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Refer To File # 501668-0005

**VIA EMAIL: [KEENE.SIMONDS@SDCOUNTY.CA.GOV](mailto:KEENE.SIMONDS@SDCOUNTY.CA.GOV)**

May 22, 2023

Mr. Jim Desmond, Chair  
San Diego LAFCO  
2550 Fifth Avenue  
Suite 725  
San Diego, CA 92103

Re: **Proposed “Fallbrook PUD & Rainbow MWD Wholesaler Reorganizations” – Concurrent Annexations to Eastern Municipal Water District and Detachments from San Diego County Water Authority with Related Actions.**

Dear Chairman Desmond:

This comment letter is being submitted in my role as Assistant General Counsel for the applicant, Rainbow Municipal Water District.

First, I wish to compliment your Executive Officer, Keene Simonds, and his entire staff for the manner in which they have professionally handled the simple proposed switch of wholesale water sources in the face of a concerted and well financed effort by the San Diego County Water Authority in an attempt to complicate the matter in an effort to continue its existing membership without regard to the detrimental impacts on the residents of North County who are served by Rainbow Municipal Water District and Fallbrook Public Utility District.

In my view the Commission needs to focus only on three factors to reach its decision.

The first factor is found in both the language of Cortese-Knox- Hertzberg and your Commission’s own policies. Government Code Section 56668 provides in relevant part as follows: “Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:...(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016...” Similarly, your Commission policy L-101 – Preservation of Open Space and Agricultural Lands - acknowledges that the State Legislature has instructed that open space and agriculture are to be preserved. Such preservation of agricultural land through the lowering of the costs of water needed for crops is the thrust of the proposal for the change of wholesalers. Yet this foundational factor – emphasized by the State Legislature – is never mentioned, let alone addressed, in the various lengthy, contentious letters filed by the San Diego County Water Authority. The Water Authority simply ignores these legislative and policy directives.

The second of the three factors for the Commission to focus on is the representation that the San Diego County Water Authority uses in communicating with the buyers of its bonds. The official policy of the San Diego County Water Authority is reflected in its Official Statement for refinancing and its financing resolution adopted by its Board is that no member agency is obligated for any debt and no member agency is obligated to purchase any water. This was pointed out to your staff in a joint letter from the applicants dated June 22, 2022.

<https://www.sdlafco.org/home/showpublisheddocument/6362/637940086528530000>.

The San Diego County Water Authority has never commented on this in its frequent correspondence. Just as with the deafening silence from the Water Authority regarding the preservation of agriculture, the Water Authority has been silent on this issue because it has no basis to refute this point. Yet the Water Authority has sought to extract large sums from the applicants in exchange for the exercise of their rights to seek detachment.

The third factor for the Commission to consider is that the principal act under which the County Water Authority was formed addresses the procedure for detachment. Section 45-11 (a)(2) only provides for a continuation of property taxes to be paid to the Water Authority following detachment – no other “exit fee” is required by the legislation. Most principal acts include no references to the role of the Local Agency Formation Commission with respect to changes in the boundaries of a public entity. The County Water Authority Act, however, references the role of the Commission multiple times with respect to annexations (sections 45.10 (d) and (e)) and once with respect to exclusions (section 45.11 (1)), but does not include any provision for the Commission to provide for a condition for detachment beyond the continuation of property taxes. This silence with respect to detachment in stark contrast to the other provisions is an indication that the State Legislature considered the role of the Commission and chose not to include any role to add additional financial conditions in the event of a detachment. The text of the relevant provision of the County Water Authority Act has never been amended despite the Act having been amended well over 100 times through 2005 (Exhibit B to our letter of September 24, 2021 <https://www.sdlafco.org/home/showpublisheddocument/5922/637684127802770000>). Dr. Hanemann in his report acknowledged that he is not an attorney and that he did not seek counsel from any in his preparation of this portion of his report. (section 2.4 at page 73 <https://www.sdlafco.org/home/showpublisheddocument/6068/637777538812570000> )

Although the involvement of LAFCO is expressly acknowledged in the Act with regard to annexation to the Water Authority, no such provision appears with respect to a detachment such as this by entire existing agencies (February 15 2022 joint letter from counsel, <https://www.sdlafco.org/home/showpublisheddocument/6124/637805980274130000>). Like the first two factors, the Water Authority has not been able to refute this point.

In conclusion, despite the Water Authority’s best efforts to defeat the simple change of water wholesalers to these two districts in North County, the delay of over three years needs to come to an end. If you look at (1) the legislative mandate regarding preservation of agriculture, (2) the representation the Water Authority has made to buyers of its bonds, and (3) the plain language of the principal act of the Water Authority, the applications should be approved and the residents of the two applicant districts should be permitted to vote on the issue.

Sincerely,



Lloyd W. Pellman  
Nossaman LLP

cc: Keene Simonds, LAFCO Executive Officer  
San Diego Local Agency Formation Commissioners  
Holly Whatley, LAFCO Counsel  
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