



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

**6a**

**AGENDA REPORT**  
 Public Hearing

May 4, 2020

**TO:** Commissioners

**FROM:** Keene Simonds, Executive Officer  
 Holly O. Whatley, Commission Counsel

**SUBJECT: Consideration of Applications by the San Diego County Water Authority for Non-District Determinations Involving Conducting Authority Proceedings for Proposed Reorganizations Filed by Fallbrook Public Utility District (RO20-05) and Rainbow Municipal Water District (RO20-04) and Related Requests**

**SUMMARY**

The San Diego County Local Agency Formation Commission (LAFCO) will consider applications from the San Diego County Water Authority to exempt it from standard conducting authority provisions and instead follow its principal act for the recent detachment proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD). Approving the applications would mean any subsequent Commission approval of the Fallbrook and/or Rainbow detachments would not involve protest proceedings but would still be subject to registered voters’ confirmation per the Water Authority’s principal act. Staff believes the qualifying criteria in statute to exempt the Water Authority from standard conducting authority proceedings applies and recommends approval. The Water Authority is also requesting the Commission suspend all further processing activities on Fallbrook and Rainbow’s proposals due to the COVID-19 emergency and separately condition any potential detachments on an expanded vote of registered voters within all 24-member agencies’ jurisdictions. No actions are recommended with respect to these latter two requests.

<p><b>Administration</b>          Keene Simonds, Executive Officer          County Operations Center          9335 Hazard Way, Suite 200          San Diego, California 92123          T 858.614.7755 F 858.614.7766          www.sdlafco.org</p>	<p><b>Jim Desmond</b>          County of San Diego</p> <p><b>Chair Dianne Jacob</b>          County of San Diego</p> <p><b>Greg Cox, Alternate</b>          County of San Diego</p>	<p><b>Mary Casillas Salas</b>          City of Chula Vista</p> <p><b>Bill Wells</b>          City of El Cajon</p> <p><b>Paul McNamara, Alternate</b>          City of Escondido</p>	<p><b>Mark Kersey</b>          City of San Diego</p> <p><b>Chris Cate, Alternate</b>          City of San Diego</p>	<p><b>Jo MacKenzie</b>          Vista Irrigation</p> <p><b>Barry Willis</b>          Alpine Fire Protection</p> <p><b>Erin Lump, Alternate</b>          Rincon del Diablo MWD</p>	<p><b>Vice Chair Andy Vanderlaan</b>          General Public</p> <p><b>Harry Mathis, Alternate</b>          General Public</p>
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## BACKGROUND

### Reorganization Proposals by Fallbrook PUD and Rainbow MWD

San Diego LAFCO received separate reorganization proposals in March 2020 from Fallbrook PUD and Rainbow MWD seeking Commission approval to concurrently (a) detach from the San Diego County Water Authority and (b) annex to Eastern MWD. The stated purpose of the reorganizations as detailed in the proposal materials is to achieve cost-savings for the agencies by transitioning the purchase of wholesale supplies from the Water Authority to Eastern MWD. Staff currently anticipates an approximate 12 to 16-month timeline to process the reorganization proposals and this includes soliciting input from Riverside LAFCO based on an earlier agreement with the Commission.<sup>1</sup> Copies of both Fallbrook PUD and Rainbow MWD’s proposals are available on the Commission website ([www.sdlafco.org](http://www.sdlafco.org)).

### Standard and Alternative Conducting Authority Proceedings

All boundary proposals approved by San Diego LAFCO are subject to conducting authority proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH”) unless all affected landowners, voters, and agencies provide written consent. Standard conducting authority proceedings are outlined in Part 4 of CKH and premised on LAFCO first holding a protest hearing to allow landowners and registered voters to file written objections to the Commission approval. An election follows only if more than 25% and less than 50% of the landowners and/or registered voters file written protests with additional details footnoted.<sup>2</sup> An election is limited to only registered voters.

CKH also provides an alternative process for conducting authority proceedings in limited circumstances involving certain eligible special districts – including county water authorities.<sup>3</sup> This alternative process involves the eligible special district applying and receiving LAFCO approval for a “non-district” determination based on meeting specific criteria. If approved, the alternative process delegates conducting authority proceedings to the special district and based on the processes provided within their principal act.<sup>4</sup>

## DISCUSSION

This agenda item is for San Diego LAFCO to consider applications from the San Diego County Water Authority and related requests in response to separate reorganization proposals recently filed by Fallbrook PUD and Rainbow MWD. The applications seek approval to utilize alternative conducting authority proceedings and delegate the associated processes from CKH to the Water Authority’s principal act. Two related requests accompany the applications and ask the Commission to suspend all proposal processing as well as condition any potential

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<sup>1</sup> In October 2019, San Diego and Riverside LAFCOs entered into an agreement to delegate all processing approvals for the Fallbrook PUD and Rainbow MWD reorganization proposals – including associated sphere amendments – to San Diego LAFCO. The agreement specifies San Diego LAFCO shall actively consult with Riverside LAFCO in processing the reorganizations and this includes providing input on all related recommendations.

<sup>2</sup> LAFCO approvals proceed without elections when protest levels fall below 25% for both landowners and registered voters. LAFCO approvals are terminated when protest levels exceed 50% for either landowners or registered voters.

<sup>3</sup> Reference to Government Code Section 56036.6.

<sup>4</sup> A similar alternative process exists involving Part 5 of CKH and the application of terms and conditions.

proposal approvals on an expanded vote of registered voters. A summary discussion on all three requested actions filed by the Water Authority follow.

### Applications for Alternative Conducting Authority Proceedings

San Diego LAFCO provided written notices to the San Diego County Water Authority on March 25, 2020 regarding the submittal of the reorganization proposals by Fallbrook PUD and Rainbow MWD. The notices advised the Water Authority of their eligibility under statute to apply for non-district determinations to delegate conducting authority proceedings to its principal act.<sup>5</sup> The Water Authority responded within the required 10-day period with formal applications requesting alternative conducting authority proceedings for both proposals. Copies of both applications are provided as Attachments One and Two.

State law prescribes LAFCO approval for alternative conducting authority proceedings for eligible special districts shall be based on the applicant qualifying as a “non-district” and specifically not engaged in any of the following activities:

- The distribution and sale for any purpose, other than for the purpose of resale, of water or of gas or electricity for light, heat, or power.
- Furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users, as defined in subdivision (b), of those services.<sup>6</sup>
- Providing fire or police protection.
- The acquisition, construction, maintenance, lighting, or operation of streets and highways, street and highway improvements, or park and recreation facilities, except as an incident to the exercise of other lawful powers of the applicant.

The Water Authority has attested in its applications to the Commission that it is not engaged in any of the above-listed activities. Staff independently concurs. Additionally, no objections to the applications have been made by Fallbrook PUD or Rainbow MWD.

### Request to Suspend Proposals’ Processing

The San Diego County Water Authority requests San Diego LAFCO suspend all processing activities on the Fallbrook PUD and Rainbow MWD proposals due to the current COVID-19 emergency. The Water Authority notes it has declared its own emergency and in doing so significantly limiting operations and largely moving to a remote workforce. The request also notes should the Commission proceed in processing the proposals it would be prejudicial to the Water Authority, its member agencies, and their shared constituents. The Water

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<sup>5</sup> The notice also advised the Water Authority of the option to apply to delegate terms and conditions under Part 5 of CKH to its principal act.

<sup>6</sup> Subsection (b) defines “ultimate user” to mean any user or consumer other than the state, the United States, a city, a county, or a district, or any agency, department, or office of any of those entities or a public utility.

Authority states similar actions to suspend activities has been done by the courts and other public agencies due to the common impacts caused by COVID-19.

Staff has reviewed the request in detail and concludes LAFCO does not have authority in CKH to suspend the processing of a proposal that has been filed with the prerequisite information required under statute and local policy without applicant consent. Staff is also unaware of any recent order or directive by the State providing new discretion to LAFCO to suspended proposal processing. Additionally, while acknowledging the impacts of COVID-19, LAFCO remains fully operational with the understanding some external resources may be impacted and create otherwise atypical delays in bringing the proposals to the Commission.

Staff separately contacted both Fallbrook PUD and Rainbow MWD to determine whether either agency would voluntarily agree to suspend their reorganization proposals on file with LAFCO given the Water Authority's request. Fallbrook PUD and Rainbow MWD responded in a joint letter to the Commission that in the absence of a LAFCO hardship they do not support suspending the processing of the proposals at this time. A copy of the joint letter is provided as Attachment Three.

### Request to Condition Any Proposal Approvals on Expanded Vote

The San Diego County Water Authority requests San Diego LAFCO condition any potential detachment approvals involving Fallbrook PUD and/or Rainbow MWD's reorganization proposals to expand the electorate to include all registered voters in the Water Authority's entire jurisdictional boundary and its 24 member agencies. This request represents a potential expansion of the eligible electorate from an approximate population base of 55,000 to 3,300,000.<sup>7</sup> The Water Authority justifies the request by noting all member agencies and their ratepayers would be financially impacted should Fallbrook PUD and/or Rainbow MWD detach.

Staff appreciates the Water Authority is choosing to advance the requested condition now for purposes of drawing the Commission's attention to the topic and the Water Authority's position therein. Staff also appreciates Fallbrook PUD and Rainbow MWD are similarly choosing to go on record now to oppose the request for reasons detailed in their joint-letter. Actual analysis of the request is deferred to the administrative review of the proposals along with any other requests or recommendations made by affected and subject agencies.

### ANALYSIS

The San Diego County Water Authority's applications for "non-district" determinations meet the qualifying criteria in statute and accordingly it would be appropriate for San Diego LAFCO to proceed with approvals. The substantive outcome of these approvals is to ensure any future actions by the Commission to detach Fallbrook PUD and/or Rainbow MWD from the Water Authority will require confirmation from registered voters per the Water Authority's principal act. With respect to the two related requests made by the Water Authority, staff

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<sup>7</sup> The approximate population estimates within Fallbrook PUD and Rainbow MWD are 35,000 and 19,000, respectively.

believes no Commission actions are appropriate and/or needed at this time. This includes taking no action on the request by the Water Authority to suspend all processing activities for the two proposals given the current COVID-19 emergency. CKH does not empower the Commission to suspend work on otherwise duly filed proposals unless requested by the applicants. Neither Fallbrook PUD nor Rainbow MWD have agreed to suspensions in the absence of a LAFCO hardship, which does not apply given the Commission remains fully functional. Additionally, the recent executive orders and directives from the State due to COVID-19 do not provide any new discretion to the Commission to suspend or adjust CKH timelines. Last, and as detailed in the preceding section, the request to condition any detachments of Fallbrook PUD or Rainbow MWD from the Water Authority to include an expanded vote of registered voters in all 24 member agencies' boundaries is premature to consider at this time. Nonetheless, staff will incorporate the request into the administrative review with any preliminary input provided in the Commission taking up this agenda item.

## **RECOMMENDATION**

It is recommended San Diego LAFCO approve the applications filed by the San Diego County Water Authority to exempt it from standard conducting authority provisions and instead follow its principal act for the recent detachment proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD). This recommendation is consistent with Alternative One as outlined in the succeeding section.

## **ALTERNATIVES FOR ACTION**

The following alternative actions are available to San Diego LAFCO and can be accomplished through a single-approved motion.

### Alternative One (recommended):

- a) Approve the San Diego County Water Authority application to exempt it from standard conducting authority proceedings under Part 4 of CKH and instead follow its principal act with respect to the detachment proposal filed by Fallbrook PUD (RO20-05).
- b) Approve the San Diego County Water Authority application to exempt it from standard conducting authority proceedings under Part 4 of CKH and instead follow its principal act with respect to the detachment proposal filed by Rainbow MWD (RO20-04).
- c) Direct Commission Counsel to prepare conforming resolutions of the preceding approvals and making the required findings under Government Code Section 56128 for signature by the Executive Officer.

### Alternative Two:

Continue the item and request additional information from staff as needed.

## PROCEDURES

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

- 1) Receive verbal presentation from staff unless waived.
- 2) Initial questions or clarifications from the Commission.
- 3) Open the hearing and invite comments in the following order:
  - representatives from the San Diego County Water Authority
  - representatives from Fallbrook PUD
  - representatives from Rainbow MWD
  - other interested parties and the general public
- 4) Discuss item and consider the staff recommendation.

Respectfully,



Keene Simonds  
Executive Officer

Attachments:

- 1) Water Authority Application for Exemption from Standard Conducting Authority Proceedings for RO20-05 (Fallbrook PUD)
- 2) Water Authority Application for Exemption from Standard Conducting Authority Proceedings for RO20-04 (Rainbow MWD)
- 3) Joint Letter from Fallbrook PUD and Rainbow MWD



April 2, 2020

MEMBER AGENCIES

**VIA E-MAIL AND U.S. MAIL**

- Carlsbad  
Municipal Water District
- City of Del Mar
- City of Escondido
- City of National City
- City of Oceanside
- City of Poway
- City of San Diego

Keene Simonds  
Executive Officer  
San Diego County Local Agency Formation Commission  
9335 Hazard Way, Suite 200  
San Diego, CA 92123  
E-Mail: [Keene.Simonds@sdcounty.ca.gov](mailto:Keene.Simonds@sdcounty.ca.gov)

- Fallbrook  
Public Utility District
- Helix Water District
- Lakeside Water District

Re: Request/Application for Determination that San Diego County Water Authority Is Not a District for Purposes of Part 4 of the CKH Act for LAFCO File RO20-05

- Olivenhain  
Municipal Water District

Dear Mr. Simonds:

- Otay Water District

The San Diego County Water Authority (the “Water Authority”) received a notice dated March 25, 2020, from the San Diego County Local Agency Formation Commission (“SD LAFCO”) regarding the filing of the proposal (“Proposal”) by Fallbrook Public Utilities District (“Fallbrook”) for a reorganization that would affect the Water Authority and its member agencies. The notice informed the Water Authority that it had until April 6, 2020 to file an application under “Government Code sections 56127 and 56128 for a determination that the Authority is a not a district for purposes of Part 4 or Part 5 of CKH for the above-referenced proposal.”

- Padre Dam  
Municipal Water District

- Camp Pendleton  
Marine Corps Base

- Rainbow  
Municipal Water District

- Ramona  
Municipal Water District

- Rincon del Diablo  
Municipal Water District

- San Dieguito Water District

- Santa Fe Irrigation District

- South Bay Irrigation District

- Vallecitos Water District

- Valley Center  
Municipal Water District

- Vista Irrigation District

- Yuima  
Municipal Water District

OTHER REPRESENTATIVE

- County of San Diego

This letter constitutes: (1) an application to SD LAFCO by the Water Authority for a determination that, as to the Proposal, the Water Authority is not a district per Government Code sections 56127, 56128, and 56036.6 as to *Part 4 only* of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”); (2) a request by the Water Authority that if for any reason SD LAFCO were to consider approving the Proposal, that as a condition of approval SD LAFCO should require a majority vote of the Water Authority service area as to the detachment sought by Fallbrook; and (3) a request by the Water Authority that SD LAFCO stay the Proposal from moving forward during the current COVID-19 emergency, and an objection to further proceedings during this period of emergency. The latter being the most urgent issue, it is addressed first.

*COVID-19 Emergency, Objection And Request For Stay*

The United States, the State of California, the County of San Diego, and the City of San Diego are all under emergency orders in connection with the COVID-19 epidemic, and most of our region’s residents are heeding “shelter in place” instructions from their governmental authorities. We are all in the midst of an unprecedented disruption of our societal norms, including severe work disruptions.

Mr. Keene Simonds

April 2, 2020

Page 2 of 4

The Water Authority Board has, like many other public agencies, declared emergency status. As a result, the Water Authority has significantly limited its operations and has moved to a largely remote workforce. We understand that many other agencies have done the same.

We are very surprised and disappointed that Fallbrook chose to file its Proposal in the midst of this crisis. Indeed, it is remarkable that the Proposal papers make no mention of the existential emergency we all face, or suggest any delays in the process. Rather, the Proposal simply presents advocacy and argument without even mentioning the unprecedented circumstances we find ourselves in as a result of the COVID-19 virus precautions being taken across the country.

The Water Authority and its other member agencies are focused at this time, as they should be, on maintaining the continuity of needed water service for our region. The Water Authority does not believe that any processing of the Proposal should go forward at this time, and we object to any further proceedings on the matter at SD LAFCO as prejudicial to the rights of the Water Authority, our other member agencies, and the public we all serve to fairly and properly address the Proposal. Our staff and those at agencies which would want to participate are swamped with emergency-related matters, consultants are shut down or limited in scope, coordination with other agencies is necessarily curtailed, and access to key documents is impaired. *The Water Authority respectfully requests that SD LAFCO, as has been done by the courts and many other public agencies, stay any further processing of the Proposal until the COVID-19 emergency subsides.* When that occurs, SD LAFCO could then formally notify the parties that the stay is lifted and normal processing will resume. We hereby agree that SD LAFCO's processing of the Water Authority's application presented next in this letter may also be stayed along with the Proposal.

*Application for Exemption from Part 4 of the CKH Act*

The Water Authority hereby files its request/application for determination by SD LAFCO that, as to the Proposal, the Water Authority is not a district or special district *for purposes of only Part 4 of the CKH Act* pursuant to Sections 56127, 56128 and 56036.6. The Water Authority hereby requests that you present this request/application to the Commission, but subject to the stay request stated above. The Water Authority Board of Directors has authorized this application per its signed Resolution dated November 21, 2019 (the "Resolution"), a copy of which is attached, along with the Water Authority Board Memo for that item.

Please take note that the Water Authority does *not* seek exemption from Part 5 of the CKH Act, and is allowed to limit its application in this manner. *See* Section 56128 ("or"); Section 56036.6(a) ("or"); Section 56036.6(b) (reference to Part 4); and Section 56128 ("or"). Also, please note that our application applies only to this Proposal (there is a similar application being filed by the Water Authority as to Rainbow Municipal Water District), and is not a blanket request for a perpetual determination as to all possible future matters.

As stated in the Resolution, the Water Authority is a county water authority and is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities,



Mr. Keene Simonds

April 2, 2020

Page 3 of 4

except as an incident to the exercise of other lawful power of the Water Authority. In the attached Resolution, the Water Authority Board of Directors approved the statement of the above-listed facts to submit to SD LAFCO. Thus, the Water Authority meets the statutory requirements for exemption “for purposes of Part 4 (commencing with Section 57000) or Part 5 (commencing with Section 57300).” (Cal. Gov’t Code section 56127.)

As you know, there was a prior Water Authority exemption determined by SD LAFCO. On November 11, 1976, in accordance with the District Reorganization Act of 1965 (“DRA”), the Water Authority submitted to SD LAFCO an application for exemption from LAFCO’s authority (the “1976 Application”). At the time under the extant law, the procedure for exemption from SD LAFCO authority was governed by Sections 56105, 56106 and 56039 of the California Government Code, all of which have since been repealed and replaced. It is important to note that under the prior law, an agency such as the Water Authority could seek an entire exemption from SD LAFCO’s jurisdiction, not the very limited exemption as to Parts 4 or 5 of the CKH Act which is present in the law today. Thus, when the 1976 Application was filed, the Water Authority was allowed to remove itself entirely from SD LAFCO review, but that is no longer the case under current law. This makes the 1976 Application (and subsequent determination) of no effect in the current proceedings, because the law has substantively changed. That is one reason why the Water Authority submits this new application under the applicable law that exists today, the CKH Act. Additionally, under the current law, an application or request for determination that an agency is not a district must now be made on an application-by-application basis (see Gov. Code Sections 56127 and 56128). Therefore, the Water Authority’s application only covers the Proposal application (and, via a separate application by the Water Authority, the sister proposal made by the Rainbow Municipal Water District).

#### *Vote of the Electorate*

We note that as part of the attached Resolution, the Water Authority Board requested that if for some reason the SD LAFCO were contemplating any approval of the Proposal, it should require a majority vote of the electorate in the Water Authority’s service area so that *all* affected ratepayers may have a say in any detachment, because a detachment may adversely affect all area ratepayers, and not just those in Fallbrook and Rainbow. While we realize this will be a material issue to be addressed in detailed briefing by all interested parties later, we wanted to call it to SD LAFCO’s attention as it is part of the Water Authority Board’s Resolution. This request is made without any prejudice to our member agencies making their positions known as well, or the Water Authority submitting further matters to SD LAFCO when the process continues.

Finally, we note – as shown on the below cc list – that Kristina Lawson is now our main contact person with our outside counsel at Hanson Bridgett, so please reflect this in your records. Her address information is as follows:

Kristina Lawson, Esq.  
Hanson Bridgett  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105  
[KLawson@hansonbridgett.com](mailto:KLawson@hansonbridgett.com)  
(925) 746-8474

Mr. Keene Simonds

April 2, 2020

Page 4 of 4

The Water Authority looks forward to SD LAFCO's approval of our request/application after the COVID-19 health emergency concludes. Given the Water Authority's affected resources during this emergency period, the Water Authority reserves all rights to amend or supplement this application. Please let me know if the SD LAFCO requires any further information or wishes to discuss this matter with the Water Authority. Thank you.

Very truly yours,



Mark J. Hattam  
General Counsel

Attachments: SDCWA Resolution and Board Memo

Cc: (all via e-mail):

Holly Whatley, Commission Counsel  
Aleks Giragosian, Deputy Commission Counsel  
Robert Barry, Chief Policy Analyst  
Sandra L. Kerl, General Manager, San Diego County Water Authority  
Kristina Lawson, Outside Counsel, San Diego County Water Authority  
Gary Thompson, Executive Officer, Riverside LAFCO  
Jack Bebee, General Manager, Fallbrook PUD  
Paula C. P. de Sousa, Counsel, Fallbrook PUD  
Paul Jones, General Manager, Eastern MWD  
Nick Kanetis, Deputy General Manager, Eastern MWD  
Tom Kennedy, General Manager, Rainbow MWD  
Alfred Smith, Counsel, Rainbow MWD  
Water Authority Board of Directors

RESOLUTION NO. 2019- 19

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO REQUEST A DETERMINATION BY THE SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION THAT THE WATER AUTHORITY IS NOT A “DISTRICT” OR “SPECIAL DISTRICT” FOR THE PURPOSES OF PART 4 OF THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT AND TO REQUEST A VOTE OF THE WATER AUTHORITY’S ELECTORATE AS TO ANY DETACHMENT.

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act (Cal. Gov. Code section 56000 et seq.) (“**CKH Act**”) at Government Code Section 56036.6 provides that a county water authority may apply to a Local Agency Formation Commission (“**LAFCO**”) for a determination that the county water authority is not a “district” or “special district” for the purposes of Part 4 (or Part 5) of the CKH Act pursuant to Government Code Sections 56036.6, 56127, and 56128;

WHEREAS, the San Diego County Water Authority (“**Water Authority**”) is a county water authority as described in Government Code Section 56036.6;

WHEREAS, the Water Authority anticipates that one or more applications for a change in organization that will affect, among others, the Water Authority and its member agencies will be filed with San Diego County LAFCO on behalf of Rainbow Municipal Water District (“**Rainbow**”) and/or Fallbrook Public Utility District (“**Fallbrook**”);

WHEREAS, the Water Authority’s principal act, the County Water Authority Act, provides procedures for a change in organization for county water authorities, as does the CKH Act;

WHEREAS, Government Code Section 53036.6 provides that if, upon application by a county water authority, a LAFCO determines that a county water authority is not a “district” or “special district,” then any authority proceedings pursuant to Part 4 of the CKH Act for a change of organization to the Water Authority (which proceedings follow the LAFCO’s commission proceedings) will be conducted pursuant to the County Water Authority Act;

WHEREAS, Part 4 of the CKH Act provides for a protest vote for any change of organization approved by the LAFCO, which results in a default approval of the LAFCO’s decision unless 25% of the registered voters in the designated territory protest the change of organization by signed mail-in vote, but the County Water Authority Act provides instead for a majority vote of the voters in the detaching agency service area to confirm the detachment/exclusion of that member agency from the Water Authority by majority approval at a general or special election;

WHEREAS, voters and ratepayers in service areas of member agencies of the Water Authority other than Rainbow and Fallbrook may be affected by a detachment of one or both of those agencies, and San Diego LAFCO may want to allow such larger electorate a chance to be heard on detachment;

WHEREAS, if a detachment application is not denied by San Diego LAFCO, then each applicable electorate should be afforded the opportunity to vote at a general or special election based on a full understanding of the potential impacts that would result from detachment and knowing all conditions that would be placed on the ratepayers of a detaching agency by LAFCO as a result of such a detachment;

WHEREAS, the CKH Act requires that if a proposal for a change in organization is initiated by other than the Water Authority, then the Water Authority may request the determination that it be deemed to be not a “district” or “special district” for purposes of Part 4 and/or 5 of the CKH Act as described in the first recital above within 10 days of notification by LAFCO of the initiation of the proposal; and

WHEREAS, the Water Authority is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of other lawful power of the Water Authority.

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority resolves the following:

1. In any LAFCO proceeding in which a change in organization is proposed that would detach or exclude Rainbow and/or Fallbrook from the Water Authority, the Water Authority shall request that if San Diego LAFCO does not deny the detachment application(s), that: (a) San Diego LAFCO exempt the proceeding from Part 4 of the LAFCO Act and, instead, proceed under the Water Authority’s principal act, the County Water Authority Act, for the purpose of the Authority Proceedings phase; and (b) in addition to any other appropriate conditions or Authority Proceeding requirements, San Diego LAFCO also require detachment approval by a majority of the voters within the Water Authority’s entire service area. The General Manager and the General Counsel, or their designees, are hereby authorized to request the foregoing as to the Rainbow and/or Fallbrook proceedings only, and to submit all applications and other necessary papers.

PASSED, APPROVED, and ADOPTED this 21st day of November 2019 by the following vote:

AYES: Unless noted below all Directors voted aye.

NOES: Bebee, Cate, Kennedy, and Steiner

ABSTAIN: None

ABSENT: Ayala, Barnum, Boyle, Fong-Sakai, Hall, Mosca, Murtland, Scalzitti (P), Simpson, and Watkins (P).

  
\_\_\_\_\_  
Jim Madaffer, Chair

ATTEST:

  
\_\_\_\_\_  
Christy Guerin, Secretary

I, Melinda Nelson, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2019- 19 was duly adopted at the meeting of the Board of Directors on the date stated above.

  
\_\_\_\_\_  
Melinda Nelson, Clerk of the Board



Our Region's Trusted Water Leader  
**San Diego County Water Authority**

November 13, 2019

**Attention: Board of Directors**

**Resolution Regarding LAFCO Part 4 Exemption Request. (Action)**

**Staff recommendation**

Adopt Resolution 2019-\_\_\_ (Attachment 1) authorizing General Manager and/or General Counsel to Apply to LAFCO to:

- Exempt a Rainbow and/or Fallbrook detachment/annexation proceeding from Part 4 of the Cortese-Knox-Hertzberg Act, and instead have any “Authority Proceedings” conducted under the County Water Authority Act; and
- In addition to any other LAFCO requirements, request that LAFCO condition approval of any detachment on a majority vote of the entire Water Authority electorate.

**Alternative**

Do not adopt the Resolution.

**Fiscal Impact**

There is no identifiable fiscal impact from this action, which pertains to a procedural issue at San Diego Local Agency Formation Commission (“LAFCO”).

### **Executive Summary**

- Rainbow Municipal Water District (“**Rainbow**”) and/or Fallbrook Public Utility District (“**Fallbrook**”) may soon file applications with the San Diego Local Agency Formation Commission (“**LAFCO**”) to detach from the Water Authority and annex into Eastern Municipal Water District (“**Eastern**”) in Riverside County (together the detachment and annexation are the “**Reorganization.**”)
- This Reorganization, under which member agencies of one regional public entity would annex into a different county’s regional public entity, appears to have no precedent in San Diego County.
- The LAFCO proceedings will be conducted in phases, and if the LAFCO approves the Reorganization, it will still be subject to a local protest vote, called “Authority Proceedings.”
- Under LAFCO law, the Authority Proceedings can require a *protest* vote; however, the Water Authority is entitled to seek the LAFCO’s approval to instead conduct the Authority Proceedings as a *majority-vote election* in at least the Rainbow and Fallbrook service areas.
- LAFCO may also condition its approval of a Reorganization on certain terms and conditions, including requiring an Authority Proceeding vote to be conducted only among voters in the detaching areas, or also among the voters in the entire Water Authority service area. The latter approach would allow for voters region-wide to ratify a potential LAFCO approval of the Reorganization, giving those ratepayers a voice in the future economic and other impacts that would result from detachment from the Water Authority.

### **Background**

Beginning in at least Fall of 2018, member agencies Fallbrook and Rainbow initiated plans to seek to detach from the Water Authority and annex into Eastern Municipal Water District, located in Riverside County. Fallbrook and Rainbow began discussions with Eastern as early as fall of 2018, and then began discussions with San Diego and Riverside LAFCOs by January of 2019.

In May of 2019, the Acting General Manager of the Water Authority was informed by the General Manager of Rainbow that both Rainbow and Fallbrook were planning to seek to detach from the Water Authority. A general proposal has now been publicly discussed by Fallbrook and Rainbow, but the specifics of the infrastructure changes and financial approach have not been made clear.

Rainbow and Fallbrook have stated at their respective board meetings that applications for detachment are being drafted and may be filed as early as December 2019.

### **Water Authority’s Involvement to Date**

Applicable LAFCO. Initially, Rainbow and Fallbrook would have had the LAFCO matters decided at two different LAFCOs – Riverside County and San Diego County. In an effort to have a consolidated set of proceedings, improve coordination and efficiency, and maintain local control of

decisions in San Diego County, the Water Authority requested that the San Diego LAFCO take exclusive jurisdiction over the matters. In October 2019, the two LAFCOs agreed to an MOU under which exclusive jurisdiction is vested in San Diego LAFCO.

Fact Finding. The Water Authority made Public Records Act requests in order to understand the scope of the plans and the history of discussions. Additionally, meetings between staff were conducted in July, and were followed by a general proposal from Rainbow and Fallbrook in August, which again provided little detail or analysis of impacts. Further meetings were conducted in September and early October, but to date the Water Authority has not been presented by Rainbow or Fallbrook with any detailed proposals, or with any substantive analyses of what the projected impacts to water supply reliability, rates, or infrastructure would be to the Water Authority and to each of its member agencies. The Water Authority has asked Rainbow and Fallbrook for these details, including in a recent October 14, 2019, letter sent by special counsel, and previously provided to each of the Board members. A copy is attached as Attachment 2.

### **Anticipated Procedure**

LAFCO Nomenclature. A detachment from the Water Authority will require multiple acts and approvals by San Diego LAFCO. Procedurally, it will require changes to the “sphere of influence” for the Water Authority, Rainbow, Fallbrook, and Eastern, as well as the detachment of Rainbow and Fallbrook from the Water Authority, and the annexation of Rainbow and Fallbrook to Eastern. All of these will be handled in one consolidated proceeding, but are governed under separate parts of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code sections 56000 *et seq.* (also known as the “CKH Act” or the “LAFCO Act.”) Annexations and detachments are also collectively known as “boundary changes” or “reorganizations.”

Consultations. Under local LAFCO policy, the applicants must consult with affected local agencies prior to submitting their applications, in order to identify and attempt to resolve any issues raised by the proposed reorganizations. Because it is possible that the proposed Reorganization would have significant financial and potential environmental impacts on the Water Authority all of its member agencies, as well as other agencies such as fire districts, all of those parties are affected local agencies with which the applicants should consult. The consultations, to be meaningful, must be based on a proposal that specifies the changes that would occur under a Reorganization. Special Counsel sent a letter to this effect to Rainbow and Fallbrook on October 14, 2019 (Attachment 2). We will continue to work with San Diego LAFCO to ensure that meaningful consultations are conducted prior to San Diego LAFCO’s accepting the applications.

Application and Commission Proceedings. Rainbow and Fallbrook would, if they go forward, subsequently submit applications (or perhaps a consolidated single application) to San Diego LAFCO and pay associated fees.

Once LAFCO determines that the application is complete, it will notify all affected agencies, including the Water Authority, and solicit public engagement and comments. The Water Authority, its member agencies and all other affected parties will have an opportunity to participate in this process.



LAFCO will then undertake an independent analysis of the proposal. This may take many months.

Upon the conclusion of that analysis, LAFCO staff will prepare a report and recommendation, provide notice, and hold a public hearing. The Water Authority and its member agencies and all other affected local parties will have an opportunity to review the analysis and report, and participate in the public hearing.

The Commission will then vote on the application. These initial procedures are referred to as the “Commission Proceedings.” (*See* Cal. Gov. Code § 56650 *et seq.*) If the application is denied, the process ends. If the application is approved (with any associated conditions), then “Authority Proceedings” may follow.

It is important to note that LAFCO may place a number of conditions on any approval. Cal. Gov. Code Section 56886 gives LAFCO a considerable amount of leeway in fashioning terms and conditions of a detachment, including imposing requirements from the principal act, here the CWA Act.

Authority Proceedings. Following the approval of an application by LAFCO, the LAFCO Act provides for a second process, known as the “Authority Proceedings.”

*LAFCO Act Authority Proceedings:*

The default approach to Authority Proceedings is a “protest” proceeding under which the affected territory’s voters may mail in a protest to oppose the LAFCO’s approval/decision. If fewer than 25% of ratepayers in the affected territory protest, then the application is deemed approved. If 50%+1 of the registered voters protest the proposal, then it is deemed denied. If 25-50% of the registered voters protest the proposal, then the proposal goes to the voters in a general or special election where it is subject to a majority vote. LAFCO may provide for the voter pool to be just Rainbow and Fallbrook, or the entirety of the four affected entities (Fallbrook, Rainbow, Water Authority and Eastern), or some subset of those. Historically it has proven procedurally cumbersome for a large electorate to affirmatively lodge 25%+ protests, especially because protest proceedings are unfamiliar to most voters. If that standard is not met, then under “Authority Proceedings” there might not be a vote of the electorate at all.

*CWA Act Authority Proceedings:*

In the alternative, the Water Authority may apply to LAFCO to opt out of the protest procedure in the LAFCO Act, and instead conduct the Authority Proceedings pursuant to its principal act, the County Water Authority Act (“**CWA Act**”). This would ensure the voters have an opportunity to vote on the proposal at a standard regular or special election.

In order to seek to proceed under the CWA Act instead of Part 4 of the LAFCO Act, the Water Authority would need to apply to LAFCO for exemption from Part 4 within 10 days after notification that the initial application is complete. That option is allowed when an agency is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or

garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of other lawful power of the Water Authority. The Water Authority, as a water wholesaler, satisfies the statutory requirement.

*Terms and Conditions Imposed by LAFCO:*

In addition to a vote in the Rainbow and Fallbrook service areas, San Diego LAFCO Commissioner Dianne Jacob suggested at the October 7, 2019, LAFCO meeting that voters within the Water Authority's entire 24-member agency service area perhaps should have an opportunity to evaluate and vote upon a detachment, as they may be affected by such a change in organization. It is within the discretion of the LAFCO to provide terms and conditions for reorganization. Consistent with Commissioner Jacob's suggestion, and assuming that LAFCO's analysis of the applications demonstrates that there will be financial impacts on ratepayers, in order to enfranchise all of the Water Authority's affected ratepayers on this issue it is therefore recommended that the Water Authority specifically request that such a vote of the larger affected electorate be considered as a condition of detachment (if detachment were to be approved; of course, detachment may also be denied by San Diego LAFCO). The below staff recommendation would ensure that all affected ratepayers are entitled to vote (including those in Rainbow and Fallbrook as specified in the CWA Act).

**Request for Board Action**

The Board is therefore requested to adopt the Attachment 1 Resolution that would authorize the General Manager and General Counsel, or their designees, to do the following upon notification of a detachment application filed with San Diego LAFCO by Rainbow or Fallbrook:

1. Request that San Diego LAFCO exempt the proceeding from Part 4 of the LAFCO Act and instead proceed under the Water Authority's principal act, the County Water Authority Act, for the purpose of voter approval of any LAFCO-approved detachment in the Authority Proceedings phase; and
2. Request that if San Diego LAFCO does not deny the detachment application(s), that – in addition to any other appropriate conditions or Authority Proceeding requirements the LAFCO may specify – San Diego LAFCO also require detachment approval by the voters within the Water Authority's entire service area.

Prepared by: Claire Hervey Collins, Special Counsel  
Approved by: Sandra L. Kerl, Acting General Manager  
Mark J. Hattam, General Counsel

Attachments:  
Attachment 1 - Resolution 2019-\_\_\_\_  
Attachment 2 - October 14, 2019 Letter

## RESOLUTION NO. 2019-\_\_\_

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO REQUEST A DETERMINATION BY THE SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION THAT THE WATER AUTHORITY IS NOT A “DISTRICT” OR “SPECIAL DISTRICT” FOR THE PURPOSES OF PART 4 OF THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT AND TO REQUEST A VOTE OF THE WATER AUTHORITY’S ELECTORATE AS TO ANY DETACHMENT.

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act (Cal. Gov. Code section 56000 et seq.) (“**CKH Act**”) at Government Code Section 56036.6 provides that a county water authority may apply to a Local Agency Formation Commission (“**LAFCO**”) for a determination that the county water authority is not a “district” or “special district” for the purposes of Part 4 (or Part 5) of the CKH Act pursuant to Government Code Sections 56036.6, 56127, and 56128;

WHEREAS, the San Diego County Water Authority (“**Water Authority**”) is a county water authority as described in Government Code Section 56036.6;

WHEREAS, the Water Authority anticipates that one or more applications for a change in organization that will affect, among others, the Water Authority and its member agencies will be filed with San Diego County LAFCO on behalf of Rainbow Municipal Water District (“**Rainbow**”) and/or Fallbrook Public Utility District (“**Fallbrook**”);

WHEREAS, the Water Authority’s principal act, the County Water Authority Act, provides procedures for a change in organization for county water authorities, as does the CKH Act;

WHEREAS, Government Code Section 53036.6 provides that if, upon application by a county water authority, a LAFCO determines that a county water authority is not a “district” or “special district,” then any authority proceedings pursuant to Part 4 of the CKH Act for a change of organization to the Water Authority (which proceedings follow the LAFCO’s commission proceedings) will be conducted pursuant to the County Water Authority Act;

WHEREAS, Part 4 of the CKH Act provides for a protest vote for any change of organization approved by the LAFCO, which results in a default approval of the LAFCO’s decision unless 25% of the registered voters in the designated territory protest the change of organization by signed mail-in vote, but the County Water Authority Act provides instead for a majority vote of the voters in the detaching agency service area to confirm the detachment/exclusion of that member agency from the Water Authority by majority approval at a general or special election;

WHEREAS, voters and ratepayers in service areas of member agencies of the Water Authority other than Rainbow and Fallbrook may be affected by a detachment of one or both of those agencies, and San Diego LAFCO may want to allow such larger electorate a chance to be heard on detachment;

WHEREAS, if a detachment application is not denied by San Diego LAFCO, then each applicable electorate should be afforded the opportunity to vote at a general or special election based on a full understanding of the potential impacts that would result from detachment and knowing all conditions that would be placed on the ratepayers of a detaching agency by LAFCO as a result of such a detachment;

WHEREAS, the CKH Act requires that if a proposal for a change in organization is initiated by other than the Water Authority, then the Water Authority may request the determination that it be deemed to be not a “district” or “special district” for purposes of Part 4 and/or 5 of the CKH Act as described in the first recital above within 10 days of notification by LAFCO of the initiation of the proposal; and

WHEREAS, the Water Authority is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of other lawful power of the Water Authority.

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority resolves the following:

1. In any LAFCO proceeding in which a change in organization is proposed that would detach or exclude Rainbow and/or Fallbrook from the Water Authority, the Water Authority shall request that if San Diego LAFCO does not deny the detachment application(s), that: (a) San Diego LAFCO exempt the proceeding from Part 4 of the LAFCO Act and, instead, proceed under the Water Authority’s principal act, the County Water Authority Act, for the purpose of the Authority Proceedings phase; and (b) in addition to any other appropriate conditions or Authority Proceeding requirements, San Diego LAFCO also require detachment approval by a majority of the voters within the Water Authority’s entire service area. The General Manager and the General Counsel, or their designees, are hereby authorized to request the foregoing as to the Rainbow and/or Fallbrook proceedings only, and to submit all applications and other necessary papers.

PASSED, APPROVED, and ADOPTED this 21st day of November 2019 by the following vote:

AYES: Unless noted below all Directors voted aye.

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Jim Madaffer, Chair

ATTEST:

\_\_\_\_\_  
Christy Guerin, Secretary

I, Melinda Nelson, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2019- \_\_\_\_ was duly adopted at the meeting of the Board of Directors on the date stated above.

\_\_\_\_\_  
Melinda Nelson, Clerk of the Board



Claire Hervey Collins  
633 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, California 90071  
Claire.Collins@lewisbrisbois.com  
Direct: 213.680.5039

October 14, 2019

File No. 44112.2

Mr. Jack Bebee  
General Manager  
Fallbrook Public Utility District  
900 East Mission Road  
Fallbrook, CA 92028  
[jackb@fpud.com](mailto:jackb@fpud.com)

Re: LAFCO Process

Dear Mr. Bebee:

As special LAFCO counsel to the San Diego County Water Authority ("Water Authority"), Chair Madaffer has asked me to respond to your October 10 letter to him on behalf of the agency.

First, as has been stated many times, the Water Authority must respect the interests of all water ratepayers served by our 24 member agencies in San Diego County. We plan to do that and stand ready to support a fully transparent LAFCO process.

Second, I am addressing this letter to you as the author of the October 10 letter, and I am copying your General Counsel. The Water Authority urges you to consult with your General Counsel or other qualified LAFCO counsel as soon as possible in order to ensure that Fallbrook Public Utility District ("Fallbrook") is following the LAFCO process, and to ensure that Fallbrook understands the Water Authority's responsibility in that process. I am copying Mr. Kennedy and his agency's General Counsel for the same reason. I believe that it is imperative that Fallbrook and Rainbow Municipal Water District ("Rainbow") take certain necessary consultation actions in light of your stated imminent plans to file a LAFCO detachment proposal.

The pace of the LAFCO process has been designed by statute and local policy to be a thorough, collaborative, and deliberative process. The responsibility for preparing a comprehensive proposal and engaging in meaningful consultations with affected agencies is a significant and serious one. Your apparent frustration at the response to date by the Water Authority is a reflection of the lack of detail and analysis in the materials provided by Fallbrook and Rainbow to the Water Authority, and a reflection of the lack of meaningful dialogue about the impacts of potential detachment. It is not the result of any actions taken or not taken by Chair Madaffer or the Water Authority, which is eager to better understand Fallbrook and Rainbow's detailed plan so that it can undertake a rigorous analysis of the related impacts. To be clear, however, the Water Authority has no duty to formulate a proposal for your agencies, or to formulate an "offer" on behalf

of its other member agencies. It does have a duty of good faith to review and consult with you on a genuine proposal, but due to the lack of specifics from your agencies as to exactly what you plan, it is unable to do so at this time.

Against this backdrop, and in the interest of fairness and to promote mutual understanding, I will take this opportunity to comment on some of the points raised in your October 10 letter.

*San Diego LAFCO Legislative Policy No. L-107:*

San Diego LAFCO's legislative policy L-107 establishes a consultation requirement among affected agencies **prior to the filing of a detachment proposal**, stating in part:

It is the policy of the San Diego Local Agency Formation Commission that:

1. Prior to submission of a proposal requesting LAFCO consideration of a change of organization or reorganization, ***the proposal applicant and representatives from affected public agencies, interested parties, and/or organizations, shall meet at the earliest possible stage for the purpose of identifying and attempting to resolve any issues associated with the proposed jurisdictional change(s)***. The Executive Officer may waive the consultation procedure outlined in this provision when it can be determined with certainty that there will be no possibility that the proposal in question will result in identified and unresolved jurisdictional issues.
2. The consultation process described in provision no. 1 should identify any jurisdictional issues or concerns related to: a. Differing development standards; b. Existing and/or planned land uses and zoning, including densities, community character, and appropriate jurisdictional transition areas; c. Existing and/or planned provision of governmental services, including any potential impacts to service levels or financial ability to sustain service levels; and, d. Any other local community or governmental concerns.

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6. Affected local agencies shall be encouraged to explore additional methods to improve future inter- and intra-departmental and jurisdictional communications for the purpose of discussing and commenting on proposed or pending jurisdictional changes at the earliest possible stage.

*Consultation Process:*

With due respect, the Water Authority does not agree that all necessary steps have been taken to satisfy L-107 requirements.

First, although your agencies have been discussing a possible detachment among yourselves for a full year now, very few concrete details have been revealed to the Water Authority

or to the public.<sup>1</sup> The very broad "framework" you have provided does not include the kind of substantive detail necessary to evaluate such a significant service change, particularly in light of the more than 50 years of water service to Fallbrook and Rainbow by the Water Authority. You are required to provide an analysis outlining the potential effects of detachment on the Water Authority and all of its member agencies, including Fallbrook and Rainbow customers.<sup>2</sup> We renew our request for a detailed proposal consistent with LAFCO requirements.<sup>3</sup>

*Detailed Proposal Needed:*

In order to have a productive consultation process, all affected parties (as defined in L-107) need to be provided with the specific details of your detachment proposal including financial and environmental impacts, impacts on water supply reliability, and all other impacts to the region as a whole that would result from a detachment.<sup>4</sup>

Because Fallbrook and Rainbow are the agencies proposing detachment, it is your responsibility, not the Water Authority's responsibility, to conduct the relevant analyses and make a detailed proposal addressing all relevant factors. For example:

- You are aware that a number of Water Authority member agencies have expressed concerns about Fallbrook and Rainbow's share of Water Authority financial obligations, incurred to develop the reliable, firm water supplies now being delivered to Fallbrook and Rainbow and all Water Authority member agencies. You should be prepared to discuss this topic when you meet with the other member agencies. Your proposal should indicate how you plan to address this concern, as well as how your proposal would impact customer rates (including those of Fallbrook and Rainbow), if at all.
- We have not been given any details as to environmental impacts, but note comments in the PRA documents that significant new piping infrastructure may be needed in Rainbow and

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<sup>1</sup> The Water Authority only became aware of this timeline from documents produced by Fallbrook and Rainbow in response to its Public Records Act (PRA) request. While your agencies began at an early stage to consult with the Eastern Municipal Water District, you did not share your intentions with the Water Authority until just this past May.

<sup>2</sup> We attach Water Authority Acting General Manager Sandy Kerl's e-mail to you dated October 10, which was not attached to your letter. In that e-mail, Ms. Kerl noted that Fallbrook and Rainbow had not provided the specifics of any proposal to the Water Authority. The document you submitted on August 21, 2019, was really an advocacy piece arguing why detachment might make sense for your agencies. This is not the kind of substantive proposal or analysis of impacts required by LAFCO.

<sup>3</sup> This is why your requests for a Water Authority open session agenda item about detachment, before submittal of a detailed written proposal, were premature. This is not a "political" decision, but must be one based on what is in the best interests of the voters and ratepayers in San Diego County.

<sup>4</sup> This is not intended to be an exhaustive list of issues or substitute for legal advice by your own attorneys on LAFCO requirements.



perhaps Fallbrook. Additionally, a detachment from the Water Authority (which uses very little water from the environmentally sensitive Bay Delta region, and will use even less over time) would, under your plan, be replaced by increased reliance on Delta water from MWD. This shift should be analyzed, particularly in light of Water Code section 85021. Review of these and other potential environmental impacts should be completed before any applications are filed with LAFCO, with all affected parties described under LAFCO Policy L-107 being provided a reasonable time and opportunity to comment.

These are only a few examples of the kinds of impacts that should be included in a detailed proposal to be presented to and discussed with affected parties during the consultation process.

*Next Steps:*

The Water Authority is fully committed to working through the LAFCO process—but the process must start with your agencies' good faith efforts to present a proposal grounded in facts and substantive analysis, including a reasonable range of alternative outcomes. You must provide sufficient information to allow all parties, and ultimately all voters and ratepayers, to make informed decisions about the proposed detachment.

Once you have prepared the terms of your proposal, Fallbrook and Rainbow can begin the process of meeting with all affected agencies and parties to identify and attempt to resolve issues, as required under LAFCO policy.<sup>5</sup> This will provide an opportunity to identify areas of agreement, disagreement, and further areas of inquiry necessary to present a meaningful application to LAFCO.

I would be happy to discuss next steps with your counsel in order to avoid further frustration and wasted effort on the part of all parties.

Very truly yours,



Claire Hervey Collins of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC:JLB

Attachment

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<sup>5</sup> Chair Madaffer's August 21 letter to Fallbrook and Rainbow did not say anything to the contrary; in fact, he reiterated then that he asked you to "please provide a specific proposal." Chair Madaffer was not addressing your LAFCO obligations in his letter—he was only asking that you cease "public relations" meetings with Water Authority directors telling them that the Water Authority was refusing to meet with you.

Mr. Jack Bebee  
October 14, 2019  
Page 5

cc: Water Authority Board of Directors  
Fallbrook Board of Directors  
Rainbow Board of Directors  
Mark Hattam, Water Authority General Counsel  
Sandy Kerl, Water Authority Acting General Manager  
Water Authority member agency General Managers  
Paula de Sousa Mills, General Counsel for Fallbrook, Best Best & Krieger  
Tom Kennedy, Rainbow General Manager  
Lloyd W. Pellman, Counsel for Rainbow, Nossaman

**From:** Kerl, Sandy

**Sent:** Thursday, October 10, 2019 12:52 PM

**To:** Bebee, Jack <[jackb@fpud.com](mailto:jackb@fpud.com)>; Kennedy, Tom <[tkennedy@rainbowmwd.com](mailto:tkennedy@rainbowmwd.com)>

**Cc:** Madaffer, Jim <[JMadaffer@sdcwa.org](mailto:JMadaffer@sdcwa.org)>; Croucher, Gary <[garydcroucher@gmail.com](mailto:garydcroucher@gmail.com)>; Guerin, Christy <[Redwhtblu56@yahoo.com](mailto:Redwhtblu56@yahoo.com)>

**Subject:** Follow-Up on Meeting of October 9, 2019

Dear Jack and Tom:

This e-mail follows our meeting yesterday, as promised. The Water Authority appreciates the opportunity for continuing dialogue with you and all of our member agencies on this subject.

While I regret the frustration you expressed at our meeting yesterday, I want to be clear that from our perspective, the process going forward has now been established by the LAFCO board action taken on Monday, October 7. We believe LAFCO policy requires that your agencies, as the potential LAFCO applicants, meet with **all affected parties** prior to your filing with LAFCO, in an attempt to reach agreement on the issues presented.

The LAFCO policy (L-107) is expressly referenced in the letter that was submitted to LAFCO by the Otay Water District (copy attached). The policy clearly states a requirement that applicants meet with all affected agencies to walk through their proposal to try and reach a resolution. While we appreciate you meeting with the Water Authority, that alone does not satisfy LAFCO's policy.

I also derived from our meeting yesterday that you believe it is the Water Authority's responsibility to make some sort of "offer" to you. We would not be in a position to do that, even if we had the specific details of your proposal (we do not), because the potential impacts are not only on the Water Authority but also on its member agencies, their ratepayers and potentially other third parties.

Finally, you said that you wanted to know our agency's legal interpretation of the applicable law as to why your agencies should pay anything upon detachment. This is an issue that will be addressed in the course of LAFCO proceedings.

As I indicated to you, the Water Authority must continue to represent the interests of all of our member agencies. We plan to do that and stand ready to support the LAFCO process.

Best regards,

Sandy

*Sandra L. Kerl*  
*Acting General Manager*

(858) 522-6783  
[skerl@sdcwa.org](mailto:skerl@sdcwa.org)



**Blank for Photocopying**

April 2, 2020

MEMBER AGENCIES

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

OTHER  
REPRESENTATIVE

- County of San Diego

**VIA E-MAIL AND U.S. MAIL**

Keene Simonds  
Executive Officer  
San Diego County Local Agency Formation Commission  
9335 Hazard Way, Suite 200  
San Diego, CA 92123  
E-Mail: [Keene.Simonds@sdcounty.ca.gov](mailto:Keene.Simonds@sdcounty.ca.gov)

Re: Request/Application for Determination that San Diego County Water Authority Is Not a District for Purposes of Part 4 of the CKH Act for LAFCO File RO20-04

Dear Mr. Simonds:

The San Diego County Water Authority (the “Water Authority”) received a notice dated March 25, 2020, from the San Diego County Local Agency Formation Commission (“SD LAFCO”) regarding the filing of the proposal (“Proposal”) by Rainbow Municipal Water District (“Rainbow”) for a reorganization that would affect the Water Authority and its member agencies. The notice informed the Water Authority that it had until April 6, 2020 to file an application under “Government Code sections 56127 and 56128 for a determination that the Authority is a not a district for purposes of Part 4 or Part 5 of CKH for the above-referenced proposal.”

This letter constitutes: (1) an application to SD LAFCO by the Water Authority for a determination that, as to the Proposal, the Water Authority is not a district per Government Code sections 56127, 56128, and 56036.6 as to *Part 4 only* of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”); (2) a request by the Water Authority that if for any reason SD LAFCO were to consider approving the Proposal, that as a condition of approval SD LAFCO should require a majority vote of the Water Authority service area as to the detachment sought by Rainbow; and (3) a request by the Water Authority that SD LAFCO stay the Proposal from moving forward during the current COVID-19 emergency, and an objection to further proceedings during this period of emergency. The latter being the most urgent issue, it is addressed first.

*COVID-19 Emergency, Objection And Request For Stay*

The United States, the State of California, the County of San Diego, and the City of San Diego are all under emergency orders in connection with the COVID-19 epidemic, and most of our region’s residents are heeding “shelter in place” instructions from their governmental authorities. We are all in the midst of an unprecedented disruption of our societal norms, including severe work disruptions.

Mr. Keene Simonds

April 2, 2020

Page 2 of 4

The Water Authority Board has, like many other public agencies, declared emergency status. As a result, the Water Authority has significantly limited its operations and has moved to a largely remote workforce. We understand that many other agencies have done the same.

We are very surprised and disappointed that Rainbow chose to file its Proposal in the midst of this crisis. Indeed, it is remarkable that the Proposal papers make no mention of the existential emergency we all face, or suggest any delays in the process. Rather, the Proposal simply presents advocacy and argument without even mentioning the unprecedented circumstances we find ourselves in as a result of the COVID-19 virus precautions being taken across the country.

The Water Authority and its other member agencies are focused at this time, as they should be, on maintaining the continuity of needed water service for our region. The Water Authority does not believe that any processing of the Proposal should go forward at this time, and we object to any further proceedings on the matter at SD LAFCO as prejudicial to the rights of the Water Authority, our other member agencies, and the public we all serve to fairly and properly address the Proposal. Our staff and those at agencies which would want to participate are swamped with emergency-related matters, consultants are shut down or limited in scope, coordination with other agencies is necessarily curtailed, and access to key documents is impaired. *The Water Authority respectfully requests that SD LAFCO, as has been done by the courts and many other public agencies, stay any further processing of the Proposal until the COVID-19 emergency subsides.* When that occurs, SD LAFCO could then formally notify the parties that the stay is lifted and normal processing will resume. We hereby agree that SD LAFCO's processing of the Water Authority's application presented next in this letter may also be stayed along with the Proposal.

*Application for Exemption from Part 4 of the CKH Act*

The Water Authority hereby files its request/application for determination by SD LAFCO that, as to the Proposal, the Water Authority is not a district or special district *for purposes of only Part 4 of the CKH Act* pursuant to Sections 56127, 56128 and 56036.6. The Water Authority hereby requests that you present this request/application to the Commission, but subject to the stay request stated above. The Water Authority Board of Directors has authorized this application per its signed Resolution dated November 21, 2019 (the "Resolution"), a copy of which is attached, along with the Water Authority Board Memo for that item.

Please take note that the Water Authority does *not* seek exemption from Part 5 of the CKH Act, and is allowed to limit its application in this manner. *See* Section 56128 ("or"); Section 56036.6(a) ("or"); Section 56036.6(b) (reference to Part 4); and Section 56128 ("or"). Also, please note that our application applies only to this Proposal (there is a similar application being filed by the Water Authority as to Fallbrook Public Utilities District), and is not a blanket request for a perpetual determination as to all possible future matters.

As stated in the Resolution, the Water Authority is a county water authority and is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of

Mr. Keene Simonds

April 2, 2020

Page 3 of 4

other lawful power of the Water Authority. In the attached Resolution, the Water Authority Board of Directors approved the statement of the above-listed facts to submit to SD LAFCO. Thus, the Water Authority meets the statutory requirements for exemption “for purposes of Part 4 (commencing with Section 57000) or Part 5 (commencing with Section 57300).” (Cal. Gov’t Code section 56127.)

As you know, there was a prior Water Authority exemption determined by SD LAFCO. On November 11, 1976, in accordance with the District Reorganization Act of 1965 (“DRA”), the Water Authority submitted to SD LAFCO an application for exemption from LAFCO’s authority (the “1976 Application”). At the time under the extant law, the procedure for exemption from SD LAFCO authority was governed by Sections 56105, 56106 and 56039 of the California Government Code, all of which have since been repealed and replaced. It is important to note that under the prior law, an agency such as the Water Authority could seek an entire exemption from SD LAFCO’s jurisdiction, not the very limited exemption as to Parts 4 or 5 of the CKH Act which is present in the law today. Thus, when the 1976 Application was filed, the Water Authority was allowed to remove itself entirely from SD LAFCO review, but that is no longer the case under current law. This makes the 1976 Application (and subsequent determination) of no effect in the current proceedings, because the law has substantively changed. That is one reason why the Water Authority submits this new application under the applicable law that exists today, the CKH Act. Additionally, under the current law, an application or request for determination that an agency is not a district must now be made on an application-by-application basis (see Gov. Code Sections 56127 and 56128). Therefore, the Water Authority’s application only covers the Proposal application (and, via a separate application by the Water Authority, the sister proposal made by the Fallbrook Public Utilities District).

#### *Vote of the Electorate*

We note that as part of the attached Resolution, the Water Authority Board requested that if for some reason the SD LAFCO were contemplating any approval of the Proposal, it should require a majority vote of the electorate in the Water Authority’s service area so that *all* affected ratepayers may have a say in any detachment, because a detachment may adversely affect all area ratepayers, and not just those in Fallbrook and Rainbow. While we realize this will be a material issue to be addressed in detailed briefing by all interested parties later, we wanted to call it to SD LAFCO’s attention as it is part of the Water Authority Board’s Resolution. This request is made without any prejudice to our member agencies making their positions known as well, or the Water Authority submitting further matters to SD LAFCO when the process continues.

Finally, we note – as shown on the below cc list – that Kristina Lawson is now our main contact person with our outside counsel at Hanson Bridgett, so please reflect this in your records. Her address information is as follows:

Kristina Lawson, Esq.  
Hanson Bridgett  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105  
[KLawson@hansonbridgett.com](mailto:KLawson@hansonbridgett.com)  
(925) 746-8474

Mr. Keene Simonds

April 2, 2020

Page 4 of 4

The Water Authority looks forward to SD LAFCO's approval of our request/application after the COVID-19 health emergency concludes. Given the Water Authority's affected resources during this emergency period, the Water Authority reserves all rights to amend or supplement this application. Please let me know if the SD LAFCO requires any further information or wishes to discuss this matter with the Water Authority. Thank you.

Very truly yours,



Mark J. Hattam  
General Counsel

Attachments: SDCWA Resolution and Board Memo

Cc: (all via e-mail):

Holly Whatley, Commission Counsel  
Aleks Giragosian, Deputy Commission Counsel  
Robert Barry, Chief Policy Analyst  
Sandra L. Kerl, General Manager, San Diego County Water Authority  
Kristina Lawson, Outside Counsel, San Diego County Water Authority  
Gary Thompson, Executive Officer, Riverside LAFCO  
Jack Bebee, General Manager, Fallbrook PUD  
Paula C. P. de Sousa, Counsel, Fallbrook PUD  
Paul Jones, General Manager, Eastern MWD  
Nick Kanetis, Deputy General Manager, Eastern MWD  
Tom Kennedy, General Manager, Rainbow MWD  
Alfred Smith, Counsel, Rainbow MWD  
Water Authority Board of Directors



RESOLUTION NO. 2019- 19

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO REQUEST A DETERMINATION BY THE SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION THAT THE WATER AUTHORITY IS NOT A “DISTRICT” OR “SPECIAL DISTRICT” FOR THE PURPOSES OF PART 4 OF THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT AND TO REQUEST A VOTE OF THE WATER AUTHORITY’S ELECTORATE AS TO ANY DETACHMENT.

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act (Cal. Gov. Code section 56000 et seq.) (“**CKH Act**”) at Government Code Section 56036.6 provides that a county water authority may apply to a Local Agency Formation Commission (“**LAFCO**”) for a determination that the county water authority is not a “district” or “special district” for the purposes of Part 4 (or Part 5) of the CKH Act pursuant to Government Code Sections 56036.6, 56127, and 56128;

WHEREAS, the San Diego County Water Authority (“**Water Authority**”) is a county water authority as described in Government Code Section 56036.6;

WHEREAS, the Water Authority anticipates that one or more applications for a change in organization that will affect, among others, the Water Authority and its member agencies will be filed with San Diego County LAFCO on behalf of Rainbow Municipal Water District (“**Rainbow**”) and/or Fallbrook Public Utility District (“**Fallbrook**”);

WHEREAS, the Water Authority’s principal act, the County Water Authority Act, provides procedures for a change in organization for county water authorities, as does the CKH Act;

WHEREAS, Government Code Section 53036.6 provides that if, upon application by a county water authority, a LAFCO determines that a county water authority is not a “district” or “special district,” then any authority proceedings pursuant to Part 4 of the CKH Act for a change of organization to the Water Authority (which proceedings follow the LAFCO’s commission proceedings) will be conducted pursuant to the County Water Authority Act;

WHEREAS, Part 4 of the CKH Act provides for a protest vote for any change of organization approved by the LAFCO, which results in a default approval of the LAFCO’s decision unless 25% of the registered voters in the designated territory protest the change of organization by signed mail-in vote, but the County Water Authority Act provides instead for a majority vote of the voters in the detaching agency service area to confirm the detachment/exclusion of that member agency from the Water Authority by majority approval at a general or special election;

WHEREAS, voters and ratepayers in service areas of member agencies of the Water Authority other than Rainbow and Fallbrook may be affected by a detachment of one or both of those agencies, and San Diego LAFCO may want to allow such larger electorate a chance to be heard on detachment;

WHEREAS, if a detachment application is not denied by San Diego LAFCO, then each applicable electorate should be afforded the opportunity to vote at a general or special election based on a full understanding of the potential impacts that would result from detachment and knowing all conditions that would be placed on the ratepayers of a detaching agency by LAFCO as a result of such a detachment;

WHEREAS, the CKH Act requires that if a proposal for a change in organization is initiated by other than the Water Authority, then the Water Authority may request the determination that it be deemed to be not a “district” or “special district” for purposes of Part 4 and/or 5 of the CKH Act as described in the first recital above within 10 days of notification by LAFCO of the initiation of the proposal; and

WHEREAS, the Water Authority is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of other lawful power of the Water Authority.

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority resolves the following:

1. In any LAFCO proceeding in which a change in organization is proposed that would detach or exclude Rainbow and/or Fallbrook from the Water Authority, the Water Authority shall request that if San Diego LAFCO does not deny the detachment application(s), that: (a) San Diego LAFCO exempt the proceeding from Part 4 of the LAFCO Act and, instead, proceed under the Water Authority’s principal act, the County Water Authority Act, for the purpose of the Authority Proceedings phase; and (b) in addition to any other appropriate conditions or Authority Proceeding requirements, San Diego LAFCO also require detachment approval by a majority of the voters within the Water Authority’s entire service area. The General Manager and the General Counsel, or their designees, are hereby authorized to request the foregoing as to the Rainbow and/or Fallbrook proceedings only, and to submit all applications and other necessary papers.

PASSED, APPROVED, and ADOPTED this 21st day of November 2019 by the following vote:

AYES: Unless noted below all Directors voted aye.

NOES: Bebee, Cate, Kennedy, and Steiner

ABSTAIN: None


ABSENT: Ayala, Barnum, Boyle, Fong-Sakai, Hall, Mosca, Murtland, Scalzitti (P), Simpson, and Watkins (P).

  
\_\_\_\_\_  
Jim Madaffer, Chair

ATTEST:

  
\_\_\_\_\_  
Christy Guerin, Secretary

I, Melinda Nelson, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2019- 19 was duly adopted at the meeting of the Board of Directors on the date stated above.

  
\_\_\_\_\_  
Melinda Nelson, Clerk of the Board



Our Region's Trusted Water Leader  
**San Diego County Water Authority**

November 13, 2019

**Attention: Board of Directors**

**Resolution Regarding LAFCO Part 4 Exemption Request. (Action)**

**Staff recommendation**

Adopt Resolution 2019-\_\_\_ (Attachment 1) authorizing General Manager and/or General Counsel to Apply to LAFCO to:

- Exempt a Rainbow and/or Fallbrook detachment/annexation proceeding from Part 4 of the Cortese-Knox-Hertzberg Act, and instead have any “Authority Proceedings” conducted under the County Water Authority Act; and
- In addition to any other LAFCO requirements, request that LAFCO condition approval of any detachment on a majority vote of the entire Water Authority electorate.

**Alternative**

Do not adopt the Resolution.

**Fiscal Impact**

There is no identifiable fiscal impact from this action, which pertains to a procedural issue at San Diego Local Agency Formation Commission (“LAFCO”).

### **Executive Summary**

- Rainbow Municipal Water District (“**Rainbow**”) and/or Fallbrook Public Utility District (“**Fallbrook**”) may soon file applications with the San Diego Local Agency Formation Commission (“**LAFCO**”) to detach from the Water Authority and annex into Eastern Municipal Water District (“**Eastern**”) in Riverside County (together the detachment and annexation are the “**Reorganization.**”)
- This Reorganization, under which member agencies of one regional public entity would annex into a different county’s regional public entity, appears to have no precedent in San Diego County.
- The LAFCO proceedings will be conducted in phases, and if the LAFCO approves the Reorganization, it will still be subject to a local protest vote, called “Authority Proceedings.”
- Under LAFCO law, the Authority Proceedings can require a *protest* vote; however, the Water Authority is entitled to seek the LAFCO’s approval to instead conduct the Authority Proceedings as a *majority-vote election* in at least the Rainbow and Fallbrook service areas.
- LAFCO may also condition its approval of a Reorganization on certain terms and conditions, including requiring an Authority Proceeding vote to be conducted only among voters in the detaching areas, or also among the voters in the entire Water Authority service area. The latter approach would allow for voters region-wide to ratify a potential LAFCO approval of the Reorganization, giving those ratepayers a voice in the future economic and other impacts that would result from detachment from the Water Authority.

### **Background**

Beginning in at least Fall of 2018, member agencies Fallbrook and Rainbow initiated plans to seek to detach from the Water Authority and annex into Eastern Municipal Water District, located in Riverside County. Fallbrook and Rainbow began discussions with Eastern as early as fall of 2018, and then began discussions with San Diego and Riverside LAFCOs by January of 2019.

In May of 2019, the Acting General Manager of the Water Authority was informed by the General Manager of Rainbow that both Rainbow and Fallbrook were planning to seek to detach from the Water Authority. A general proposal has now been publicly discussed by Fallbrook and Rainbow, but the specifics of the infrastructure changes and financial approach have not been made clear.

Rainbow and Fallbrook have stated at their respective board meetings that applications for detachment are being drafted and may be filed as early as December 2019.

### **Water Authority’s Involvement to Date**

Applicable LAFCO. Initially, Rainbow and Fallbrook would have had the LAFCO matters decided at two different LAFCOs – Riverside County and San Diego County. In an effort to have a consolidated set of proceedings, improve coordination and efficiency, and maintain local control of

decisions in San Diego County, the Water Authority requested that the San Diego LAFCO take exclusive jurisdiction over the matters. In October 2019, the two LAFCOs agreed to an MOU under which exclusive jurisdiction is vested in San Diego LAFCO.

Fact Finding. The Water Authority made Public Records Act requests in order to understand the scope of the plans and the history of discussions. Additionally, meetings between staff were conducted in July, and were followed by a general proposal from Rainbow and Fallbrook in August, which again provided little detail or analysis of impacts. Further meetings were conducted in September and early October, but to date the Water Authority has not been presented by Rainbow or Fallbrook with any detailed proposals, or with any substantive analyses of what the projected impacts to water supply reliability, rates, or infrastructure would be to the Water Authority and to each of its member agencies. The Water Authority has asked Rainbow and Fallbrook for these details, including in a recent October 14, 2019, letter sent by special counsel, and previously provided to each of the Board members. A copy is attached as Attachment 2.

### **Anticipated Procedure**

LAFCO Nomenclature. A detachment from the Water Authority will require multiple acts and approvals by San Diego LAFCO. Procedurally, it will require changes to the “sphere of influence” for the Water Authority, Rainbow, Fallbrook, and Eastern, as well as the detachment of Rainbow and Fallbrook from the Water Authority, and the annexation of Rainbow and Fallbrook to Eastern. All of these will be handled in one consolidated proceeding, but are governed under separate parts of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code sections 56000 *et seq.* (also known as the “CKH Act” or the “LAFCO Act.”) Annexations and detachments are also collectively known as “boundary changes” or “reorganizations.”

Consultations. Under local LAFCO policy, the applicants must consult with affected local agencies prior to submitting their applications, in order to identify and attempt to resolve any issues raised by the proposed reorganizations. Because it is possible that the proposed Reorganization would have significant financial and potential environmental impacts on the Water Authority all of its member agencies, as well as other agencies such as fire districts, all of those parties are affected local agencies with which the applicants should consult. The consultations, to be meaningful, must be based on a proposal that specifies the changes that would occur under a Reorganization. Special Counsel sent a letter to this effect to Rainbow and Fallbrook on October 14, 2019 (Attachment 2). We will continue to work with San Diego LAFCO to ensure that meaningful consultations are conducted prior to San Diego LAFCO’s accepting the applications.

Application and Commission Proceedings. Rainbow and Fallbrook would, if they go forward, subsequently submit applications (or perhaps a consolidated single application) to San Diego LAFCO and pay associated fees.

Once LAFCO determines that the application is complete, it will notify all affected agencies, including the Water Authority, and solicit public engagement and comments. The Water Authority, its member agencies and all other affected parties will have an opportunity to participate in this process.

LAFCO will then undertake an independent analysis of the proposal. This may take many months.

Upon the conclusion of that analysis, LAFCO staff will prepare a report and recommendation, provide notice, and hold a public hearing. The Water Authority and its member agencies and all other affected local parties will have an opportunity to review the analysis and report, and participate in the public hearing.

The Commission will then vote on the application. These initial procedures are referred to as the “Commission Proceedings.” (*See* Cal. Gov. Code § 56650 *et seq.*) If the application is denied, the process ends. If the application is approved (with any associated conditions), then “Authority Proceedings” may follow.

It is important to note that LAFCO may place a number of conditions on any approval. Cal. Gov. Code Section 56886 gives LAFCO a considerable amount of leeway in fashioning terms and conditions of a detachment, including imposing requirements from the principal act, here the CWA Act.

Authority Proceedings. Following the approval of an application by LAFCO, the LAFCO Act provides for a second process, known as the “Authority Proceedings.”

*LAFCO Act Authority Proceedings:*

The default approach to Authority Proceedings is a “protest” proceeding under which the affected territory’s voters may mail in a protest to oppose the LAFCO’s approval/decision. If fewer than 25% of ratepayers in the affected territory protest, then the application is deemed approved. If 50%+1 of the registered voters protest the proposal, then it is deemed denied. If 25-50% of the registered voters protest the proposal, then the proposal goes to the voters in a general or special election where it is subject to a majority vote. LAFCO may provide for the voter pool to be just Rainbow and Fallbrook, or the entirety of the four affected entities (Fallbrook, Rainbow, Water Authority and Eastern), or some subset of those. Historically it has proven procedurally cumbersome for a large electorate to affirmatively lodge 25%+ protests, especially because protest proceedings are unfamiliar to most voters. If that standard is not met, then under “Authority Proceedings” there might not be a vote of the electorate at all.

*CWA Act Authority Proceedings:*

In the alternative, the Water Authority may apply to LAFCO to opt out of the protest procedure in the LAFCO Act, and instead conduct the Authority Proceedings pursuant to its principal act, the County Water Authority Act (“**CWA Act**”). This would ensure the voters have an opportunity to vote on the proposal at a standard regular or special election.

In order to seek to proceed under the CWA Act instead of Part 4 of the LAFCO Act, the Water Authority would need to apply to LAFCO for exemption from Part 4 within 10 days after notification that the initial application is complete. That option is allowed when an agency is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or

garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of other lawful power of the Water Authority. The Water Authority, as a water wholesaler, satisfies the statutory requirement.

*Terms and Conditions Imposed by LAFCO:*

In addition to a vote in the Rainbow and Fallbrook service areas, San Diego LAFCO Commissioner Dianne Jacob suggested at the October 7, 2019, LAFCO meeting that voters within the Water Authority's entire 24-member agency service area perhaps should have an opportunity to evaluate and vote upon a detachment, as they may be affected by such a change in organization. It is within the discretion of the LAFCO to provide terms and conditions for reorganization. Consistent with Commissioner Jacob's suggestion, and assuming that LAFCO's analysis of the applications demonstrates that there will be financial impacts on ratepayers, in order to enfranchise all of the Water Authority's affected ratepayers on this issue it is therefore recommended that the Water Authority specifically request that such a vote of the larger affected electorate be considered as a condition of detachment (if detachment were to be approved; of course, detachment may also be denied by San Diego LAFCO). The below staff recommendation would ensure that all affected ratepayers are entitled to vote (including those in Rainbow and Fallbrook as specified in the CWA Act).

**Request for Board Action**

The Board is therefore requested to adopt the Attachment 1 Resolution that would authorize the General Manager and General Counsel, or their designees, to do the following upon notification of a detachment application filed with San Diego LAFCO by Rainbow or Fallbrook:

1. Request that San Diego LAFCO exempt the proceeding from Part 4 of the LAFCO Act and instead proceed under the Water Authority's principal act, the County Water Authority Act, for the purpose of voter approval of any LAFCO-approved detachment in the Authority Proceedings phase; and
2. Request that if San Diego LAFCO does not deny the detachment application(s), that – in addition to any other appropriate conditions or Authority Proceeding requirements the LAFCO may specify – San Diego LAFCO also require detachment approval by the voters within the Water Authority's entire service area.

Prepared by: Claire Hervey Collins, Special Counsel  
Approved by: Sandra L. Kerl, Acting General Manager  
Mark J. Hattam, General Counsel

Attachments:  
Attachment 1 - Resolution 2019-\_\_\_\_  
Attachment 2 - October 14, 2019 Letter



## RESOLUTION NO. 2019-\_\_\_

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO REQUEST A DETERMINATION BY THE SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION THAT THE WATER AUTHORITY IS NOT A “DISTRICT” OR “SPECIAL DISTRICT” FOR THE PURPOSES OF PART 4 OF THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT AND TO REQUEST A VOTE OF THE WATER AUTHORITY’S ELECTORATE AS TO ANY DETACHMENT.

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act (Cal. Gov. Code section 56000 et seq.) (“**CKH Act**”) at Government Code Section 56036.6 provides that a county water authority may apply to a Local Agency Formation Commission (“**LAFCO**”) for a determination that the county water authority is not a “district” or “special district” for the purposes of Part 4 (or Part 5) of the CKH Act pursuant to Government Code Sections 56036.6, 56127, and 56128;

WHEREAS, the San Diego County Water Authority (“**Water Authority**”) is a county water authority as described in Government Code Section 56036.6;

WHEREAS, the Water Authority anticipates that one or more applications for a change in organization that will affect, among others, the Water Authority and its member agencies will be filed with San Diego County LAFCO on behalf of Rainbow Municipal Water District (“**Rainbow**”) and/or Fallbrook Public Utility District (“**Fallbrook**”);

WHEREAS, the Water Authority’s principal act, the County Water Authority Act, provides procedures for a change in organization for county water authorities, as does the CKH Act;

WHEREAS, Government Code Section 53036.6 provides that if, upon application by a county water authority, a LAFCO determines that a county water authority is not a “district” or “special district,” then any authority proceedings pursuant to Part 4 of the CKH Act for a change of organization to the Water Authority (which proceedings follow the LAFCO’s commission proceedings) will be conducted pursuant to the County Water Authority Act;

WHEREAS, Part 4 of the CKH Act provides for a protest vote for any change of organization approved by the LAFCO, which results in a default approval of the LAFCO’s decision unless 25% of the registered voters in the designated territory protest the change of organization by signed mail-in vote, but the County Water Authority Act provides instead for a majority vote of the voters in the detaching agency service area to confirm the detachment/exclusion of that member agency from the Water Authority by majority approval at a general or special election;

WHEREAS, voters and ratepayers in service areas of member agencies of the Water Authority other than Rainbow and Fallbrook may be affected by a detachment of one or both of those agencies, and San Diego LAFCO may want to allow such larger electorate a chance to be heard on detachment;

WHEREAS, if a detachment application is not denied by San Diego LAFCO, then each applicable electorate should be afforded the opportunity to vote at a general or special election based on a full understanding of the potential impacts that would result from detachment and knowing all conditions that would be placed on the ratepayers of a detaching agency by LAFCO as a result of such a detachment;

WHEREAS, the CKH Act requires that if a proposal for a change in organization is initiated by other than the Water Authority, then the Water Authority may request the determination that it be deemed to be not a “district” or “special district” for purposes of Part 4 and/or 5 of the CKH Act as described in the first recital above within 10 days of notification by LAFCO of the initiation of the proposal; and

WHEREAS, the Water Authority is not engaged in: (a) the distribution and sale for any purpose, other than for the purpose of resale, of water or of gas, or electricity for light, heat, or power; (b) furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users thereof; (c) providing fire or police protection; or (d) the acquisition, maintenance, lighting or operation of streets and highways, street and highway improvements or park and recreation facilities, except as an incident to the exercise of other lawful power of the Water Authority.

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority resolves the following:

1. In any LAFCO proceeding in which a change in organization is proposed that would detach or exclude Rainbow and/or Fallbrook from the Water Authority, the Water Authority shall request that if San Diego LAFCO does not deny the detachment application(s), that: (a) San Diego LAFCO exempt the proceeding from Part 4 of the LAFCO Act and, instead, proceed under the Water Authority’s principal act, the County Water Authority Act, for the purpose of the Authority Proceedings phase; and (b) in addition to any other appropriate conditions or Authority Proceeding requirements, San Diego LAFCO also require detachment approval by a majority of the voters within the Water Authority’s entire service area. The General Manager and the General Counsel, or their designees, are hereby authorized to request the foregoing as to the Rainbow and/or Fallbrook proceedings only, and to submit all applications and other necessary papers.

PASSED, APPROVED, and ADOPTED this 21st day of November 2019 by the following vote:

AYES: Unless noted below all Directors voted aye.

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Jim Madaffer, Chair

ATTEST:

\_\_\_\_\_  
Christy Guerin, Secretary

I, Melinda Nelson, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2019- \_\_\_\_ was duly adopted at the meeting of the Board of Directors on the date stated above.

\_\_\_\_\_  
Melinda Nelson, Clerk of the Board



Claire Hervey Collins  
633 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, California 90071  
Claire.Collins@lewisbrisbois.com  
Direct: 213.680.5039

October 14, 2019

File No. 44112.2

Mr. Jack Bebee  
General Manager  
Fallbrook Public Utility District  
900 East Mission Road  
Fallbrook, CA 92028  
[jackb@fpud.com](mailto:jackb@fpud.com)

Re: LAFCO Process

Dear Mr. Bebee:

As special LAFCO counsel to the San Diego County Water Authority ("Water Authority"), Chair Madaffer has asked me to respond to your October 10 letter to him on behalf of the agency.

First, as has been stated many times, the Water Authority must respect the interests of all water ratepayers served by our 24 member agencies in San Diego County. We plan to do that and stand ready to support a fully transparent LAFCO process.

Second, I am addressing this letter to you as the author of the October 10 letter, and I am copying your General Counsel. The Water Authority urges you to consult with your General Counsel or other qualified LAFCO counsel as soon as possible in order to ensure that Fallbrook Public Utility District ("Fallbrook") is following the LAFCO process, and to ensure that Fallbrook understands the Water Authority's responsibility in that process. I am copying Mr. Kennedy and his agency's General Counsel for the same reason. I believe that it is imperative that Fallbrook and Rainbow Municipal Water District ("Rainbow") take certain necessary consultation actions in light of your stated imminent plans to file a LAFCO detachment proposal.

The pace of the LAFCO process has been designed by statute and local policy to be a thorough, collaborative, and deliberative process. The responsibility for preparing a comprehensive proposal and engaging in meaningful consultations with affected agencies is a significant and serious one. Your apparent frustration at the response to date by the Water Authority is a reflection of the lack of detail and analysis in the materials provided by Fallbrook and Rainbow to the Water Authority, and a reflection of the lack of meaningful dialogue about the impacts of potential detachment. It is not the result of any actions taken or not taken by Chair Madaffer or the Water Authority, which is eager to better understand Fallbrook and Rainbow's detailed plan so that it can undertake a rigorous analysis of the related impacts. To be clear, however, the Water Authority has no duty to formulate a proposal for your agencies, or to formulate an "offer" on behalf

of its other member agencies. It does have a duty of good faith to review and consult with you on a genuine proposal, but due to the lack of specifics from your agencies as to exactly what you plan, it is unable to do so at this time.

Against this backdrop, and in the interest of fairness and to promote mutual understanding, I will take this opportunity to comment on some of the points raised in your October 10 letter.

*San Diego LAFCO Legislative Policy No. L-107:*

San Diego LAFCO's legislative policy L-107 establishes a consultation requirement among affected agencies ***prior to the filing of a detachment proposal***, stating in part:

It is the policy of the San Diego Local Agency Formation Commission that:

1. Prior to submission of a proposal requesting LAFCO consideration of a change of organization or reorganization, ***the proposal applicant and representatives from affected public agencies, interested parties, and/or organizations, shall meet at the earliest possible stage for the purpose of identifying and attempting to resolve any issues associated with the proposed jurisdictional change(s)***. The Executive Officer may waive the consultation procedure outlined in this provision when it can be determined with certainty that there will be no possibility that the proposal in question will result in identified and unresolved jurisdictional issues.
2. The consultation process described in provision no. 1 should identify any jurisdictional issues or concerns related to: a. Differing development standards; b. Existing and/or planned land uses and zoning, including densities, community character, and appropriate jurisdictional transition areas; c. Existing and/or planned provision of governmental services, including any potential impacts to service levels or financial ability to sustain service levels; and, d. Any other local community or governmental concerns.

\* \* \*

6. Affected local agencies shall be encouraged to explore additional methods to improve future inter- and intra-departmental and jurisdictional communications for the purpose of discussing and commenting on proposed or pending jurisdictional changes at the earliest possible stage.

*Consultation Process:*

With due respect, the Water Authority does not agree that all necessary steps have been taken to satisfy L-107 requirements.

First, although your agencies have been discussing a possible detachment among yourselves for a full year now, very few concrete details have been revealed to the Water Authority

or to the public.<sup>1</sup> The very broad "framework" you have provided does not include the kind of substantive detail necessary to evaluate such a significant service change, particularly in light of the more than 50 years of water service to Fallbrook and Rainbow by the Water Authority. You are required to provide an analysis outlining the potential effects of detachment on the Water Authority and all of its member agencies, including Fallbrook and Rainbow customers.<sup>2</sup> We renew our request for a detailed proposal consistent with LAFCO requirements.<sup>3</sup>

*Detailed Proposal Needed:*

In order to have a productive consultation process, all affected parties (as defined in L-107) need to be provided with the specific details of your detachment proposal including financial and environmental impacts, impacts on water supply reliability, and all other impacts to the region as a whole that would result from a detachment.<sup>4</sup>

Because Fallbrook and Rainbow are the agencies proposing detachment, it is your responsibility, not the Water Authority's responsibility, to conduct the relevant analyses and make a detailed proposal addressing all relevant factors. For example:

- You are aware that a number of Water Authority member agencies have expressed concerns about Fallbrook and Rainbow's share of Water Authority financial obligations, incurred to develop the reliable, firm water supplies now being delivered to Fallbrook and Rainbow and all Water Authority member agencies. You should be prepared to discuss this topic when you meet with the other member agencies. Your proposal should indicate how you plan to address this concern, as well as how your proposal would impact customer rates (including those of Fallbrook and Rainbow), if at all.
- We have not been given any details as to environmental impacts, but note comments in the PRA documents that significant new piping infrastructure may be needed in Rainbow and

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<sup>1</sup> The Water Authority only became aware of this timeline from documents produced by Fallbrook and Rainbow in response to its Public Records Act (PRA) request. While your agencies began at an early stage to consult with the Eastern Municipal Water District, you did not share your intentions with the Water Authority until just this past May.

<sup>2</sup> We attach Water Authority Acting General Manager Sandy Kerl's e-mail to you dated October 10, which was not attached to your letter. In that e-mail, Ms. Kerl noted that Fallbrook and Rainbow had not provided the specifics of any proposal to the Water Authority. The document you submitted on August 21, 2019, was really an advocacy piece arguing why detachment might make sense for your agencies. This is not the kind of substantive proposal or analysis of impacts required by LAFCO.

<sup>3</sup> This is why your requests for a Water Authority open session agenda item about detachment, before submittal of a detailed written proposal, were premature. This is not a "political" decision, but must be one based on what is in the best interests of the voters and ratepayers in San Diego County.

<sup>4</sup> This is not intended to be an exhaustive list of issues or substitute for legal advice by your own attorneys on LAFCO requirements.

Mr. Jack Bebee  
October 14, 2019  
Page 4

perhaps Fallbrook. Additionally, a detachment from the Water Authority (which uses very little water from the environmentally sensitive Bay Delta region, and will use even less over time) would, under your plan, be replaced by increased reliance on Delta water from MWD. This shift should be analyzed, particularly in light of Water Code section 85021. Review of these and other potential environmental impacts should be completed before any applications are filed with LAFCO, with all affected parties described under LAFCO Policy L-107 being provided a reasonable time and opportunity to comment.

These are only a few examples of the kinds of impacts that should be included in a detailed proposal to be presented to and discussed with affected parties during the consultation process.

*Next Steps:*

The Water Authority is fully committed to working through the LAFCO process—but the process must start with your agencies' good faith efforts to present a proposal grounded in facts and substantive analysis, including a reasonable range of alternative outcomes. You must provide sufficient information to allow all parties, and ultimately all voters and ratepayers, to make informed decisions about the proposed detachment.

Once you have prepared the terms of your proposal, Fallbrook and Rainbow can begin the process of meeting with all affected agencies and parties to identify and attempt to resolve issues, as required under LAFCO policy.<sup>5</sup> This will provide an opportunity to identify areas of agreement, disagreement, and further areas of inquiry necessary to present a meaningful application to LAFCO.

I would be happy to discuss next steps with your counsel in order to avoid further frustration and wasted effort on the part of all parties.

Very truly yours,



Claire Hervey Collins of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC:JLB

Attachment

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<sup>5</sup> Chair Madaffer's August 21 letter to Fallbrook and Rainbow did not say anything to the contrary; in fact, he reiterated then that he asked you to "please provide a specific proposal." Chair Madaffer was not addressing your LAFCO obligations in his letter—he was only asking that you cease "public relations" meetings with Water Authority directors telling them that the Water Authority was refusing to meet with you.

Mr. Jack Bebee  
October 14, 2019  
Page 5

cc: Water Authority Board of Directors  
Fallbrook Board of Directors  
Rainbow Board of Directors  
Mark Hattam, Water Authority General Counsel  
Sandy Kerl, Water Authority Acting General Manager  
Water Authority member agency General Managers  
Paula de Sousa Mills, General Counsel for Fallbrook, Best Best & Krieger  
Tom Kennedy, Rainbow General Manager  
Lloyd W. Pellman, Counsel for Rainbow, Nossaman



**From:** Kerl, Sandy

**Sent:** Thursday, October 10, 2019 12:52 PM

**To:** Bebee, Jack <[jackb@fpud.com](mailto:jackb@fpud.com)>; Kennedy, Tom <[tkennedy@rainbowmwd.com](mailto:tkennedy@rainbowmwd.com)>

**Cc:** Madaffer, Jim <[JMadaffer@sdcwa.org](mailto:JMadaffer@sdcwa.org)>; Croucher, Gary <[garydcroucher@gmail.com](mailto:garydcroucher@gmail.com)>; Guerin, Christy <[Redwhtblu56@yahoo.com](mailto:Redwhtblu56@yahoo.com)>

**Subject:** Follow-Up on Meeting of October 9, 2019

Dear Jack and Tom:

This e-mail follows our meeting yesterday, as promised. The Water Authority appreciates the opportunity for continuing dialogue with you and all of our member agencies on this subject.

While I regret the frustration you expressed at our meeting yesterday, I want to be clear that from our perspective, the process going forward has now been established by the LAFCO board action taken on Monday, October 7. We believe LAFCO policy requires that your agencies, as the potential LAFCO applicants, meet with **all affected parties** prior to your filing with LAFCO, in an attempt to reach agreement on the issues presented.

The LAFCO policy (L-107) is expressly referenced in the letter that was submitted to LAFCO by the Otay Water District (copy attached). The policy clearly states a requirement that applicants meet with all affected agencies to walk through their proposal to try and reach a resolution. While we appreciate you meeting with the Water Authority, that alone does not satisfy LAFCO's policy.

I also derived from our meeting yesterday that you believe it is the Water Authority's responsibility to make some sort of "offer" to you. We would not be in a position to do that, even if we had the specific details of your proposal (we do not), because the potential impacts are not only on the Water Authority but also on its member agencies, their ratepayers and potentially other third parties.

Finally, you said that you wanted to know our agency's legal interpretation of the applicable law as to why your agencies should pay anything upon detachment. This is an issue that will be addressed in the course of LAFCO proceedings.

As I indicated to you, the Water Authority must continue to represent the interests of all of our member agencies. We plan to do that and stand ready to support the LAFCO process.

Best regards,

Sandy

*Sandra L. Kerl*  
*Acting General Manager*

(858) 522-6783  
[skerl@sdcwa.org](mailto:skerl@sdcwa.org)



**Blank for Photocopying**

April 23, 2020

Keene Simonds  
Executive Officer  
San Diego County Local Agency Formation Commission  
9335 Hazard Way, Suite 200  
San Diego, CA 92123

Re: San Diego County Water Authority letters, dated April 2, 2020.

Dear Keene,

On behalf of the Fallbrook Public Utility District (“FPUD”) and the Rainbow Municipal Water District (“RMWD”), we would like to jointly respond to your letters to each of our agencies dated April 10, 2020 related to the April 2, 2020 letters you received from the San Diego County Water Authority (“SDCWA”) (“SDCWA Letters”). In the SDCWA Letters, SDCWA submitted to LAFCO the following:

- a request to have LAFCO stay proceedings on LAFCO’s consideration of the applications for reorganization (“FPUD/RMWD Applications”) filed by our two Districts, which Applications involve a detachment from the Districts from SDCWA; and
- its application for a determination under Government Code sections 56127, 56128 and 56036.6 a determination that it is not a “district” as to Part 4 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, (Government Code sections 56000 et seq. (“CKH Act”)) (“SDCWA Application”);
- a premature and improper request for LAFCO to require a county-wide vote, contrary to the express requirements of the County Water Authority Act.

This letter provides the Districts’ response to all three components of the SDCWA Letters.

**1. SDCWA’s Request for LAFCO to Stay Proceedings on the Applications**

The COVID-19 “stay home except for essential needs order” imposed by Executive Order N-33-20 is having a significant impact on our region, and we understand the challenges it presents to local governments, special districts and the public at large. That stated, as public officials responsible to the public, it is our duty to continue working on behalf of our constituents, customers and ratepayers—even during this “stay home except for essential needs” order. As you also identified in your letter, despite the present challenges, LAFCO continues to serve its

key role in the region, providing service to its constituents. We appreciate your efforts on behalf of our ratepayers.

Given that this unprecedented public health crisis is causing serious financial hardship for so many residents of our service areas – and will likely do so for months, if not years to come – it is imperative that we all help where we can; especially as it relates to our respective ratepayers. By seeking to detach from SDCWA and instead purchase our water from the Eastern Municipal Water District, we anticipate saving our ratepayers \$8-10 million per year. These are savings that would translate to their bottom line, providing discretionary income to help them recover not only from the financial impacts due to COVID-19 today, but also from the rising cost of water over the past years.

In light of all this, we do not believe that it is necessary or prudent for LAFCO to grant SDCWA's request to delay LAFCO's review and processing of the FPUD/RMWD Applications due to the COVID-19 situation, unless **LAFCO** has a pressing reason to do so. There is nothing new in the FPUD/RMWD Applications that SDCWA was not already aware of. In fact, SDCWA has been aware of our Districts' plans to pursue detachment for nearly a year, and as SDCWA noted in its letter, SDCWA took its necessary board action last year regarding our respective detachment applications. Also, it is important to note that despite the COVID-19 situation SDCWA – like most public agencies across the region – continues to move forward on many significant actions.

However, we are sensitive to any potential resource constraints LAFCO and its relatively small staff may encounter, especially during these unprecedented times. We would expect that if LAFCO stopped processing our applications, it would not be an arbitrary decision to just stop processing the FPUD/RMWD Applications, but would be part of a larger decision to stop all operations and stop processing all other proposals before LAFCO. We also understand many of the Commissioners are leading the public health efforts for their communities and our entire region. For these reasons, we are willing to work with your Commission. Accordingly, if LAFCO, because of operational constraints, needs to delay consideration of SDCWA's Application from its May Commission meeting to its June Commission meeting, the Districts agree to such a delay. Otherwise, as is our right as the applicants, we do not agree to have the FPUD/RMWD Applications, including, but not limited to, consideration of SDCWA's Application, delayed. We instead expect that the FPUD/RMWD Applications proceed as required under state law and local rules.

Even if a delay in considering SDCWA's Application occurs, given that the entire LAFCO process will likely take at least a year, the Districts fully expect that all other future statutory timelines be maintained. This is essential for our Districts to provide our ratepayers relief, as soon as possible, since they will be feeling the financial impacts of this crisis for quite some time, Additionally, it is imperative that we provide them with a secure supply of water at the lowest possible cost, as soon as possible.

## **2. SDCWA's Application for Determination that it is not a "District" as to Part 4 of the CKH Act**

The Districts generally do not object to SDCWA's Application, except as discussed below in Section 3. In fact, the Districts are confused as to whether such an application is even necessary given the long-standing practice of LAFCO to process those components of changes of organization and reorganizations involving SDCWA, as exempt under both Parts 4 and Parts 5 of the CKH Act<sup>1</sup> presumably as a result 1976 approvals by both SDCWA and LAFCO referenced in SDCWA's Application.

**3. SDCWA's Premature and Improper Request for a County-Wide Vote Contrary to the Express Requirements of the County Water Authority Act**

FPUD and RMWD object to any attempt by SDCWA to request that LAFCO impose a legally impermissible term and condition on a future LAFCO approval of the FPUD/RMWD Applications. SDCWA has done just this by submission of its resolution supporting the SDCWA Application, which resolution focuses almost entirely on SDCWA's confused belief that it can ask LAFCO to impose a term and condition on the FPUD/RMWD Applications that is expressly contrary to applicable law. Simply put, and as we have stated previously, a countywide vote is not called for in the County Water Authority Act. (See County Water Authority Act § 45-11 (a)(2), attached.) In fact, the County Water Authority Act specifically requires that detachment be determined only by the electors in those districts that are seeking detachment. The SDCWA request also has no precedent in LAFCO law and such a request could have profound effects on other, future Commission actions. Arbitrarily ignoring the clear statutory requirements on how elections are conducted would open the door to all LAFCO actions being required to conduct a countywide vote, effectively negating the basic role of the Commission.

In closing, as we move forward, we request that the FPUD/ RMWD Applications be processed and considered in a timely manner. We must reiterate, the negative financial impact of delays in the process are significant – about \$800,000 per month - so unnecessary delays will continue to inflict financial harm on the ratepayers of our two Districts.

Sincerely,



Jack Bebee  
General Manager  
Fallbrook Public Utility District



Tom Kennedy  
General Manager  
Rainbow Municipal Water District

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<sup>1</sup> We call your attention to LAFCO's Directory of Special Districts in San Diego County (2011) ("Directory"), which indicates that SDCWA is already exempt from conducting authority/ protest proceedings. The Directory, which can be found on LAFCO's website at <https://www.sdlafco.org/home/showdocument?id=3114>, provides in pertinent part as follows:

LAFCO has purview over some aspects of SDCWA boundary change; however, SDCWA is exempt from conducting authority proceedings (commencing with Government Code § 57000).

(Directory, Section II, Agencies with Restricted LAFCO Oversight, p. 105.)

§ 45-11. Exclusion of territory

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

(1) . . .

(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 in the following manner:

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 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 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) . . .

**Credits**

(Stats.1943, c. 545, p. 2111, § 11. Amended by Stats.1951, c. 997, p. 2628, § 1; Stats.1957, c. 1356, p. 2685, § 3; Stats.1985, c. 1408, § 3, eff. Oct. 1, 1985.)

West's Ann. Cal. Water Code App. § 45-11, CA WATER App. § 45-11  
Current with urgency legislation through Ch. 3 of 2020 Reg.Sess