

July 3, 2023

VIA EMAIL

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

Re: Fallbrook/Rainbow Proposed Reorganizations

Dear Commissioners and Mr. Simonds:

You are preparing to hear again on July 10 the applications for the Fallbrook/Rainbow reorganizations. Though our previous submittals have made these points in detail, we write to remind you that if LAFCO approves the reorganizations as currently recommended by staff, that action will be vulnerable to legal challenges, including:

- Failure to comply with CEQA, all as detailed in prior submittals to LAFCO. These include: (a) the improper adoption of Fallbrook and Rainbow Board approvals to merely submit applications to LAFCO as a substitute for CEQA review; (b) that reorganizations of Rainbow and Fallbrook are exempt pursuant to a Class 20 Categorical Exemption (despite San Diego Superior Court Orders to the contrary); and (c) finding that LAFCO's action is exempt under Guideline 15061(b)(3), the "Common Sense Exemption," despite clear evidence in the record that the reorganizations will cause material adverse environmental impacts, and no CEQA review of such impacts. Substantial evidence in the record (as documented in the extensive CEQA comments in our prior letters) shows that the proposed re-organizations are not eligible for the above-referenced CEQA exemptions. Reasons why the exemptions cannot be used include (but are not limited to) the following: (1) The cumulative effect of the proposed reorganizations is significant; (2) Due to the unique nature and circumstances of the reorganizations and their expansive scope, there is a reasonable possibility that the proposed reorganizations will have a significant effect on the environment due to unusual circumstances; (3) The proposed reorganizations have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or

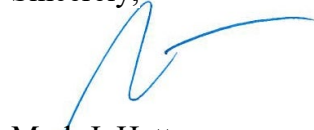
MEMBER AGENCIES

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

endangered plant or animal species; and (4) The environmental effects of the proposed reorganizations will have a substantial adverse effects on human beings.

- Violation of the Water Authority’s principal act, because staff have not proposed a condition that assures 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....”
- Violation of LAFCO statutes/rules/policies and other legal requirements because of:
(a) failure to review the economic effect of anticipated water rate increases on agriculture in the Water Authority's service area following detachment of Fallbrook and Rainbow;
(b) failure to review economic justice issues in the Water Authority's service area following detachment; (c) reliance on staff reports that omit and skew material facts, downplay facts presented by expert interested parties, and dismiss material risks;
(d) failure to obtain and analyze crucial data; (e) reliance on stale data; (f) failure to reconcile provisions in the Water Authority's principal act with Proposition 13, and follow-on Constitutional amendments regarding taxation without voter approval; and
(g) failure to fully account for the financial impacts of the detachments on the Water Authority.
- Violation of the Water Authority's rights by proceeding as if LAFCO, not the Water Authority, is in charge of detachment “authority proceedings,” even though the Water Authority legally exempted itself from LAFCO control over such Part 4 proceedings.
- Uncompensated taking of Water Authority assets by LAFCO and Eastern under Public Utilities Code sections 1503 and 1505.5.
- Failure to condition the reorganizations on approval from the Metropolitan Water District of Southern California Board of Directors for Fallbrook and Rainbow to annex into Eastern.
- Uncertain and unaddressed conditions that would make any elections in Fallbrook or Rainbow premature and impossible to accurately and fully describe in the ballot pamphlets.

Sincerely,



Mark J. Hattam
Special Counsel for the San Diego County Water Authority

LAFCO
July 3, 2023
Page 3 of 3

cc via email:

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