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November 19, 2020

Keene Simonds  
Executive Officer  
San Diego Local Agency Formation Commission  
9335 Hazard Way, Suite 200  
San Diego, CA 92123

VIA EMAIL

Subject: Clarifying Information for LAFCO Staff and Consultants

Dear Mr. Simonds,

In order to assist SDLAFCO staff and its consultants in the upcoming review of the Fallbrook Public Utility District (FPUD) and Rainbow Municipal Water District (RMWD) applications to San Diego County Local Agency Formation Commission (LAFCO) for reorganization, we wanted to provide some clarifying information related to the various San Diego County Water Authority (SDCWA) responses to our applications. We emphasize that this response does not address all of our substantive concerns with the various SDCWA responses submitted to LAFCO to date. Rather, this is a summary of what we feel are key issues under each of the three areas that are to be reviewed by the consultant, as summarized below.

**Issue 1: Water Supply Reliability**

1. The main question is whether Eastern Municipal Water District (EMWD) can meet the water supply needs of RMWD and FPUD. The study conducted by EMWD dated February 12, 2020, clearly demonstrates that FPUD and RMWD demands can be met - even during extended droughts. The conclusion of the study was based on conservative metrics because it was based on elevated demand projections from the 2015 Urban Water Management Plan (UWMP), which is in the process of being updated. The actual demands for both FPUD and RMWD are currently well below the forecasts made in 2015 and are being revised downward again for the 2020 UWMP. The EMWD study also didn't contemplate or include FPUD's new local supplies which are expected to be available in 2022. These new supplies will drive FPUD's demand for imported water even lower.
2. The SDCWA analysis ignores conservation and conservation requirements during a drought. For example, Table 6:1 SDCWA shows it could meet 99% of M&I demands in 2015-2016 but fails to mention that the State mandated conservation levels of 36% for FPUD and RMWD. SDCWA's

approach ignores the fact that for agencies like FPUD and RMWD, with high Gallons Per Capita Per Day (GPCD) metrics and high outdoor irrigation demands, some level of conservation will always be mandated by the State when state-wide conservation measures are imposed. This was clearly demonstrated in 2015, when RMWD and FPUD responded to the drought by significantly reducing water use not just well below the MWD established 15% cutback target, but also below the state mandated 36% conservation requirement.

3. The level of reliability and cost of supplies is a local issue, as laid out in the SDCWA Initial September 18, 2020 response, noting that LAFCO policies L-108 and L-109 encourage decision making and that water supply should be “diversified where possible yet under local agency control and management.”

With regard to the reference to Policies L-108 and L-109, FPUD and RMWD have two comments:

First, the local agency responsible for making water supply decisions within the respective boundaries of FPUD and RMWD is FPUD and RMWD, which are both governed by a Board comprised of Directors elected by FPUD and RMWD ratepayers, **and not** SDCWA’s Board, which is comprised of appointees of SDCWA member agencies.

Second, SDLAFCO Policy L-109 clearly outlines what the Commission must consider when making decisions related to water supply:

***The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires Local Agency Formation Commissions to consider the availability of a reliable and adequate long-term water supply as part of determinations.***

Here, the policy clearly states that the standard is an **adequate** supply. While SDCWA may point to other improvements that have marginal increases in supply reliability, the supply from EMWD is well above the “reliable and adequate” standard established by Policy L-109.

## **Issue 2: Financial Impact to Member Agencies**

1. FPUD and RMWD agree there is some cost to other SDCWA member agencies from the loss of excess revenue provided by FPUD and RMWD ratepayers to SDCWA. An independent economic analysis has demonstrated that much of this excess revenue is associated with what amounts to essentially a subsidy FPUD and RMWD have been paying to allow other SDCWA member agencies not to pay for their full cost of water (See London Moeder Advisors Study dated September 15, 2020).
2. While the SDCWA response to the report outlines how SDCWA can legally charge rates that allocate many of the fixed costs at a higher rate to FPUD and RMWD customers, SDCWA does

not address the fact that the benefits associated with these costs are not then allocated based on water use. For example, even though FPUD and RMWD customers pay for Desalinated Water, when reduced water supply allocations are implemented FPUD and RMWD customers don't see the benefit of the small incremental differential between the MWD and SDCWA water supply allocation because FPUD and RMWD customers are already required to cut back more than other customers. SDCWA ignores the new reality of the State mandates on water conservation, which are based on GPCD metrics. This was clearly highlighted in the 2015/16 drought when FPUD and RMWD were required to cutback 36%, well above MWD's cutback of 15%. At the same time some of the more urban agencies were subject to much lower State cutback requirements (some as low as 12%) and did potentially benefit from additional SDCWA supplies even if they didn't pay their relative share of these supplies.

3. Even assuming that SDCWA's identified impact of \$16.4 million annually is accurate, this "identified impact" equates to a roughly 1% increase in the cost of water. In contrast, FPUD's cost of water has gone up about 9% annually over the last 10 years. It would seem that an additional 1% rate increase to other SDCWA member agencies, which would essentially result in them paying their true cost of water, is not financially significant compared to other SDCWA existing rate pressures. This relative cost of the FPUD/RMWD detachment, again, based on SDCWA's "identified impact" is also **four times less** than the impact of member agencies rolling off SDCWA supplies (City of San Diego, Padre Dam/Helix, City of Oceanside, etc.) on FPUD and RMWD ratepayers.
4. The additional cost of up to \$45.7 million annually that SDCWA presents, with which again, FPUD and RMWD disagrees, is based on the hypothesis that SDCWA has procured just enough take or pay water (328,700 AFY) to meet demands with FPUD and RMWD as part of SDCWA. In this concept, if RMWD and FPUD leave, SDCWA will have to pay for this water, but they cannot use it. This analysis is inconsistent with SDCWA draft 2020 UWMP numbers, which is its most recent analysis on demands. In this analysis the demands on MWD are 45,610 AFY in 2025 growing to 98,937 AFY in 2045. The combined RMWD and FPUD water demand projections on SDCWA are well below the SDCWA/MWD demand projections.
5. There is no SDCWA precedent for requiring a SDCWA member agency that reduces its water purchases (and thereby its payments to SDCWA), to then have an obligation to continue to make payments to SDCWA in order to reduce rate impacts to other member agencies. If such a requirement is established for FPUD and RMWD it would need to apply to other SDCWA member agencies reducing their financial obligations to SDCWA through local supply development. As noted above, the financial impacts of local supply development dwarf that of detachment.

### **Issue 3: Financial True-up**

1. The requirements for detachment of an agency is clearly laid out in the County Water Authority Act (CWA Act) in the California Water Code Section 45-11 – Exclusion of Territory. The CWA Act

has been amended many times over the years, but the requirements set out in Section 45-11 applicable to the proposed FPUD and RMWD detachments has remained, substantively, as originally enacted. The obligation of the detaching agency is on-going payment of property tax if there is outstanding debt secured by property tax. We support on-going payment of the ad-valorem property tax collected from FPUD and RMWD ratepayers that is currently allocated to SDCWA. This has been established in case law and was the outcome in the *AVEK* case, contrary to the incorrect interpretation suggested by SDCWA in its September 18 filing.

2. SDCWA claims that LAFCO should ignore the CWA Act and include all obligations, including nearly 100 years of future water purchases as “incurred expenses” owed by FPUD and RMWD ratepayers. This concept not only ignores the plain text of the law, but is also misguided in several ways:
  - a. This ignores the value to the remaining member agencies of the past investments paid for by FPUD and RMWD ratepayers and any future operational and capital savings from our departure. For example, FPUD and RMWD ratepayers have helped build the Emergency Storage Project (ESP) and have never had full access to it. There is a \$40 million project to serve FPUD and RMWD with ESP water which will be eliminated with our detachment. This project is required to be built if FPUD and RMWD stay within SDCWA, otherwise SDCWA would have illegally charged FPUD and RMWD ratepayers for ESP facilities for which they do not have full access. The only facilities that SDCWA owns that provide no benefit to other SDCWA member agencies are the Flow Control Facilities owned by SDCWA, the original construction of which was paid directly by FPUD and RMWD rather than SDCWA, and for which FPUD and RMWD pay all ongoing operation and maintenance costs. All other SDCWA assets will continue to provide the same, and in many cases, increased benefits to the remaining agencies including the additional water supplies that FPUD and RMWD ratepayers helped pay for.
  - b. FPUD and RMWD have together paid SDCWA nearly \$900 Million that was used in part to construct and acquire the assets that SDCWA currently holds. These assets have a stated value of over \$4 Billion on SDCWA’s balance sheet. Together, FPUD and RMWD’s “share” of these assets is about 6.5% or about \$260 Million. The value of both agency’s “share” of these assets will be distributed among the remaining member agencies, thus increasing their respective shares of SDCWA’s net position.
  - c. SDCWA’s \$21 Billion “obligation” calculation is based on a forecast that stretches out to the year 2112. The fact is that no one can predict the future with such precision – even SDCWA’s demand forecasts from five years ago have proven to be incorrect. Further, should the total demand profile of SDCWA continue to decline there are many points over the next 93 years where SDCWA could (and arguably, if not legally, should) modify these “obligations”, or, at the very least, opt out of, as business conditions change.
  - d. There is no legal or logical basis for the SDCWA argument that FPUD and RMWD ratepayers should not only continue to pay for infrastructure we don’t use (and have

never used) but also pay for the actual water for other member agencies in the future.

3. Due to the hydraulics of the SDCWA/MWD infrastructure and the location of FPUD and RMWD at the northernmost part of the SDCWA service area, the vast majority of the water served in our districts must be supplied by MWD owned pipelines from an MWD owned treatment plant. SDCWA argues that its cost of water will be much lower than MWD's cost of water in the future. Interestingly, this argument would imply that there is a net financial benefit from detachment in that it will reduce SDCWA's net cost for supply in the future, thereby benefiting its member agencies.

### Summary

RMWD and FPUD put forward the following facts to help guide the analysis to be performed by Staff and the consultant:

1. EMWD has sufficient supply reliability to meet all projected FPUD and RMWD water demands.
2. The financial impact of the detachment of FPUD and RMWD on SDCWA is very minimal--a roughly 1% rate impact. The FPUD and RMWD impact on SDCWA member agencies is also very minimal compared to projected (and historical) SDCWA rate increases and, is further, much less than the impact from local supply development projects of other member agencies.
3. The CWA Act very clearly outlines the process and obligations for an agency to detach. The CWA Act has been amended many times since it was originally enacted, but the provisions applicable to the proposed detachment have substantively remained unchanged.

FPUD and RMWD appreciate your consideration of the above clarifying information.



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