

February 25, 2022

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

VIA EMAIL

Mr. Adam Wilson, Moderator
San Diego County LAFCO
(adwilson858@yahoo.com)

Re: Additional Significant Items To Be Considered By Ad Hoc Committee

Dear Mr. Wilson:

This letter is in response to your request regarding additional issues the parties would like to bring before the Ad Hoc Committee for further discussion. In this letter we spell out the items we believe require further review by the Committee. We ask that this letter be provided to the Commissioners and LAFCO staff.

Before getting into the substance of the issues, here are important introductory comments:

- In your letter to the parties you used the phrase “peripheral issues.” We are concerned that LAFCO staff incorrectly believes that issues beyond those assigned to Dr. Hanemann are “peripheral.” *Nothing could be further from the truth.* Dr. Hanemann was assigned certain important water issues to review that were outside the scope of LAFCO expertise, and thus understandably required third party expert review. However, that does not make the other issues involved in these LAFCO proceedings in any respect peripheral, or secondary. Indeed there are many other issues raised by this first-in-kind proceeding that are of critical importance to the deliberation by LAFCO of the Fallbrook and Rainbow applications.
- In this letter we do not raise all matters LAFCO must deal with, but only those we believe the Committee should further review. At your request, we do not include legal issues such as CEQA review, violation of the State’s Bay-Delta legislation, LAFCO’s ability to deny the applications or impose conditions, the scope of the County Water Authority Act, the still-missing procedural requirements for a completed LAFCO application, and similar matters.
- As we go through the issues below, we do not here try to prove every detail with citations to all applicable facts and law. Rather, we simply spell out for LAFCO and the Committee what the issues are, and what they mean, so they can be scheduled for consideration as requested.

With those caveats, we here summarize what we see as the six issues that the Committee should review and discuss:

1. Loss Of San Diego County Voting Rights At MWD

Perhaps the most critical aspect of the proposed reorganization applications is that they would result in moving San Diego County's voting rights at the Metropolitan Water District of Southern California (MWD) to Riverside County and Eastern Municipal Water District (Eastern). This occurs because weighted voting rights at MWD are set by statute, and are based upon the assessed value of lands in member agency service areas.

Right now, Rainbow and Fallbrook are in the Water Authority's service area. This means that the assessed value of their lands are counted for the Water Authority, and thus for San Diego County, in weighted voting at MWD. Should they move into Eastern, the assessed value of land in the Rainbow and Fallbrook regions would no longer go to San Diego County's voting interests via the Water Authority, but instead would shift to Riverside County and Eastern. *By allowing detachment, LAFCO would be ceding San Diego County voting rights at MWD to a Riverside County agency.*

Why does this matter? Because water rates in San Diego County are greatly affected by MWD rates. MWD not only sells water to our area, it also provides the transportation for our QSA water from the Imperial Valley. The Water Authority and MWD have been engaged in litigation for a decade over MWD rates because they critically matter for San Diego County ratepayers. Indeed, the Water Authority has recovered more than \$80 million to date from MWD, which it has returned to its member agencies (including Fallbrook and Rainbow, who in the past two years received about \$3.8 million from such recovery).¹

For these and other reasons, every vote at MWD matters to the pocketbooks of our County's ratepayers. Fallbrook and Rainbow claim that these voting rights are small because they are small agencies. But any loss to San Diego County is important because: (1) San Diego County loses the vote; (2) the vote is given to Eastern, which has a long and consistent history of fighting against the interests of San Diego County water ratepayers and taxpayers, thus doubling the impact of the lost vote; and (3) the assessed values of lands in Rainbow and Fallbrook are increasing rapidly, making their voting rights even more valuable as they rise due to development.

Under the current voting rights allocation, assessed values of lands in Fallbrook and Rainbow represent approximately 1.69% of the Water Authority's vote at MWD (a loss of 0.284% voting rights at MWD, or reducing from 17.26% to 16.98%). Should the agencies move to Eastern, they would immediately increase Eastern's weighted vote at MWD by about 10.11% (increasing from 2.81% to 3.09%).

However, the Rainbow and Fallbrook service areas are not static. As their service area lands continue to urbanize, that assessed land valuation increases meaningfully. Just by

¹ A fact ignored by Fallbrook and Rainbow when they complain about water rates, as they do not factor in such significant rebates, which effectively reduce the Water Authority rates.

way of example, the Meadowood annexation into Rainbow is about 375 acres.² The complete Tri-Pointe (formerly Pardee) development is for 844 single-family homes with values (a year ago, and thus even higher now) estimated up to \$700,000 each.³ All such increased development will cause assessed land values – and thus voting rights at MWD -- to increase over time.

Today, small percentages in votes at MWD matter more than ever. MWD's current General Manager was selected with 50.42% support, a bare .42% over the required threshold—with Eastern and the Water Authority on different sides of the vote. This vote symbolizes the divide on the MWD board on policy issues and the vision of MWD's role in the future. There have been other close votes, one with an even smaller margin of 0.284%, in recent years that also reflect the MWD board's policy divide. It is not lost on Eastern that even a small change in the vote entitlement could alter the outcome of important policy and fiscal votes that the MWD board will consider, including but not limited to participating in the Bay-Delta tunnel project, pursuing the Regional Recycled Water Program, and potential modifications to MWD's rate structure. The implementation of these projects, how they are funded, and any modifications to MWD's rates would have material impacts on the Water Authority and San Diego County ratepayers and taxpayers.

There is no way for LAFCO to change this voting rights issue. It is set by the Legislature. The LAFCO Commissioners, and the Committee, must ask whether from a regional planning perspective it is in the best interests of San Diego County to lose influence at MWD on the water rates and property taxes our County's residents pay.

2. Loss Of Regional Land Use And Water Planning By SANDAG And The Water Authority, And Water Supply Assessment (WSA) Decisions Being Made In Riverside County

In 1988, voters in San Diego County approved a measure to strategically address core issues related to regional planning and growth management. Proposition C, the “Regional Planning and Growth Management Review Measure”, was passed and sought to develop a strategic plan to resolve regional problems associated with development and planning of transportation, water supply, wastewater treatment, water quality, housing and economic prosperity, among many other issues for the San Diego region.

To formalize the water supply planning element of SANDAG's Regional Growth Management Strategy, and to indicate its intent to participate in the implementation of the Strategy's Water Supply chapter, in 1992 the Water Authority entered into a Memorandum of Agreement (MOA) with SANDAG. (Water Authority September 2020 Response, Exhibit 13). The intent of the MOA was to “assure consistency between the plans, policies and ordinances of the cities and County, and the plans and programs of the Authority.”

² See Item 13 on LAFCO list at [Microsoft Word - 4-5-21_AgendaItem5g_CurrentProposals.docx \(sdlafco.org\)](#)

³ [Ground Broken for New Fallbrook Community, Citro, With Model Homes Set to Be Unveiled by Fall - Times of San Diego](#)

As part of the 1992 MOA, the Water Authority agreed to utilize SANDAG's most recent regional growth forecasts as part of development of its long-range water demand forecast for the region, which is provided in the Water Authority's Regional Urban Water Management Plan (UWMP). In turn, SANDAG utilizes the Water Authority's long-range water demand forecast in the water supply chapter of its Regional Growth Management Strategy.

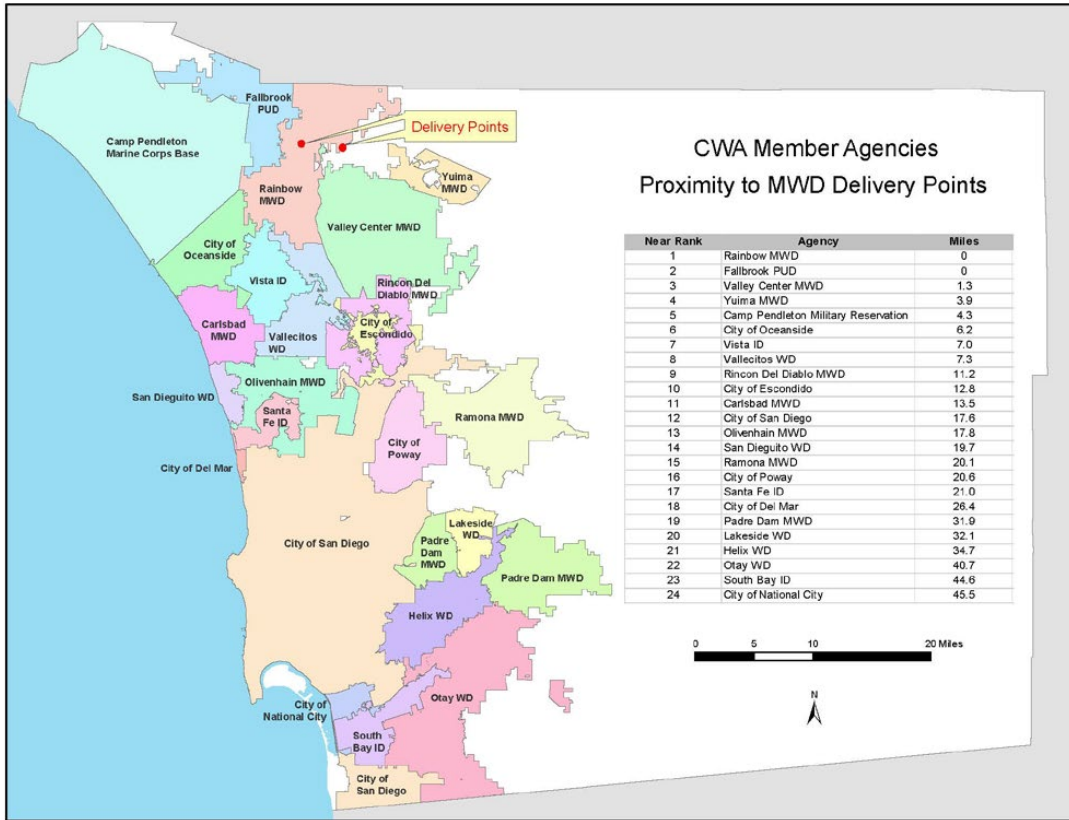
This collaborative approach, linking regional land use planning and regional water supply planning, has worked well for SANDAG and the Water Authority and was years ahead of SB 610 and SB 221. Those two bills, effective in January 2002, improved the link between water supply availability and certain land use planning decisions made by cities and counties. Both statutes require detailed information regarding water availability to be provided to city or county decision-makers prior to the approval of large development projects. This is performed using water supply assessments (WSA) requested by the developer/local government agency of the water agency to affirm via written verification of sufficient water supply. WSAs are then provided to local governments for including in the environmental documentation for any large development project. The foundational document of compliance with SB 610 and 221 is the UWMP. As mentioned above, the 1992 MOA has linked the Water Authority's UWMP to SANDAG by utilizing SANDAG's most recent regional growth forecast, the base of which is the cities and county's General Plans.

Should Rainbow and Fallbrook detach, it would undermine and unravel the longstanding close regional collaborative planning efforts between land use and water supply in San Diego County. SANDAG would continue to include in its regional growth forecast the projections for land use, population, and growth in Fallbrook and Rainbow's service areas, however the Water Authority would no longer include Fallbrook and Rainbow's water demands in its UWMP. As a result, water supply planning and any WSA decisions to serve future development would be ceded to decision-makers in Riverside County.

With such a split between counties on land use planning and decisions and water supply planning, it is unclear how the process on WSAs will be carried out. More discussion and understanding is needed with respect to this matter.

3. Risk That Other Agencies May Seek To Detach, With Associated Impacts

Rainbow and Fallbrook assert that they are the only Water Authority members which currently draw water directly from MWD's pipes that extend into San Diego County. However, as explained in our September, 2020, Response to LAFCO (the "Response") at pp. 62-65, there are various Water Authority members which are not located far from the MWD pipelines. Here is the graphic we used in our Response:



The above is not intended to intimate that any particular other agencies are now planning to seek detachment, but just to show that physically there are multiple agencies close to the MWD pipes. If LAFCO were to allow detachment, particularly detachment without appropriate financial conditions, it would send a dangerous message to such agencies (if not set a precedent), one that could harm all remaining Water Authority member agencies by increased borrowing costs. The action would also send a message across the entire MWD service area as its member agencies and sub-agencies may also seek to detach. Further detachments would also further erode our County’s MWD voting rights.

The rating agencies have called out this significant risk regarding the pending detachment applications. In January of this year Moody’s published Credit Opinion on the Water Authority stated under Factors That Could Lead To A Downgrade: “Detachment of member agencies that significantly reduces projected consumption levels.” Similarly, S&P Global’s rating report this year says (emphasis added):

In our view, the potential effects of the detachment include the possibilities of having to spread fixed costs over a slightly smaller base that could potentially increase the cost burden and pressure affordability for the overall member base. In addition, long-term political risk might exist, in our view, especially if an approved detachment sets a precedent if members can easily detach from the authority.

Again, there is no reason to believe that the precedential affect of action by LAFCO will be limited to the Water Authority or San Diego County.

4. Water Supply Risk Of Potential Earthquake, Particularly On The Elsinore Fault

As members of the Water Authority, Rainbow and Fallbrook will be able to receive water from both the north and the south. This is because the Water Authority has desalinated water and stored water which will be able to be sent north to the Fallbrook and Rainbow service areas, as well as being able to bring them QSA and MWD water from the north.

What Rainbow and Fallbrook propose, however, is to receive water only from the north, from MWD. This ignores the risk that there could be a break on the MWD pipeline, most notably on the Elsinore Fault, thus cutting Rainbow and Fallbrook off from all imported water, and from all wholesaler water storage. We cover this in detail in our Response at pp.85-90, and at p.21.

Rainbow and Fallbrook's position is that MWD has a plan that shows a pipeline break due to an earthquake on the Elsinore Fault would be repaired in two weeks. However, as noted in our Response at p.85, this plan has never been presented and is not credible:

The Fallbrook and Rainbow detachment applications both reference an unproduced MWD emergency planning document ("Emergency Response Plan") describing MWD's intent to complete repairs on facilities that cross the Elsinore Fault within 14 days of a seismic event and restore service to at least the 75% level. So far, the Water Authority has been unable to obtain or review this referenced document, as it was not included in the Fallbrook and Rainbow plan of service submittals. Even if MWD did publish such a claim, the Water Authority is very concerned that a 14-day repair time significantly understates the time and resources that would be required to repair the large-diameter pipelines damaged by an earthquake on the Elsinore Fault at a time when many other pipe breaks could also occur in the region competing for the same resources for repair.

Indeed, the Water Authority told LAFCO that it needed to investigate this issue and require Rainbow and Fallbrook to submit this supposed MWD "14-day plan," yet to our knowledge nothing has been done, and Rainbow and Fallbrook have ignored our request stated on pages 148 and 150 of the Response (question 10 for each agency).

5. Requisite Infrastructure Changes, Particularly In Rainbow's Service Area

Rainbow has stated that it will need to create new infrastructure to serve a portion of its service area if detachment occurs. In its "Supplemental Information Package for Reorganization Application," Rainbow stated 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.

Again, the Water Authority told LAFCO that this issue needed to be investigated, and Rainbow must be required to provide real information as to what would be necessary for this work – and what real current cost estimates would be. *See*, for example, our Response at pp. 183 and 147-148 (questions 2 and 4). Again, Rainbow has provided *nothing* to LAFCO on this topic that the Water Authority has seen, yet it is a critical area of inquiry.

6. Potential Voting On The Detachment Issue Throughout The Water Authority Service Area, And Not Just In Fallbrook And Rainbow

Any detachment by Rainbow and/or Fallbrook would have serious consequences for all of San Diego County. Voting power would be lost at MWD, reduced revenues at the Water Authority would increase water rates, and credit risks could create higher borrowing costs.

Given that this is an issue of County-wide concern, the Water Authority Board of Directors asked LAFCO to require a County-wide vote on the matter. In our Response, we explained at pp.169-170 how this is allowed under the LAFCO statutes.

We believe that the Committee should discuss this issue and – without addressing legal issues – state whether it believes a County-wide vote would be appropriate and prudent, if for any reason detachment were to be allowed by LAFCO.

In conclusion, we again point out that there are many matters not addressed in this letter which LAFCO must consider. The above items are the matters we think the Committee should discuss, and we ask that further meetings be set to address them. Thank you for your consideration of these items.

Sincerely,



Sandra L. Kerl
General Manager

cc via email:

Keene Simonds, Executive Officer, San Diego County LAFCO
Tom Kennedy, General Manager, Rainbow MWD
Jack Bebee, General Manager, Fallbrook PUD
Nick Kanetis, Deputy General Manager, Eastern MWD
Holly Whatley, Counsel, San Diego County LAFCO
Lloyd W. Pellman, Counsel, Rainbow MWD
Paula C. P. de Sousa, Counsel, Fallbrook PUD
Water Authority Board of Directors