

May 12, 2022

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

Keene Simonds, Executive Officer
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103
(Keene.Simonds@sdcounty.ca.gov)

Re: CEQA Compliance

Dear Executive Officer Simonds:

We are in receipt of your letter of May 5 responding to our letter of April 27, 2022. We appreciate that you have reviewed our correspondence and responded to us.

Though your letter says that our correspondence contained “misstatements of the facts and law,” you only address a single issue: the Superior Court Judgments. You point to no other issues at all, and you provide no information how anything we outlined in our detailed letter constituted “misstatements.” If you believe we are presenting facts that are in error, you should explain to us what facts are wrong and why. Simply making a blanket allegation of “misstatements” serves no productive purpose.

In regards to the Superior Court Judgments, the sole stated basis for LAFCO’s position that it can ignore the Judgments is that it was not a party to the cases. However, there are errors in this premise:

- The LAFCO *applicants* stipulated that their CEQA findings and Notices of Exemption “may not be utilized or relied upon by the San Diego LAFCO or any other agency for the purpose of that agency’s CEQA compliance in connection with any potential detachment by Respondent from the San Diego County Water Authority, or for any potential annexation by Respondent into Eastern Municipal Water District.” While LAFCO itself was not a party to the lawsuits, the LAFCO applicants were parties and they agreed that their CEQA documents could not be used in the LAFCO process. They are therefore barred from having them as part of their applications to LAFCO. LAFCO cannot simply “rubber-stamp” exemptions and findings that were expressly stipulated *not to be usable in this proceeding* by the agencies that prepared them.
- Even if one were to seek to use the actions by Rainbow and Fallbrook, they simply evaluated the effects of *submitting applications to LAFCO*, not the effects of the actual detachments and reorganizations, which must be reviewed by LAFCO.

We are pleased that you state that in your letter that “staff remains open to revisiting the initial position [on CEQA exemption] as the administrative review process continues.” Your comment is directly relevant to the letter LAFCO just recently received from the Delta Watermaster, Michael George, who informed LAFCO that (emphases added):

- “Fallbrook and Rainbow’s proposed combined de-annexation from SDCWA is directly counter the State’s policy of reduced reliance on the Delta as a water supply source.”
- [T]he two agencies would be increasing reliance on the Delta because they would abandon a less Delta-dependent supply mix (available through their SDCWA membership) in favor of a more Delta-reliant supply mix (available under the contract with Eastern MWD).”
- “SDCWA’s decades-long diversification of its water supply portfolio to include “E-water” (based on IID’s senior Colorado River allocation status) as well as desalination, reservoir expansion, and other drought-resistant sources demonstrates the long-term wisdom of adhering to the State policy of reduced reliance on the Delta. The combined de-annexation petitions, in contrast, appear to be expedients which trade away the greater reliability of SDCWA, primarily to escape the immediate and near-term costs associated with that reliability.”

When evaluating the environmental effects of the proposed detachment and annexation, LAFCO cannot limit its analysis to the evidentiary record that Rainbow and Fallbrook supposedly reviewed before approving their CEQA exemptions. Instead, LAFCO must consider all evidence presented prior to the close of its public hearing on the proposed detachment and annexation. (Pub. Resources Code, § 21177, subd. (b); Guidelines, § 15202, subd. (b); and *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1201 [new environmental objections could be made until close of this hearing].) If LAFCO ignores substantial evidence of significant environmental effects, “it does so at its own risk.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1201.)

Also, LAFCO seems to be under the mistaken assumption that it is a “responsible agency.” It is not. For one thing, an agency can only assume the role of a “responsible agency” after an environmental impact report (EIR) or negative declaration has been prepared by a lead agency. (CEQA Guidelines, §§ 15096, subd. (a); 15381.) There is no equivalent “responsible agency” process following the approval of a CEQA exemption. (Cf. CEQA Guidelines, § 15052 [process for other agencies to assume the role of lead agency when another agency prepares an inadequate exemption].) Also, we note that even if one were to accept Fallbrook and Rainbow’s alleged exemptions, they cover only the actions of Rainbow and Fallbrook – not the acts of LAFCO, which must make its own decisions as to the overall reorganizations, and for which there is no applicable exemption (as we have detailed before).

LAFCO must independently disclose, analyze, and mitigate the environmental impacts associated with the proposed detachment of Rainbow and Fallbrook from San Diego County Water Authority and the annexation of these entities into Eastern Municipal Water District.

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(*Fullerton Joint Union High School Dist. v. State Board of Ed.* (1982) 32 Cal.3d 779, 796-797 [a Local Agency Formation Commission’s approval of an annexation or de-annexation is a “project” that must be evaluated in an appropriate CEQA document when the annexation or de-annexation “may affect the environment.”].) In other words, LAFCO will be the lead agency.


Here, LAFCO must prepare an Environmental Impact Report ("EIR") to disclose, analyze, and mitigate significant environmental impacts of the proposed detachment and annexation. (Pub. Resources Code, § 21083, subd. (b)(2), (3); Guidelines, § 15065, subd. (a)(3), (4).) As stated by the Delta Watermaster, and as you know because we have explained it many times, the proposed detachments and annexations would result in increased reliance on water from the Bay Delta. Rainbow and Fallbrook would be forced to obtain a greater quantity of water from the Metropolitan Water District of Southern California, which imports a significant portion of its supply from the Delta through the State Water Project. LAFCO has an obligation to independently evaluate the potential environmental effects of the detachment and reorganization. (See Pub. Resources Code, § 21082.2 [“The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.”]; *see also* Guidelines, § 15064.)

LAFCO's analysis must also disclose, analyze, and mitigate whether the detachments and annexations will have impacts that are individually limited, but cumulatively considerable. (Guidelines, Appendix G, subd. XXI [“ ‘Cumulatively considerable’ means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects”]; *see also* (Pub. Resources Code, § 21083, subd. (b); Guidelines, § 15065, subd. (a)(3).) Here, the cumulative effect of successive detachments and annexations, as well as the cumulative effects of successive infrastructure enhancement and replacement projects, will have potentially significant environmental effects and those effects have not yet been reviewed or considered by any agency.

We again urge LAFCO to not rely on an inapplicable CEQA exemption, and alleged “findings” by Rainbow and Fallbrook that were ordered not to be used in this proceeding, while ignoring the many detailed filings with LAFCO showing the numerous CEQA issues which exist. This includes the increase in dependence of water from the Bay-Delta that the applications would entail, just as stated by the Delta Watermaster.

We respectfully ask that you, LAFCO staff, and the Commissioners carefully consider the issues stated above. Thank you.

Sincerely,



Mark J. Hattam
General Counsel

Keene Simonds

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cc via email:

Holly Whatley, LAFCO General Counsel

Adam Wilson, Ad Hoc Committee Moderator

All LAFCO Commissioners

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

Claire Collins, Counsel, San Diego County Water Authority

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Nick Kanetis, Deputy General Manager, Eastern MWD

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Water Authority Board of Directors