



November 8, 2021

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

VIA EMAIL

Dear Mr. Simonds,

As requested by Mr. Wilson, we have prepared this brief response to the two separate letters provided on behalf of the San Diego County Water Authority (SDCWA) by Ms. Kerl, SDCWA General Manager, and Mr. Hattam, SDCWA General Counsel, on October 25, 2021.

While we appreciate the comments of SDCWA on the draft report prepared by Dr. Hanemann (Report) and SDCWA's perspective that there is not significant justification for the proposed reorganizations, there is nothing in the Report itself that indicates that seeking to reorganize is not a reasonable choice for the FPUD and RMWD governing boards and their ratepayers. Ultimately, this is not a decision to be made for the two districts by an appointed SDCWA Board.

Ms. Kerl's comments were focused on compliance of the Report with a resolution passed by the SDCWA Board of Directors. SDCWA does not have such an oversight role with either LAFCO or FPUD or RMWD. The SDCWA resolution has no application to the process other than to express the position of SDCWA. In addition, the Report addresses only the topics contained in the scope of work as vetted by the Ad Hoc Advisory Committee, which included representatives of SDCWA.

In regard to some of the specific items addressed in Ms. Kerl's letter:

1. Water Reliability: As noted in the letter provided by Ms. Thorne on October 25, 2021, Dr. Hanemann concluded at the October 4th LAFCO meeting that any water supply reliability difference is unquantifiable, and we anticipate this will be clearly identified in the final report. The Report also does not indicate that the reliability of EMWD is not sufficient to meet FPUD and RMWD future water demand needs. In the midst of the current drought, SDCWA, MWD and EMWD are all asking for the same level of voluntary conservation, and the Governor has indicated that if dry conditions persist these voluntary requests will become mandatory.
2. SDCWA versus EMWD Rates: The Report also clearly indicates that supplies from EMWD are significantly less expensive than SDCWA supplies. While Dr. Hanemann may speculate

on future cost drivers, he did not substantiate the SDCWA claim that SDCWA rates (currently \$1833/AF) will someday be less expensive than EMWD (currently \$1154/AF).

3. **Bay Delta Impact:** While the Report may talk about a change in the paper allocation of QSA Colorado River Supplies to FPUD and RMWD supplies, there is no change in the water molecules that are physically delivered, and the Report does not support that there is a net impact on demands from the Delta. The net supply of Colorado River Water and State Water Project supplies into MWD's service area is unchanged, with and without detachment, as clearly described by MWD in the letter dated September 17, 2020.

*"Because identical water will continue to be delivered from Metropolitan's service connections to Rainbow and Fallbrook's service areas regardless of which Metropolitan member agency serves them, there is no increased reliance on the Delta and no implications on state policy for Delta issues. It is simply not true that the proposed reorganization would result in any increased reliance on Bay Delta supplies or violate state law."*

The Districts' efforts regarding meeting the State goals specified in the Delta Reform Act, to reduce Bay-Delta reliance is also clearly addressed by both FPUD and RMWD in their UWMPs, in FPUD's letter to the Delta Stewardship Council (dated 12/17/2020) and RMWD's letter to Keene Simonds (dated 1/2/2021).

In the letter provided by SDCWA General Counsel, Mr. Hattam, we find it interesting that the SDCWA General Counsel makes no connection to any specific statutes or legal precedent. Instead, he is focused on the SDCWA invented concept that FPUD and RMWD have an obligation to make SDCWA "whole," and that SDCWA has no ability to make any adjustments when one agency reduces its purchases, except to pass the cost on to others. As stated in Mr. Hattam's letter

*"If Rainbow and Fallbrook receive a discount in cost payments, that necessarily means that the remaining members agencies would face a rate increase."*

"Rainbow and Fallbrook" in this statement could be replaced with any agency that is pursuing local supply development or purchase agreements for local supplies. Just because FPUD and RMWD have been paying to fund SDCWA infrastructure they don't use for the past seven decades doesn't mean they should be required to continue it for another decade. There is no "make whole" provision in the CWA Act, as this was clearly not envisioned by the legislature—and certainly after seven decades of overpayments, the Districts have not been made whole.

As supported in the letter provided by Ms. Thorner on October 25th, the Report should clarify that the financial burdens of SDCWA are not fixed and ongoing on any of the member agencies. Rather, the existing rate structure has a roll-off period for fixed costs that was set in place by the SDCWA Board of Directors to allow SDCWA a time period to make adjustments for declining demands. There is no financial commitment, for example, for the City of San Diego, City of Oceanside, or agencies participating in the East County Project to make FPUD and RMWD ratepayers whole due to their reduction in cost payments to SDCWA.

Mr. Hattam's letter also seems to be confused about the difference between FPUD/RMWD and the fact they do not need to use SDCWA physical infrastructure, and the need for other

SDCWA member agencies to physically receive water through SDCWA infrastructure. As stated in the letter:

*“Any costs not recovered through an exit fee will result in rate increases to the remaining member agencies, and will encourage further detachments to receive similar discounts.”*

However, and as is well known to SDCWA, no other SDCWA member agency can leave SDCWA because SDCWA owns the infrastructure they need to receive their water deliveries. Even the closest SDCWA member agency, Valley Center MWD, has made it abundantly clear in numerous letters that it is financially infeasible for that agency to receive water directly from MWD facilities. The continued expression of these fallacies by SDCWA is a disingenuous red herring.

We are providing no additional comments on the Report prepared by Dr. Hanemann other than responses to some direct email questions. While we hope some comments will be incorporated, we also understand that Dr. Hanemann has his own perspectives and opinions, and that many of them do not align with the position of the FPUD and RMWD governing Boards; but that does not make our positions or opinions incorrect. Mr. Hattam’s letter also recognized that the Report has some inconsistencies, miscalculations, and speculation.

Our agencies also understand that the Report is not a substitute for the Executive Officer’s report to be submitted to the Commission. The Ad Hoc Advisory Committee and the Report were explicitly designed and announced to be a means of airing various issues to benefit LAFCO Staff in its gathering of information for the report to be prepared by the Executive Officer. The academic hypotheses produced by the Report, without the benefit of legal guidance, is no substitute for applying the provision in the County Water Authority Act, the Cortese-Knox-Hertzberg Act, and LAFCO’s own policies. We look forward to the timely completion of the Ad Hoc Advisory Committee process.

Sincerely,



Tom Kennedy  
General Manager  
Rainbow Municipal Water District



Jack Bebee  
General Manager  
Fallbrook Public Utility District

cc: via email:

Keene Simonds, Executive Officer, San Diego County LAFCO

Adam Wilson, Moderator, San Diego County LAFCO

Holly Whatley, Counsel, San Diego County LAFCO

Alfred Smith, Counsel, Rainbow Municipal Water District

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

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

Mark J. Hattam, Counsel, San Diego County Water Authority

Nick Kanetis, Deputy General Manager, Eastern Municipal Water District