San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

SAN DIEGO COUNTY
LOCAL AGENCY FORMATION COMMISSION

SPECIAL MEETING AGENDA
Wednesday, June 14, 2023 at 1:00 P.M.

NOTE
– Different Meeting Room –

In-Person Participation
County Administration Center
1600 Pacific Highway, Room 402
San Diego, California

Video-Teleconference Participation
https://www.zoom.us/join
Meeting ID 895 6767 7168
Passcode 508649
(669) 900-9128

Commissioner Barry Willis
Will Participate from
the Following Remote Site
The M Resort & Casino
12300 Las Vegas Blvd South, Room No. 9115
Henderson, NV 89044

Commissioner David Drake
Will Participate from
the Following Remote Site
Association of California Water Agencies:
Joint Powers Authority
Conference Room
2100 Professional Drive
Roseville, CA 95661

Video Viewing Only
YouTube Channel
@sandiegolafco9909

San Diego LAFCO		
Commissioner	**Appointing Authority**	**Affiliation**
Chair Jim Desmond	Board of Supervisors	County of San Diego
Vice Chair Stephen Whitburn	Mayor of the City of San Diego	City of San Diego
Joel Anderson	Board of Supervisors	County of San Diego
Kristi Becker	Cities Selection Committee	City of Solana Beach
Jo MacKenzie	Independent Special Districts	Vista ID
Andy Vanderlaan	Commission	General Public
Dane White	Cities Selection Committee	City of Escondido
Barry Willis	Independent Special Districts	Alpine FPD
Alternate David A. Drake	Independent Special Districts	Rincon del Diablo MWD
Alternate Harry Mathis	Commission	General Public
Alternative Nora Vargas	Board of Supervisors	County of San Diego
Alternate Marni von Wilpert	Mayor of the City of San Diego	City of San Diego
Alternate John McCann	Mayor of the City of Chula Vista	City of Chula Vista

Participation Instructions:

In person attendance by the public is welcomed. Three-hour visitor parking is available using the Ash Street entrance. To provide comments on any item, please turn in a speakers slip to LAFCO staff before the item commences.

Remote participation by video or telephone is welcomed through Zoom by following these instructions.

Comments by Video	Comments by Telephone
1. Click or type the link found at the top of the agenda	1. Dial + 1-669-900-9128
2. Type the Meeting ID identified on the top of this agenda followed by the Passcode	2. Dial the Meeting ID identified at the top of the agenda followed by the Passcode
3. Click the raise hand icon	3. Dial *9 to raise your hand
4. LAFCO will announce your name as it appears when it is your turn to speak	4. LAFCO will call out the last 4 digits of your phone number when it is your turn to speak
5. Click the speaker icon to unmute to speak	5. Dial *6 to unmute yourself

Remote participation by e-mail is also welcomed by sending comments to Executive Assistant Erica Sellen at erica.sellen@sdcounty.ca.gov. All e-mails received before 4:00 P.M. one business day before the meeting will be forwarded to the Commission and posted online. These comments will also be referenced at the meeting. All e-mails received during the meeting and before the item concludes will be read into the record subject to standard time limitations and subsequently posted online.

All comments are limited to three minutes for individuals and five minutes for organizations.

The Chair may authorize additional time at their discretion.

Public Accommodations:

Assistance for the disabled are available by contacting LAFCO staff. To the extent possible, accommodation requests should be submitted at least 72 hours in advance of the meeting.

Spanish language translation services are available at LAFCO meetings. Translation services covering other languages may be made available upon request at least 72 hours prior to the meeting.

Contact Information:

Tamaron Luckett
Commission Clerk
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T: 619-321-3380
F: 619-404-6508
E: tamaron.luckett@sdcounty.ca.gov

1. **1:00 P.M. – CALL TO ORDER BY CHAIR | ROLL CALL**

2. **PLEDGE OF ALLEGIANCE**

3. **STATEMENT (JUST CAUSE) AND/OR CONSIDERATION OF A REQUEST TO PARTICIPATE REMOTELY (EMERGENCY CIRCUMSTANCES) BY A COMMISSIONER, IF APPLICABLE.**

4. **AGENDA REVIEW**
   The Executive Officer will summarize the agenda as well as to advise of any requested changes. The Chair will also consider requests from Commissioners.

5. **CONSENT ITEMS**
   All items calendared as consent are considered ministerial and subject to a single motion approval. The Chair will entertain requests by Commissioners to pull any items for discussion.

   None

6. **PUBLIC HEARING ITEMS |**
   COMMISSIONER DISCLOSURE OF EX PARTE COMMUNICATIONS
   Public hearing items require expanded public notification per provisions in State law or have been voluntarily scheduled by the Executive Officer to ensure opportunity for public input. All public hearing items require verbal disclosures by Commissions regarding any material communications.

   None

7. **BUSINESS CALENDAR**
   Business items involve regulatory, planning, or other items that do not require a noticed hearing.

   a) **Recommendation to Oppose Assembly Bill 530 or any Related Legislation (action)**
      The Commission will consider a staff recommendation to formally oppose Assembly Bill 530 as amended on May 15th or any other related legislation this session. The amended bill seeks to require an affirmative vote of the entire electorate of any County Water Authority, including the San Diego County Water Authority, as a statutory condition to any member agency receiving LAFCO approval to detach. The timing of the item follows confirmation from the author of their intent to proceed with the legislation this session as well as apply an urgency clause to enact the provisions as soon as possible.

   b) **Request to Re-Calendar Date of Continued Public Hearing Item |**
      Proposed "Rainbow Municipal Water District and Fallbrook Public Utility District Reorganizations: Wholesale Water Services" (RO20-05 & RO20-04)
      The Commission will consider re-calendaring the continued hearing and the Commission's ongoing deliberations on the reorganization proposals filed by Fallbrook Public Utility District and Rainbow Municipal Water District. It is recommended the Commission advance the continued hearing from August 7, 2023 to July 10, 2023 and in doing so address new information separately detailed as part of Item No. 7a.

8. **EXECUTIVE OFFICER REPORT**

9. **COMMISSIONER ANNOUNCEMENTS & REQUESTS FOR FUTURE ITEMS**

10. CLOSED SESSION

None

11. ADJOURNMENT

Attest to Posting:

Tamaron Luckett
Commission Clerk

San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

7a

AGENDA REPORT
Business | Action

June 14, 2023

TO: Commissioners

FROM: Keene Simonds, Executive Officer

SUBJECT: **Action to Oppose Assembly Bill 530 and/or Related Legislation**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a staff recommendation to take an oppose position on Assembly Bill 530 as amended on May 15th as well as on any related legislative efforts this session. The proposed legislation is authored by Assemblymember Tasha Boerner (Encinitas) and sponsored by the City of San Diego Mayor's Office. The proposed legislation seeks an affirmative vote of the entire San Diego County Water Authority electorate as a statutory condition to any member agency receiving LAFCO approval to detach. This agenda item was initially placed on the Commission's June 5th meeting but pulled to accommodate a meeting with the author. Staff subsequently met with the author on June 9th and – among other items – received confirmation they will be proceeding with the legislation this session through a substitute bill while also seeking an urgency clause to enact the provisions immediately. This timeline moots opportunities to work with the author and sponsor on any material amendments this session. As a result, and irrespective of the author and sponsor's fair intentions, staff recommends the Commission proceed now to oppose the amended bill and any related legislation this session given substantive timing and content concerns as detailed. These concerns are collectively marked by disenfranchising Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD) given their current proposal filings by establishing new and inconsistent thresholds in statute for special district detachments.

BACKGROUND

Legislation to Amend County Water Authority Act

Assembly Bill (AB) 530 was introduced by Assemblymember Boerner on February 8, 2023 to further address and manage methane emissions in California. The bill was comprehensively amended on May 15th to revise the County Water Authority Act to require a confirming vote of the entire electorate of the San Diego County Water Authority – as the only special district formed under the Act – should any member agency receive approval from LAFCO to detach. The amended bill is sponsored by the City of San Diego through the Mayor's Office. A copy of the amended bill is provided as Attachment One.

Response from County Water Authority and Letter of Concern to Assemblymember Boerner

LAFCO staff became aware of Assemblymember Boerner's amended bill on May 16th. Staff contacted the County Water Authority and ultimately solicited a response from the General Manager on May 19th confirming the Authority's support of the legislation. Staff proceeded to discuss the proposed legislation with the Mayor's Office before issuing a letter of concern via email to the author on May 25th. Staff also submitted a meeting request with the author. Copies of the referenced communications (County Water Authority and Executive Officer) are provided as Attachments Two and Three.

Initial Agenda Placement and Meeting with Assemblymember Boerner

Staff initially placed Assemblymember Boerner's amended bill on the agenda for San Diego LAFCO's June 5th meeting with a recommendation to take an oppose position. The agenda item, however, was pulled in conjunction with staff receiving a meeting invite from the author on June 2nd. The meeting was subsequently held on June 9th by video and included the Executive Officer, LAFCO Consultant Chris Cate, and Commissioner Kristi Becker. During the meeting, the author confirmed their objectives for the legislation and most notably wanting to require the same level of voter input available to cities should any incorporated neighborhoods seek to detach and incorporate on their own (e.g., La Jolla). The author also confirmed plans to transfer the contents of the legislation into another bill that has already passed into the Senate and in doing so remedy a missed deadline. Amendment inquiries were raised by LAFCO staff but materially mooted given the author's intent to fast-track the legislation by seeking an urgency clause this session.

DISCUSSION

This item is for San Diego LAFCO to consider a staff recommendation to approve an oppose position AB 530 as amended on May 15th as well as on any related legislative efforts this session. The timing of the recommendation is two-fold. It follows confirmation from Assemblymember Boerner of their intention to proceed with an urgency clause to enact the proposed legislation – currently in AB 530 and presumably to be transferred to a substitute bill shortly – immediately and impacts therein on Fallbrook PUD and Rainbow MWD's detachment proposals. Pertinently, should the proposed legislation become law before the Commission take action on the proposals, any approvals would require affirmative votes of the entire County Water Authority electorate. The applicants contend they would have pursued alternatives other than detachments had the legislation been known at the time of their filings in April 2020 given the costs and variables in holding expanded elections.

ANALYSIS

San Diego LAFCO staff believes AB 530, as amended on May 15th generates considerable concerns with respect to both timing and content. LAFCO staff and counsel have made a series of decisions and determinations to guide its review of the Fallbrook PUD and Rainbow MWD proposals in step with forwarding recommendations to the Commission ahead of opening the joint hearing on June 5th. The proposed legislation – and irrespective of fair intentions – introduces an additional layer of uncertainty and influence at the 11th hour and negatively impacts staff's ability to provide clear and reasonable guidelines and answers to Commissioners. This includes complications for three of the five options evaluated by staff and currently under consideration by the Commission.[1] The proposed legislation similarly creates uncertainty for the applicants in receiving due consideration for their proposals. Specific timing and content concerns follow.

With respect to timing:

- The proposed legislation was added to AB 530 through a comprehensive amendment process involving a bill previously introduced on February 8th to address methane emissions in California.

- The comprehensive amendment to AB 530 was published on May 15th. This is approximately three weeks after LAFCO staff posted a final report on the Fallbrook PUD and Rainbow MWD proposals and noticed a public hearing for June 5th.

- No committee in the Legislature has held a meeting on the proposed legislation and none are currently scheduled. Similarly, there have been no committee analyses performed on the proposed legislation.

[1] The June 5th agenda report on the proposed detachments outlines five distinct options for the Commission's consideration. Three of the five options - which involve either approval (Options One and Two) or an administrative pause to first complete a municipal service review on the County Water Authority (Option Three) - are complicated by the proposed legislation. Options One and Two would need to be approved before the legislation becomes effective. Option Three – and unless substantively adjusted into a hybrid format with either of the two preceding alternatives – becomes moot.

- Because a June 2nd deadline to pass AB 530 out of the Assembly was missed, the author expects to place the proposed legislation in another bill that is already in the Senate through a second comprehensive amendment process.

- The author is expected to add an urgency clause to the proposed legislation as part of the second comprehensive amendment process. This means the proposed legislation could be enacted at any time this summer.

With respect to content:

- The proposed legislation disenfranchises Fallbrook PUD and Rainbow MWD by depriving established statues that were otherwise and reasonably assumed to apply at the time of their respective proposal filings with LAFCO in April 2020.

- The proposed legislation circumvents LAFCO's decision-making involving the Fallbrook PUD and Rainbow MWD proposals by trumping any potential approvals by creating an otherwise poisonous condition requirement. This circumvention would similarly apply to other member agencies in the future should they choose to pursue detachments based on otherwise meritorious local conditions and circumstances.

- The proposed legislation is inconsistent with State law given no other provision exists that provides special districts' electorate veto-power over detachments.

- An unfit comparison is cited in justifying the proposed legislation by seeking the same level of voter input available in statute to cities should any of their neighborhoods seek to detach and self-incorporate. The cited comparison is known as the "San Fernando Valley" provision and requires city-wide electorate approvals to divide cities into two or more municipalities given the redistribution of general taxes and impacts on non-enterprise functions – like public safety. No other allowance exists in statute to require a city-wide or district-wide vote on detachments.

- The proposed legislation assumes higher water rates are a given should any agencies detach from the County Water Authority. While detachments may generate higher water rates for end users, it is not a certainty since the loss revenue could be absorbed through cost-savings and/or recovered through new income streams. Existing statute also empowers LAFCO to mitigate any ratepayer impacts through various true-ups – including conditioning approvals on exit fee payments.

- The proposed legislation creates an unbalanced public policy with proponents citing the need for County Water Authority voters to decide on detachments and in doing so having input on the disposition of any remaining long-term debts. The unbalancing ties to voters having no role to date in voting on long-term debts of the County Water Authority with the Board instead taking administrative action to finance projects by pledging future water rate revenues. (If the County Water Authority received voter approval to finance long-term debts, the debt payments would be drawn from the tax roll and can continue to be paid post detachment under LAFCO statute.)

RECOMMENDATION

It is recommended San Diego LAFCO approve an oppose position on AB 530 as amended on May 15th and any related legislation this session consistent with Alternative One as outlined in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO:

Alternative One (recommended):
Approve an oppose position on AB 530 as amended on May 15th as well as on any other related legislation this session and authorize the Executive Officer to prepare a letter for the Chair's signature for distribution.

Alternative Two:
Continue consideration of the item to a future meeting.

Alternative Three:
Take no action.

PROCEDURES FOR CONSIDERATION

This item has been placed on San Diego LAFCO's agenda for action as part of the business calendar. The following procedures are recommended in the consideration of this item:

1) Receive verbal presentation from staff unless waived.
2) Invite comments from interested audience members.
3) Discuss item and consider the recommendation.

Respectfully,

Keene Simonds
Executive Officer

Attachments:

1. AB 530, as Amended on May 15, 2023
2. Correspondence from County Water Authority to LAFCO on AB 530
3. Corresondence from LAFCO EO to Assemblymember Boerner on AB 530

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AMENDED IN ASSEMBLY MAY 15, 2023
AMENDED IN ASSEMBLY MARCH 09, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL **NO. 530**

Introduced by Assembly Member Boerner

February 08, 2023

~~An act to amend Section 39731 of the Health and Safety Code, relating to greenhouse gases.~~ *An act to amend Section 11 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

AB 530, as amended, Boerner. ~~Methane emissions.~~ *County Water Authority Act: exclusion of territory: procedure.*

The County Water Authority Act provides for the formation of county water authorities and grants to those authorities specified powers with regards to providing water service. The act provides 2 methods of excluding territory from any county water authority, one of which is that a public agency whose corporate area as a unit is part of a county water authority may obtain exclusion of the area by submitting to the electors within the public agency, at any general or special election, the proposition of excluding the public agency's corporate area from the county water authority. Existing law requires that, if a majority of the electors approve the proposition, specified actions take place to implement the exclusion.

This bill would additionally require the public entity to submit the proposition of excluding the public agency's corporate area from the county water authority to the electors within the territory of the county water authority. The bill would require the 2 elections to be separate; however, the bill authorizes both elections to run concurrently. The bill would require a majority vote for withdrawal in both elections for the withdrawal of the public agency from the territory of the county water authority.

~~Existing law requires the State Air Resources Board, no later than January 1, 2016, to complete a comprehensive strategy to reduce emissions of short-lived climate pollutants in the state. Existing law requires the state board, no later than January 1, 2018, to approve and begin implementing the comprehensive short-lived climate pollutant strategy to achieve a reduction in the statewide emissions of methane by 40%, hydrofluorocarbon gases by 40%, and anthropogenic black carbon by 50% below 2013 levels by 2030. Existing law requires the state board to undertake certain tasks, including consulting with federal and state agencies, independent scientific experts, and any other appropriate entities to gather or acquire the necessary information to carry out a life-cycle greenhouse gas emission analysis of natural gas produced and imported into the state using the best available and cost-effective scientific and technical methods, and to update relevant policies and programs to incorporate this information and other specified information.~~

~~This bill would additionally require the state board to consult with the aforementioned stakeholders to gather and acquire the necessary information to estimate, using the best available and cost-effective scientific and technical methods, methane emissions from landfills in the state. The bill would require the state board, no later than~~

~~December 31, 2024, to update relevant policies and programs to incorporate this information. The bill would require the state board to consider additional policies to encourage the use of natural gas produced in the state with the lowest life-cycle emissions.~~

Digest Key

Vote: majority Appropriation: no Fiscal Committee: ~~yes~~*no* Local Program: no

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Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 11 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as amended by Section 3 of Chapter 1408 of the Statutes of 1985, is amended to read:*

SEC. 11. (a) Exclusion of territory from any county water authority may be effected by either of the following methods:

(1) Territory excluded from the portion of the corporate area of any public agency ~~which~~ *that* lies within the exterior boundaries of a county water authority, the public agency being a unit of the authority, and ~~which~~ *that* exclusion occurs in accordance with the provisions of law applicable to those exclusions, shall thereby be excluded from and shall no longer be a part of the authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the ~~bounded~~ *bonded* or other indebtedness outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof shall be, at the time of the exclusion, subject to special taxes levied, or to be levied, by the county water authority pursuant to terms and conditions previously fixed under paragraph subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to those special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies.

Exclusion of territory from a county water authority pursuant to this paragraph shall not occur if two or more public agencies that are included in a county water authority as separate units are subject to a reorganization of their boundaries under applicable provisions of law ~~which~~ *that* would result in an exchange or transfer, but not an overlapping, of territory that is entirely within the county water authority. The boundaries of those agencies within the county water authority, upon that reorganization and the filing with the secretary of the county water authority of a copy of the certificate of completion prepared, executed, and filed by the executive officer of the local agency formation commission responsible therefore constitute the boundaries of the agencies for all purposes of the county water authority, without action by the board of directors of the county water authority. If the exchange includes territory subject to special conditions and tax levies pursuant to the terms of annexation at the time the territory became a part of the county water authority, the territory shall continue to be subject to those conditions and to be taxable by the county water authority or those levies.

From and after the effective date of the inclusion of the territory by the including public agency, the territory shall be considered to be a part of the corporate area of the including agency; provided, however, that, if the taxable property within the territory, or any portion thereof, is subject to special taxes levied or to be levied by

the county water authority pursuant to terms and ~~condition~~ *conditions* previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the territory or portion thereof to the county water authority, then the taxable property within the territory shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of the special taxes pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been ~~or~~ *so* raised by the special tax levy.

(2) Any public agency whose corporate area as a unit has become or is a part of any county water authority may obtain the exclusion of the area therefrom *by elections conducted* in the following manner:

~~The~~

(A) (i) The governing body of any public agency may submit to the electors thereof at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority. ~~A~~

(ii) The governing body of any public agency may submit to the electors within the territory of the county water authority at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors within the territory of the county water authority voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority.

(iii) The elections conducted pursuant to this subparagraph shall be separate elections; however, they may run currently with one another. A majority vote in both elections for withdrawal is necessary for the withdrawal of the public agency from the territory of the county water authority.

(B) A certificate of the proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing of the certificate, the corporate area of the public agency shall be excluded from the county water authority and shall no longer be a part thereof; provided, that the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded area or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to the terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded area or part thereof to the county water authority, the taxable property within the excluded area or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of the papers in ~~his or her~~ *the Secretary of State's* office and the exclusion of the corporate area of the public agency from the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.

(b) Whenever territory is excluded from any public agency in accordance with paragraph (1) of subdivision (a), the governing body, or clerk thereof, of the public agency shall file with the board of directors of the county

water authority a statement of the change of boundaries of the public agency, setting forth the legal description of the boundaries of the public agency, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating the boundaries.

(c) Whenever any territory has been excluded from any public agency prior to the effective date of this section, under conditions ~~which~~ *that* would have resulted in the exclusion of the territory from a county water authority had paragraph (1) of subdivision (a) then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be excluded from and shall no longer be a part of, the authority, the last-mentioned provisions being as follows:

(1) The governing body of the public agency may adopt an ordinance ~~which,~~ *that,* after reciting that the territory has been excluded from the public agency by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date or dates upon which the exclusion became effective, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, excluded from the county water authority.

(2) The governing body, or clerk thereof, of the public agency shall file a certified copy of the ordinance with the Secretary of State. Upon the filing of the certified copy of the ordinance in the office of the Secretary of State, the territory shall be excluded from, and shall no longer be a part of, the county water authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion, and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed, and until the aggregate sums have been so raised by the special tax levies.

(3) Upon the filing of the certified copy of the ordinance, the Secretary of State shall, within 10 days issue a certificate describing the territory, reciting the filing of certified copy of the ordinance and the exclusion of the territory from the county water authority, and declaring that the territory is no longer a part of the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy of the certificate to the county clerk of the county in which the county water authority is situated.

(d) Whenever any territory has been exchanged or transferred pursuant to law prior to January 1, 1986, among two or more public agencies that are included in a county water authority as separate units, the territory shall not be deemed excluded from the county water authority, notwithstanding the failure of the county water authority to give its consent to the exchange or transfer of the territory, if there has been filed with the board of directors of the county water authority prior to January 1, 1986, a statement of the change of boundaries of the agencies, as so changed, and of the part within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

~~SECTION 1.Section 39731 of the Health and Safety Code is amended to read:~~

~~39731.The state board shall do all of the following:~~

~~(a)Monitor and measure, in consultation with districts that monitor methane, high-emission methane hot spots in the state using the best available and cost-effective scientific and technical methods.~~

~~(b)Consult with federal and state agencies, independent scientific experts, and any other appropriate entities to gather or acquire the necessary information to estimate, using the best available and cost-effective scientific and technical methods, methane emissions from landfills in the state and carry out a life-cycle greenhouse gas~~

~~emission analysis of natural gas produced and imported into the state.~~

~~(c)Update, no later than December 31, 2024, relevant policies and programs to incorporate the information gathered and acquired pursuant to subdivisions (a) and (b).~~

~~(d)Consider additional policies to encourage the use of natural gas produced in the state with the lowest life-cycle emissions.~~

~~(e)Review, in consultation with independent scientific experts, the most recent available scientific data and reports on the atmospheric reactivity of methane as a precursor to the formation of photochemical oxidants.~~

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San Diego County Water Authority
And Its 24 Member Agencies

VIA EMAIL

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

May 19, 2023

Re: Rainbow Letter of May 18, 2023

Dear Mr. Simonds:

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

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

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

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

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

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

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

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

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

- He claims this was an "attempt by SDCWA to bypass the determinations that SDLAFCO and its counsel have made in the staff report that will be considered on June 5th by the Commission." First, AB 530 was not written, drafted, or reviewed by our staff or counsel. It is a proposal sponsored by the City of San Diego. Second, we are sure you would disagree with Mr. Kennedy that LAFCO staff have made "determinations" via your report. We are sure you would instead agree that the *Commission, and not LAFCO staff*, will make determinations on this matter for your agency.

- Mr. Kennedy states that AB 530 is "an affront to the processes ongoing at LAFCO" and that this legislation will "corrode the authority of LAFCOs statewide." The exact opposite is true. The proposed legislation, which the Water Authority Board will soon review at a noticed meeting, simply allows voters to be heard, which is what our Board requested of LAFCO years ago, which former Chair Jacob supported, and which in fact might be welcomed by most of your Commissioners.

- Mr. Kennedy asserts that the Water Authority has just recently been "finally willing to have open discussions." That is not correct. We have sent extensive correspondence over the years to LAFCO pointing out how Rainbow and Fallbrook had not honored commitments to us for proposals to resolve this matter.

- Mr. Kennedy asks that you remove Option 3 (a delay for an MSR on the Water Authority) as a possibility. Though our agency does not support this option, as you will see in our upcoming formal comment letter, it is not up to Mr. Kennedy, or you, to remove options from the Commission. We reiterate the point that it is the Commission, not staff, and certainly not Mr. Kennedy and his agency, which decide matters at LAFCO. All legal options are of course open to the Commission.

Thank you for your consideration of these matters.

Sincerely,

Sandra L. Kerl
General Manager

cc via email:

All LAFCO Commissioners
Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator
David Edwards, General Counsel, San Diego County Water Authority
Mark Hattam, Special Counsel, San Diego County Water Authority
Claire Collins, Counsel, San Diego County Water Authority
Jack Bebee, General Manager, Fallbrook PUD
Paula C. P. de Sousa, Counsel, Fallbrook PUD
Nick Kanetis, Deputy General Manager, Eastern MWD
Tom Kennedy, General Manager, Rainbow MWD
Alfred Smith, Counsel, Rainbow MWD
Water Authority Board of Directors
Rainbow Municipal Water District Board of Directors

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San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

May 25, 2023

DELIVERED BY ELECTRONIC MAIL
Assemblymember Tasha Boerner
State of California
77th Assembly District
c/o Robert Charles, Chief of Staff
robert.charles@asm.ca.gov

SUBJECT: Concerns with Assembly Bill (AB) 530

Honorable Assemblymember Boerner:

As the Executive Officer of the San Diego County Local Agency Formation Commission (LAFCO), I am writing to express concerns regarding your proposed AB 530, and the amendments that were introduced on May 15th. The amendments to a previously unrelated bill involving the reduction of methane emissions seek to revise the County Water Authority Act to require expanded voter confirmations of any LAFCO approved detachments. The San Diego County Water Authority is the only agency organized under this principal act. The amended bill, accordingly, would require any member agency of the County Water Authority to receive majority confirmation among registered voters throughout the entirety of the Authority's jurisdictional boundary as a condition to detachment.

As amended, AB 530 generates significant concerns in terms of timing and content.

- With respect to timing, the amended bill comes at the end of a prolonged administrative review process that began in April 2020 in which San Diego LAFCO has expended considerable public resources in evaluating Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District's (MWD) applications to detach from the County Water Authority. This includes staff holding more than a dozen publicly noticed meetings with three different advisory committees as well as employing multiple outside experts. LAFCO staff has recently capitalized on this extensive administrative review and the 4,000 plus pages of documents therein in issuing a final

report with recommendations on April 26, 2023 with a public hearing set for June 5th. Further, one of the merited options evaluated and available to the Commission involves administratively pausing action on the proposals in favor of completing a comprehensive municipal service review on the County Water Authority, which would likely take 18-24 months to complete. This option now appears impractical with the potential chaptering of the amended bill.

- With respect to content, the amended bill would establish a defacto prohibition on member agency detachments from the County Water Authority given the unfavorable odds for any single agency in receiving majority approval from the entire Authority electorate, which presently tallies 1.9 million registered voters. As the current proposals filed by Fallbrook PUD and Rainbow MWD indicate, there may be unique and locally meritorious reasons for member agencies to seek future detachments that would be otherwise mooted from consideration should the amended bill proceed into law. Similarly, I am not aware of any existing provision – certainly not in LAFCO statute and presumably not in any other principal act – that provides special district voters the approval power over proposed detachments. Accordingly, the precedent setting nature of the amended bill and potential for unintended consequences should not be dismissed. Similarly, the amended bill's sidestepping of the Legislature's long-standing delegation to LAFCOs to independently consider jurisdictional changes and term any approvals as appropriate should not be dismissed given its own precedent setting nature.

San Diego LAFCO staff and counsel have made a series of decisions and determinations to guide its review of the Fallbrook PUD and Rainbow MWD detachment proposals in step with forwarding recommendations to the Commission ahead of a June 5th public hearing. The amended bill introduces an additional layer of uncertainty and influence at the 11th hour and negatively impacts our ability to provide clear and reasonable guidelines and answers to Commissioners. The precedent setting nature of the bill is equally concerning as detailed.

I appreciate your consideration of my letter. I would also welcome any opportunity to further discuss the amended bill with you and/or your staff and will make myself available to accommodate your schedules. I am available by telephone at 619-321-3380 or email at keene.simonds@sdcounty.ca.gov.

Respectfully,

Keene Simonds
Executive Officer

cc:

San Diego LAFCO Commissioners
Honorable Mayor Todd Gloria of the City of San Diego
Holly Whatley, Commission Counsel
Aleks Giragosian, Deputy Commission Counsel
Priscilla Mumpower, Analyst II
Chris Cate, LAFCO Consultant
Adam Wilson, LAFCO Consultant
Nick Serrano, Deputy Chief of Staff for Mayor Todd Gloria
Sandy Kerl, County Water Authority General Manager
Jack Bebee, Fallbrook PUD General Manager
Tom Kennedy, Rainbow MWD General Manager
Nick Kanetis, Eastern MWD Assistant General Manager
René LaRoche, CALAFCO Director

7b

AGENDA REPORT
Business | Action

June 14, 2023

TO: Commissioners

FROM: Keene Simonds, Executive Officer
Priscilla Mumpower, Assistant Executive Officer

SUBJECT: **Request to Re-Calendar Date of Continued Public Hearing Item | Proposed "Rainbow Municipal Water District and Fallbrook Public Utility District Reorganizations: Wholesale Water Services" (RO20-05 & RO20-04)**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider action to re-calendar the continued hearing on the reorganization proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD). The Commission opened the hearing on June 5th before continuing its deliberations to August 7th. It is recommended the Commission re-calendar and advance the continued hearing by one month to July 10, 2023 and in doing so address new information separately detailed as part of Item No. 7a.

BACKGROUND

Public Hearing Opening

San Diego LAFCO held a regular meeting on June 5, 2023 and opened a public hearing in consideration of the proposed "Rainbow Municipal Water District and Fallbrook Public Utility District Reorganizations: Wholesale Water Services". The purpose of the proposals is to achieve cost-savings to the applicants and their retail ratepayers based on the difference in charges between their current wholesale supplier – San Diego County Water Authority (CWA) – and Eastern MWD. Five distinct alternative actions have been evaluated for Commission

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action and this included staff's recommendation to proceed with Option Two (approve the proposals with additional conditions that include requiring the applicants to pay exit fees to CWA). The Commission closed public testimony and proceeded to continue its deliberations to August 7th with related direction to staff for additional information on exit fee alternatives.

DISCUSSION

This item is for San Diego LAFCO to consider re-calendaring its continued hearing on the Fallbrook PUD and Rainbow MWD reorganization proposals from August 7th to July 10th. The proposed re-calendaring helps to accommodate the Commission in taking actions on the proposals ahead of the potential enactment of legislation as detailed in Item No. 7a that would require any approvals be subject to a vote of the entire CWA electorate. Both applicants support re-calendaring the public hearing to July 10th.

ANALYSIS

Staff believes it is reasonable and merited for San Diego LAFCO to re-calendar the continued hearing on the Fallbrook PUD and Rainbow MWD's detachment proposals to July 10th. Advancing the continued hearing by one month positions the Commission to consider the staff recommendation to approve the proposals with special conditions ahead of the potential enactment of legislation as detailed that would otherwise moot any approvals.

RECOMMENDATION

It is recommended San Diego LAFCO re-calendar the continued public hearing on the Fallbrook PUD and Rainbow MWD reorganization proposals to July 10th. This recommendation is consistent with Alternative One as outlined in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternatives are available to San Diego LAFCO through a single motion:

Alternative One (recommended):
Re-calendar and advance the continued hearing on the "Rainbow Municipal Water District and Fallbrook Public Utility District Reorganizations: Wholesale Water Services" proposals from August 7, 2023 to July 10, 2023.

Alternative Two:
Take no action.

PROCEDURES

This item has been placed on the agenda for action as part of San Diego LAFCO's business calendar. The following procedures, accordingly, are recommended in the consideration of this item:

1) Receive verbal report from staff unless waived.
2) Invite comments from interested audience members.
3) Discuss item and consider recommendation.

On behalf of the Executive Officer,

Priscilla Mumpower
Assistant Executive Officer

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