

I am in receipt of Mr. Simonds' correspondence. Here is our response. We ask that this response be made part of the record and be shared with the Commissioners. Additionally, we note that this e-mail is being sent twice, as was your e-mail, so that all the different cc's receive it. Thank you.

Unfortunately, Mr. Simonds' comments make it sound if as if our recent letter he responded to was the first time any of these issues had been raised to LAFCO. For example, he makes comments about our alleged misunderstanding of CEQA, that LAFCO acts only as a responsible agency and need do no substantive environmental review, that citations were not provided, and like comments. Our July 3 letter, however, said at the very outset, "Though our *previous submittals have made these points in detail*, we write to remind you" of certain significant topics. Our letter was only a short summary of literally hundreds of pages which have been submitted to LAFCO on these same topics.

Indeed, the Water Authority's 186-page Response we filed with LAFCO in September of 2020 addressed issues such as CEQA and LAFCO's duties in detail. Since a good part of Mr. Simonds' letter is premised on our agency's alleged "misunderstanding" of CEQA law, and he seeks to provide the Water Authority with a CEQA primer in his letter, we here provide -- as a more detailed reminder -- the exact text we sent to LAFCO three years ago on CEQA, none of which has changed or been substantively refuted (and which is a good example of the kind of detail we have also previously provided on the other topics addressed in our letter):

(September 20 Response, pages 174-184; see the Response for extensive footnotes and exhibits):

As part of its consideration of Rainbow and Fallbrook's applications for detachment and annexation, LAFCO must conduct environmental review in a manner that complies with the requirements of the California Environmental Quality Act ("CEQA;" Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines ("Guidelines;" Cal. Code Regs., tit. 14, § 15000 et seq.). In this instance, LAFCO will need to prepare an environmental impact report ("EIR") that discloses, analyzes, and mitigates all significant environmental effects of the detachment and annexation. Whatever CEQA analysis Rainbow and Fallbrook contend that they prepared in connection with the submission of their applications was insufficient to substitute for a full environmental review as required by CEQA.

LAFCO's independent obligation under CEQA is to conduct a separate analysis of the environmental impacts of approving the potential reorganizations, detachments, and annexations. (See Pub. Resources Code, § 21082.2 ["The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record."]; see also Guidelines, § 15064.) Because LAFCO is required to investigate the basis for, review, and approve or reject the applications of Rainbow and Fallbrook based upon the record before it, it is uniquely positioned to perform a full environmental review of each application and the cumulative effects of the applications together.

LAFCOs are particularly equipped to perform an analysis of the regional, and in this case potentially statewide, environmental impacts of annexations and detachments, as opposed to the entities seeking changes in their own jurisdictions. The Supreme Court, in *Bozung v. LAFCO (Ventura County)* (1975) 13 Cal.3d 263, a case involving LAFCO action on an annexation to a city, recognized this fact:

A vital provision of the Guidelines (Cal. Admin. Code, tit.14, Sec. 15142) stresses that an EIR must describe the environment from both a local 'and regional' perspective and that knowledge of the regional setting is critical to the assessment of environmental impacts. It directs special emphasis on environmental resources peculiar to the region and directs reference to projects, existent and planned, in the region so that the cumulative impact of all projects in the region can be assessed. While, of course, a city is not necessarily incompetent to prepare and evaluate an EIR complying with Section 15142, obviously a LAFCO must be presumed to be better qualified on both scores . . . CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations. At the very least, however, the People have a right to expect that those who must decide will approach their task neutrally, with no parochial interest at stake. (Bozung, 13 Cal.3d. at 283.)

The proposed detachments and annexations are subject to CEQA. As the Court of Appeal explained in *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 704-705, CEQA review procedures generally involve a “three-tiered process:”

The first tier requires an agency to conduct a preliminary review to determine whether CEQA applies to a proposed project. [Citation.] If CEQA applies, the agency must proceed to the second tier of the process by conducting an initial study of the project. [Citation.] Among the purposes of the initial study is to help 'to inform the choice between a negative declaration and an [EIR].' [Citation.] If there is 'no substantial evidence that the project or any of its aspects may cause a significant effect on the environment,' the agency prepares a negative declaration. (Guidelines, § 15063, subd. (b)(2).) Alternatively, if '“the initial study identifies potentially significant effects on the environment but revisions in the project plans 'would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur' and there is no substantial evidence that the project as revised may have a significant effect on the environment, a mitigated negative declaration may be used.” ' [Citation.] Finally, if the initial study uncovers 'substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment' (CEQA Guidelines, § 15063, subd. (b)(1)), the agency must proceed to the third tier of the review process and prepare a full EIR . . . [Citation.]

CEQA mandates a finding of significant impact, and thus preparation of an EIR, when substantial evidence, in light of the whole record, shows that a project has a significant cumulative effect, or has “effects [that] will cause substantial adverse effects on human beings, either directly or indirectly.” (Pub. Resources Code, § 21083, subd. (b)(2), (3); Guidelines, § 15065, subd. (a)(3), (4).)

Here, potentially significant environmental impacts of the detachment and annexation include (but are not limited to) the following:

1. Air Quality

Lead agencies must disclose, analyze, and mitigate whether a project will cause conflicts with or obstruct implementation of the applicable air quality plan, whether the project will result in a cumulatively considerable net increase of certain criteria pollutants, and whether the project will expose sensitive receptors to substantial pollutant concentrations. (Guidelines, Appendix G, subd. III.) Rainbow's Supplemental Information Package for its application (at pp. 5-6) reveals that if the detachment and annexation is approved, Rainbow will need to construct a range of large-scale infrastructure projects to service "higher elevation areas in [Rainbow's] southern service area" during peak summertime demand periods. Rainbow currently relies on the Water Authority's aqueduct to service these areas. This new infrastructure includes new pipelines, pumping facilities, and water mains, among other new facilities. The construction of these new facilities will inevitably lead to impacts associated with dust and other air pollution. These impacts may also expose sensitive receptors to dust and air pollution. Construction of this infrastructure may also impact other environmental resources, such as sensitive wildlife. Rainbow has stated that these facilities were reviewed under some other CEQA document, but has failed to identify that environmental document. Nonetheless, it is LAFCO's duty to examine the potential effects. (*See Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 915 [a lead agency must "fulfill its mandate to present a complete analysis of the environmental consequences of implementing" a proposed project].)

2. Biological Resources

Lead agencies must disclose, analyze, and mitigate whether a project will cause substantial adverse effects on biological resources, including inter alia certain protected and migratory fish species. (Guidelines, Appendix G, subd. IV.) Here, increased reliance on imported water from the State Water Project by both Rainbow and Fallbrook could potentially exacerbate impacts to certain fish species that will occur from hydrological changes that are caused by transporting water through the State Water Project. (2020 Initial Study for State Water Project at pp. 3-21 to 3-25 [disclosing potentially significant impacts to aquatic species]; *see also* Section 6 of this Response re Bay-Delta issues.) As noted above, construction of new infrastructure may also impact protected species.

3. Greenhouse Gas Emissions

Lead agencies must disclose, analyze, and mitigate whether a project will generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment. (Guidelines, Appendix G, subd. VIII.) Here increased reliance on water from Northern California delivered via the State Water Project may, in turn, lead to increased generation of greenhouse gasses. There is a significant difference between the amount of energy required to pump water from Northern California (delivered via the State Water Project)

and water from the Colorado River (delivered via the Colorado River Aqueduct). Additionally, by creating a need for increased water supply (Section 6) there will be increased energy usage. None of this has been reviewed.

4. Hydrology and Water Quality

Lead agencies must disclose, analyze, and mitigate whether a project will adversely impact hydrology and water quality. (Guidelines, Appendix G, subd. X.) LAFCO must determine whether increased reliance on imported water from the State Water Project could have hydrological and water quality impacts. (See 2020 Initial Study for State Water Project at pp. 3-79 to 3-101 [disclosing potentially significant impacts to hydrology and water quality].)

5. Land Use and Planning

Lead agencies must disclose and analyze whether a project will cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. If so, a lead agency must mitigate the impacts of such a conflict. (Guidelines, Appendix G, subd. XI.) Here, the proposed detachment and annexation potentially conflict with a range of plans, policies, and regulations, including (but not limited to) Rainbow's own Urban Water Management Plan (2015), which calls for "maximiz[ing] the use of local water resources and minimiz[ing] the need to import water from other regions." (Id. at p. 31; Appendix, Exhibit "27.") Likewise, Fallbrook's Urban Water Management Plan (2015) also calls for the agency to mitigate "minimize imported water." (Id. at pp. 1-2.; Appendix, Exhibit "26.") Similarly, relevant Water Authority plans include its Urban Water Management Plan (Appendix, Exhibit "16") and Regional Water Facilities and Optimization Master Plan (2014). (Appendix, Exhibit "69.") Other relevant regional policies are included in SANDAG's San Diego FORWARD, The Regional Plan (October 2015; Appendix, Exhibit "70") and in the Regional Water Management Plan.

Among these and other plans and policies, the proposed detachments and annexations also conflict with the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), as codified at Water Code Section 85021, which states that:

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

While there are many more agencies involved in both the near and long-term management of the Delta at a statewide level, the Delta Reform Act established the Delta Stewardship Council ("Council") to create a comprehensive, long-term, legally enforceable plan ("Delta Plan") to guide how multiple federal, state, and local agencies manage the Delta's water and

environmental resources. The Act also directed the Council to oversee implementation of this plan through coordination and oversight of state and local agencies proposing to fund, carry out, and approve Delta-related activities. An excerpt from the Delta Plan, Appendix G, Achieving Reduced Reliance on the Delta and Improved Regional Self-Reliance, is found at Appendix Exhibit "47." Further discussion of potential impacts of increased reliance on Bay Delta water is contained in Section 6.

Rainbow and Fallbrook cannot escape the fact that detachment will not just change their water supplier, but will also substantially increase the use of Bay Delta water. The approximately 30,000 acre-feet per year of water the Water Authority provides to Rainbow and Fallbrook is part of a diversified portfolio of water sources in which the Bay Delta is only a small portion. If Rainbow and Fallbrook detach from the Authority, the Water Authority will still, by contract, obtain the QSA water from which some or all of the 30,000 acre-feet is being supplied to Rainbow and Fallbrook and will distribute it to the other member agencies. However, upon annexation to Eastern, Rainbow and Fallbrook would take a potential new 30,000 acre-feet supply of water from MWD via Eastern, using a supply that that is sourced more than 60 percent the State Water Project from the Bay Delta. Rainbow and Fallbrook cannot assert that the water they will receive from Eastern is the same water that it received from the Authority simply because both sources have a physical connection to MWD. This increased consumption of water, especially water from the Bay Delta, is a potentially significant impact upon the environment that is ignored by the applicants and must be studied by LAFCO.

6. Utilities and Service Systems

Lead agencies must disclose, analyze, and mitigate whether a project will require or result in the relocation or construction of new or expanded water infrastructure. (Guidelines, Appendix G, subd. XIX.) As noted above, the proposed detachment and annexation will require the construction of new, large-scale infrastructure projects to service higher elevation areas in Rainbow's southern service area during peak summertime demand periods. The applications only provide very limited, general information about potential impacts to utilities and service systems, not the actual data that would be required for LAFCO to make an informed decision.

7. Mandatory Findings of Significance

Lead agencies must disclose, analyze, and mitigate whether a project will have impacts that are individually limited, but cumulatively considerable. (Guidelines, Appendix G, subd. XXI [“Cumulatively considerable’ means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects”].) Here, the cumulative effect of successive detachments and annexations, as well as the cumulative effects of successive infrastructure enhancement and replacement projects, will have potentially significant environmental effects and those effects have not yet been reviewed or considered by any agency.

8. Direct, Indirect, and Cumulative Impacts on Other Wholesalers, Including the Water Authority

Lead agencies must also disclose impacts to other public agencies “in the vicinity of the project.” (Guidelines, § 15125, subd. (a).) Indeed, the CEQA Guidelines emphasize that “[k]nowledge of the regional setting is critical to the assessment of environmental impacts. . . .” (Id. at subd. (c).) Here, the proposed detachments and annexation will cause significant direct, indirect, and cumulative impacts on other water wholesalers in the region, including the Water Authority and Eastern Municipal Water District.

First, in addition to analyzing consistency with adopted water planning, management, and sustainability plans within Rainbow and Fallbrook’s service areas, a full and complete CEQA analysis should also analyze region-wide water management and sustainability plans that encompass areas that are managed by other adjacent agencies. (Guidelines, Appendix G, subd. XI; see also Guidelines, § 15125, subd. (d) [The EIR shall discuss any inconsistencies between the proposed project and applicable . . . regional plans]; see also discussion of regional plans above [Land Use and Planning].)

Second, abrupt changes in wholesale demand, such as those proposed by these applications within the Water Authority’s service area, may cause direct physical impacts to existing infrastructure and will likely require a reassessment of needs for potential new infrastructure (or changes to existing infrastructure) to account for changes in demand.

Third, a full and complete CEQA analysis must analyze the ways in which the proposed detachment and annexation may impact new urban development and population growth (and the concurrent need for additional water services) both within Rainbow and Fallbrook’s service areas as well as the other territory of the Water Authority and its member agencies. (See Bozung, above, [CEQA analysis should review the “answer to the question whether the proposed annexation would result in urban growth”].) At a time when San Diego County’s Regional Housing Needs Assessment (Appendix, Exhibit “71”) determined that 171,685 housing units are needed in the region between 2021 and 2029, the impacts of differential water rates on urban development and population growth distribution in San Diego County should be analyzed in connection with the proposed detachment.

The proposed detachment and annexation will likely implicate other direct, indirect, and cumulative environmental effects, and those effects must be disclosed, analyzed, and potentially mitigated within an appropriate CEQA document.

9. The Proposed Reorganizations, Detachments, and Annexations are Not Categorically Exempt Under CEQA

Rainbow and Fallbrook claim that the proposed detachments and annexations are exempt from CEQA. These assertions have no basis in fact or in law. As demonstrated above and discussed in further detail below, the proposed detachments and annexations are projects that will cause

potentially significant environmental impacts, and LAFCO must prepare an appropriate CEQA document that discloses, analyzes, and mitigates those impacts.

Under the first tier of CEQA review, agencies determine whether projects fall within a category of projects that the Legislature has expressly exempted from review (Pub. Resources Code § 21080, subds. (b)(1)–(15)), or whether projects qualify for one of the categorical exemptions (Guidelines §§ 15300–15333) the California Resources Agency has established for projects it found do not, as a general rule, have a significant effect on the environment. (§ 21084; see *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1092 [*Berkeley Hillside*].) Categorical exemptions must be construed narrowly “to afford the fullest possible environmental protection.” (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 [*Save Our Carmel River*].)

“Unlike statutorily exempt projects, which are ‘absolute’ and not subject to exceptions, categorical exemptions are subject to exceptions in the Guidelines.” (*Save Our Schools v. Barstow Unified School Dist. Bd. of Education* (2015) 240 Cal.App.4th 128, 140; see *Save the Plastic Bag Coalition v. County of Marin* (2013) 218 Cal.App.4th 209, 224; see also *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 260.) Guidelines Section 15300.2 specifies exceptions to the categorical CEQA exemptions, including:

Cumulative Impact. [Categorical exemptions] are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” (*Id.*, subd. (b).)
Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (*Id.*, subd. (c).)

If an agency finds that a project is categorically exempt from CEQA, reversal of the agency’s action is appropriate when substantial evidence fails to support that finding. (*Berkeley Hillside, supra*, 60 Cal.4th at p. 1110.) “In the CEQA context, substantial evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (Guidelines, § 15384, subd. (a).)” (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 730.) “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved. . . .” (Guidelines, § 15064, subd. (b).) *Berkeley Hillside* confirms that CEQA’s procedures for exempting projects do not supersede the fundamental rule that an EIR is required “ ‘[i]f there is substantial evidence . . . that the project may have a significant effect on the environment.’ ” (60 Cal.4th at 1098, citing Pub. Resources Code § 21080, subd. (d).)

Furthermore, the plain language of Public Resources Code Section 21083 confirms that a project is not exempt from CEQA when its effects trigger CEQA’s mandatory findings of significance. CEQA and the Guidelines require a lead agency to find that a project may have a significant effect on the environment when “[t]he possible effects of a project are individually

limited but cumulatively considerable”; or when “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” (Pub. Resources Code, § 21083, subd. (b)(2) & (3); Guidelines, § 15065, subd. (a)(3) & (4); *see California Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 386.)

The Water Authority has presented in this Response and the accompanying documents substantial evidence that the detachments and annexations may have a significant effect on the environment. Therefore, unless LAFCO can mitigate those environmental impacts so that they are no longer significant, LAFCO will need to prepare an EIR. At the very least, once all responses are filed, LAFCO should prepare an initial study to determine the extent and severity of potentially significant environmental effects.

10. A Class 20 Exemption Is Facially Inapplicable to the Proposed Detachments and Annexations

Rainbow and Fallbrook have argued, in part, that the proposed detachments and annexations are categorically exempt from CEQA per State CEQA Guidelines Section 15320 [the “Class 20 exemption”]. That exemption applies to projects that consist of “changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised.” (Guidelines, § 15320; emphasis added.)

By its own terms, the Class 20 exemption does not apply to the proposed detachments and annexations. By seeking detachment from the Water Authority and annexation by the Riverside County-based Eastern, Rainbow and Fallbrook will change the geographic areas in which the Authority, by subtraction, and Eastern, by addition, exercise their powers. This is a key point, since the proposed detachments and annexations will cause Rainbow and Fallbrook territory to be subject to new policies and standards concerning the management of one of our state’s most valuable ecological resources: potable water. As described above, it is imperative that LAFCO conduct an independent review of all relevant facts and regional policies in order to accurately disclose, analyze, and mitigate the ways in which MWD and Eastern/Riverside County water supply and other policies (such as policies relating to property tax rates) may adversely affect the physical environment and people who live in the affected districts and the rest of San Diego County.

None of the examples contained in Section 15320 are relevant here because none of them involve circumstances where a district loses jurisdiction over a specific territory:

“Establishment of a subsidiary district:”

“Consolidation of two or more districts having identical powers:”

“Merger with a city of a district lying entirely within the boundaries of the city.”

Unlike the above examples listed in Guidelines Section 15320, the Water Authority and San Diego County will experience a change in the geographic area in which previously existing powers were exercised. This fact alone renders Guidelines Section 15320 facially inapplicable to

Rainbow and Fallbrook's proposed detachments and annexations. None of the Class 20 examples in the CEQA Guidelines apply to this Project. These detachments and annexations do not create a subsidiary district, consolidate districts with identical powers, or provide for a merger of a district into a city which encompasses it. Instead, the Project seeks detachment of two districts from a county water authority that encompasses both of them, and their annexation into an entity located in a different county than the detaching entities. By seeking detachment from the Authority and annexation by the Riverside County-based Eastern, Rainbow and Fallbrook will change the geographical areas in which the Authority, by subtraction, and Eastern, by addition, exercise their powers. If Rainbow and Fallbrook are detached, the Authority will no longer exercise its powers within the boundaries of these two districts, and Eastern will have the new right to exercise its powers within the boundaries of these two districts. This Project is not a mere consolidation, creation of a new subsidiary district, or a merger. The Class 20 exemption is facially inapplicable to the Project, and there is no factual evidence to support any determination that the Project is exempt from a full CEQA analysis.

11. The Proposed Detachments and Annexations Will Have a Significant Effect on the Environment Due to Unusual Circumstances

Even without considering the unsuitability of the Category 20 exemption to Rainbow and Fallbrook, there are unusual circumstances that distinguish the proposed detachment and annexation from other "changes in the organization or reorganization of local governmental agencies." (See Guidelines, § 15320.)

Categorical exemptions are also inapplicable if an exception to the exemption applies to the projects. This exception applies where a reasonable possibility exists that the project may have significant impacts because of unusual circumstances. (CEQA Guidelines § 15300.2(c).) An "unusual circumstance" is some feature of the project which distinguishes it from others in the exempt class. (*Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1105-1106.)

The Project will impact the environment in ways not previously considered by Rainbow or Fallbrook. Rainbow has conceded, for example, in its "Supplemental Information Package for Reorganization Application," that the detachment and annexation will require it to accelerate the construction of "improvement projects" for which the cost estimates total \$10-\$15 million. (See pp. 5-6.) Although these projects are generally described in that package as necessary to serve some higher elevation areas in the southern part of Rainbow's service area, no substantial details or environmental analysis was identified with respect to these projects. Among these projects is construction that will provide service to an area of "new development," but there is no consideration of potential impacts regarding future development at that location or elsewhere. Rainbow has not disclosed any analysis of the impacts of construction, operation or growth inducement, among other potential environmental impacts, regarding these projects.

Neither Rainbow nor Fallbrook has apparently undertaken or presented any environmental analysis of the potential cumulative impacts of their simultaneous detachments and annexations. The existence of these potential impacts is an unusual circumstance for projects covered by the Class 20 exemption. Importantly, the Project may also increase the reliance of Fallbrook and Rainbow upon water imported from the Bay-Delta, a unique ecosystem, in direct contradiction to the Delta Reform Act (Water Code § 85000, et seq.)(See also, Section 6.) By moving to complete reliance on imported water from a wholesaler which has high dependence on the Bay-Delta (MWD), and away from a wholesaler that has a much lower reliance on Bay-Delta water (the Water Authority), there is a likelihood of overall increased Bay-Delta reliance. Neither Fallbrook nor Rainbow provided a full analysis of this issue, and LAFCO must do so.

These types of impacts are not part of the usual “reorganization” project covered by Class 20, and constitute “unusual circumstances” under CEQA Guidelines Section 15300.2(c). First of all, it is extremely uncommon (if not unprecedented) for a member agency to detach from a statutory water wholesaler created for the express purpose of meeting its supplemental water supply needs. Because there is no precedent for analyzing the long-term environmental effects of detachments such as those that are now proposed, LAFCO should proceed with caution and conduct more environmental review, not less.

Second, unlike other government reorganizations, the proposed detachments and annexations will require the construction of new infrastructure, including new pipelines, pumping facilities, and water mains that will be needed to serve customers in the southern portion of Rainbow’s service area.

Third, the unique composition of customers and water uses within Rainbow and Fallbrook’s boundaries necessitates an individualized, in-depth assessment of the ways in which those unique features may facilitate the emergence of significant environmental effects. Indeed, in the Supplemental Information Package submitted along with Rainbow’s application (at p.2), Rainbow notes that “The District is unique in San Diego County” because of the orientation and composition of existing aqueducts within its boundaries. In its own application (at p.2), Fallbrook also calls its service area “unique.” Clearly, the definition of what is and should be considered “unique” for these purposes requires a more detailed review and deliberation by LAFCO.

Because these circumstances of the Project are unusual, the exception prevents use of the Class 20 Exemption so long as substantial evidence exists in the record to support a “fair argument” that the “exempt” project has a “reasonable probability” of creating a significant environmental impact as a result of the unusual circumstances. (*Berkeley Hillside*, 60 Cal. 4th at 1115; *Respect Life S. San Francisco v. City of S. San Francisco* (2017) 15 Cal.App.5th 449, 458). The unusual circumstances described above have a reasonable probability of creating significant environmental impacts, both direct and indirect. Substantial evidence has been shown to support a fair argument that such impacts are reasonably probable. Therefore, the Class 20 exemption cannot apply, and LAFCO must produce an EIR to perform a full environmental analysis of the Project.

