



February 15, 2022

VIA EMAIL

Adam Wilson, Moderator
San Diego Local Agency Formation Commission

Re: Legal Issues Raised by Dr. Hanemann's Report/ Concerns Regarding CWA Letter of February 8, 2022

We submit this joint letter on behalf of the Rainbow Municipal Water District ("RMWD") and Fallbrook Public Utility District ("FPUD") related to the Districts' reorganization applications (often referred to as the "detachment applications") in light of legal issues raised by findings in the report ("Report") of LAFCO's independent consultant, Dr. Michael Hanemann, and the February 8, 2022 letter submitted by the San Diego County Water Authority ("CWA").

At the upcoming Ad Hoc Advisory Committee meeting on February 17, 2022, the Ad Hoc Advisory will not only review and potentially provide input on the final Report, but will also review the Municipal Service Review ("MSR") of the Fallbrook Region (although such a process is not found in the Cortese-Knox-Hertzberg Local Government Reorganization Law of 2000 ("CKH")). The Report, as is stated in its Introduction section, is not a legal analysis and does not offer legal advice on the issues discussed in the Report. Because of this, we have two requests of LAFCO and LAFCO's Legal Counsel:

First, we want to make clear on the record of the Ad Hoc Advisory Committee proceedings that the Report's conclusions and recommendations, as well as any input or recommendations by the Ad Hoc Advisory Committee related thereto or on the Fallbrook Region MSR, **are not** founded or based on application of the County Water Authority Act, other applicable California statutory case law, and/or applicable provisions of the California constitution. In fact they are disassociated from legal reality. As has been noted by the Districts the Ad Hoc Advisory Committee has not received information regarding legal requirements for the detachment. We further request that the Commission be apprised of this fact at the outset prior to its discussion and review of the Report's conclusions and recommendations, or its review of the Ad Hoc Advisory Committee's input or recommendations on the final Report or the Fallbrook Region MSR, if any.

Second, we believe it is imperative that the Commission be provided guidance, as part of the draft staff report by the Executive Officer, by LAFCO's Legal Counsel on legal requirements applicable to the Districts' detachment applications, to include the below listed questions.

1. How the County Water Authority Act applies to the issue of continuing payments of existing property taxes for any debts of CWA.¹
 - a. Since the County Water Authority Act has a much different process spelled out for annexation than the process for detachment, doesn't that portion of the County Water Authority Act support the application of the detachment process without any additional conditions to be imposed²?
2. With regard to the 1998 Court of Appeal decision in *Antelope Valley East Kern Water Agency v. LAFCO*, in which the Court of Appeal determined that language essentially identical to that in the County Water Authority Act simply required property being detached to continue to have its property taxes be paid to retire the existing bonded debt:
 - a. Is the decision still good law/ has the decision ever been overturned?
 - b. Does the decision provide a precedent for the application of the County Water Authority Act as specific, controlling legislation?
 - c. Did not the Court find that the specific provisions of the principal act controlled over the more general provisions of LAFCO statutes?
 - d. Is the decision not conclusive as to how detachments, such as the Districts' detachment applications, are to be handled fiscally?
 - e. Has there been any legislation adopted since the decision was issued that would impact the application of that opinion to the application of the County Water Authority Act near identical provision to the Districts' detachment applications?

¹ We do note that the Report incorrectly states that the Districts' position is "that they should be able to detach without any further financial liability." (Report, p. 13, 73.) The Report further intimates that the District's position is that they should be "able to walk away scot-free," (Report, p. 13, 74.) This could not be farther from the truth—as the Districts have stated repeatedly, the Districts' position is that the County Water Authority Act be applied, which Act requires taxable property within the area to be detached "continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the [detachment] and until the bonded or other indebtedness has been satisfied." (County Water Authority Act, §45-11(a)(2).

² Section 45-10 of the County Water Authority Act providing for annexations contains multiple references to the roles of the Local Agency Formation Commission and its Executive Officer. In addressing annexations the Board of Directors of the County Water Authority has broad powers, including the ability to grant or deny permission to annex and the power to adopt terms and conditions which LAFCO is required to include even if LAFCO adds additional terms and conditions. So as the principal act, the County Water Authority Act undeniably recognizes the existence of LAFCO in the processes, but fails to provide such powers to the Board of Directors regarding detachment. All that the section on detachment provides is for the continued payment of existing property taxes to the Authority to retire existing debt.

3. With regard to the so called “Exit Fee” issue:
 - a. Is there any legal basis that could support requiring a detaching district to continue to pay for water it does not receive? Especially if the annual fee to be paid is higher than the sum that would have been paid if water were being purchased solely from the CWA?
 - b. Is there any legal basis for treating the detachment and accompanying elimination of any purchases of water from CWA differently than a situation where the amount of water purchased from CWA is lessened by the development of alternate supplies?
 - c. If CWA has already established a guideline for how and for what period agencies that reduce purchases due to establishment of alternate sources will make adjusted payments, why would not that guideline be applied to a detachment, assuming more than the continued property tax is to be required?
4. Whether the County Water Authority Act controls the issue of elections, so that voters within Fallbrook PUD and Rainbow MWD alone participate in any election³?
 - a. If an election were to be held throughout the territory of the SDCWA, would that not be a precedent for all such future matters that may have an effect beyond the immediate subject territory to also be subjected to area wide votes?

This information is essential to the Commission’s evaluation of the Report’s conclusions and recommendations as well as, input or recommendations by the Ad Hoc Advisory Committee related thereto or on the Fallbrook Region MSR, if any. This information is also essential to the public’s understanding of LAFCO’s proceedings on the detachment applications. Ultimately, after all, the Commission’s evaluation of the Report/ Ad Hoc Advisory Committee input or recommendations, must be based on the law applicable to detachments from a County Water Authority.

With regard to February 8, 2022 CWA letter, we want to make note that the content of the letter essentially raises the same issues raised by CWA, through its counsel, four months ago, to which we have already responded in our letter dated October 15, 2022, and which has already been discussed by the Advisory Ad Hoc Committee. Unfortunately, over the nearly two years since the Districts’ submitted their detachment applications to LAFCO, CWA seemingly is incapable of ceasing to restate previous requests made or inventing new issues for consideration by the Ad Hoc Advisory Committee.

³ Again, the principal act, the County Water Authority Act, should be conclusive on this issue. Further, in the Antelope Valley East Kern case, the precedent for such detachments, the election was conducted within the area seeking to detach.

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Last, the Districts respectfully reiterate their request of October 2021, for an outline of any items remaining outstanding which prevent the Executive Officer from issuing the certificate of filing pursuant to the provisions of Government Code section 56658.

Sincerely,



Lloyd W. Pellman
Attorney for
Rainbow Municipal Water District



Paula C. P. de Sousa
Attorney for
Fallbrook Public Utility District

cc: Keene Simonds, LAFCO Executive Officer
Holly O. Whatley, LAFCO Counsel