but the entire scope of the projects is not identified with any specificity.<sup>1</sup> All necessary infrastructure changes need to be fully detailed by the applicants and reviewed by the Committee.
3. Financial Issues: There are numerous significant financial issues to be examined, including a full examination of current and projected water rates and charges by both the Water Authority and MWD. The Committee must also identify all financial impacts and risks of detachment on Fallbrook, Rainbow, the Water Authority and its 22 other member agencies, the County of San Diego, and the region as a whole.

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<sup>1</sup> See Rainbow Supplemental Information submittal to LAFCO, pages 5 and 6.

4. Bay-Delta and Other Environmental Issues: By proposing to detach from the Water Authority's diversified water portfolio and instead rely almost exclusively on MWD's sources of imported water, there would appear to be an inevitable increase in reliance on water imported from the environmentally sensitive Bay-Delta region. Additionally, with extensive construction proposed for detachment (at least in Rainbow), there are local environmental issues that must also be reviewed.
5. Governmental Issues: The proposed detachment seeks to move – at least for water purposes – Rainbow and Fallbrook out of San Diego County and into Riverside County. This raises a number of novel governmental issues that should be carefully reviewed by the Committee, including: (a) how San Diego County's representation at MWD will be affected; (b) how regional planning would be affected; and (c) how ongoing governmental functions such as annexations of land into districts would be affected, including which LAFCO would have jurisdiction over future water issues in Rainbow and Fallbrook .
6. Application Sufficiency/Accuracy: The detachment applications make numerous assertions about various projects, effects, etc., many of which are only partially discussed or identified. The Committee should work with the applicants and LAFCO staff to obtain a complete set of the factual assertions Fallbrook and Rainbow are relying on in filing the applications.

Obviously, the above topic areas may include sub-issues far beyond what can be listed here. However, the Water Authority believes that these six general areas must be included in the Committee's scope of work.

## 2. Consultants

What independent consultants would LAFCO need for the above areas? The Water Authority believes a minimum of three outside consulting firms would be required, covering topics 1, 3, and 4 above. They would include a water supply expert firm which could fully address topic area 1; a water rate and finance expert firm to cover topic area 3; and an environmental consulting firm to review all environmental matters (topic area 4).

Why does the Water Authority say a "minimum of three"? Because some topic areas may require more than one expert firm. For example, given the breadth and nature of topic number 1, and historical disputes between the parties, it is possible that more than one expert will need to be retained to cover that subject matter. Similarly, the financial topic (number 2 above) includes not just water rates and charges (which is a fairly unique expertise in the water industry), but also financial management, risks and effects. It is possible that one firm could be found to cover all issues, but it is also possible that the breadth of the subject matter and relevant issues would require multiple firms (for example, in addition to water rate expertise, a separate consultant for issues pertaining to other finance areas such as bonds, taxation, etc.).

Mr. Keene Simonds

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The Water Authority does not currently believe that topic areas 2, 5, or 6 require outside consultants for LAFCO. Topic area 2 on engineering issues is an identification issue, which identification could lead to possible environmental issues (covered by a consultant for topic 4), financial issues (covered by a consultant for topic 3), or pure engineering issues, which staff at the Water Authority, Fallbrook and Rainbow can address. Topic areas 5 and 6, governmental issues and application issues, likely can be covered by staff at all the agencies which are participating at LAFCO.

However, because water supply, financial matters, and environmental issues will require thorough *independent* review for LAFCO, these are areas the Water Authority believes should be reviewed by third party neutral experts to be agreed upon by all parties.

### **3. Conclusion**

We look forward to working with the Committee, LAFCO staff, and all parties to proceed with the Committee process. Because you had noted that some Committee appointments were still tentative, we did not copy this letter to all persons on your initial list. We therefore ask that you please copy this letter to other Committee members not included on the below "cc" list. Thank you.

If you have any questions or need any further information, please feel free to contact me.

Very truly yours,



Sandra L. Kerl  
General Manager

cc via email:

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