



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

May 5, 2022

Delivered by Electronic Mail:

Mark J. Hattam, General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233
mark.hattam@sdcwa.org

SUBJECT: Response to April 27, 2022 Letter

Mr. Hattam:

I write in response to your letter dated April 27, 2022 letter regarding my April 15, 2022 e-mail to Fallbrook Public Utility District and Rainbow Municipal Water District related to steps remaining to complete the administrative reviews of their detachment applications. You take expanded issue with my statement that it initially appears the Class 20 exemption determined and filed by Fallbrook and Rainbow as the lead agencies under the California Environmental Quality Act (CEQA) applies. Your arguments are misplaced.

Consider the following.

- San Diego County Water Authority did not challenge the two notices of exemption that Fallbrook and Rainbow filed in conjunction with initiating the detachment applications with LAFCO.
- Otay Water District did challenge the two notices of exemption, but LAFCO was not a party to either action. LAFCO was also not a signatory to the stipulated judgments. LAFCO has not acquiesced to their enforceability to alter the Commission's duties and discretions as a responsible agency under CEQA. Staff is aware of no authority that a stipulated judgment in an action to which LAFCO was not a party could, by its express terms, purport to limit LAFCO's discretion. If you have authority to the contrary, please share and staff will consider it.

Administration

Keene Simonds, Executive Officer
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Vista Irrigation

Barry Willis
Alpine Fire Protection

David A. Drake, Alt.
Rincon del Diablo

Andy Vanderlaan
General Public

Harry Mathis, Alt.
General Public

- Regardless of whether, as CEQA permits, LAFCO as a responsible agency relies on the Class 20 exemption found by the two applying agencies, I made it clear staff remains open to revisiting the initial position as the administrative review process continues.

Your letter's strident tone and misstatements of the facts and law are counterproductive.

Proceeding forward, LAFCO staff will continue to process the applications and fully consider all public comments, including those from County Water Authority. However, that staff may disagree with some of County Water Authority's comments or positions does not mean we are ignoring them. To the contrary, we have gone to great lengths to ensure all affected agencies and other interested parties have ample opportunity to communicate their concerns and comments to inform staff's evaluation and ultimate report to the Commission, your accusatory tone notwithstanding.

Respectfully,



Keene Simonds
Executive Officer

cc via email:

Commissioners
Holly Whatley, Commission Counsel
Aleks Giragosian, Deputy Commission Counsel
Priscilla Allen, Analyst
Adam Wilson, Consultant and Ad Hoc Moderator
Sandra L. Kerl, General Manager, County Water Authority
Claire Collins, Counsel, San Diego County Water Authority
Jack Bebee, General Manager, Fallbrook PUD
Paula C. P. de Sousa, Counsel, Fallbrook PUD
Nick Kanetis, Deputy General Manager, Eastern MWD
Tom Kennedy, General Manager, Rainbow MWD
Alfred Smith, Counsel, Rainbow MWD
Bill Pellman, Special Counsel, Rainbow MWD
County Water Authority Board of Directors

enclosures:

1. Mark Hattman Letter, Dated April 27, 2022
2. Keene Simonds Email, Dated April 15, 2022

April 27, 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

Keene Simonds, Executive Officer
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Re: CEQA Compliance

Dear Executive Officer Simonds:

We are in receipt of the e-mail of April 15 from you to Rainbow and Fallbrook. In this e-mail you raise various issues LAFCO staff are working on, and then you make some comments regarding CEQA. We address all briefly here.

Here are the points you raised in the e-mail before your CEQA remarks, and we comment briefly on each, in italics:

- “Identify ratepayer impacts should one or both proposals proceed forward within three specific jurisdictions: City of San Diego; Valley Center MWD; and City of Poway. This work will be led by an Ad Hoc working group (Kim, Brian, Keith, and Lydia) and is currently underway.” *We have previously noted that our September 2020 Response denoted the estimated financial impacts on each of our member agencies. See Response, pp.48 et seq. We of course we will provide any additional information that is necessary or helpful to the review process you plan to conduct.*
- “Evaluate existing ‘roll off’ impacts on the County Water Authority. This work will be led by the Ad Hoc working group and is currently underway.” *The ups and downs of water orders by our member agencies are not the subject of any applications or issues pending before LAFCO, are not relevant and therefore should not guide any LAFCO decision-making here. Rainbow and Fallbrook simply make the “roll-off” argument as a straw man to deflect attention from the real issue which is the financial impacts of their own applications. We have repeatedly described to LAFCO the substantive differences between “roll off” and detachment in the context of real-world water management and financial planning, and would appreciate understanding the premise upon which your LAFCO process will be based. We will of course provide any additional information that is necessary or helpful to the review process you plan to conduct.*

- “Verify/disclose any material “voting” changes at MET with respect to the two subject agency wholesalers (County Water Authority and Eastern MWD) should one or both proposals proceed. A related request was emailed to MET earlier this week.” *We have already provided information to LAFCO describing how the MWD voting rights will be changed as between the Water Authority and Eastern. See Response, pp. 68 et seq. We will also double-check any information MWD provides, although we have no reason to believe it will be different or inconsistent with the information we have already provided. However, your inquiry does not address the real issue, which is the dynamic political situation at MWD, one part of which is the longstanding direct adversity of Eastern’s leadership on the MWD Board against San Diego County interests.¹*
- “Address any material impacts on the Bay Delta should one or both proposals proceed. An email to the Delta Watermaster was sent earlier this week and among other items seeks clarification on his earlier “observations” made on the proposals in September 2020.” *Our Response provided extensive detail on this subject, also addressed in numerous letters we have written subsequently. We look forward to the Watermaster’s comments, and we will provide any additional information that is necessary or helpful to your review process. In addition, here is further updated data showing many months in 2021-22 where QSA treated water was provided to Rainbow and Fallbrook, all of which – if detached – would have been extra demand on MWD, and thus on the State Water Project:*

Jan. 2021 -- CWA bought 297 AF of MWD treated water, Fallbrook/Rainbow bought 1,189 AF of CWA QSA water, meaning 892 AF of extra demand on MWD if detached.

Feb. 2021 -- CWA bought 368 AF of MWD treated water, Fallbrook/Rainbow bought 1,203 AF of CWA QSA water, meaning 835 AF of extra demand on MWD if detached.

March 2021 -- CWA bought 8 AF of MWD treated water, Fallbrook/Rainbow bought 1,255 AF of CWA QSA water, meaning 1,247 AF of extra demand on MWD if detached.

December 2021 -- CWA bought 2 AF of MWD treated water, Fallbrook/Rainbow bought 1,036 AF of CWA QSA water, meaning 1,034 AF of extra demand on MWD if detached.

¹ On April 21, 2022, the California State Auditor issued a scathing report on MWD, finding that its leadership has failed to promote transparency or ensure a fair and equitable workplace ([Report 2021-104 \(ca.gov\)](#) (Audit Report)). Among many other findings, the state auditor determined that, “our review of the ethics office identified instances of interference by high-ranking MWD officials in two cases that occurred in 2017, *and the opportunity for additional interference still exists.*” (Audit Report at p. 55). Specifically, the Audit Report found that while state law requires the ethics office to operate independently and free of political influence, MWD’s General Counsel and its former chair, Randy Record, *the MWD board member representing Eastern*, “inappropriately” interfered with and influenced the ethics office’s work on two claims, one of which is public and involved a representative of San Diego County, Keith Lewinger. Mr. Record, consistent with Eastern’s consistent adversity to San Diego County interests as detailed in our Response, filed a complaint against Mr. Lewinger, claiming he had leaked confidential information to a newspaper’s attorney. The ethics officer found that the claim was not substantiated, but Mr. Record and the General Counsel improperly “involved themselves heavily” to try to change the ethics officer’s conclusion. (Audit Report at p. 56). As stated repeatedly to LAFCO, important decisions involving many billions of ratepayer dollars in coming years are being debated right now at MWD, with many turning on a very small share of the vote. These are the *practical issues* LAFCO needs to consider when assessing the impact of a handover to Eastern of San Diego County’s voting rights at MWD should detachment be approved.

January 2022 -- CWA bought 320 AF of MWD treated water, Fallbrook/Rainbow bought 1,037 AF of CWA QSA water, meaning 717 AF of extra demand on MWD if detached.

February 2022 -- CWA bought 287 AF of MWD treated water, Fallbrook/Rainbow bought 1,593 AF of CWA QSA water, meaning 1,306 AF of extra demand on MWD if detached.

March 2022 -- CWA bought 379 AF of MWD treated water, Fallbrook/Rainbow bought 1,234 AF of CWA QSA water, meaning 855 AF of extra demand on MWD if detached.

- *“Confirmation USMC Camp Pendleton will not be materially impacted in continuing to receive their wholesale supply from County Water Authority should Fallbrook PUD detach.” The Water Authority recently learned a fact that we do not believe Fallbrook ever disclosed to LAFCO: that the binding and judicially approved settlement agreement between Fallbrook and Camp Pendleton requires – in certain circumstances – for Camp Pendleton to provide Fallbrook with Water Authority water. Attached is a copy of the federal court order and settlement printed off the web, with highlighting we added, which specifies our water going (via Pendleton) to Fallbrook in certain circumstances. See settlement sections 2.6.2, 3.23, 3.24, and 3.25. This would be a non-issue if both agencies remain members of the Water Authority, but would not be allowed should Fallbrook be outside our agency’s service area. Perhaps this agreement was later changed; we do not know. LAFCO should immediately ask Fallbrook to provide LAFCO and the parties with all effective settlement agreement documents and court decisions regarding this settlement so we all know the facts. We have told LAFCO many times that these applications are far more complex than Rainbow and Fallbrook have told LAFCO, and this is just one example. Similarly, we do not believe, despite our many requests, that LAFCO has yet asked Rainbow to provide all the detail on what needs to be done in the southern portion of its service area, which apparently requires major construction for it to even be served by MWD pipes. We are very concerned that LAFCO staff is ignoring the acquisition of relevant facts that directly bear on the application.*
- *“Complete an addendum to Riverside LAFCO’s MSR on Eastern MWD.” We will of course provide further input necessary or helpful to the review process you plan to conduct.*

You then go on to state the following as to CEQA:

“One topic you don’t see above relates to CEQA. At this point, I do not believe there is anything in the record identifying/suggesting a substantive impact warrants LAFCO deviating from its responsible agency role and related concurrence with your agencies’ findings as lead agencies that a Class 20 exemption appropriately applies under CEQA. I will revisit this position with Commission Counsel should a substantive impact reveal itself through the remainder of the administrative reviews.”

This is a statement that is completely belied by the actual record. Here are the actual facts, from the record, regarding CEQA, all of which your statement ignores²:

1. We submitted extensive information in our Response, and in many letters, explaining how the sought reorganizations would increase water demands on the environmentally sensitive Bay Delta – all contrary to the Legislature’s instructions in statutes such as Water Code Section 85001 *et seq.* See Response, pp. 95 *et seq.* and 170 *et seq.* None of this has been reviewed for environmental purposes, in clear violation of CEQA.
2. The CEQA “findings” you cite from Rainbow and Fallbrook ignore the Orders from Judges Frazier and Medel of the San Diego Superior Court that the CEQA findings and the 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.”³ Are you telling your Commissioners that they can violate two orders from the San Diego Superior Court by using the findings and NOE in LAFCO’s actions? Do the Commissioners even know about these two Orders?
3. Even if LAFCO were able to use the Fallbrook/Rainbow CEQA actions, which it cannot do per judicial Orders, neither Fallbrook nor Rainbow took any action that reviewed the combined effects of their joint actions. Yet CEQA requires such environmental review. September 2020 Response (“Response”), pp. 174 *et seq.*
4. There is no CEQA exemption applicable here, as detailed in the Response at pp. 174 *et seq.*
5. Rainbow must perform major construction to be able to serve its southern service area if its application is granted. It has not provided any factual information on which LAFCO can intelligently act, which we have pointed out many times. See, for example, Response, pp. 137 and 147. No environmental review of such changes have been done by anyone, to our knowledge.
6. Air quality may be affected. Rainbow’s Supplemental Information Package for its application (at pp. 5-6) reveals that if the detachment and annexation are approved, Rainbow will need to construct a range of large-scale infrastructure projects to service “higher elevation areas in [Rainbow’s] southern service area” during peak summertime demand periods. This new infrastructure includes new pipelines, pumping facilities, and water mains, among other new facilities, all of which may affect air quality.
7. Increased reliance on imported water from the State Water Project by both Rainbow and Fallbrook could potentially exacerbate impacts to certain fish species that will occur from hydrological changes that are caused by transporting water through the State Water Project. (2020 Initial Study for State Water Project at pp. 3-21 to 3-25 [disclosing potentially significant impacts to aquatic species].) Also, construction of new

² And all of which you have been informed of in writing, repeatedly, both in our September 2020 Response and in numerous letters to LAFCO.

³ Exhibits 66 and 67 to our September 2020 Response.

infrastructure may also impact protected species.

8. Increased reliance on water from Northern California delivered via the State Water Project may, in turn, lead to increased generation of greenhouse gasses. There is a significant difference between the amount of energy required to pump water from Northern California (delivered via the State Water Project) and water from the Colorado River (delivered via the Colorado River Aqueduct). None of this has been reviewed.
9. LAFCO must determine whether increased reliance on imported water from the State Water Project could have hydrological and water quality impacts. (*See* 2020 Initial Study for State Water Project at pp. 3-79 to 3-101 [disclosing potentially significant impacts to hydrology and water quality].)
10. Analysis must be done to determine whether a project will cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Here, the proposed detachment and annexation potentially conflict with a range of plans, policies, and regulations.
11. Numerous other required analyses under CEQA have not been performed, all as detailed in our Response.

It is startling that you have apparently already made a CEQA determination for your agency that there is not “anything in the record identifying/suggesting a substantive impact warrants LAFCO deviating from its responsible agency role and related concurrence with your agencies’ findings as lead agencies that a Class 20 exemption appropriately applies under CEQA.” Once again, we implore LAFCO to perform its required CEQA duties under the law.

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

Sincerely,



Mark J. Hattam
General Counsel

Enclosure (*Omitted in this correspondence*)

Keene Simonds

April 27, 2022

Page 6 of 6

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

Jack Bebee, General Manager, Fallbrook PUD

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

Nick Kanetis, Deputy General Manager, Eastern MWD

Tom Kennedy, General Manager, Rainbow MWD

Alfred Smith, Counsel, Rainbow MWD

Water Authority Board of Directors

From: [Simonds,Keene](#)
To: [Jack Bebee](#); [Tom Kennedy](#)
Cc: [Lauren Eckert](#); [Holly O. Whatley](#); [Aleks R. Giragosian](#); [Allen, Priscilla](#); [Adam Wilson](#)
Bcc: [Simonds,Keene](#)
Subject: RE: Correspondence Sent on Behalf of Jack Bebee and Tom Kennedy
Date: Friday, April 15, 2022 10:13:00 AM
Attachments:

Hi Tom and Jack –

Thank you for the joint-letter from yesterday confirming you will be providing payments for the final invoice from Dr. Hanemann in completing his assigned work from the Ad Hoc Committee. I am sure Dr. Hanemann appreciates it too.

I also want to respond to your requests for more specifics on next steps needed to complete the administrative reviews of your agencies' respective proposals to detach from the County Water Authority and annex to Eastern MWD. With the qualifier that things can come up, I nonetheless offer up the following outline of remaining and unique tasks that need to be addressed to complete the administrative reviews of these two proposals:

- Identify ratepayer impacts should one or both proposals proceed forward within three specific jurisdictions: City of San Diego; Valley Center MWD; and City of Poway. This work will be led by an Ad Hoc working group (Kim, Brian, Keith, and Lydia) and is currently underway.
- Evaluate existing “roll off” impacts on the County Water Authority. This work will be led by the Ad Hoc working group and is currently underway.
- Verify/disclose any material “voting” changes at MET with respect to the two subject agency wholesalers (County Water Authority and Eastern MWD) should one or both proposals proceed. A related request was emailed to MET earlier this week.
- Address any material impacts on the Bay Delta should one or both proposals proceed. An email to the Delta Watermaster was sent earlier this week and among other items seeks clarification on his earlier “observations” made on the proposals in September 2020.
- Confirmation USMC Camp Pendleton will not be materially impacted in continuing to receive their wholesale supply from County Water Authority should Fallbrook PUD detach.

- Complete an addendum to Riverside LAFCO's MSR on Eastern MWD.
- Presentation of a draft EO report on the reorganizations to the Ad Hoc for feedback before the document is finalized and sent to the Cities and Special Districts Advisory Committees (presumably sometime in September-October 2022).

One topic you don't see above relates to CEQA. At this point, I do not believe there is anything in the record identifying/suggesting a substantive impact warrants LAFCO deviating from its responsible agency role and related concurrence with your agencies' findings as lead agencies that a Class 20 exemption appropriately applies under CEQA. I will revisit this position with Commission Counsel should a substantive impact reveal itself through the remainder of the administrative reviews.

I hope this email is helpful and please follow up with me with any general items or observations. Should you have more specific questions on the Ad Hoc and its working group please direct these to Adam Wilson. Specific questions on the proposals' processing should separately be directed to Priscilla Allen.

Keene

Keene Simonds, Executive Officer

San Diego County

Local Agency Formation Commission (LAFCO)

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