

VIA EMAIL

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)

May 19, 2023

Re: Rainbow Letter of May 18, 2023

Dear Mr. Simonds:

We are in receipt of Mr. Tom Kennedy's letter to you of May 18, 2023, about new pending legislation, Assembly Bill 530. We are disappointed at both the tone and the content of Mr. Kennedy's letter. He makes a number of inaccurate and disparaging remarks that are counter-productive. We address some of his main contentions here so that you and the Commission are not misinformed.

For context, you will recall that years ago the Water Authority Board requested that LAFCO consider a vote in our service area so that all persons who would be affected by the requested Fallbrook/Rainbow reorganizations could have a say. As your own current Agenda Report for June 5 notes, millions of ratepayers in San Diego County will see increased water rates and loss of some of our County's MWD voting rights if the Commission were to approve the pending applications. Our Board felt it very important that all local residents who would face such impacts have a voice in the matter. Indeed, at the very first LAFCO Commission hearing on these applications years ago, then LAFCO Chair Dianne Jacob expressed exactly the same concern and supported such a vote in our entire service area.

However, as your Draft Report also notes, LAFCO's counsel has stated that LAFCO has no statutory authority to grant a vote by all those affected. As you know, our legal counsel disagrees, but we understand attorneys can have differing views.

Given LAFCO counsel's stated position that your agency is constrained by law from requiring a vote by all those persons affected by the applications, it is no surprise that the City of San Diego (not the Water Authority), decided that a vote by all those concerned was important enough to be reviewed by the Legislature. AB 530, the bill Mr. Kennedy addresses, simply allows a vote in our service area when agencies seek to detach. Though we did not propose this law, we certainly

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understand the concerns that led our member agency -- the largest City in the County --to seek legislation that would let the voters decide such an important issue.

Indeed, in a March 21, 2023, *Union-Tribune* article, it was noted that when you were asked about La Jolla's trying to leave the rest of the City of San Diego:

Simonds said . . . that communities that are already part of a city must win majority approval from the rest of the city's voters [to leave]."

It is our understanding that the City of San Diego is simply asking the Legislature to apply the same legal principle for the Water Authority that you cited as to cities in California. There is nothing wrong in asking the Legislature to let affected voters have a say in this matter, something the Commission itself might well prefer, but for the legal opinion it received.

A few additional specific comments as to accusations made by Mr. Kennedy:

- He claims this was an “attempt by SDCWA to bypass the determinations that SDLAFCO and its counsel have made in the staff report that will be considered on June 5th by the Commission.” First, AB 530 was not written, drafted, or reviewed by our staff or counsel. It is a proposal sponsored by the City of San Diego. Second, we are sure you would disagree with Mr. Kennedy that LAFCO staff have made “determinations” via your report. We are sure you would instead agree that the Commission, and not LAFCO staff, will make determinations on this matter for your agency.
- Mr. Kennedy states that AB 530 is “an affront to the processes ongoing at LAFCO” and that this legislation will “corrode the authority of LAFCOs statewide.” The exact opposite is true. The proposed legislation, which the Water Authority Board will soon review at a noticed meeting, simply allows voters to be heard, which is what our Board requested of LAFCO years ago, which former Chair Jacob supported, and which in fact might be welcomed by most of your Commissioners.
- Mr. Kennedy asserts that the Water Authority has just recently been “finally willing to have open discussions.” That is not correct. We have sent extensive correspondence over the years to LAFCO pointing out how Rainbow and Fallbrook had not honored commitments to us for proposals to resolve this matter.
- Mr. Kennedy asks that you remove Option 3 (a delay for an MSR on the Water Authority) as a possibility. Though our agency does not support this option, as you will see in our upcoming formal comment letter, it is not up to Mr. Kennedy, or you, to remove options from the Commission. We reiterate the point that it is the Commission, not staff, and certainly not Mr. Kennedy and his agency, which decide matters at LAFCO. All legal options are of course open to the Commission.

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Thank you for your consideration of these matters.

Sincerely,



Sandra L. Kerl
General Manager

cc via email:

All LAFCO Commissioners
Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator
David Edwards, General Counsel, San Diego County Water Authority
Mark Hattam, Special Counsel, 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
Rainbow Municipal Water District Board of Directors

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