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VIA EMAIL AND PERSONAL DELIVERY

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

Re: Reorganization Applications by Fallbrook and Rainbow (“Applications”)

Dear San Diego LAFCO:

The Commission has set June 5, 2023, for a hearing on the reorganization Applications by Fallbrook Public Utility District (“Fallbrook”) and Rainbow Municipal Water District (“Rainbow”), seeking detachment from the Water Authority and annexation to Eastern Municipal Water District (“Eastern”). LAFCO Staff has issued an Agenda Staff Report (the “Report”) which recommends that the Commission approve detachment with a very limited “exit fee.”¹ The Water Authority, which provides wholesale water service to almost the entire population of San Diego County and whose membership includes all major water provider cities and districts in its service area, opposes the Applications and objects to their approval. The Water Authority recommends that the Commission adopt Option 5 from the Report, which is to disapprove the reorganization proposals.²

At the outset, the Water Authority notes to the Commission two important facts not highlighted in the Report: that the *City of San Diego -- representing more than 1.3 million residents -- opposes detachment* (letter of 11/30/2022 to LAFCO from Mayor Todd Gloria), and LAFCO’s own Cities Special Advisory Committee voted *10-1* to also oppose detachment (March 17, 2023, meeting; two abstentions). The Water Authority encourages the Commission to listen to the voices of our County’s many cities and water agencies, whose millions of residents are being asked by Fallbrook

¹ Staff also issued an abbreviated “Prospectus” that merely summarizes the more detailed Agenda Report.

² The Water Authority Board resolved to oppose the Applications unless four key conditions were satisfied: (a) Rainbow and Fallbrook guarantee that all obligations promised to their own ratepayers are met; (b) detachment will not adversely affect other Water Authority member agencies and San Diego County as a region financially or environmentally; (c) detachment and then annexation into Eastern will not increase reliance on the Bay-Delta; and (d) detachment will not result in a diminution of the Water Authority’s voting power at MWD, all as detailed in our previous submittals. The conditions have not been satisfied, and thus this letter follows our Board’s direction as an objection by the Water Authority to the Applications.

MEMBER AGENCIES

Carlsbad MWD • City of Del Mar • City of Escondido • Fallbrook Public Utility District • Helix Water District • Lakeside Water District • City of National City
City of Oceanside • Olivenhain MWD • Otay Water District • Padre Dam MWD • Camp Pendleton Marine Corps Base • City of Poway • Rainbow MWD
Ramona MWD • Rincon del Diablo MWD • City of San Diego • San Dieguito Water District • Santa Fe Irrigation District • Sweetwater Authority
Vallecitos Water District • Valley Center MWD • Vista Irrigation District • Yulma Municipal Water District

and Rainbow to subsidize their exits from a water system established by the Legislature to serve our region. The Commission should also not ignore the judgment of the Water Authority's Board of Directors, which has both the expertise and statutory responsibility for long-term water planning in San Diego County for more than 75 years.

In this letter we first provide an Executive Summary of the Water Authority's central objections to the Applications, and some key facts. The rest of the letter then addresses each of these areas in greater detail. Citations are generally in endnotes rather than footnotes for ease of reading.

A. EXECUTIVE SUMMARY

There are a number of independent reasons the Applications should be denied by the Commission:

1. Allowing Fallbrook and Rainbow to move their imported water service from San Diego County to Riverside County has long-term and far-reaching negative impacts across San Diego County. These include:
 - a. Loss of San Diego County voting rights at Metropolitan Water District of Southern California ("MWD"), directly diluting the San Diego region's influence at MWD and harming all San Diego County water ratepayers.
 - b. Loss of revenue to the Water Authority, which will cause water rate hikes across San Diego County, as other member agency ratepayers must cover the revenue losses caused by a Fallbrook and Rainbow exit.
 - c. Dangerous precedent, and adverse financial ratings impacts at the Water Authority and MWD, raising borrowing costs and therefore causing water rates to even further increase across San Diego County and Southern California.
 - d. Loss of water supply reliability by Fallbrook and Rainbow residents by becoming totally dependent on MWD, without benefit of the MWD preferential water rights they have already paid for at the Water Authority.
 - e. Loss of water supply reliability for Fallbrook and Rainbow residents in an emergency by reliance on water only from the north, without adequate analysis of how a serious earthquake would threaten farms and residents.
 - f. Risk of significant water rate increases in Fallbrook and Rainbow, because MWD – on which those two agencies will solely rely for imported water – is heading into a major capital investment cycle that will raise its rates significantly. Dr. Hanemann, LAFCO's expert, called detachment a financial "gamble" by Fallbrook and Rainbow.
2. The Applications, if granted, will increase reliance on the fragile Bay-Delta water system, contravening State law and policy.

3. There has been no CEQA review of the effect of granting the Applications, including their combined effect and Bay-Delta impacts. This is a serious matter, and the Commission should not proceed until all CEQA review has been properly performed.
4. The Applications, if granted, will damage coordinated regional planning efforts in San Diego County for water supply reliability and other critical issues.
5. There is extensive data missing from the Applications, making them defective until remedied.

By asking and answering the following questions, we cover some basic facts underlying why the Applications should be denied, all as addressed in detail after this Executive Summary.

What do the Applications Seek? They ask LAFCO to approve reorganizations for Fallbrook and Rainbow which would detach them from the Water Authority in San Diego County and annex them into Eastern in Riverside County, and MWD via Eastern.¹

Would the Applications change the service areas of the Water Authority and Eastern? Yes. The Water Authority's service area would be reduced in San Diego County, and Eastern's service area would be expanded to include portions of San Diego County for the first time.² In addition, new MWD terms and conditions to annexation may apply under the applicable provisions of the MWD Act and Administrative Code.

Would Fallbrook and Rainbow receive the same water? No. Currently, they receive water from the Water Authority, and our agency's water portfolio includes contractual water from desalination and from the Quantification Settlement Agreement's ("QSA") high priority water transfer and canal lining in the Imperial Valley, along with water purchases from MWD³ that are fully backed by our agency's preferential rights to MWD water. If the reorganizations are approved, Fallbrook and Rainbow would only receive imported water from MWD, whose supply is dependent on the Bay-Delta⁴ and lower priority Colorado River water. Demand on MWD and the Bay-Delta would increase.⁵ MWD staff has informed LAFCO that preferential rights are not transferrable from the Water Authority to Eastern or to the Applicants directly, and there is nothing in the record indicating that Eastern ratepayers would share Eastern's preferential rights at MWD with Rainbow and Fallbrook.

Would Fallbrook and Rainbow receive water from Eastern's local supplies? No. They would be paying Eastern a nominal administrative fee to access MWD water only.⁶ Eastern's infrastructure does not reach Fallbrook and Rainbow.⁷

Would Fallbrook and Rainbow have the same access to all the water storage they do now? No. Right now they can be supplied from MWD's storage system via membership in the Water Authority, and from the Water Authority's separate storage system. If reorganization is allowed, they would lose access to the Water Authority's storage (which provides not only dry year supplies but also emergency supplies), and retain access only to MWD storage. The Applicants would not have access to Eastern's storage. Fallbrook and Rainbow thus seek Commission approval to trade Water Authority + MWD storage for just MWD storage.

Would Fallbrook and Rainbow continue to be able to be served from north and south in case of earthquake or other infrastructure loss? No. As Eastern members they would only be able to be served from the north. However, as Water Authority members they are able to be served from the north and from the south, providing significant redundancy that could prevent extreme hardship for farms and residents following a major earthquake.

Is MWD water as reliable as that of the Water Authority? No. The Water Authority, as a member of MWD, has access to MWD water, as does Eastern. But the Water Authority *also* has large volumes of water from conservation in the Imperial Valley (QSA water) that is of higher legal priority than MWD's more junior Colorado River supplies.⁸ The Water Authority also has drought-proof desalinated seawater. These additional water sources, over and above just MWD water alone, make the Water Authority's water supply more reliable.⁹ This extra reliability is critical, because MWD in 2022 experienced water supply shortages and is now beginning an investment cycle, planning many billions of dollars of investments to avoid future shortages.

Would Fallbrook and Rainbow continue to have the same form of representation at Eastern as they do at the Water Authority? No. At the Water Authority they have direct representation with their own Board members who can vote their agency's interests. At Eastern they apparently will be merged into some larger Riverside County voting district and will not have their own Board representatives, thus diluting their vote.¹⁰ As a matter of transparency, the Commission should require Eastern and the Applicants to detail for LAFCO and the public precisely how Fallbrook and Rainbow ratepayers will, or will not, have a vote on decisions at Eastern.

Will pressure on MWD's water supplies increase with the reorganizations? Yes. Whatever amounts of water Fallbrook and Rainbow currently order from the Water Authority will be ordered from Eastern. Because Eastern will only have the ability to serve Fallbrook and Rainbow with MWD water, Eastern's orders from MWD will increase accordingly. The QSA and desalination water that was previously being provided to Fallbrook and Rainbow by the Water Authority will now be replaced by MWD water, increasing demand on MWD's already constrained water supply, and on the Bay-Delta.

Will the Water Authority lose revenues with the reorganizations? Yes. Fallbrook and Rainbow make up almost 7% of the Water Authority's revenues. The Water Authority estimates annual base year losses to be about \$16 million per year.¹¹ Dr. Hanemann estimates them at about \$12 million per year.¹² All such losses would have to be made up from the remaining member agencies, i.e., water ratepayers across the rest of the County.¹³

Will San Diego County lose voting rights at MWD? Yes. San Diego County will lose voting rights at MWD, while Eastern will gain voting rights at MWD.¹⁴ This is very important, because decisions at MWD affect what is paid for water and property taxes in San Diego County, and Eastern has opposed MWD water refunds for San Diego County ratepayers.

B. REASONS THE APPLICATIONS SHOULD BE DENIED

The Water Authority believes the Commission should deny the Applications for all the reasons

stated in this section. We walk through each category, and then address what the LAFCO Staff Report states as to each topic.

REASON #1 – San Diego County Will Lose Voting Rights at MWD:

What happens at MWD has a major impact on San Diego County and its water ratepayers. Our region purchases MWD water supplies, and also pays MWD to deliver the majority of our region's water that has been conserved in the Imperial Valley (QSA water).

Therefore, actions at MWD can have significant effects on our County. When MWD spends money, there is pressure to pass costs on to our water ratepayers and taxpayers. When MWD makes major infrastructure investments, those costs can be in the billions of dollars, and again, some portion will get paid by our water ratepayers and taxpayers. When MWD makes decisions on who constitutes its management, those choices materially affect our region.

The Water Authority, representing San Diego County interests, is a member agency at MWD and has a weighted vote there *based on assessed land values in our service area*. The more land is located in the Water Authority, the larger San Diego County's share of the MWD vote. The less land, the lower San Diego County's vote at MWD.

By moving the Fallbrook and Rainbow service areas into Eastern, San Diego County's current vote at the Water Authority tied to those lands *permanently moves to that Riverside County district*. This is a legislative requirement under the MWD Act,¹⁵ and cannot be changed by LAFCO, or by any agreement among the agencies. San Diego County, through the Water Authority, will lose about 2% of its current voting rights at MWD, while Eastern will gain about 10% of its current voting rights.¹⁶ Further, the effect of this voting shift will continue to increase over time, because land values in the Fallbrook and Rainbow service areas are rising faster than the more urbanized areas of the County, and that will likely continue with population growth. For example, the total assessed land values in those regions went from 1.677% to 1.684% as a percentage at the Water Authority just from 2021 to 2022.

A reduced MWD voting right is a critical loss for San Diego County, because recent key votes at MWD have been decided by razor-thin margins.¹⁷ Additionally, as explained in detail in the Water Authority's September 2020 Response to LAFCO, it would hand our County's vote to Eastern, an agency which has regularly sought to prevent San Diego water ratepayers from the benefit of refunds of illegal rates by MWD, litigating actively to prevent such return of funds to our County. The Applications, if granted, would boost Eastern's power at MWD, and reduce San Diego County's voice there.¹⁸ Thus, the vote shift not only reduces our County's voting strength at MWD, it increases the voting strength of an agency which has long opposed MWD rate refunds to our County.

For the Commission to allow a transfer of any of our County's voting rights at MWD to an agency adverse to the interests of San Diego County would be a dereliction of the Commission's duty to the water ratepayers and taxpayers of San Diego County.

The LAFCO Staff Report: As to Reason #1, the Report notes that MWD voting rights are important, but downplays the issue by stating that in the last ten years there were only three votes

that were extremely close, and two of them -- per LAFCO Staff -- were not “significant in terms of generating long-term impacts on MET’s member agencies.”¹⁹ Staff have no sound basis for making such an assertion.

In the first place, what was happening at MWD (and statewide and in the Southwest) 10 years ago is very different than what is happening at MWD today. In earlier times, MWD was a water delivery agency, exporting then low-cost water from Northern California and the Colorado River. Today, these MWD supplies are more and more constrained. To its credit, MWD’s new management (appointed via a close and controversial vote) acknowledges the need for investment in a reliable water supply, and to change its business model and past financial practices. Not only were the close votes at MWD very important (which is why the MWD Board was split almost 50-50), but they were all made in the past two years. In other words, voting at MWD during these changing times can be very close and divided on key policy matters, and LAFCO Staff’s attempt to downplay the issue is not informed or appropriate.²⁰

REASON #2 – San Diego County Water Ratepayers Will Pay Higher Rates:

There has been extensive evidence submitted to the Commission during the processing of the Applications showing that should the Commission approve the reorganizations without full compensation to the Water Authority for losses, the rest of San Diego County’s ratepayers will be paying the bill.

What is the amount of that bill? Annual losses of, on average, between \$12.2 and \$16.4 million per year. LAFCO expert Dr. Hanemann estimates the former,²¹ while the Water Authority estimates the latter.²² Because the Water Authority must pay for all the water supplies and infrastructure it acquired for the region (including for Fallbrook and Rainbow), it must recover such costs from its member agencies, i.e., the rest of San Diego County.

Though Dr. Hanemann suggests that up to 10 years might be an appropriate time span for an “exit fee”²³, and the Report suggests only five years, neither eliminates significant water rate impacts for the rest of our member agencies’ ratepayers. The Hanemann Report’s suggested exit fee also ignores the millions of dollars in engineering costs the Water Authority must pay if there are detachments, costs spelled out in our Response,²⁴ and which are higher today due to construction and labor cost increases. There is thus inherent unfairness at the baseline because not all water supply investments and costs are covered.

The LAFCO Staff Report: As to Reason #2, the Report downplays the impacts suffered by water ratepayers in the County, and it uses artificially low calculations in doing so.

First, the Report only suggests a five-year exit fee, though even Dr. Hanemann had suggested up to 10 years.²⁵ *Second*, Dr. Hanemann’s exit fee analysis addressed only the QSA obligations, not all the other obligations the Water Authority has incurred to serve member agencies such as Fallbrook and Rainbow. All such costs would have to be borne by the rest of the County. *Third*, the ratepayer impacts suggested by the Report are in error. They assume Dr. Hanemann’s figures, and ignore possible changes that can meaningfully escalate such costs. For example, the Water Authority noted in its Response that though a base year loss of detachment was estimated at \$16 million, this could escalate to over \$40 million annually in some years.²⁶ This would create far

larger ratepayer impacts than the Report claims. *Fourth*, the Report suggests an offset to even its own limited exit fee by deducting money that “would otherwise be expended on proceeding with the previously planned construction of the ESP North County Pump Station.” However, this pump station would be funded over a long period of time. Staff is proposing five years of exit fees, but arbitrarily crediting Fallbrook and Rainbow for 30 years of costs. In other words, for an “exit fee,” only five years of Water Authority losses are counted, but when it comes to an offset 30 years of spread-out costs are all included. The methodology is seriously flawed and the Commission should not accept it.

The Report tries to marginalize the issue by claiming that the average County-wide water rate increases of 3.6% are less than inflation, and thus “less than significant.”²⁷ The Report thus recommends that the Commission vote to impose 3.6% annual water rate hikes for the rest of our County so Fallbrook and Rainbow can buy MWD water from Riverside County. Staff suggest such rates hikes are immaterial. They are not. *They come on top of inflation*, and at a time when water agencies across the state and the nation are struggling to contain pass-through costs. Adding to water rates is never insignificant.

Also, where is the environmental justice and economic impact review of this question for the poorer areas of the County which are being asked to pay the bill for Fallbrook and Rainbow? *It is non-existent*. The Report has a short section on page 52, but this only covers purported effects *in the Rainbow and Fallbrook areas*, not the rest of the County. Yet, LAFCO’s own environmental justice brochure states: “State law directs San Diego LAFCO to address several factors anytime the Commission considers jurisdictional changes. The current listing of factors is codified in Government Code Section 56668 and includes considering whether proposed jurisdictional changes will promote environmental justice.”²⁸ Under the statute this means the “*fair* treatment and meaningful involvement of people of *all* races, cultures, *incomes*, and national origins, with respect to the location of public facilities and the *provision of public services*.” (Emphases added.) Contrary to this requirement, the Report ignores the issue of impacts of unnecessary higher water rates outside Fallbrook and Rainbow by arbitrarily concluding it is less than inflation so it is not significant. This is not a proper consideration or determination of environmental justice.

Finally, the Report notes that the Applicants have argued that detachment is the same as “rolloff.”²⁹ They are unrelated. The Water Authority’s member agencies order water when they need it, and not when the need is lacking. This occurs for a host of reasons, including having their own supplies, rainfall, and other factors. The Water Authority’s Board of Directors makes all appropriate decisions with respect to near-term and long-term water resource planning and how to fairly allocate and charge member agencies for our recovery of costs. Once an agency detaches it is no longer a member and is not subject to such decisions. Thus, detachment is not the same as rolloff. We also note that the Report states that, “The Ad Hoc Committee tasked a working group to independently address the topic [of rolloff/detachment].”³⁰ This is not accurate. LAFCO Staff generated that assignment, and chose the participants, which did not include the Water Authority.

REASON #3 – The Applications Would Increase Reliance on the Bay-Delta:

The Water Authority has repeatedly informed LAFCO that the environmentally fragile Bay-Delta will be harmed by the reorganizations. The reason why was explained by Bay-Delta Watermaster

Michael George: “[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 [with Eastern].”³¹

This is true because there are many months where the Water Authority currently buys little or no MWD water (the Water Authority’s sole source of Bay-Delta water is via MWD), and it serves Fallbrook and Rainbow with QSA water from the Colorado River, all as explained in detail in prior submittals to LAFCO. Should the reorganizations occur, Fallbrook and Rainbow will have to rely continuously and exclusively on MWD for imported water, which has a much higher dependence on Bay-Delta water than the Water Authority.

The State of California has instructed agencies in the State to reduce – not increase – their reliance on the environmentally sensitive Bay-Delta, as stated in Water Code section 85021 (emphases added):

The policy of the State of California is to *reduce* reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed *shall* improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and *improved regional coordination of local and regional water supply efforts*.

The Commission should not approve reorganizations that increase water usage from the Bay-Delta, contrary to the Legislature’s statutory directive. Indeed, the Commission is instructed by the above statute *not* to obstruct the “improved regional coordination of local and regional water supply efforts” that has been accomplished by the Water Authority Board in moving off the Bay-Delta via QSA water and desalinated water. As detailed in the next section on CEQA, this is also an environmental issue that has not been reviewed under CEQA by LAFCO or by either of the Applicants.

The LAFCO Staff Report: As to Reason #3, the Report notes on page 36 that Dr. Hanemann “advised there are potential risks to applicants and their ratepayers with respect to increased reliance on the Sacramento Bay-Delta.” The Report also points out that Dr. Hanemann stated that, “If FPUD and RMWD switch from SDCWA to EMWD, they will switch from relying on SWP water for 24% of their supply to relying on SWP water for 63% of their supply.” Report, p.37. Staff acknowledges that detachment would cause increased reliance on the Bay-Delta, and would impact the State Water Project’s “baseline” delivery amounts by between 0.84% and 1.65%. Report, p.37.

However, the Report does not inform the Commission that the Legislature has expressly instructed that such increases are against State policy, including Water Code section 85021. The statute is not even cited in the Report. Instead, the Report yet again minimizes an impact by creating and using a standard not found in State water law or policy, trying to make the harm look immaterial. The Report compares the *entire State’s* SWP water deliveries against the annual Delta flow

increases that would be needed for just Fallbrook and Rainbow so as to try and marginalize the latter. This is not a fair analysis, nor does it follow legislated State policy.

REASON #4 – No Proper CEQA Review Has Been Performed:

There are two main areas where the reorganizations may have various environmental impacts: (a) increased Bay-Delta reliance, as noted above; and (b) necessary construction that has been undisclosed in Rainbow. Neither has been reviewed, and it is a clear violation of CEQA for the Commission to proceed without such required review.

We note the following CEQA-related matters, all of which have been previously presented to LAFCO by the Water Authority:

- Increased reliance on the Bay-Delta raises many environmental concerns, such as: (a) Using more imported water from the State Water Project could potentially exacerbate impacts to certain fish species that will occur from hydrological changes; (b) Increased reliance on water from Northern California delivered via the State Water Project may 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); and (c) LAFCO must determine whether increased reliance on imported water from the State Water Project could have hydrological and water quality impacts. *None of these issues have been reviewed under CEQA.*
- Rainbow must perform major construction to be able to serve its southern service area if its application is granted. There are CEQA issues that have not analyzed. For example, air quality may be affected, and there may be impacts on protected species. Rainbow's Supplemental Information Package for its application (at pp. 5-6) reveals that if the reorganization is approved by MWD and LAFCO, 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. No facts regarding such changes have been submitted, and no environmental review of such changes have been conducted or presented.
- 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 reorganizations potentially conflict with a range of plans, policies, and regulations, yet no review has been performed. Annexation to Eastern will also require annexation approval by MWD under Part 7 of the MWD Act, including but not limited to environmental review.
- There are applicable Orders from Judges Frazier and Medel of the San Diego Superior Court that the Rainbow and Fallbrook 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.”³²

- Even if LAFCO were able to use the woefully deficient and inapplicable Fallbrook/Rainbow CEQA actions, which it cannot do per judicial Orders, neither Fallbrook or Rainbow took any action that reviewed the combined effects of their joint actions. Yet CEQA requires such environmental review.³³ Further, if one reads the actual actions taken by Rainbow and Fallbrook, one will see that their purported CEQA review was only for submitting reorganization applications to LAFCO, not for all the actual effects of any granted approvals.³⁴
- There is no CEQA exemption applicable here, as detailed in the Response.³⁵

In summary, CEQA is clearly being violated if this Commission approves these Applications without full and proper environmental compliance.

The LAFCO Staff Report: As to Reason #4, the Report asserts LAFCO can ignore Superior Court judgments because it was not a party to the cases. However, the Court Orders expressly cover the decisions by the applicant agencies, and those agencies were parties to the cases and are not allowed to use their actions with LAFCO in violation of the Orders. Nor should the Commission sanction ignoring two on-point Judgments on the very issue before it without a formal public legal determination as to the effects of the Judgments and how they relate to LAFCO, including by way of LAFCO’s contractual arrangements with the Applicants.

The Report states that there are two CEQA exemptions that allow reorganization without further CEQA review: CEQA Guideline sections 15061(b)(3) and 15320.³⁶ As to the latter, the Water Authority explained in great detail in its Response that the cited exemption is completely inapplicable here and cannot be relied upon by LAFCO.³⁷ This was the exemption cited by LAFCO staff to the Water Authority earlier. Now, LAFCO Staff also cites section 15061(b)(3) as to sphere of influence decisions. However, such section requires that (emphases added):

(3) The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

It is clear here that there will in fact be an adverse effect on the environment, from the extra demand on Bay-Delta water if nothing else. To avoid CEQA compliance, the Report says that a sphere of influence change by itself does not affect the environment, then it says that Rainbow and Fallbrook used a section 15320 exemption on their end so everything under CEQA has been covered. This ignores the following “inconvenient truths”: (a) The Report admits on page 45 that the “conforming sphere of influence actions” are “accommodating the reorganizations.” (Emphasis added.) Thus, the actions at LAFCO are not independent, and are part of the overall reorganizations which have environmental impacts, and thus cannot fit within section 15061(b)(3). CEQA does not allow such a piecemeal approach. Section 15378 of the CEQA Guidelines defines a project as the “whole of an action,” and LAFCO Counsel is no doubt aware of the extensive case

law that bars trying to satisfy CEQA by breaking an overall action such as we have here into smaller bits and pieces to avoid CEQA compliance; and (b) The Report ignores all the problems cited by the Water Authority as to the inapplicability of section 15320 and the Applicants' non-existent CEQA review. The environmental effects of these actions have not been reviewed by any agency, let alone their combined effects.

The Report does not justify the Commission ignoring its duties under CEQA.

REASON #5 – Fallbrook and Rainbow Water Users Lose Water Reliability, and May Not Even Save Money:

Fallbrook and Rainbow have been repeatedly telling LAFCO and their customers that the water they will be relying on from MWD is just as reliable as Water Authority supplies. This is not true, as LAFCO expert Dr. Hanemann noted in his Report:

The “superior reliability of SDCWA has benefited FPUD and RMWD in the past” – Hanemann Report, p.14.

“Q. Has the distinctive reliability of SDCWA’s supply portfolio actually made any Difference? A. Yes. It would have made a difference if SDCWA had QSA water in the 1991 drought, it did make a difference that SDCWA had QSA water in the 2007-2009 drought, and it made a difference that SDCWA had desal water in the 2015-2016 drought.” – Hanemann Report, p.84.

“It is not clear that MWD yet has the practical capacity to sustain more severe and prolonged drought, especially on the Colorado River” – Hanemann Report, p.16.

“RMWD could be especially vulnerable in a shortage of MWD water” – Hanemann Report, p.97.

“[W]hile I believe that FPUD and RMWD are taking something of a gamble on supply reliability if they switch from SDCWA to EMWD, the gamble ultimately is not one of running out of water but, rather, paying a higher price than they had anticipated to get by in a drought.” – Hanemann Report, p.16.

Now, there is a simple reason Dr. Hanemann could make these statements, and it does not take a water expert to see the basic facts here: both Eastern and the Water Authority are MWD member agencies with access to MWD water. *However*, the Water Authority *also* has its QSA supplies, which are higher priority Colorado River water than MWD’s Priority 4 water, *and* it has drought-proof desalinated water. If Fallbrook and Rainbow go to Eastern they will receive only MWD water (and without any assurance of MWD preferential rights if they annex to Eastern). At the Water Authority, in contrast, they receive MWD water (backed up by our agency’s preferential rights), plus access to the Water Authority’s other supplies, which are both more reliable than MWD supplies alone.

Fallbrook and Rainbow are seeking to trade away better water reliability for uncertain cost savings. But any cost savings may be ephemeral. As also noted by Dr. Hanemann:

“The recent trend has been for the average cost of M[WD]-water to SDCWA to grow faster than that of QSA water. That would tend to narrow the differential between SDCWA’s all-in rate and MWD’s all-in rate.” – Hanemann Report, p.61.

“Q. Will the Delta Conveyance Project raise the cost of [MWD] SWP water? A. For sure.” – Hanemann Report, p.89.

“SDCWA and MWD [are] at different phases of their investment cycles.” – Hanemann Report, p.51.

One of the key justifications for the reorganizations cited by the Applicants and LAFCO staff is that the reorganizations will supposedly produce cost-savings for the Applicants and their ratepayers. However, this ignores that the agencies will be paying a potentially greater amount by having to pay a greater share of the costs to develop water supplies for the entire MWD service area, spanning five other counties, should they annex to Eastern.

These points cannot be overstated. As explained in prior correspondence with LAFCO, MWD has already experienced water shortages and is facing serious challenges to its water supply reliability going forward. As noted by Dr. Hanemann, and as readily apparent to anyone who follows MWD Board proceedings, MWD is now heading into a construction cycle that will cost many billions of dollars, with associated impacts on its rates and charges.³⁸ In contrast, the Water Authority already made significant supply investments, and is thus in a lower expenditure cycle going forward. This can narrow the gap in rates, as described by Dr. Hanemann.

The Applicants and the Report also fail to account for the fact that unlike the Water Authority, MWD no longer has an agricultural water discount program³⁹, which was discontinued by MWD after 2012. Far from treating agriculture as a “unique and/or protected group,” which the Report identifies as a major policy consideration of its recommendation (Report p. 43), MWD -- unlike the Water Authority -- ended its agricultural discount program.⁴⁰ Even before the MWD Board eliminated its last “interim plan” to sell discounted water to agriculture, MWD barred new lands being annexed that would receive the discounted plan water: “No District water shall be sold or delivered to any member public agency for use, directly or indirectly, for agricultural purpose as defined in Section 4106 within the annexing area.”⁴¹ Thus, MWD is on record with a policy disfavoring discounted agricultural water, and MWD’s coming cost increases are unlikely to provide any rate relief for agriculture.

Further, in an era of drought, water reliability is critical. Fallbrook and Rainbow have sold their customers on the idea that they will have the same reliability with MWD as they do with the Water Authority, but this demonstrably is not so. Fallbrook’s own expert report submitted to the Fallbrook Board in December 2019 stated:

“[T]he above reliability analysis supports that the overall range in reliability is better under SDCWA”⁴²

That report also aptly summarized the result of the Water Authority's supply diversification as creating a more dependable water supply than relying solely on MWD supplies:

“SDCWA's dependence on imported water from MWD has been reduced and the reliability of its service area has substantially improved in the last two droughts as compared to the maximum of 32% combined agricultural and non-agricultural shortages SDCWA experienced in 1991-1992 prior to the region's diversification program. The more reliable local supplies available to MWD member agencies, the less reliant they are on MWD imported water supplies in a drought induced shortage, and the higher the agencies level of reliability.”

The Report states that Rainbow and Fallbrook are “attesting neither the CWA or MET have taken actions to curtail the availability of supplies to its member agencies in any time during the last five-years.” This is certainly incorrect as to MWD, as MWD has in fact just in 2022 curtailed water deliveries to some of its member agencies. From June 1, 2022, through March 14, 2023, MWD implemented its “Emergency Water Conservation Program” in its State Water Project Dependent Area—the northern portion of its service area that serves about 7 million Southern Californians. This program sought to reduce State Water Project (imported) water use on average by 35% and up to 73%.⁴³ As noted on December 21, 2022, by *The Los Angeles Times*, this MWD water allocation was likely to spread across the entire MWD service area,⁴⁴ until it was later avoided only by fortuitous heavy rains this year.

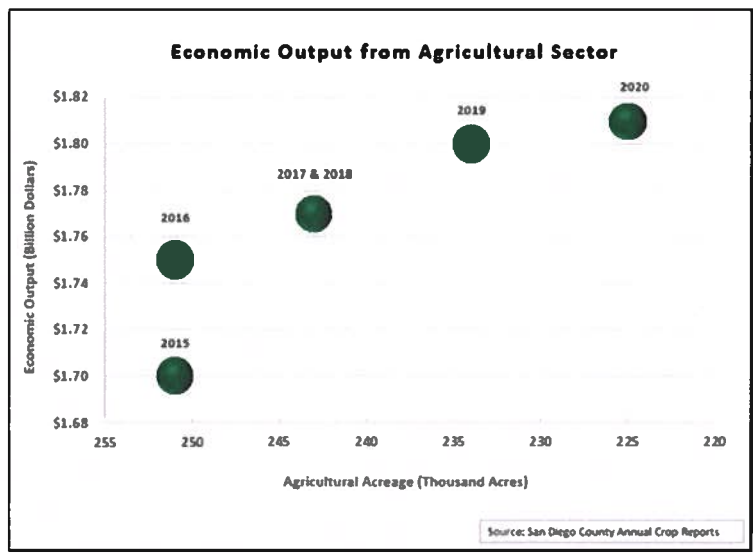
Additionally, the Bureau of Reclamation has issued a draft Supplemental Environmental Impact Statement (“SEIS”) for possible serious action as to Lower Basin Colorado River water deliveries.⁴⁵ Given the Water Authority's higher priority 3 water on the Colorado River (via Imperial Irrigation District's priority rights), any cutbacks it may face from Bureau action would likely be far less serious than those imposed on MWD's lower priority 4 supplies. The importance of our agency's higher priority Colorado River water than that of MWD was called out multiple times in the Hanemann Report.⁴⁶ *[Note: As of the date of this letter, the federal government has announced a new deal on the Colorado River which may moot the SEIS referenced above. Once the details are released, they can be reviewed by all parties.]*

LAFCO Staff also should be required to confirm the MWD Board's position on annexation, given that the MWD Board (not the General Manager or MWD's staff) has sole authority to approve a service change under the annexation provisions of the MWD Act (Part 7 Changes in Organization). It cannot merely be assumed that the terms and conditions established by MWD for annexation of Eastern and the Water Authority many decades ago would necessarily apply to a requested annexation in 2023. Today, MWD annexation requires detailed factual review of water usage, compliance with water use efficiency guidelines, CEQA compliance and many other factors in connection with the MWD Board's adoption of a resolution fixing terms and conditions for annexation—which vary according to the timing, facts, and circumstances. The MWD Board has never been asked to approve the annexations that would be necessary if these reorganizations were to be allowed, and is scheduled to consider its annexation policies generally for situations like this involving changes in service within its current boundaries (June 13, 2023 Finance, Audit, Insurance, and Real Property Committee Item 7-b).

In summary, management at Fallbrook and Rainbow imprudently seek to move to reliance on MWD, an agency which just recently faced serious water allocation, and is confronting severe challenges going forward with both its State Water Project and Colorado River supplies. These are risks Dr. Hanemann identified might happen, but now have happened. The applicant agencies seek to trade away the water reliability our region fought so hard for, and has invested in, after past MWD drought water shortages. It is a short-sighted strategy, and the Commission should not favor this “gamble,” as it is aptly characterized by Dr Hanemann.⁴⁷

The LAFCO Staff Report: As to Reason #5, the Report claims that Dr. Hanemann’s Report asserted that the Water Authority’s water is more reliable than that of MWD (via Eastern), but that, “Dr. Hanemann does not define the reliability differences between the two as substantive relative to industry standards.” This is not correct. There is not a single reference in the Hanemann Report to any “industry standard” on the issue of water reliability. In fact, Dr. Hanemann’s Report repeatedly notes the clear differences in water reliability between the Water Authority (which has its own supplies plus MWD water) versus MWD water alone, as quoted above.

Additionally, the Report focuses on avocado farming, creating the impression that this should be the main concern of LAFCO (for example, *see* pages 12 and 16). However, the Report ignores these key facts: (a) the number of residential and municipal/industrial water customers, and farmers of other crops, in Rainbow and Fallbrook outnumber avocado farmers by an order of magnitude; (b) many agricultural customers in Rainbow and Fallbrook, particularly those growing higher value nursery crops, have not subscribed to the lower PSAWR ag rate available to them currently at the Water Authority. This shows their preference for higher water reliability over less reliable water at a price discount; and (c) the annual San Diego County crop reports show the value of the San Diego region’s agricultural products increased significantly in the years before the pandemic:



The Water Authority strongly supports avocado farming in our region. Indeed, it is one of the primary objectives of the lower PSAWR ag rate. But avocados are just a piece of the region’s

farm economy and are not the sole predicate for LAFCO water decisions that will affect almost all San Diego County water ratepayers.

REASON #6 – There Has Been No Proper Review of Earthquake Risks:

Because Fallbrook and Rainbow want to move to full MWD reliance, they would also be moving from the ability to get water from both north and south at the Water Authority, to the ability to get water solely from the north via Eastern. This makes it imperative that all earthquake risks, including on the Elsinore Fault, be reviewed carefully.

MWD supplies depend on the lengthy Colorado River and California Aqueducts, which cross many major earthquake zones, including the San Andreas Fault. All MWD pipelines, serving either untreated or treated water from Skinner Lake and the Skinner Water Treatment Plant respectively, also cross the Elsinore Fault that lies within Eastern’s service area to the north of the San Diego County boundary and the Water Authority’s service area. These numerous fault regions have the potential to cause significant damage to the conveyance pipelines and extended outages of imported deliveries to the San Diego region, including to Fallbrook and Rainbow.⁴⁸

The Fallbrook and Rainbow detachment applications both reference an unproduced MWD emergency planning document describing MWD’s supposed ability to complete repairs on major aqueduct facilities within 14 days of a seismic event and restore service to at least the 75% level. The Water Authority told LAFCO that it had never seen this purported plan, and that a 14-day repair on a large aqueduct after a major earthquake seemed unrealistic.⁴⁹ The Water Authority informed LAFCO that this 14-day repair report should be requested by LAFCO so it could be publicly reviewed.⁵⁰ To our knowledge no such request has been made by LAFCO, and there has been no analysis by LAFCO of the earthquake risks on water deliveries to Fallbrook and Rainbow. This analysis was not included in Dr. Hanemann’s scope of work.

For context, the Water Authority’s Emergency Storage Project is sized for a two-month complete outage (or six-month partial outage) of imported water from Lake Skinner and the Skinner Water Treatment Plant resulting from damage to pipelines caused by an earthquake event on the Elsinore Fault or San Andreas Fault.

MWD’s published Emergency Storage Objective belies a 14-day estimate, projecting lengthy potential service outage durations resulting from an earthquake, as represented in Table 1 below from that report:⁵¹

Table 1
Estimated Outage Duration for Imported Supply Aqueducts (M 7.8 earthquake)

Aqueduct	Estimated Outage Duration
Colorado River Aqueduct	2 to 6 months (recovery of 80% CRA capacity) 3 to 5 years (recovery of 100% CRA capacity)
California Aqueduct: East Branch	12 to 24 months
California Aqueduct: West Branch	6 to 12 months
Los Angeles Aqueduct	18 months

The LAFCO Staff Report: As to Reason #6, the Report simply asserts on page 19: “Should service be completely cutoff, Metropolitan maintains that repairs would be completed within 14 days.” The basis for the claim that a major earthquake that severs a major aqueduct can be brought back into service within 14 days is unproduced and unexamined.

*REASON #7 – There Will Be a Loss of Regional Water Planning
for San Diego County:*

The regional planning between the Water Authority and SANDAG required by law (Water Code section 10915) is contravened by detachment.

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.⁵² 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.”

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 and join a Riverside County water agency, 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.

The LAFCO Staff Report: As to Reason #7, the Report says SANDAG has not taken any position.⁵³ But SANDAG has already taken a position on regional planning, as the above-cited facts and our agreement with SANDAG clearly demonstrate. Rather than assuming SANDAG has no position, LAFCO should assume compliance with the regional planning processes that are well-established and in force.

REASON #8 – There Is Risk of Negative Precedent:

LAFCO should deny the Applications because of the meaningful risk of precedent, a risk that has already been noted by the debt rating agencies, and which could cost the remaining Water Authority member agencies higher interest rates, and thus higher water rates. A letter sent to LAFCO by MWD's current Board Chair Ortega also identified precedent as a risk for MWD: "as communities chase after the lesser rates among adjacent Metropolitan Member Agencies in a potential race to the bottom *compromising past investments*." (emphasis added).⁵⁴ As noted by MWD Chair Ortega, the increasing cost of water is better addressed in long-term planning processes such as the Water Authority has established and MWD is now undertaking.

The Water Authority explained the risk of negative precedent in detail in its Response to LAFCO.⁵⁵ As noted there, S&P Global has stated, "[W]e do believe an approved detachment could set a poor precedent if members can easily detach from the authority, especially if they are not required to pay for their portion of the associated debt and infrastructure costs that the authority has undertaken to provide reliable water sources."

Though Fallbrook and Rainbow may be the only two agencies with current direct connections to MWD pipelines, this does not mean that other agencies could not potentially construct pipes to also connect their own systems to MWD. The Water Authority, in its Response, provided LAFCO with a map showing that there are six other member agencies less than ten miles away from those MWD pipes, and twelve agencies less than 20 miles away.⁵⁶ Additionally, this does not even begin to address the chaos that could ensue at both MWD and the Water Authority if agencies are able to detach and have an automatic right to be served by any other agency in the MWD service area.

The LAFCO Staff Report: As to Reason #8, the Report concedes that the detachments could adversely affect the Water Authority's credit rating (also a concern expressed by MWD's Chair), but then – as it does in many other areas – downplays the issue based on unsupported assumptions and presumptions: "Given Standard and Poor's own observations on the topic, it is reasonable to

assume detachments would impact the County Water Authority's credit rating. It is also reasonable to presume the impact would be less than significant given two factors."⁵⁷ The stated purported factors are that for a previous downgrade by Standard and Poor's "detachments were not a primary reason," and that an exit fee and proximity to MWD pipes by only Rainbow and Fallbrook covers any loss or precedent issues.⁵⁸ The Report simply has no grounds to state that fears of precedent-setting are immaterial. Cites to an earlier Standard and Poor downgrade when there was no actual detachment, and the possible existence of a *de minimis* exit fee or pipe location, as the foundations for the Report's opinion are without basis and inappropriate.

REASON #9 –Material Information Is Still Missing:

There is significant information missing from the Applications. The Commission must not ignore these items – all of which have been noted earlier to LAFCO Staff – as the Commission needs them to proceed:

- The missing CEQA review noted above.
- The missing earthquake items noted above.
- The missing data from Rainbow as to their needed major infrastructure improvements noted above.
- What Williamson Act and California Land Conservation Act lands are there in Fallbrook and Rainbow's service areas (if any). LAFCO Statutes require certain special processes for such lands before this process can proceed. *See*, for example, Government Code Section 56426.6 and, 56856.5.
- What specific Water Authority infrastructure would Fallbrook and Rainbow need access to after annexation into Eastern, and what water volumes and timing would be required?
- How exactly will Fallbrook and Rainbow be represented at Eastern? It appears they may be merged into an existing voting district which will be predominantly residents of Riverside County. Neither Eastern nor the Applicants have told LAFCO exactly what will happen, but only referenced things that might happen.

The LAFCO Staff Report: As to the above items, the Report is mostly silent except for the issues covered earlier, such as CEQA.

C. DELAY OPTIONS

The Report has suggested in both its Options 3 and 4 that the Commission delay a decision on these reorganizations so that a Municipal Service Review of the Water Authority and potentially MWD (mentioned by staff earlier) could take place. Any such review is unrelated to these Applications, which have now been at LAFCO for four years. The Applications should simply be denied.

D. CONDITIONS

The Water Authority strongly believes the Commission should deny the Applications for all the reasons stated above. If for any reason an approval were to be granted over our objections, and the objections by the City of San Diego and LAFCO's own Cities Special Advisory Committee, the Commission should only do so under the most careful conditions. The Water Authority here sets out the minimal conditions needed:

Condition #1: An affirmative majority vote in the entire Water Authority service area, as well as one in the Fallbrook and Rainbow service areas, as LAFCO acknowledges was requested by the Water Authority.⁵⁹ The voting issues are addressed in detail in the Response.⁶⁰ The Report states that LAFCO cannot legally do this, but we believe LAFCO counsel is in error. LAFCO should engage a completely independent counsel to review the issue after taking input from all parties.

[Note: As this letter is being filed, the City of San Diego has just supported a new piece of legislation -- AB 530 -- that would require voting in the entire Water Authority service area on detachment. The Water Authority's Board recommended such a vote to LAFCO years ago.]

Condition #2: An increased "exit fee" for a longer period of time to allow the Water Authority to manage the countywide ratepayer impacts caused by detachment, and with a much reduced offset to match the years included in an exit fee.

Condition #3: A requirement that any "exit fee" be agreed to via a formal majority vote in Fallbrook and Rainbow's service areas such that if the agencies do not timely pay for any given year(s), the taxpayers agree via their vote that the unpaid amounts may be levied on their properties by the Water Authority. As explained in the Response, this tax approval by the voters in the Fallbrook and Rainbow service areas is the only way, under today's voter approval laws and the State Constitution, that the Commission can effectuate the intent and requirements of the County Water Authority Act.

Condition #4: That all Water Authority costs of the engineering and infrastructure changes that need to be made to accommodate the reorganizations be paid for by Fallbrook and Rainbow. The Water Authority provided rough estimates in its Response,⁶¹ but that was done before high inflation hit, and the costs would be meaningfully higher now.

Condition #5: Require the Applicants to formally apply for annexation to MWD to establish, rather than assume, MWD terms and conditions, or confirm that MWD Board policy is that no annexation is required under the MWD Act so long as the detaching and annexing areas are within the MWD service territory.

Condition #6: Require the Applicants to secure a formal resolution of the Eastern Board of Directors identifying exactly how Fallbrook and Rainbow customers will be represented

should annexation be granted, and demonstrating compliance with all local, regional and statewide legal requirements.

E. CONCLUSION

The Commission should not approve the Applications, because they harm the Fallbrook and Rainbow communities, as well as the rest of San Diego County. The Water Authority respectfully requests that the Applications be denied.

In closing, we recall for the Commission a bit of history, as the past can be instructive.

The Water Authority was annexed to MWD as a member agency in 1946. A condition for this annexation was a transfer to MWD of San Diego's water rights to Colorado River water, and such transfer of water rights occurred.

In the Spring of 1953, the Water Authority's Board approved a resolution informing MWD that the Board would favorably consider an application for Rainbow and other County areas to be annexed into the Water Authority.⁶² During this time, the San Diego Chamber of Commerce became aware of efforts by entities within Rainbow and other North County areas to be annexed directly into MWD and to receive Colorado River water from MWD rather than through the Water Authority. On May 11, 1953, the Chamber wrote to MWD stating the Chamber's opposition to these efforts and advocating instead for annexation of these areas into the Water Authority.⁶³

Two weeks after the Chamber's letter, the Water Authority wrote to MWD and stated that it had not yet received any application for the northern areas to be annexed into the Water Authority but that these areas had sought "informal consent" from MWD to be directly annexed into MWD and that this request was pending.⁶⁴ The Water Authority Board opined that MWD should reject the request for direct annexation and recommend to the applicants that their annexation should occur through the Water Authority. Indeed, the Water Authority Board cited its Resolution 261 (attached Exhibit A), which stated that any water coming into the County should do so via the Water Authority:

“[A]ny area in San Diego County which is to participate in the delivery of water imported into the County from the Colorado River, or any other source outside of the County, should so participate as a part of the San Diego County Water Authority.”⁶⁵

MWD rejected the Rainbow-Bonsall area's "informal application" for direct annexation.⁶⁶ Then, in July of 1953, MWD informally approved Rainbow as an acceptable entity for concurrent annexation into the Water Authority.⁶⁷ The next year a deal was struck by which the Water Authority's rights to the San Diego Aqueduct and second barrel were transferred to MWD, subject to it not being used in any manner "inconsistent" with the rights of the Water Authority to receive water from MWD through that system.⁶⁸

Many decades have now passed, but the current Applications are simply a renewal of the attempt to move to MWD, this time using Eastern as a proxy. The San Diego region has spent billions of

dollars developing Colorado River rights for our County, rights that had been lost to MWD in the WWII era, so that our County could have a reliable water supply that was not dependent on the decisions of others. MWD is now facing major water challenges, and it does not support agricultural water use in the same way San Diego County and the Water Authority have done.

Finally, we ask that this letter, and all prior submittals by the Water Authority and others related to the Applications, be made part of the official administrative record for the Applications. We expect that record to be a complete compilation of everything related to these Applications, including the Hanemann Report and all of Dr. Hanemann's presentations, all proceedings of the Ad Hoc Committee, all correspondence, and every other matter related to, and occurring during, the long history of the Applications.

Thank you. We look forward to addressing these issues with you on June 5.

Sincerely,



Mark J. Hattam
Water Authority Special Counsel

cc via email on May 22:

All LAFCO Commissioners
Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator
Sandra L. Kerl, General Manager, San Diego County Water Authority
David Edwards, General 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
Fallbrook Public Utility District Board of Directors
Rainbow Municipal Water District Board of Directors
Eastern Municipal Water District Board of Directors
Adán Ortega, Chair, Metropolitan Water District of Southern California
Dr. Michael Hanemann

¹ See Fallbrook and Rainbow applications.

² San Diego County Water Authority September 18, 2020, Response (the "Response"), p. 1.

³ Response, p. 79.

⁴ Response, pp. 81 and 97.

⁵ Response, pp. 97-99.

⁶ Response, p.5.

⁷ Response, pp.76-77.

⁸ Response, p.33.

⁹ *Id.*

¹⁰ Response, p.74.

¹¹ Response, p.57.

¹² Hanemann Report, p.68.

¹³ Response, pp.48 *et seq.*

¹⁴ Response, pp. 68 *et seq.*

¹⁵ MWD Act, Section 65.

¹⁶ Response, p.68.

¹⁷ *See*, for example: 1) Election of a nonofficer member of MWD's Executive Committee (Director Camacho was elected with 50.28% support, [Minute 52298](#)); 2) Hiring Mr. Adel Hagekhalil as General Manager (approved with 50.42% support, [Minute 52420](#)); and 3) not conduct a performance review of MWD's General Counsel given the results of the State's audit of MWD (approved with 50.60% support, [Minute 52839](#)).

¹⁸ Response. pp. 68 *et seq.*

¹⁹ Report, p.38.

²⁰ Indeed, if one reads the full Report one cannot help but come away with the impression that no matter the problem area, the Report's response is almost always the same: there is a harm, but it is not material. Yet, LAFCO Staff does not have a basis to make such judgments. The Report reaches conclusions in key water policy areas that are inconsistent with the expertise and Water Authority Staff and Board judgment over the past 20+ years, as the California and Southwest water world have been evolving to an entirely new era with different facts and circumstances. Additionally, from the very beginning of this now years-long process the Water Authority has repeatedly called out to the Commission our concern that LAFCO Staff has regularly shown a predisposition to favor detachment. Also, we pointed out to LAFCO in our counsel's May 13, 2021, letter to LAFCO: "When the Water Authority had its very first meeting with LAFCO Executive Officer Keene Simonds and LAFCO counsel Holly Whatley on August 20, 2019, they informed LAFCO of a significant issue: that in May of 2019, when Rainbow MWD General Manager Tom Kennedy first told Water Authority General Manager Sandy Kerl that Rainbow and Fallbrook were intending to initiate detachment proceedings, Mr. Kennedy stated that there would be no point in the Water Authority even opposing detachment because it had already been pre-arranged at LAFCO."

²¹ Hanemann Report, p.68.

²² Response, pp.59-60.

²³ Hanemann Report, p.82.

²⁴ Response, pp.104-105.

²⁵ Hanemann Report, p.82.

²⁶ Response, p.55.

²⁷ Report, p.31.

²⁸ See <https://www.sdlafco.org/home/showpublisheddocument/6174/637817360700300000>

²⁹ Report, pp. 23 *et seq.*

³⁰ Report, p.23.

³¹ November 29, 2022, letter from SDCWA to LAFCO, Exhibit 4.

³² Exhibits 66 and 67 to the Response.

³³ Response, pp. 174 *et seq.*

³⁴ See, for example, Fallbrook's Resolution No. 4985 submitted with its LAFCO application. This Resolution says on p.6 that "Reorganization" is exempt or not a project under CEQA. However, the Resolution expressly defines the term "Reorganization" *not* as an actual detachment from the Water Authority and annexation to Eastern, but solely "to initiate proceedings" at LAFCO. Thus, the purported CEQA compliance is *only for Fallbrook's applying to LAFCO*, not for all the actual effects of any possible LAFCO action. Similarly, Rainbow Resolution 19-15 was just its Board's approval to submit an application to LAFCO, on which decision a Notice of Exemption was then filed. These Fallbrook and Rainbow approvals therefore simply covered LAFCO application submittals and are not a substitute for actual CEQA review of the effects of the reorganizations if such were to be granted. The Report provides no basis for LAFCO to avoid its CEQA responsibilities.

³⁵ Response, pp. 174 *et seq.*

³⁶ Report, p.45.

³⁷ Response, p.182.

³⁸ See Attachment 1, Page 4 of 55 of MWD's [Adopt the 2020 Integrated Water Resources Plan Needs Assessment](#) Board Letter dated April 12, 2022, describing MWD's "potential annual net shortage" being as high as 1.2 million acre-feet.

³⁹ MWD Administrative Code § 4106 (Interim Agricultural Water Program Purposes).

⁴⁰ *Id.*

⁴¹ MWD Administrative Code § 3104.

⁴² Response, p.78.

⁴³ <https://mwdh2o.legistar.com/View.ashx?M=F&ID=10838150&GUID=3EAF5D95-F527-4B68-9168-D5E14E5C6A0D> and <https://mwdh2o.legistar.com/View.ashx?M=F&ID=11694055&GUID=CC9BF29A-99FC-4913-8BC3-769B010CDA80>

⁴⁴ [California to see more brown lawns and water restrictions - Los Angeles Times \(latimes.com\)](#) ("State water-dependent areas have already been under one- or two-day-a-week outdoor watering restrictions for months, but the MWD may soon expand those rules across their entire service area.")

⁴⁵ See <https://www.usbr.gov/ColoradoRiverBasin/SEIS.html>

⁴⁶ Hanemann Report at pp.14, 84, and 98.

⁴⁷ Hanemann Report, p.98.

⁴⁸ Response, pp.85 *et seq.*

⁴⁹ *Id.*

⁵⁰ Response, pages 148 and 150, question 10 on each. Also, the Water Authority repeatedly raised this issue in subsequent submittals, all to no avail.

⁵¹ See Attachment 1, Page 4 of 17 of MWD's [Update of Metropolitan's Emergency Storage Objective](#) Board Letter dated May 14, 2019.

⁵² Response, Exhibit 13.

⁵³ Report, p.23.

⁵⁴ <https://mwdprograms.sdcwa.org/wp-content/uploads/2023-03-22-MWD-Chair-Ortega-to-SDLAFCO-EO-Simonds-re-Rain-Fall-Detach.pdf>

⁵⁵ See pages 62 *et seq.*

⁵⁶ Response, p.64.

⁵⁷ Report, p.27.

⁵⁸ *Id.*

⁵⁹ November 29, 2022, letter from SDCWA to LAFCO, Exhibit 1, p.6.

⁶⁰ Response, pp. 169 *et seq.*

⁶¹ Response, pp. 103 *et seq.*

⁶² See attached Exhibit A.

⁶³ See attached Exhibit B.

⁶⁴ See attached Exhibit C.

⁶⁵ *Id.* and Resolution 261 at attached Exhibit A.

⁶⁶ See attached Exhibit D.

⁶⁷ See attached Exhibit E.

⁶⁸ See attached Exhibit F

EXHIBIT A

RESOLUTION NO. 261

A RESOLUTION AMENDING RESOLUTION NO. 260 OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY ENTITLED "A RESOLUTION ADVISING THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA OF THE INTENTIONS OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY RELATIVE TO THE ANNEXATION OF THE ENLARGED RAINBOW PUBLIC UTILITY DISTRICT AREA".

WHEREAS, the Board of Directors of the San Diego County Water Authority has long had before it the application of the Rainbow Public Utility District for the annexation of its corporate area, together with the area of neighboring lands aggregating approximately 30,000 acres, to the San Diego County Water Authority; and

WHEREAS, after detailed and careful study of the problems presented by such request, the Board of Directors of the San Diego County Water Authority concluded that the annexation of the proposed area on the prevailing terms and conditions of annexation to both the County Water Authority and the Metropolitan Water District was not warranted, in view of the lack of comparative developed primary water supply and comparative financial contribution of the area under consideration; and

WHEREAS, the Board of Directors of the San Diego County Water Authority is now informed that the annexation of the area under consideration would be acceptable to The Metropolitan Water District of Southern California under the prevailing terms and conditions of annexations, either through membership in the San Diego County Water Authority or directly as a separate unit member of the Metropolitan Water District; and

WHEREAS, the San Diego County Water Authority was organized for the sole purpose and charged with the obligation of importing and distributing in San Diego County the waters of the Colorado River to which the City and/or County of San Diego were or might become entitled to receive, and any other water supply the source of which lies outside the County of San Diego, and for that


reason it is the opinion and conclusion of the Board of Directors of the San Diego County Water Authority that any area in San Diego County which is to participate in the delivery of water imported into the County from the Colorado River, or any other source outside of the County, should so participate as a part of said San Diego County Water Authority;

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Directors of the San Diego County Water Authority that the Board of Directors of The Metropolitan Water District of Southern California be advised that the San Diego County Water Authority is prepared to approve the annexation of the approximate 30,000 acres of lands within the Rainbow Public Utility District, the San Luis Rey Heights Mutual Water Company and the Bonsall Heights area ^{subject to the usual and current terms and conditions} upon the incorporation of such area within a water district of an acceptable type and the receipt of a formal application from such water district.



Chairman of the Board of Directors
San Diego County Water Authority

ATTEST:



Secretary of the Board of Directors
San Diego County Water Authority

Roll Call _____

Resolution No. 261

Ordinance No. _____

Special MEETING OF BOARD OF DIRECTORS

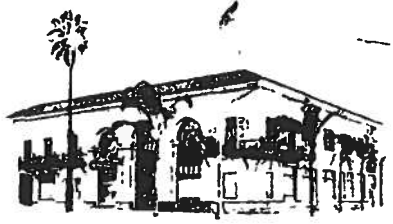
SAN DIEGO COUNTY WATER AUTHORITY

May 11, 1953

City of Escondido	1 Vote	<u> </u>	X	Reed
Fallbrook Public Utility District	1 Vote	<u> </u>	✓	Heald
Lakeside Irrigation District	1 Vote	<u> </u>	X	McLean
La Mesa, Lemon Grove and Spring Valley				
Irrigation District	10 Votes	<u> </u>	✓	Shelton
City of National City	3 Votes	<u> </u>	✓	Dickson
City of Oceanside	3 Votes	<u> </u>	✓	Weese
The City of San Diego	26 Votes	<u> </u>	✓	Beermann)
			✓	Fisher)
			✓	Heilbron)
			X	Marston)
			✓	Simpson)
			X	Wansley)
			X	Watt)
			X	Wells)
San Dieguito Irrigation District	1 Vote	<u> </u>	✓	Jacobson
Santa Fe Irrigation District	1 Vote	<u> </u>	X	Bakewell
South Bay Irrigation District	5 Votes	<u> </u>	X	Lynds

EXHIBIT B

14-3



BROADWAY
AT
COLUMBIA ST

SAN DIEGO CHAMBER OF COMMERCE

SAN DIEGO 1, CALIFORNIA

May 11, 1953

Mr. Joseph Jensen
Chairman of the Board of Directors
Metropolitan Water District of
Southern California
306 West Third Street
Los Angeles 13, California

Dear Mr. Jensen:

Many of the citizens of this community, who make every possible effort to keep in close touch with the work and activities being done by your Honorable Body and its counterpart and its affiliated agency in this county, have been disturbed over the efforts being made by an area in the northern part of this county for direct affiliation with the Metropolitan Water District.

Most of us in business and our public officials consider that the Colorado River water distribution should be confined to the San Diego County Water Authority.

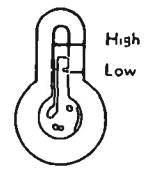
We, therefore, trust that your Board will take the necessary steps to suggest that the San Diego County Water Authority reopen the servicing of the Rainbow area, rather than having your agency extended within our county.

Yours very sincerely

Arnold Klaus
Assistant Manager

Referred to:
WPPR Committee
May 12, 1953

Yesterday's Temperature
in San Diego





15095

May 19, 1953

Mr. Arnold Klaus
Assistant Manager
San Diego Chamber of Commerce
Broadway at Columbia Street
San Diego 1, California

Dear Mr. Klaus:

Your letter, dated May 11, 1953, advocating the annexation of the Rainbow-Bonsall area to the San Diego County Water Authority, is hereby acknowledged.

It was read to the Board of Directors of the District on May 12 and was referred to the Standing Committee having this matter under consideration.

There are many factors to be considered and the situation has many ramifications. However, we are pleased to have your statement reflecting the attitude of the San Diego Chamber of Commerce.

Yours truly,

Joseph Jensen, Chairman

EXHIBIT C



SAN DIEGO COUNTY WATER AUTHORITY

314-321 Land Title Building
San Diego 1, California

~~CITY OF CHULA VISTA~~
CITY OF ESCONDIDO
CITY OF NATIONAL CITY
CITY OF OCEANSIDE
CITY OF SAN DIEGO
FALLBROOK PUBLIC UTILITY DISTRICT
LAKESIDE IRRIGATION DISTRICT
LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT
SAN DIEGUITO IRRIGATION DISTRICT
SANTA FE IRRIGATION DISTRICT
SOUTH BAY IRRIGATION DISTRICT

FRED A. NEILBRON
CHAIRMAN
ARTHUR L. LYNDS
VICE-CHAIRMAN
~~DEWAYNE S. SIMMONS~~
SECRETARY
E. J. SHELTON

May 25, 1953

Board of Directors
The Metropolitan Water District
of Southern California
306 West Third Street
Los Angeles 13, California

Attention: Water Problems and Public Relations Committee

Gentlemen:

By Resolution No. 261 your honorable body was advised by the Board of Directors of the San Diego County Water Authority that it would favorably consider the application of the Rainbow Public Utility District-Bonsall Heights-San Luis Rey Heights Mutual Water Company areas upon the formation of the proper public agency and the receipt of formal application for annexation by such organization. The reasons for the action of this Board were recited in detail in said resolution, and the Authority is prepared to proceed as therein outlined. In the meantime, however, no application of any kind from representatives of that area is pending before the Authority--and we understand that an application for informal consent for direct annexation to the Metropolitan Water District is still pending before its Board of Directors and Water Problems Committee.

In view of the action taken by this member agency of the Metropolitan Water District, it is the opinion of the members of this Board that Metropolitan should reject the request for direct annexation on the part of this area and recommend to the applicants that their annexation should best be accomplished through the San Diego County Water Authority, in accordance with the statement of this Authority's official position as set forth in said Resolution No. 261.

Very truly yours,

M. J. Shelton
Secretary of the Board of Directors
San Diego County Water Authority

cc: Mr. Warren W. Butler, Chairman
Water Problems and Public Relations Committee

1953

MEMORANDUM FOR THE DIRECTOR
SUBJECT: [Illegible]

[Extremely faint and illegible typed text, likely the body of a memorandum or report.]



1953

1953

15082
T. H. W.

June 19, 1953

Board of Directors
San Diego County Water Authority
314-321 Land Title Building
San Diego 1, California

Gentlemen:

The Board of Directors of The Metropolitan Water District of Southern California on June 9, 1953, rejected the informal application made on behalf of the Rainbow-Bonsall area for consent to annex directly to this District.

At the time the action was taken the letter received from your Secretary, Mr. M. J. Shelton, under date of May 25, 1953, expressing the opinion that the application referred to should be rejected and recommending that the applicants be informed that the annexation of the area should best be accomplished through the San Diego County Water Authority, was read and considered.

Yours truly,

A. L. Gram
Executive Secretary

cc: Chairman Jensen
Messrs: Diemer
Howard
McKinlay

ACW

15282

June 19, 1953

Mr. W. N. Davis, Chairman
Rainbow Public Utility District
P. O. Box 195
Fallbrook, California

Mr. Thos. L. Hoemer
Donsall Heights Association
Fallbrook, California

Mr. W. B. Dennis, Attorney
for the Rainbow Public Utility District
and the Donsall Heights Land Owners Committee
Route 1
Fallbrook, California

Gentlemen:

You are hereby formally notified that the Board of Directors of The Metropolitan Water District of Southern California on June 9, 1953, rejected the proposal that consent be granted to annex the Rainbow-Donsall area directly to this District.

Yours truly,

cc: Chairman
Gen. Mgr. & Ch. Engr.
General Counsel
Controller

A. L. Oram
Executive Secretary

EXHIBIT D

THE METROPOLITAN WATER DISTRICT

OF SOUTHERN CALIFORNIA

306 WEST THIRD STREET

LOS ANGELES 13 CALIFORNIA

OFFICE OF
BOARD OF DIRECTORS

June 9, 1953

Board of Directors
The Metropolitan Water District
of Southern California
Los Angeles, California

Gentlemen:

The Water Problems and Public Relations Committee has considered the informal application for consent to annex the Rainbow-Bonsall area to this District, in which application the offer is made to agree to the subsequent annexation of any acceptable lands in that vicinity desiring to obtain Colorado River water and to agree that at such time as the San Diego feeder lines do not have sufficient capacity to supply the then current needs of the San Diego County Water Authority and the Rainbow-Bonsall area, to construct at its expense a feeder line from the Rainbow area to the San Jacinto regulating reservoir, and the Committee has also considered the several related communications, including Resolution 261 of the Board of Directors of the San Diego County Water Authority, expressing its willingness to approve the annexation of the approximately 30,000 acres of land within the Rainbow Public Utility District, the San Luis Rey Heights Mutual Water Company, and the Bonsall Heights area, subject to the current terms and conditions of annexation, upon their incorporation into a water district of an acceptable type, and the written opinion from the General Counsel, previously requested, concluding that in consenting to the annexation of any area the Board of Directors of this District may determine that present circumstances require that additional facilities necessary for delivering water to such area be furnished without expense to this District and submitting language for incorporating such provisions in the terms and conditions of annexation of a unit to the Authority and this District, and has also considered a form of resolution submitted by Chairman Jensen which would have the effect of tentatively approving the annexation to this District of the Rainbow-Bonsall area, if constituted as a municipal water district, or the annexation of the area to the Authority upon the conditions that the Authority file with this

- 2 -

District on or before June 9, 1953, its consent to the annexation of the Rainbow-Bonsall area upon the usual terms and conditions and agree, in addition, that the Authority will consent from time to time to the annexation of additional lands in Northern San Diego County acceptable to the Rainbow-Bonsall area and to this District and will agree with this District to construct, when required, a third barrel of the San Diego Aqueduct from the Riverside County line to the west portal of the San Jacinto Tunnel sufficient to meet the needs of the Authority.

It is the recommendation of the Committee, pursuant to a consideration of the foregoing, that the application of the Rainbow-Bonsall area for consent to annex directly to this District be denied without prejudice, with the understanding that the application would be subject to renewal in the event consent to the annexation of the Rainbow-Bonsall area is not granted by the Board of Directors of the San Diego County Water Authority; and that the language suggested by the Legal Division in its opinion previously referred to be incorporated in the resolutions used in fixing the terms and conditions for the annexation of an area to the Authority and to this District; and with the further understanding that the area would be required to incorporate as a municipal water district; and that a declaration be made that it is not the intention at this time of the Board of Directors of this District to assume the obligation of building facilities for the delivery of water to any area.

Yours truly,

WATER PROBLEMS AND
PUBLIC RELATIONS COMMITTEE

Warren W. Butler

Warren W. Butler, Chairman

EXHIBIT E

Resol 4339
THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 306 WEST THIRD STREET
 LOS ANGELES 13 CALIFORNIA

APPROVED
 by the Board of Directors of
 The Metropolitan Water District
 of Southern California
 at its meeting held *Jan 12 1954*

A. L. Gram
 Executive Secretary

OFFICE OF
 GENERAL COUNSEL

January 12, 1954

Board of Directors
 The Metropolitan Water District
 of Southern California
 Building

Gentlemen:

A communication has been received from the San Diego County Water Authority transmitting certified copy of Resolution No. 279, adopted by the Board of Directors of the Authority on January 7, 1954, relative to the application of the Board of Directors of Rainbow Municipal Water District for consent to annex the corporate area of that District. The Authority's Resolution No. 279 requests the consent of your Board for the concurrent annexation of this area to the Metropolitan Water District, and, subject to such consent being obtained, approves the request for annexation, subject to such terms and conditions as shall hereafter be determined.

The Controller has prepared a report showing the amount of the annexation charges, determined from the data certified by Realty Tax & Service Company and the computations explained in the Controller's report.

There is transmitted herewith form of resolution granting the requested consent to this annexation upon the terms and conditions therein expressed. The resolution is in standard form and sets forth the aggregate amount to be raised by special taxes as reported by the Controller. All facilities required for the delivery of water to the annexing area from works owned by the Metropolitan Water District are to be provided without cost to this District.

Rainbow Municipal Water District was incorporated December 30, 1953, and was formed for the purpose of annexing its corporate area to the Authority and to the Metropolitan Water District. The incorporation proceedings were conducted after review of the principal forms and procedures by the General Counsel of the Authority and by my office. The annexation proceedings likewise will receive close scrutiny by the attorneys for the Authority and this District, as well as by the attorney for the Rainbow District, who will be charged with primary responsibility for the procedural details. It is expected that a pattern can be set which will serve as a convenient model for the annexation of other areas now in the process of completing the formation of their respective municipal water districts.

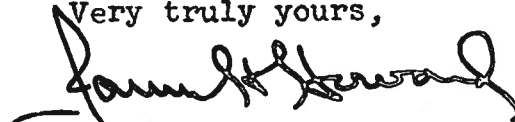
Board of Directors

- 2 -

1-12-54

It is recommended that the enclosed resolution be adopted.

Very truly yours,



James H. Howard
General Counsel



RESOLUTION 4339

APPROVED

by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held JAN. 12, 1954

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN
CALIFORNIA CONSENTING TO THE ANNEXATION TO
SAID DISTRICT OF THE CORPORATE AREA OF RAINBOW
MUNICIPAL WATER DISTRICT UPON THE CONCURRENT
ANNEXATION OF SUCH CORPORATE AREA TO SAN DIEGO
COUNTY WATER AUTHORITY AND FIXING THE TERMS AND
CONDITIONS OF SUCH ANNEXATION TO THE METROPOLITAN
WATER DISTRICT OF SOUTHERN CALIFORNIA

J. P. Gamm
Executive Secretary

A. WHEREAS, the governing body, to wit, the Board of Directors, of San Diego County Water Authority, a county water authority situated in the County of San Diego, State of California (hereinafter referred to as "San Diego Authority"), pursuant to its Resolution No. 279, adopted January 7, 1954, and in accordance with the provisions of the Metropolitan Water District Act of the State of California, has applied to the Board of Directors of The Metropolitan Water District of Southern California (hereinafter referred to as "Metropolitan") for consent to annex to Metropolitan the corporate area of Rainbow Municipal Water District, a municipal water district situated in said County of San Diego (hereinafter referred to as "Rainbow"), concurrently with the annexation of said corporate area of Rainbow to San Diego Authority, such annexation to Metropolitan to be upon such terms and conditions as may be fixed by the Board of Directors of Metropolitan; and

B. WHEREAS, it appears to the Board of Directors of Metropolitan that said application of the Board of Directors of San Diego Authority for consent to annex to Metropolitan the corporate area of Rainbow should be granted, subject to the terms and conditions hereinafter set forth:

C. NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of The Metropolitan Water District of Southern California, subject to the following terms and conditions, does hereby grant the said application of the governing body of San Diego County Water Authority for consent to annex to The Metropolitan Water District of Southern California the corporate area of Rainbow Municipal Water District, and does hereby fix the terms and conditions upon which such annexation may occur, as follows:

Section 1. Such concurrent annexation of the corporate area of Rainbow to San Diego Authority and to Metropolitan shall be completed, and all necessary certificates, statements, maps, and other documents required to be filed by or on behalf of San Diego Authority or by or on behalf of Rainbow to effectuate such annexation shall be filed in the respective offices required by law, on or before December 1, 1954.

Section 2. In the event of such annexation:

a. There shall be levied by Metropolitan special taxes upon taxable property within said corporate area of Rainbow, in addition to the taxes elsewhere in the Metropolitan Water District Act (Stats. 1927, page 694, as amended) authorized to be levied by Metropolitan.

b. The aggregate amount to be raised by such special taxes shall be \$167,700.

c. The number of years prescribed for raising such aggregate sum shall be thirty years, commencing with the fiscal year 1955-56.

d. Substantially equal annual levies will be made for the purpose of raising said sum over the period so prescribed.

Section 3. In the event of such annexation, all feeder pipe lines, structures, connections, and other facilities required for the delivery of water to said corporate area of Rainbow, from works owned or operated by Metropolitan, shall be constructed, provided, and installed without cost or expense to Metropolitan, and Metropolitan shall be under no obligation to provide, construct, operate, or maintain such works.

D. BE IT FURTHER RESOLVED, that the Executive Secretary be, and he hereby is, directed to transmit forthwith to the governing body of San Diego County Water Authority a certified copy of this resolution.

I HEREBY CERTIFY, that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California at its meeting held January 12, 1954.

January 15, 1954

Board of Directors
San Diego County Water Authority
714-721 Land Title Building
San Diego 1, California

Gentlemen:

Enclosed is a certified copy of Resolution 4139 adopted by the Board of Directors of The Metropolitan Water District of Southern California on January 12, 1954, granting consent to and fixing the terms and conditions for the annexation of the Rainbow Municipal Water District concurrently to this District and to the San Diego County Water Authority.

Also at this meeting, informal consent was granted to the application of the San Diego County Water Authority for consent to annex to this District territory which had previously been included within the boundaries of the La Mesa, Lemon Grove and Spring Valley Irrigation District without becoming a part of the San Diego County Water Authority. In this connection, Mr. Robert T. Eisner, General Manager and Chief Engineer of this District, was authorized to select the specific years numbering not less than six, for which the assessed valuations of the area proposed for annexation will be required.

Yours truly,

A. J. Owen
Executive Secretary

ALG:z

Enclosure

Copy to: Director Holbrow and
Director Holmgren

Chairman
CMCE
General Counsel
Controller

EXHIBIT F

THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 306 WEST THIRD STREET
 LOS ANGELES 13, CALIFORNIA

OFFICE OF
 GENERAL COUNSEL

May 26, 1953

Board of Directors
 The Metropolitan Water District
 of Southern California
 Building

Gentlemen:

This office has been asked to advise whether, in the event that at some time in the future a third water line shall become necessary to serve the San Diego County Water Authority, this District will be under any obligation to construct such line so as to provide for delivery of additional water from the main Colorado River Aqueduct to the point near Rainbow Tunnel now fixed as the point of delivery of water transported by means of the first and second barrels of the San Diego Aqueduct System.

Resolution No. 3612 adopted by your Board on October 4, 1946, fixing the terms and conditions upon which the corporate area of the Authority was annexed to the District on December 17, 1946, provides that

"the point of delivery of water by the District to the Authority shall be at or in the immediate vicinity of North Station 1920/00 as shown on Y. & D. Drawing No. 386,014".

This resolution further provides that upon assumption by the Authority of the possession of the San Diego Aqueduct as lessee under the Lease-Contract

"the District shall have the right of use of the said northerly part of said aqueduct for the purpose of delivering water to the Authority, and during the period of such use and after title thereto shall have been conveyed to the District, the District, at its own cost, shall have the duty of operating, maintaining and, when necessary to satisfy the Authority's requirements for water, the obligation to enlarge or parallel that part of the said aqueduct lying northerly of said point of delivery."

The resolution referred to was accepted by a vote of the electors of the Authority as part of the annexation proceedings. The Authority assumed possession of the aqueduct as lessee on January 1, 1952.

May 26, 1953.

Under a contract between the United States and the Authority, dated April 1, 1952, and designated "Supplemental Agreement No. 4," the Government now is constructing a second barrel. The Supplemental Agreement specifically authorizes the Authority to arrange for the possession and use by the District of that part of the original aqueduct and the second barrel, lying northerly of the fixed point of delivery. Under the contract between the District and the Authority dated September 29, 1952, the District agreed to take over the use, operation and maintenance of the second barrel northerly of the point of delivery, and to pay to the Authority the true cost thereof. The last mentioned agreement contains the following clause (paragraph 11):

"It is further agreed that compliance with the terms and conditions of this Contract shall constitute full performance of any existing agreement by the District to enlarge or parallel any part of the Aqueduct."

The only contractual obligations to the Authority assumed by the District respecting construction of transmission facilities arise out of Resolution No. 3612 and the contract of September 29, 1952. The pertinent provisions of the two documents are set forth for convenience in the appendix to this opinion. From the portion quoted above, it is apparent that the contract of September 29, 1952, effectively eliminates any obligation of a contractual character respecting the enlargement or paralleling of the San Diego Aqueduct.

Under existing conditions, the Authority, in its relationship to the District, is on the same basis as are all other unit municipalities of the District. The District's distribution lines are not earmarked for the exclusive use of any municipality which may be served thereby. Any duty to provide line capacity for additional water for such units, in response to their respective needs, is not contractual in character. Determination of the means by which such needs are to be met and of the time and extent of any required additional construction, rests in the sound discretion of the Board of Directors of this District. This discretion will be exercised in the light of the then existing circumstances.

In consenting to the annexation of any particular area, your Board may determine that the present circumstances require that additional facilities necessary for delivering water to such area be furnished without expense to the District. Suitable provision also may be included, whereby any line capacity may be made temporarily available for such delivery until such capacity may be needed for other purposes. Continuing authority may be retained in your Board to determine when, and in what manner, future needs of areas and unit municipalities of the District shall be met. Submitted herewith for consideration is a draft of suggested provisions to accomplish this result with respect to areas which may be annexed to the Authority and to this District. If found acceptable, the text of such draft may be included in the terms and conditions of annexation fixed by your Board.

Very truly yours,



James H. Howard
General Counsel

APPENDIX

1. Resolution No. 3612 adopted by the Board of Directors of the District on October 4, 1946, fixing the terms and conditions upon which the corporate area of the Authority was annexed to the District on December 17, 1946, contains the following provisions (references are to sub-paragraphs of paragraph 9 of the resolution):

(a) "Point of Delivery of Water" (Subparagraph (3))

Upon completion of the annexation

"the point of delivery of water by the District to the Authority shall be at or in the immediate vicinity of North Station 1920/00 as shown on Y. & D. Drawing No. 386,014 entitled 'San Jacinto-San Vicente Aqueduct, North Station 1919/50 to 1968/00, North Station 2101/00 to 2109/00, Profiles and Alinements,' approved September 14, 1945 by A.K. Fogg, Public Works Officer, Eleventh Naval District, San Diego, California, being sheet 2 of 8 sheets accompanying Specifications No. 17383 issued under date of September 21, 1945 by A.K. Fogg, Captain (CEC) USN, Officer-in-Charge of Construction Contracts, Naval Operating Base, San Diego, California, which Station 1920/00 is hereinafter referred to as the point of delivery; provided, however, that if the United States shall resume possession of the San Diego Aqueduct to the exclusion of the District's use thereof, or if the District shall be excluded from, or be interrupted in its use of, that part of the San Diego Aqueduct lying northerly of said point of delivery as the result of any breach or failure of performance of said Lease-Contract on the part of the Authority or on the part of the City, the District, during the period of such exclusion or interruption, shall be under no obligation to deliver water at the said point of delivery, but shall deliver all water which the Authority may rightfully be entitled to receive from the District, at a point near the west portal of the District's San Jacinto tunnel and to such facilities as may be provided therefor by the Authority, subject to the approval of the District as to construction details."

(b) "Use of Works" (Subparagraph (5))

Upon assumption by the Authority of the possession of the San Diego Aqueduct as lessee under the Lease-Contract

"the District shall have the right of use of the said northerly part of said aqueduct for the purpose of delivering water to the Authority, and during the period of such use and after title thereto shall have

been conveyed to the District, the District, at its own cost, shall have the duty of operating, maintaining and, when necessary to satisfy the Authority's requirements for water, the obligation to enlarge or parallel that part of the said aqueduct lying northerly of the said point of delivery."

Possession of the Aqueduct was delivered by the Government to the Authority as lessee on January 1, 1952.

(c) "Title to Works" (Subparagraph (4))

The Authority shall acquire title to the Aqueduct

"and upon acquisition of title shall transfer to the District title to that part of the San Diego Aqueduct lying northerly of said point of delivery"

upon payment by the District to the Authority of the consideration therefor.

2. The United States is constructing the Second Barrel in accordance with the provisions of Supplemental Agreement No. 4 between the United States and the Authority, dated April 1, 1952, which expressly authorizes the Authority to arrange for the possession and use by the District of that part of the Aqueduct and Second Barrel northerly of Station 1920/00. Such arrangement was made by contract between the District and the Authority, dated September 29, 1952, which contains the following provisions (references are to numbered sections or paragraphs):

(a) Upon delivery by the Government to the Authority of the possession of the Second Barrel, pursuant to the provisions of said Supplemental Agreement No. 4,

"and until title thereto shall have been conveyed to the District as hereinafter provided, the District shall have the possession and use, and the duty of operation, maintenance and repair, of the said Aqueduct system, * * * ." (Section 2)

(b) Section 3 provides:

"3. During the period that the District shall have possession and use of the Aqueduct System hereunder, and thereafter when title thereto shall have been conveyed to the District as herein provided, said Aqueduct System shall be a part of the distributing system of the District, fully under the District's control and subject to use for any lawful District purpose; provided, that full recognition is hereby given to the right of the Authority to purchase water from the District as provided in the Metropolitan

May 26, 1953.

Water District Act, subject to such regulations as shall be prescribed by the District and which shall be generally applicable to sales and deliveries of water to its constituent municipalities by means of the District's distributing system, and the said Aqueduct System shall not be used in any manner inconsistent with or in derogation of such right of the Authority;
* * *

(c) Section 4 provides:

"4. After delivery to the District of possession of the Aqueduct System, water purchased by the Authority from the District shall be delivered at the delivery point specified in said Resolution No. 3612. In the event that the Government should resume possession of the Aqueduct System, or of any substantial part thereof, to the exclusion of the District's use thereof, or if the District shall be excluded from or interrupted in its use of the Aqueduct System as the result of any breach or failure of performance of Contract NOy-13300, as amended and supplemented, the District, during the period of such exclusion or interruption shall be under no obligation to deliver water at said point of delivery, but will deliver all water which the Authority may lawfully be entitled to receive from the District at or near the west portal of the District's San Jacinto Tunnel, and by means of such facilities as may be provided therefor by the Authority, subject to the approval of the General Manager and Chief Engineer of the District as to design and construction of any additional connection with the District's works."

(d) The Authority shall acquire title to the Aqueduct and Second Barrel, pursuant to Contract NOy-13300, as amended and supplemented,

"and when such title shall have been so acquired and the Authority shall have received payment from the District of the moneys herein and in said Resolution No. 3612 agreed to be paid by the District, the Authority, without further consideration, shall convey and transfer to the District, title to the Aqueduct System"

(i.e., the portions of the First and Second Barrels northerly of Station 1920/00). (Section 6)

(e) Prior to the delivery by the Government to the Authority of the possession of the Second Barrel, the rights and obligations of the District and of the Authority respecting the possession, use, operation, repair and maintenance of the Aqueduct northerly of Station 1920/00 shall be controlled by Resolution No. 3612. (Section 10 (a)) Thereafter, the rights

Board of Directors -6.

May 26, 1953.

and obligations relating to such possession, use, operation, repair and maintenance shall be controlled by the contract of September 29, 1952. (Section 10 (b)) In event of any conflict between the provisions of the resolution and the contract, the latter shall control. (Section 10 (e))

(f) Section 11 provides:

"11. It is further agreed that compliance with the terms and conditions of this Contract shall constitute full performance of any existing agreement by the District to enlarge or parallel any part of the Aqueduct."

15081

SUGGESTED PROVISIONS FOR INCLUSION IN METROPOLITAN'S
RESOLUTION FIXING TERMS AND CONDITIONS FOR ANNEXATION
OF AN AREA TO THE AUTHORITY AND TO METROPOLITAN

(By definitions in earlier portions of the resolution, "Metropolitan" means The Metropolitan Water District of Southern California, "San Diego Authority" means San Diego County Water Authority, and "_____ Area" means the annexing area designated by that title in the resolution)

Section . In the event of such annexation:

(a) Metropolitan, by reason of the annexation of the _____ Area to San Diego Authority and to Metropolitan, shall not be obligated to construct, provide, install, operate, maintain, or replace, at Metropolitan's expense, any feeder pipe lines, structures, connections, or other facilities for delivering or distributing water to or within the corporate area of San Diego Authority or to or within said _____ Area thereof.

(b) All feeder pipe lines, structures, connections, and other facilities required for the delivery or distribution of water to or within said _____ Area from works owned or operated by Metropolitan shall be constructed, provided, installed, operated, maintained, and replaced without cost or expense to Metropolitan, and Metropolitan shall be under no obligation to construct, provide, install, operate, maintain, or replace such works.

(c) Metropolitan may deliver water to San Diego Authority for use within said _____ Area thereof by means of the San Diego Aqueduct System (as defined in the contract between Metropolitan and San Diego Authority, dated September 29, 1952), during such times as the capacity of said Aqueduct System under the control of Metropolitan shall be adequate to permit such deliveries without impairing Metropolitan's use thereof for transporting and delivering water for use elsewhere than within said _____ Area of San Diego Authority; provided that whenever it shall be determined by the Board of Directors of Metropolitan that the capacity of said Aqueduct System under Metropolitan's control no longer is adequate for such purpose, the Board of Directors of Metropolitan may terminate such deliveries to San Diego Authority, by means of said Aqueduct System, of water for use within said _____ Area of San Diego Authority, and may provide that deliveries of such water thereafter shall be made at or near the west portal of Metropolitan's San Jacinto Tunnel by means of such facilities as may be provided therefor without cost or expense to Metropolitan.