

May 22, 2023

Chair Jim Desmond
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

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

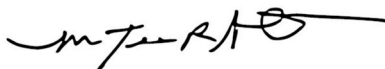
Dear Chair Desmond,

The Carlsbad Municipal Water District (CMWD) wants to thank the San Diego Local Agency Formation Agency (SDLAFCO) for the thorough analysis of the proposed reorganization of Rainbow Municipal Water District (Rainbow) and Fallbrook Public Utility District (Fallbrook) wholesale water services presented in the June 5, 2023, Agenda Report, and its attachments.

CMWD opposes any action by SDLAFCO that would increase its costs in the short or long term. The report indicates that the Rainbow and Fallbrook exit fee mitigates the impact on CMWD and other member agencies over the next five years, which is acceptable. However, CMWD is very concerned with the long-term consequences of the possible detachments in combination with the larger impending roll-offs of the San Diego County Water Authority (Water Authority) member agencies with local supply projects that will be completed over the next decade. While roll-offs are different than detachment, these roll-offs will significantly decrease water demands on the Water Authority.

CMWD asks SDLAFCO to choose Option 3 and administratively hold consideration of the reorganization proposals until completion of the Commission’s scheduled municipal service review covering the Water Authority. Considering the reorganization proposals in conjunction with completing a holistic assessment of wholesale water supply and demand issues in San Diego County will benefit every Water Authority member agency and the region as a whole. While we recommend considering the Water Authority municipal service review before making a decision on the reorganization, we urge SDLAFCO to begin the Water Authority municipal service review as soon as possible and take a deep dive into the water supply and demand challenges facing the San Diego region as soon as possible.

Sincerely,



Teresa Acosta
CMWD Board of Directors

Chair Jim Desmond

May 22, 2023

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cc: CMWD Board of Directors

Cindie McMahon, General Counsel

Scott Chadwick, Executive Manager

Paz Gomez, Deputy City Manager, Public Works

Vicki Quiram, General Manager

Jason Haber, Intergovernmental Affairs Director

Keene Simonds, LAFCO Executive Officer, San Diego County

David J. Edwards, General Counsel, San Diego County Water Authority

RECEIVED

JUL 03 2023

SAN DIEGO LAFCO

Lafco (Meeting)
1600 Pacific Coast Hwy
San Diego, CA

6-30-23

Re: Meeting July 10, 2023
Fallbrook Detachment vote

As a resident of Fallbrook & a
member of the Farm Bureau.
Only residents of Fallbrook and
Rainbow should be able to
vote on detachment from
San Diego County Water Authority.

We are an agricultural area
& have special needs as such.
The vote should not be
County wide.

Gail Lindstrom
Sweetbriar Gardens
Farm Bureau Member
Resident of Fallbrook



Gail Lindstrom
2187 Gracey Ln.
Fallbrook CA 92028-8836

I participate in writing
for meeting on July 10

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

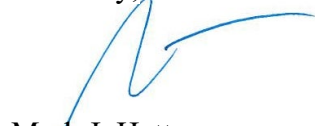
MEMBER AGENCIES

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



VALLEY CENTER MUNICIPAL WATER DISTRICT

A Public Agency Organized July 12, 1954

BOARD OF DIRECTORS

Robert A. Polito
President
Enrico P. Ferro
Vice President
Daniel E. Holtz
Director
Oliver J. Smith
Director
Cooper T. Ness
Director

July 3, 2023

Via E-Mail

Keene Simmonds, Executive Officer and LAFCO Commissioners
San Diego County Local Agency Formation Commission
2250 Fifth Avenue, Suite 725
San Diego, CA 92103
keene.simmonds@sdcounty.ca.gov

Re: Fallbrook/Rainbow Proposed Reorganization

Dear Commissioners and Mr. Simmonds;

As is currently scheduled, San Diego LAFCO will again be considering the application for detachment by the Fallbrook Public Utility District and the Rainbow Municipal Water District on Monday, July 10, 2023. As you consider these applications, Valley Center Municipal Water District would like to reiterate its position on the detachments recently in a letter dated May 19, 2023 (*copy attached*).

Like Fallbrook and Rainbow, Valley Center still has a large segment of its annual water demand going to commercial agriculture, roughly 60%. We too understand the pressures our growers are under, the most significant being the cost of water. Despite the efforts of the San Diego County Water Authority (SDCWA) to control costs and provide the Permanent Special Agricultural Water Rate (PSAWR) price differential, we all see commercial agriculture declining in our districts and North San Diego County as a whole.

While we can understand and be sympathetic to the efforts of Fallbrook and Rainbow to seek an alternate, lower-cost water supply for their customers, we also understand the negative impact the detachment would have on our commercial agriculture customers. As such, we must reiterate our previous support of SDCWA Resolution No. 2020-06 (*copy attached*) setting forth the conditions under which the SDCWA and Valley Center MWD could support the detachments. In essence, the detachments should not result in any negative significant financial impact on its customers to add to the anticipated pressures of general cost increases and future member agency roll-off.

As stated in the May 19, 2020 letter, "We trust that LAFCO...(will) impose terms and conditions which serve to minimize the negative financial impact the detachments will have on the SDCWA and the balance of its member agencies."

Sincerely,

Gary Arant
General Manager and VCMWD Representative to the SDCWA Board of Directors

Cc: May 19, 2023 Letter to Keene Simmonds
SDCWA Resolution No. 2020-06



VALLEY CENTER MUNICIPAL WATER DISTRICT

A Public Agency Organized July 12, 1954

BOARD OF DIRECTORS

Robert A. Polito
President
Enrico P. Ferro
Vice President
Daniel E. Holtz
Director
Oliver J. Smith
Director
Cooper T. Ness
Director

May 19, 2023

Keene Simonds, *Executive Director*
San Diego LAFCO
9335 Hazard Way, Suite 200
San Diego, CA 92123

Subject: Fallbrook Public Utility District / Rainbow Municipal Water District Detachment from the San Diego County Water Authority

Dear Keene,

In May 2020, the Valley Center Municipal Water District voted to support all of the conditions of approval for the proposed detachment of Fallbrook Public Utility District and the Rainbow Municipal Water District, as set forth in the San Diego County Water Authority Resolution No. 2020-06 (certified copy attached).

Our position on the proposed detachment is still the same three years later.

As a predominantly agricultural agency in North San Diego County, we understand the negative impact rapidly increasing water rates are having on commercial agriculture as well as the motivation of Fallbrook and Rainbow to seek a lower-cost alternative supply. However, we also understand that as these agencies seek solutions for their customers, water costs will certainly increase for our customers, compounding the problems with which our agency is dealing. These cost increases along with those we anticipate from the impending roll-off of SDCWA Member Agencies having developed significant local supplies, can only hasten the negative financial impact on our local agricultural community.

After over three years in the process, the issue is scheduled to go to the San Diego Local Agency Formation Organization in early June. We must trust in LAFCO, if indeed it does approve the detachments, to conduct a fair and open process to impose terms and conditions which serve to minimize the negative financial impact the detachments will have on the SDCWA and the balance of its member agencies.

Whatever the outcome of the detachment process, it is clear that it is time for the SDCWA to make a serious evaluation of its cost structure and the balance between fixed costs/variable costs and fixed costs/fixed revenues to deal with future negative impacts of agency roll-off on its financial future.

Sincerely;

Gary T. Arant

Valley Center Municipal Water District *General Manager, and*
San Diego County Water Authority *Member Board of Directors*

Attachment: SDCWA Resolution No. 2020-06

RESOLUTION NO. 2020-06

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN DIEGO COUNTY WATER AUTHORITY ADDRESSING
POTENTIAL DETACHMENT OF FALLBROOK PUBLIC
UTILITIES DISTRICT AND RAINBOW MUNICIPAL WATER
DISTRICT AND ANNEXATION OF THOSE DISTRICTS INTO
EASTERN MUNICIPAL WATER DISTRICT-06**

The San Diego County Water Authority (“**Water Authority**”) is a county water authority established in 1944 under the County Water Authority Act (“**Act**”), that has provided water to its member agencies throughout San Diego County since World War II.

The Fallbrook Public Utilities District (“**Fallbrook**”) was a founding member agency of the Water Authority in 1944 and Rainbow Municipal Water District (“**Rainbow**”) has been a member agency of the Water Authority since 1954.

In March 2020, Fallbrook and Rainbow filed applications with the San Diego County Local Agency Formation Commission (“**San Diego LAFCO**”) seeking detachment from the Water Authority and annexation into Riverside County’s Eastern Municipal Water District.

The proposed detachment will affect water users and ratepayers in Fallbrook and Rainbow, as well as other member agencies and their ratepayers throughout the County of San Diego.

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

1. Given the significant and unprecedented nature of the proposed detachments, and in order to protect ratepayers in Rainbow, Fallbrook, and the remainder of the Water Authority’s service area, the Water Authority recommends that San Diego LAFCO conduct a comprehensive evaluation of the impacts of the detachment proposals, including financial, water supply reliability, governmental, and environmental impacts, and ensure that the public and all affected agencies have a meaningful and balanced opportunity to engage in the evaluation process.

2. Given the Water Authority’s obligation to provide an adequate, reliable, and affordable source of water for all of San Diego County, the Water Authority will oppose detachment by Rainbow and Fallbrook unless:

a. It can be determined by what means Rainbow and Fallbrook can guarantee that all obligations as promised to their own ratepayers are met;

b. It can be demonstrated that detachment will not adversely affect other Water Authority member agencies and San Diego County as a region financially or environmentally;

c. It can be demonstrated that detachment and then annexation into Riverside County’s Eastern Municipal Water District will not increase reliance on the Bay-Delta; and

d. It can be demonstrated that detachment will not result in a diminution of the Water Authority's voting power at MWD to represent the interests of all San Diego County ratepayers and property owners.

PASSED, APPROVED, and ADOPTED this 28th day of May, 2020 by the following vote:


AYES:	Unless noted below all Directors voted aye.
NOES:	Bebee and Kennedy.
ABSTAIN:	None.
RECUSAL:	Ayala and Cate.
ABSENT:	Boyle, Simpson, Steiner, and Preciado (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. 2020- 06 was duly adopted at the meeting of the Board of Directors on the date stated above.


Melinda Nelson, Clerk of the Board

Preliminary Financial Impact Analysis | De-Annexation

August 2019

Given the potential Rainbow Municipal Water District (RMWD) and Fallbrook Public Utility District (FPUD) de-annexation from the San Diego County Water Authority, Water Authority staff performed a preliminary financial assessment to determine an initial order-of-magnitude financial impact. This high-level analysis calculates the potential net revenue loss and re-allocation of costs to remaining member agencies to meet necessary annual revenue requirements.

To provide a baseline estimate, the preliminary analysis uses a mix of FY 2018 actual data and CY 2020 adopted rates and charges, which reflects the best available data at this time. The values and impacts presented herein reflect a reasonable 1-yr estimate. It is important to note that the estimated impact is likely to fluctuate year-to-year based on updated assumptions, financials, and demands.

Table 1 defines the forecasted financial (revenue and expenditure) impacts related to RMWD and FPUD.

Table 1: Preliminary De-Annexation Net Impact

	Forecasted Impact (\$)
Anticipated Avoided Costs	
Avoided Supply Purchases	\$22,268,000
Avoided Treatment Expense	\$9,526,600
Avoided SDCWA O&M	\$0
Total Avoided Costs	\$31,794,600
Anticipated Revenue Loss	
Supply Reliability Charge	\$1,594,400
Customer Service Charge	\$1,691,700
Storage Charge	\$2,787,700
Infrastructure Access Charge	\$1,165,700
Melded Supply Rate	\$25,391,300
Melded Treatment Rate	\$8,258,300
Transportation Rate	\$1,292,800
Other Revenue (1)	\$2,979,800
Total Anticipated Revenue	\$45,161,700
Net Impact	-\$13,367,100
<i>(Avoided Expense - Revenue Loss)</i>	
(1) Includes Property Tax, Standby Charge, and Capacity Fees (FY 2018)	

Table 2 provides a break down of revenues by rate component (fixed, transportation, melded supply, and melded treatment) and reflects the projected revenue loss based on Rainbow and Fallbrook's specific use of the system and benefit of the SAWR program and that not all deliveries are subject to the Water Authority's Transportation Rate. For simplicity, the Melded Treatment Impact was allocated over total deliveries (not just treated).

Table 2: Revenue Impact by Rate Category

Fixed Charge Impact	CY2020
Revenue Loss (from Table 1)	\$7,239,552
Transportation Rate Impact	
Revenue Loss	\$1,292,800
CY 2020 Deliveries (less R&F)	367,819
Rate Impact	\$3.51
Melded Supply Impact	
Revenue Loss (Supply)	\$3,123,300
Revenue Loss (Other Revenues)	\$2,979,800
CY 2020 Deliveries (less R&F)	367,819
Rate Impact	\$16.59
Melded Treatment Impact	
Revenue Loss	(\$1,268,200)
CY 2020 Deliveries (less R&F)	367,819
Rate impact	(\$3.45)
Variable Rate Impact	
Transportation Rate	\$3.51
Melded Supply Rate	\$16.59
Treatment Rate	(\$3.45)
Total Volumetric Rate Impact	\$16.66

The Net Impact (Table 1) and Total Revenue Recovery (Table 3) do not match, due to the use of different delivery assumptions (CY 2020 vs FY 2018) throughout. In addition, the values presented in Table 3 reflect the use of FY 2018 Actuals for "Other Revenues" rather than an initial staff input. As such, these values are lower by \$37,847 than from delivered impacts (provided on 8/5/2019). Some of the difference also reflects the use of non-rounded values.

Table 3: Estimated Recovery of Net Impact (De-Annexation)

	Supply Reliability Charge	Customer Service Charge	Storage Charge	IAC	Estimated Fixed Charge Impact	FY 2018 Deliveries (AF)	Est. Variable Impact (AF * \$16.66)	Total Estimated Impact (Fixed + Variable)
Carlsbad M.W.D.	\$59,164	\$57,510	\$100,517	\$47,104	\$264,295	16,032	\$267,873	\$531,378
Del Mar, City of	\$3,999	\$4,274	\$7,471	\$3,234	\$18,979	1,078	\$18,012	\$36,938
Escondido, City of	\$69,358	\$78,315	\$120,848	\$45,932	\$314,453	7,869	\$131,480	\$445,545
Fallbrook P.U.D.	\$0	\$0	\$0	\$0	\$0	N/A	\$0	\$0
Helix W.D.	\$114,229	\$111,392	\$194,690	\$84,672	\$504,983	25,913	\$432,971	\$936,678
Lakeside W.D.	\$11,635	\$11,449	\$20,010	\$10,754	\$53,848	2,836	\$47,386	\$101,094
Oceanside, City of	\$88,210	\$93,010	\$160,295	\$74,551	\$416,067	22,510	\$376,112	\$791,070
Olivenhain M.W.D.	\$75,803	\$77,583	\$134,915	\$36,672	\$324,973	19,423	\$324,532	\$648,548
Otay W.D.	\$117,569	\$120,429	\$210,484	\$77,746	\$526,227	29,638	\$495,211	\$1,019,978
Padre Dam M.W.D.	\$39,888	\$41,488	\$71,141	\$34,832	\$187,349	10,332	\$172,634	\$359,474
Pendleton Military Reserve	\$240	\$288	\$502	\$0	\$1,030	84	\$1,404	\$2,429
Poway, City of	\$40,846	\$39,414	\$68,622	\$22,130	\$171,012	10,316	\$172,366	\$342,870
Rainbow M.W.D.	\$0	\$0	\$0	\$0	\$0	N/A	\$0	\$0
Ramona M.W.D.	\$17,832	\$21,982	\$30,389	\$13,341	\$83,544	5,379	\$89,876	\$173,154
Rincon Del Diablo M.W.D.	\$22,211	\$22,251	\$38,696	\$13,098	\$96,257	5,468	\$91,363	\$187,350
San Diego, City of	\$686,275	\$694,117	\$1,211,896	\$510,938	\$3,103,225	155,923	\$2,597,581	\$5,700,807
San Dieguito W.D.	\$17,597	\$15,369	\$26,861	\$19,539	\$79,365	2,660	\$44,445	\$123,679
Santa Fe I.D.	\$32,280	\$28,384	\$49,609	\$13,651	\$123,924	5,818	\$97,211	\$220,848
Sweetwater Authority	\$44,661	\$41,472	\$72,485	\$55,901	\$214,519	1,735	\$28,990	\$243,423
Vailcitos W.D.	\$52,276	\$53,599	\$87,412	\$35,275	\$228,561	16,168	\$270,145	\$497,910
Vailey Center M.W.D.	\$31,614	\$91,490	\$56,181	\$19,048	\$198,332	22,526	\$376,379	\$573,601
Vista I.D.	\$64,287	\$66,589	\$116,011	\$46,525	\$293,412	2,530	\$42,273	\$335,560
Yulma M.W.D.	\$3,848	\$20,829	\$8,712	\$784	\$34,172	6,088	\$101,722	\$135,594
South Coast W.D.	\$558	\$466	N/A	N/A	\$1,025	-	\$0	\$1,025
Total	\$1,594,380	\$1,691,700	\$2,787,744	\$1,165,728	\$7,239,552	370,326	\$6,169,404	\$13,408,953

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 again preparing to hear the applications for the Fallbrook/Rainbow reorganizations on July 10. This letter from the Water Authority is provided to update you on two important financial matters determined by our staff.

First, as to the exit fee issue, your staff has recommended using lost revenue figures from Dr. Michael Hanemann for a proposed exit fee. You are well aware that the Water Authority does not agree with all the numbers calculated or methods, nor with staff's attempt to use a lower net lost revenue amount rather than Dr. Hanemann's substantially higher exit fee, and to also then use only five years instead of the up-to 10 years he felt was reasonable. However, the numbers used by LAFCO staff are also now years old and based on demonstrably wrong projections and thus should not be currently relied upon. The issue of using out-of-date numbers was called out some time ago in your Advisory Committee meeting on August 11, 2022, by member Kim Thomer, who stated: "[It] would be a simple calculation that LAFCO staff could do to maybe true up those numbers to today's dollars whenever they do take it to the Commission." See [Advisory Committee on Rainbow-Fallbrook Meeting - August 11, 2022 - YouTube](#) at 41:25.

Staff has not yet issued such an update, though it is necessary. Our staff has done this analysis and provides it to the Commission with this letter (see attached). Our staff took all of Dr. Hanemann's numbers from his 2021 report (2022 adopted rates and estimated CY 2022 demands) and trueed them up to today's status (2024 adopted rates and *actual* CY 2022 demands). The end result is clear and meaningful: Dr. Hanemann's 2021 annual number of \$12.58 million which staff is using in its recommendation is now actually \$18.90 million for a potential 2024 detachment. Without a proper true-up, LAFCO is proposing to shortchange the proposed detachment fee by over 50%. We believe this is critical information for your consideration.

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
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Additionally, the Commission requested two additional analyses regarding the proposed exit fee: the effects of longer exit fee (7 to 10 years), and application of an ESP pump station credit. As to the first, using the trued-up net-revenue impact, Water Authority finance staff calculated the requested scenarios (which are also attached). A trued-up exit fee (without ESP offset) would be as follows: \$132 million at 7 years; \$151.2 million at 8 years; \$170.1 million at 9 years; and, \$189.0 million at a full 10 years. As to a potential credit for the future ESP North County Pump Station, while LAFCO staff proposes a full credit of \$38.6 million for the yet to be built facility, Water Authority Finance staff estimated the annual debt service payment to be \$2.5 million. Because the Water Authority does not have \$38.6 million in its PAYGO fund, construction of the project would necessitate future debt funding. This matches industry funding and cost of service standards for new facilities. Thus, the number of years for an exit fee would be reduced by ESP offset of \$2.5 million per year; i.e., a 10-year exit fee would be reduced by \$25 million, etc. In other words, the offset should match the exit fee years allowed.

Second, we spelled out to LAFCO in our 2020 detailed response that the Water Authority has various facilities and infrastructure that will require meaningful engineering costs to address if a detachment were to be granted. Our Engineering Department prepared a lengthy analysis for LAFCO that was presented on pages 103-123 of our Response in 2020. The cost estimate in August 2020 dollars was \$3,936,000 (Response, p.123). Based on CPI data provided by the Bureau of Labor Statistics, our finance staff estimates that would be approximately \$4,620,000 in today's dollars (May 2023). Without full compensation for these facilities, our legal team concurrently by separate letter informs LAFCO that it and Eastern will violate Cal Pub. Util. Code § 1503 and Cal. Pub. Util. Code § 1505.5. LAFCO must include compensation for such facilities or it and Eastern will be responsible for a taking without compensation. We have raised this engineering issue to your staff repeatedly over the years, all with no response.

Thank you in advance for your review of the above issues. If you have any questions, please let me know and I will be happy to arrange for our staff to discuss these issues with LAFCO.

Sincerely,



Dan Denham
Acting General Manager

Attachments

cc via email:

Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator
David Edwards, General Counsel, San Diego County Water Authority
Mark Hattam, Special Counsel, San Diego County Water Authority

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July 3, 2023
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Claire Collins, Special Counsel, San Diego County Water Authority
Pierce Rossum, Rate and Debt Manager, 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
San Diego County Water Authority Board of Directors
Eastern Municipal Water District Board of Directors
Dr. Michael Hanemann

Attachment #1 – True-Up of Dr. Hanemann’s 2021 Calculations

The following tables make three critical updates to Dr. Hanemann’s 2021 calculations, using his same methodology: First, earlier estimated demands for calendar year 2022 have been replaced with actual demands. Dr. Hanemann expressed the challenges with forecasting the future and he was correct, demonstrating the need to use real, actual data now available. Second, the then future 2022 rates have been updated to reflect the already enacted 2024 rates and charges. Last, the “Other Revenues” have also been updated to reflect FY ’22 actual number, rather than Dr. Hanemann’s earlier estimates.

Table 16 of the 2021 Hanemann Report details the “revenue reduction” expected by the detachments of Fallbrook and Rainbow. For comparison purposes, two columns have been added to detail the change in dollars and as a percentage basis. Not only did the actuals acre-feet increase by 32% (matching Fallbrook and Rainbow’s 3yr and 5yr averages), but the mix of those sales were significantly weighted to M&I rather than the estimated “AG” (PSAWR) water which purportedly has been the focus of the detachment. The net result is an 47% increase to the revenue reduction.

Table 16 - With True-Up

SDCWA Revenue Reduction									
	Adopted CY 2024 Rate	FPUD AF	FPUD Revenue	RMWD AF	RMWD Revenue	Combined AF	Combined Revenue	\$ Change	% Change
M&I Water Supply									
Water Supply	\$1,200	5,808	\$6,969,600	12,536	\$15,043,080	18,344	\$22,012,680	\$11,418,180	108%
Transportation	\$189	-	\$0	11,118	\$2,101,208	11,118	\$2,101,208	\$1,686,008	406%
Treatment	\$400	5,808	\$2,323,200	12,536	\$5,014,360	18,344	\$7,337,560	\$4,082,560	125%
AG Water Supply									
Water Supply	\$903	1,312	\$1,184,465	4,253	\$3,840,820	5,565	\$5,025,285	(\$1,047,115)	-17%
Transportation	\$189	-	\$0	-	\$0	-	\$0	(\$1,314,800)	-100%
Treatment	\$400	1,312	\$524,680	4,253	\$1,701,360	5,565	\$2,226,040	(\$129,960)	-6%
Subtotal - Volumetric			\$11,001,945		\$27,700,828		\$38,702,773	\$14,694,873	61%
Customer Service Charge			\$578,390		\$1,144,874		\$1,723,264	\$103,852	6%
Storage Charge			\$1,071,929		\$1,727,199		\$2,799,128	\$185,780	7%
Supply Reliability Charge			\$746,541		\$1,157,325		\$1,903,866	\$242,106	15%
Infrastructure Access Charge			\$622,021		\$792,953		\$1,414,974	\$53,874	4%
Subtotal - Fixed Charges			\$3,018,881		\$4,822,351		\$7,841,232	\$585,612	8%
Subtotal Charges Paid by Member Agency			\$14,020,826		\$32,523,179		\$46,544,005	\$15,280,485	49%
Other Revenues									
Property Taxes			\$178,502		\$215,118		\$393,620	\$43,620	12%
Availability Standby Charge			\$290,064		\$479,744		\$769,808	\$48,498	7%
Capacity Charges			\$116,905		\$1,102,714		\$1,219,619	\$285,181	31%
Total Without Property Tax			\$14,427,795		\$34,105,637		\$48,533,432	\$15,614,164	47%
Total With Property Tax			\$14,606,297		\$34,320,755		\$48,927,052	\$15,657,784	47%

Table 18 of the 2021 Hanemann Report details the "expenditure reduction" expected from the detachments of Fallbrook and Rainbow. For comparison purposes, two columns have been added to detail the change in dollars and as a percentage basis. Along with the higher demands, the expenditure reduction also increases between 44% and 44%.

Table 18 - With True-Up

SDCWA Expenditures Reduction CY 2022

CY 2024	FPUD		RMWD		Combined		\$ Change	% Change	
	AF	Expenditure	AF	Revenue	AF	Expenditure			
M-Water, Full Service Tier 1, Trd	\$1,256	7,120	\$8,942,343	16,789	\$21,087,361	23,909	\$30,029,704	\$9,341,404	45%
MWD RTS Charge - Short Run	\$0	7,120	\$0	16,789	\$0	23,909	\$0	\$0	n/a
MWD RTS Charge - Long Run	\$88	7,120	\$626,534	16,789	\$1,477,458	23,909	\$2,103,992	\$511,192	32%
Total Reduction - Short Run	\$1,256	7,120	\$8,942,343	16,789	\$21,087,361	23,909	\$30,029,704	\$9,341,404	45%
Total Reduction - Long Run	\$1,344	7,120	\$9,568,877	16,789	\$22,564,819	23,909	\$32,133,696	\$9,852,596	44%

Finally, Table 19 of the 2021 Hanemann Report details the "net revenue reduction" expected from the detachments of Fallbrook and Rainbow. For comparison purposes, two columns have been added to detail the change in dollars and as a percentage basis. Focusing on the change in net revenue (short run with property tax loss), which is used by LAFCO staff, a true-up results in a \$6,316,380 increase to the annual impact. Thus, there is a 50% increase using actual rather than projected water sales and updated Water Authority rates and charges.

Table 19 - With True Up

SDCWA Net Revenue Impact CY 2022

	FPUD	RMWD	Combined	\$ Change	% Change
Reduction in Revenue					
Without Property Tax Loss	\$14,427,795	\$34,105,637	\$48,533,432	\$15,614,164	47%
With Property Tax Loss	\$14,606,297	\$34,320,755	\$48,927,052	\$15,657,784	47%
Reduction in Expenditure					
Short-Run	\$8,942,343	\$21,087,361	\$30,029,704	\$9,341,404	45%
Long-Run	\$9,568,877	\$22,564,819	\$32,133,696	\$9,852,596	44%
Change in Net Revenue					
Short-Run					
Without Property Tax Loss	\$5,485,451	\$13,018,276	\$18,503,728	\$6,272,760	51%
With Property Tax Loss	\$5,663,954	\$13,233,394	\$18,897,348	\$6,316,380	50%
Long Run					
Without Property Tax Loss	\$4,858,918	\$11,540,818	\$16,399,736	\$5,761,568	54%
With Property Tax Loss	\$5,037,420	\$11,755,936	\$16,793,356	\$5,805,188	53%

Attachment #2 – Exit Fee Scenarios

The following tables address the Commission’s request for additional analysis and evaluation of the LAFCO staff’s recommended 5yr, \$24.3 million exit fee. Water Authority staff has utilized both LAFCO staff’s use of Dr. Hanemann’s outdated 2021 Net Revenue Impact as well as the True-Up value presented in attachment #1. Without a fair and appropriate exit fee, the LAFCO commission will shift as much as \$140 million to remaining rate payers over just the first 10-year period.

Below are LAFCO staff’s recommendation as well as the analysis of adding either two or five years to the currently proposed 5-year exit fee. Under this approach, the value of the ESP credit remains fixed at the full amount, with the net amount only changing based on years of net revenue impact.

	LAFCO Staff Recommendation	7 Years (LAFCO + 2 years)	10 Years (LAFCO + 5 years)
Exit Fee			
Annual Cost	\$12,580,964	\$12,580,964	\$12,580,964
Term (yrs.)	5	7	10
Total Exit Fee	\$62,904,820	\$88,066,748	\$125,809,640
ESP Adjustment			
Annual Cost	\$38,600,000	\$38,600,000	\$38,600,000
Term (yrs.)	n/a	n/a	n/a
Total Adjustment	\$38,600,000	\$38,600,000	\$38,600,000
Net Total	\$24,304,820	\$49,466,748	\$87,209,640
Net Annual	\$4,860,964	\$7,066,678	\$8,720,964

The tables below show the results of replacing the outdated numbers with the new true-up values from Attachment 1. This maintains the approach of providing the full ESP credit. In all cases it results in an annual increase of \$6.3 million over LAFCO staff’s recommendation.

	5yr True-Up (Full ESP)	7r True-Up (Full ESP)	10yr True-Up (Full ESP)
Exit Fee			
Annual Cost	\$18,897,348	\$18,897,348	\$18,897,348
Term (yrs.)	5	7	10
Total Exit Fee	\$94,486,739	\$132,281,435	\$188,973,479
ESP Adjustment			
Annual Cost	\$38,600,000	\$38,600,000	\$38,600,000
Term (yrs.)	n/a	n/a	n/a
Total Adjustment	\$38,600,000	\$38,600,000	\$38,600,000
Net Total	\$55,886,739	\$93,681,435	\$150,373,479
Net Annual	\$11,177,348	\$13,383,062	\$15,037,348

Finally, the Water Authority evaluated an alternative and cost-of-service based approach to providing a full credit for the ESP project. The project would not be funded with cash (as insufficient cash is available), thus providing a full credit is inconsistent with cost of service and industry standard capital funding approaches. Instead, the Water Authority considered an approach that scales with the selected term of the "exit fee" and is valued at the associated annual debt service cost of the project (30yr bond issuance at 5% rate). As detailed below, the total provided adjustment for the ESP project more appropriately reflects the value of avoiding construction of the new facility. The value only would reflect the full project value at the end of the 30-year life of the asset (and bond issue).

	5yr True Up + 5yr ESP Credit	7yr True Up + 7yr ESP Credit	10yr True Up + 10yr ESP Credit
Exit Fee			
Annual Cost	\$18,897,348	\$18,897,348	\$18,897,348
Term (yrs.)	5	7	10
Total Exit Fee	\$94,486,739	\$132,281,435	\$188,973,479
ESP Adjustment			
Annual Cost	\$2,510,985	\$2,510,985	\$2,510,985
Term (yrs.)	5	7	10
Total Adjustment	\$12,554,927	\$17,576,898	\$25,109,854
Net Total	\$81,931,812	\$114,704,537	\$163,863,625
Net Annual	\$16,386,362	\$16,386,362	\$16,386,362

The table below provides a summary of the above evaluated alternatives against the maximum 10-year exit fee period recommended by Dr. Hanemann. The final column of the table details the potential burden the LAFCO Commission will force on the rest of the county without a full and appropriate exit fee when compared to full recovery over the 10 years. LAFCO staff, as did Dr. Hanemann, acknowledged the continued shift of millions in financial burden to remaining ratepayers, regardless of the proposed exit fee (see LAFCO Staff Report Attachment 10). The amounts provided below do not include these additional and well-known ratepayer impacts.

	Net		Cost to Remaining Ratepayers			
	Revenue Impact	ESP Credit	Net Total	Net Annual	over 10yr Period	
LAFCO Staff Recommendation	\$62,904,820	\$38,600,000	\$24,304,820	\$4,860,964	\$139,558,805	
7 Years (LAFCO + 2 years)	\$88,066,748	\$38,600,000	\$49,466,748	\$7,066,678	\$114,396,877	
10 Years (LAFCO + 5 years)	\$125,809,640	\$38,600,000	\$87,209,640	\$8,720,964	\$76,653,985	
5yr True-Up, Full ESP	\$94,486,739	\$38,600,000	\$55,886,739	\$10,705,446	\$107,976,885	
7r True-Up, Full ESP	\$132,281,435	\$38,600,000	\$93,681,435	\$12,911,160	\$70,182,190	
10yr True-Up, Full ESP	\$188,973,479	\$38,600,000	\$150,373,479	\$14,565,446	\$13,490,146	
5yr True Up + 5yr ESP Credit	\$94,486,739	\$12,554,927	\$81,931,812	\$15,914,460	\$81,931,812	
7yr True Up + 7yr ESP Credit	\$132,281,435	\$17,576,898	\$114,704,537	\$15,914,460	\$49,159,087	
10yr True Up + 10yr ESP Credit	\$188,973,479	\$25,109,854	\$163,863,625	\$15,914,460	\$0	

From: Mel Katz <mel.katz@sdcwa.org>

Sent: Wednesday, July 5, 2023 3:37 PM

To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>

Subject: [External] Help Protect San Diego County Water Bills From \$200M Increase

Dear San Diego County leaders:

On July 10, the San Diego Local Agency Formation Commission faces an unprecedented decision that will affect generations of San Diego County water ratepayers. Effectively, LAFCO is deciding whether to charge working families, farmers, small businesses, and others nearly \$200 million more for water over the next decade.

The context is that two water agencies are seeking to leave the San Diego County Water Authority without paying the full cost of investments made on their behalf over the past several decades.

I am deeply concerned that LAFCO could make this momentous decision without ensuring the accuracy of the costs of detaching from the Water Authority or allowing residents countywide to vote on this scheme. The exit fee proposed by LAFCO staff is based on years-old data and questionable projections that understate the actual costs of detachment by at least 50%.

Like everything else, costs related to water supplies – such as treatment and energy costs – have significantly increased since LAFCO gathered its data, and that inflation isn't accounted for. In addition, the LAFCO data don't reflect the fact that the financial impacts of detachment will continue far beyond LAFCO's five-year horizon, which does not reflect the actual lifespan of water infrastructure or the debt used to finance it.

The net effect is that while the LAFCO staff recommendation includes an exit fee of about \$4.8 million a year for five years, that isn't close to covering the actual costs that will be shifted to residents elsewhere in the county.

Unfortunately, LAFCO's staff recommendation to approve the detachment proposals by Fallbrook and Rainbow does not include substantive analysis of impacts to disadvantaged communities or to agriculture in the Water Authority service area. Nor does it include environmental analysis required by law.

I need your help. Please send an email by COB Friday, July 7, to LAFCO commissioners, urging them to:

- Take the appropriate time to conduct an updated financial and environmental analyses that reflect the current financial and economic environment
- Require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.

You can file comments by emailing them to LAFCO at keene.simonds@sdcountry.ca.gov.

Respectfully,

Mel Katz, Board Chair
San Diego County Water Authority



San Diego County Water Authority
And Its 24 Member Agencies

[Unsubscribe](#)

July 6, 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
Agenda Item No. 6a/Attachment Two Response to MWD Chair and Related
Communications**

Dear Commissioners and Mr. Simonds:

I am an elected board member of the Otay Water District (Otay), a member of the board of the San Diego County Water Authority (Water Authority) and sit on the board of directors of Metropolitan Water District of Southern California (MWD) on behalf of the Water Authority. I chair the MWD Finance, Audit, Insurance, and Real Property (FAIRP) committee, including at the meeting held on June 13, 2023, which is referenced in the above LAFCO report. I am sending this letter in my role at the Water Authority, based on my personal knowledge of MWD board and committee practice and procedure at MWD.

The “Points of Reasoning” stated in Agenda Item No. 6a/Attachment Two of your board report by your consultant Adam Wilson reflect a fundamental misunderstanding of how the MWD board and committee process works. Even if the FAIRP committee had taken action at its June 13 meeting—which it did not—that action would be subject to a vote by the MWD board of directors to be effective. *Comments made by individual board members in committee **do not constitute a position of the board*** and should not be considered as “instructive for LAFCO purposes,” as advocated by Mr. Wilson. A copy of the FAIRP committee agenda for June 13 may be viewed [here](#). ACTION items are listed at agenda items 3 and 4; annexation policies were on the agenda as a COMMITTEE ITEM for which no action was planned to be taken and none was taken (Chair Ortega’s stated intention to establish an ad hoc committee to review annexations was discussed but no action was taken).

Further, Mr. Wilson’s “Points of Reasoning” do not accurately reflect what MWD’s legal counsel said at the FAIRP meeting or how “internal” reorganization of territory between MWD member agencies has “historically” been treated. To our knowledge, there is *no history* of this

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 Diabolo MWD · City of San Diego · San Dieguito Water District · Santa Fe Irrigation District · Sweetwater Authority
Vallecitos Water District · Valley Center MWD · Vista Irrigation District · Yulma Municipal Water District

kind of hostile process or third-party mandate by LAFCO; to the contrary, all prior reorganizations involved mutually agreed-upon exchanges between member agencies. Even then, the proposals went to the MWD board for approval:

- January 1969: [Exchange of Territory Between Coastal Municipal Water District and Orange County Municipal Water District](#).
- April 1969: [Annexation Terms for Territory Being Transferred from Eastern to Western](#).
- May 1969: [Exchange of Territory Between Eastern Municipal Water District and Western Municipal Water District of Riverside County](#).
- July 2000: [Consolidation of Municipal Water District of Orange County and Costal Municipal Water District](#).

Far from supporting the unprecedented action San Diego LAFCO staff is proposing, Metropolitan's counsel described LAFCO's role as "essentially a ministerial function," which is what it normally would be after member agencies have agreed upon an exchange. The Commissioners should **disregard** Mr. Wilson's incorrect "legal" interpretations, baseless "final points" and "recommendations." Similarly, his personal statements about what he thinks MWD's FAIRP committee "wants" or does not "want" should **carry no weight**.

Finally, MWD Chair Ortega provided a further [report](#) to the MWD board of directors (Chair of the Board Adán Ortega Jr.'s Monthly Activity Report – June 2023, Page 5 of 5 Date of Report: July 11, 2023). Here is what he said:

Notable Correspondence

In June, I received a letter (distributed to the Board) from the general managers of two member agencies ("the sub-agencies") of the San Diego County Water Authority (SDCWA) who in 2020 applied to San Diego LAFCO for a simultaneous detachment and annexation to Eastern Municipal Water District (EMWD). The letter was in reaction to the discussion by the Finance, Audit, Insurance, and Real Property Committee (FAIRP) about the potential policy implications from the precedent of forced changes to boundaries within Metropolitan's service area imposed by entities such as San Diego LAFCO, and perhaps other governmental entities; as well as by my previous communication to San Diego LAFCO's Executive Officer.

In their letter, the San Diego sub-agencies admonished me for not subscribing to the culture of personal hostility that erupted from litigation between MWD and SDCWA. In their view, I should regard people associated with SDCWA with apprehension. The letter included references to conspiracy theories about my motives and thinly veiled threats. In recognition of free speech rights, but to avoid the festering and seemingly personal animosities apparently still in play, I will not reply in kind. To be constructive, I have asked staff to ensure that the San Diego sub-agencies are engaged through SDCWA as we discuss affordability in our Climate Adaptation Master Planning Process.

I have acted to protect and promote our Board's policy prerogative on issues affecting boundary changes and their potential precedents impacting Metropolitan's planning, finance, and governance. The consensus at FAIRP as proposed by Director Jeff Armstrong was that an ad hoc committee should be formed to weigh the potential precedent and policy implications. I am consulting with our General Counsel and staff as well as the Board's Vice Chairs about forming the ad hoc committee consistent with the FAIRP committee's discussions. As an alternative, I am also discussing with Diversity, Equity, and Inclusion Committee Chair Tana McCoy and staff about the possibility of weighing the related affordability issues in that committee instead, probably at the Committee's August meeting in order to inform CAMP4Water.

While we stretch to expand supply alternatives to the State Water Project dependent areas, we would be pretending that an involuntary detachment and annexation driven by third parties to secure sole reliance on cheaper imported water for its proponents is inconsequential to our planning efforts. Moreover, it would be an effective reconsideration of our current policies that endorse integrated resources planning, not sole reliance on imported water.

In closing, I want to communicate to the Commissioners that I believe approval of detachment without a firm right to annexation and establishment of the terms of annexation could leave the applicant agencies' customers in a position of risk and uncertainty. I would be happy to address any questions the Commissioners or your staff may have.

Sincerely,



Tim Smith

cc via email:

San Diego County Water Authority Board of Directors
Metropolitan Water District of Southern California Board of Directors
Eastern MWD Board of Directors
Fallbrook MWD Board of Directors
Rainbow PUD Board of Directors
Adam Wilson, Ad Hoc Committee Moderator

-----Original Message-----

From: Colin Parent <cparent@cityoflamesa.us>

Sent: Wednesday, July 5, 2023 4:18 PM

To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>

Subject: [External] Comment - Proposed departure of Rainbow and Fallbrook

To Whom it May Concern:

I am writing to express my worry about the proposrf efforts by two local water agencies to leave the San Diego County Water Authority.

I am requesting that LAFCO commissioners do the following:

(1) Take the appropriate time to conduct an updated financial and environmental analyses, so that the public can understand the financial and economic consequence of such an action.

(2) Require Fallbrook and Rainbow to fully cover costs so they do not unfairly shift the burden to the rest of the region's water ratepayers.

Sincerely,

Colin Parent

--

Vice Mayor

City of La Mesa, California

From: Michael Freedman
Sent: Wednesday, July 5, 2023 3:57 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Cc: mel.katz@sdcwa.org
Subject: [External] Fallbrook & Rainbow Detachment

I oppose LAFCO's staff recommendation to approve the detachment proposals by Fallbrook and Rainbow Water Districts. The proposed action does not include substantive analysis of impacts to disadvantaged communities or to agriculture in the Water Authority service area. Nor does it include environmental analysis required by law.

I support SDCWA Board Chair Mel Katz demand to:

Take the appropriate time to conduct an updated financial and environmental analyses that reflect the current financial and economic environment, and

Require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.

Michael Freedman
San Ysidro, CA.

*"Experience hath shewn, that even under the best forms of government those entrusted with power have, in time, and by slow operations, perverted it into tyranny."
- Thomas Jefferson*

From: Frank Merchat <
Sent: Wednesday, July 5, 2023 4:59 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Cc: Mel Katz <mel.katz@sdcwa.org>
Subject: [External] Clear and transparent

Allowing Rainbow and Fallbrook to secede from the water authority with a full and fair accounting I know wasn't in your plan, but based on community feedback it appears that is what appears to be happening. Can you please insure that all costs are accounted for so that it is fair for all parties. Second, when handling issues of this magnitude it seems like the process should include time for public comment.

Thanks for working with the community in an open and transparent way so that everyone is treated fairly.

Frank Merchat
Managing Director
Night Oak, LLC

From: Patrick Sanchez
Sent: Thursday, July 6, 2023 7:59 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>

Subject: [External] LAFCO's opportunity to make a Momentous Decision -Detachment

Dear Keene Simonds and Commissioners of the San Diego Local Area Formation Commission,

As a representative of the Vista Irrigation District Board of Directors, I am deeply concerned that LAFCO could make a momentous decision without ensuring the accuracy of cost of detaching from the San Diego County Water Authority or allowing residents countywide to vote on this scheme. The exit fee proposed by LAFCO staff is based on years-old data and questionable projections that understate the actual costs of detachment by at least 50%.

I urge you to take the appropriate time to conduct an updated financial and environmental analyses that reflect the current and economic environment. Please require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.

The Vista Irrigation District and its Board of Directors appreciate the opportunity to provide comments on the proposed reorganization. The Vista Irrigation District is a member of the San Diego County Water Authority and is very concerned about the negative impacts to our agency and ratepayers.

Listed below are some of our concerns and for your serious consideration in connection with the proposed detachment:

1. Fallbrook and Rainbow ratepayers may not see a cost savings equal to the amount shown if an exit fee is assessed. LAFCO published estimates that the average monthly household savings for Fallbrook and Rainbow ratepayers is \$23.50 per household if the proposed reorganizations are approved. It is not clearly stated whether the estimated savings figure takes into consideration the payment of an exit fee to the Water Authority; if the figure does not include this cost, the estimated savings figure would be overstated (over time period that the exit fee is in place). The cost savings figure (at a minimum) should take into account the assessment of an exit fee (if it does not already) to fully inform those voting on the proposed reorganizations, including Fallbrook and Rainbow ratepayers and LAFCO Commissioners.

2. Water Authority member agencies' ratepayers will see cost increases. The conclusion that other Water Authority member agencies' ratepayers will have to pay higher rates (if Fallbrook and Rainbow detach and no exit fee is assessed; if an assessed exit fee does not equal the Water Authority's revenue loss associated detachment; or after the term of an assessed exit fee terminates) is correct. Additionally, the Water Authority's pass-through rate increase associated with the proposed reorganizations would be added to any other rate adjustments made by the Water Authority to address member agency roll-offs, Metropolitan Water District of Southern California (MWD) rate increases, etc. as well as the member agencies own rate and charge increases. Based on figures shown in the "Estimated Detachment Impacts to Member Agencies + Ratepayers" table, the District would see its costs increase \$347,984 annually if an exit fee is not assessed (or after an exit fee terminates, if one is assessed). The District would need to increase its commodity rates by an estimated five cents per billing unit to cover those higher costs from the Water Authority. This translates to the District's typical customer (3/4" water meter using 24 billing units) being charged an additional \$1.20 every two months. As previously noted,

this increase would be in addition to any other rate adjustments made by the Water Authority and/or the District in futures years.

3. Financial Impacts to Water Authority and ratepayers are material and significant when one considers the cumulative impact of the proposed reorganizations and future rate increases. LAFCO staff's conclusion that the financial impacts of the detachments are significant but not material because the annual net revenue loss to the Water Authority (\$12.581 million) equals 4.4% of its gross water sales misses a key factor. The increase is significant and material when one considers that it would be added to any other to any other rate adjustments.

4. Approval of the Proposals is reasonable only if conditioned on an appropriate exit fee and duration that it is in place. Conditioning the proposed reorganizations' approval to require an exit fee is reasonable and merited given the financial impacts and need therein for a period of adjustment. This conclusion is correct; however, the exit fee would need to be equal to the estimated revenue loss for the Water Authority and not discounted, and the length of time the exit fee is in place (five years) be appropriate, which it is not.

LAFCO staff's conclusion that five years (based on the intervals that Urban Water Management Plans are updated and Municipal Service Reviews are conducted) is an appropriate standard to apply an annual exit fee is not supported. The Hanemann reports notes that in the water industry, 10 years would typically be considered short term for planning purposes. Therefore, 10 years would be the shortest standard to apply. However, even 10 years is too short under the circumstances given the substantial investments/obligations that have been incurred by the Water Authority in order to supply water to its member agencies, including Rainbow and Fallbrook. The appropriate length of time for the exit fee should be tied to longer-term financial commitments made to construct major infrastructure (e.g. the largest debt burden through 2039 as shown in the Hanneman report) or to secure water supplies such as Imperial Irrigation District transfer water (which has commitments through at least 2047).

5. Discounting an exit fee to reflect cost savings is not reasonable. The prospectus' statement that the Water Authority would save \$38.6 million should Fallbrook and Rainbow detach that would otherwise be expended on proceeding with the Emergency Storage Project (ESP) North County Pump Station is incorrect; therefore, discounting the exit fee to account for this mythical cost avoidance is unreasonable. Budgeting project is not the same as actually making an expenditure. As noted in the District's November 29, 2022 comment letter, the Water Authority has stated that only "de minimis amounts" have been spent on initial planning for this project, no debt has been issued for this project and no project costs have been included in its rates and charges. Given those statements, a firm commitment to fund and construct the project has not been made by the Water Authority; therefore, there are no savings to be realized.

6. Near-certain roll-off impacts are measurably higher than detachment impacts; when considered together, they significantly affect the Water Authority, its member agencies and ratepayers. LAFCO staff estimates the annual net revenue loss tied to expected roll-offs involving three reuse projects will be \$47.0 million by the end of the decade, translating to a ratepayer impact of 9.4% (compared to a 2.5% ratepayer impact associated with the detachment). This conclusion seems to support LAFCO staff's alternative action to defer consideration of the proposals until the completion of a scheduled municipal service review on the Water Authority, which includes an evaluation of the financial condition of the agency.

7. Loss of voting Rights at MWD is a valid concern. LAFCO staff is correct that voting rights at the MWD are valuable, especially when voting on important decisions that have a lasting impact on San Diego region's ratepayers; the loss of any voting rights is of the utmost concern.

8. Detachments would not benefit agriculture in the North County. LAFCO staff notes that both agencies' proposals center on the premise of providing economic relief to their agricultural customers by securing less expensive water supplies. LAFCO statute and adopted policy address the loss of agriculture with the latter having been recently expanded to now consider actions whenever appropriate to "enhance" agriculture, which allows the Commission to make special accommodations for the affected territory in evaluating the proposals. As noted in the District's November 29, 2022 letter, agricultural water use could be reduced by as much as 90% or be completely prohibited under the Human Health and Safety formula MWD (Eastern's wholesale water supplier) used in parts of its service area during the last drought. The potential for this type of reduction during a drought does not appear to support a policy of enhancing agriculture rather it seems more likely to place agriculture in jeopardy.

9. An election to include all registered voters within the Water Authority member agencies' boundaries is warranted. The Water Authority has requested that LAFCO condition approval of the reorganization proposals on expanding the "affected territory" for the purposes of calling an election to include all registered voters within its member agencies' boundaries. LAFCO legal counsel has stated that LAFCO has no statutory authority to grant a vote by all those affected, a position that the Water Authority's legal counsel does not agree with. Assembly Bill 530, which would allow a vote in the Water Authority's service area when agencies seek to detach, may be the answer. Given the financial impact that the reorganizations would have on the Water Authority as well assist member agencies and their ratepayers, a vote by all affected is warranted.

Thank you for the opportunity to comment on the proposed reorganizations of Fallbrook and Rainbow. If you have any questions regarding Vista Irrigation District's comments and position on this matter, please feel free to contact me at (760) 597-3128 - patrick.sanchez@vidwater.org or Brett Hodgkiss at (760) 597-3117 - bhodgkiss@vidwater.org

Sincerely,

Patrick Sanchez
Board Member
Vista Irrigation District
Division 4

From: Greg Thomas

Sent: Thursday, July 6, 2023 4:07 PM

To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>

Subject: [External] Rainbow MWD/Fallbrook PUD Detachment - Support

Dear Mr. Simonds,

I write to support the detachment of Rainbow MWD and Fallbrook PUD from the San Diego County Water Authority and concur with LAFCO staff's recommendations. Please let the LAFCO commissioners know to register a support for detachment and not delay the vote any longer.

The straw that broke the back on responding is the most recent lies being spread in an email by the Chair of SDCWA and the \$200M costs this will cause to all of San Diego. The reality is it's not even close or will impact the rest of the county and SDCWA service area, and the two agencies will be paying a reasonable "divorce" fee for their detachment. Seriously, \$4.8M a year for 5 years is \$24M, which is a significant hit to a small agency budget and potentially rates, of which many are low-income customers! We already know the agricultural business community has been reduced in size due to water rates. The other reality is they barely use the SDCWA system, as many of the northern SD county agencies don't, as well as the amount they take in total acre-foot (AF) barely makes a dent in SDCWA totals.

The real question all of San Diego County and the cities in the county should be asking is what is it going to cost them as the City of San Diego and a few other agencies roll off the SDCWA system and Metropolitan Water District as they pursue their own pure water programs? This will force agencies such as Rincon and others who are 100% reliant on imported water to absorb a significantly higher cost, since the City of SD and others will say they don't need to pay for imported water, so the costs will go against those still taking from the SDCWA system. Maybe LAFCO should look into how the costs are going to be spread out in the future to those 100% reliant on imported water and SDCWA, as well as a re-determination of voting weights of SDCWA member agencies should be assessed if agencies like City of SD are buying 50% less water in the future.

Sincerely,

Greg Thomas



Setting Standards of
Excellence in Public Service

Administration Office
7811 University Avenue
La Mesa, California 91942-0427

619-466-0585
helix@helixwater.org
hwd.com

July 6, 2023

Jim Desmond, Chair
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Re: Agenda Item 6a Detachments from San Diego County Water Authority with Related Actions
(RO20-05 and RO20-04)

Honorable Chair Desmond and Commissioners:

This letter is a follow-up to the correspondence Helix Water District sent to this commission on May 17, 2023. In the letter, the district expressed serious concerns regarding the conclusions and recommendations that the LAFCO staff report had made about the proposed Fallbrook PUD and Rainbow MWD detachments. Of particular note was the negative financial impact of the detachment and the proposed inadequate detachment fee to Helix Water District ratepayers and our over 112,000 economically disadvantaged customers. In fact, the latest data shows that this detachment would increase costs for our customers by almost \$1.3 million annually.

However, we do not fault Fallbrook PUD and Rainbow MWD in wanting to buy lower cost water as we are all in search for a cheaper water supply. But in this case, it is an unfortunate situation that the two agencies who want to leave for lower water rates will increase water rates for the remaining 22 agencies.

How much of a water rate impact, also known as the "detachment fee", is debatable depending on who you ask. The consultant report from LAFCO is significantly lower than the analysis done by San Diego County Water Authority. In fact, who knows what the actual impact could be as there are so many variables to be considered. But the bottom line and the best scenario is plainly to have Fallbrook and Rainbow not leave and work out the issues with SDCWA.

We are stronger together, and for over 75 years, SDCWA has served the region. We understand the job of a LAFCO commissioner is a difficult one and you rely on your executive director and consultants hired to provide you with all the information to make the best decision possible. But as you know and have seen through the over three years that we have spent on this issue, that numbers change and there are a lot of experts with many different opinions.

We do not want Fallbrook PUD and Rainbow MWD to leave. The best solution is that SDCWA work with Fallbrook and Rainbow and come to a resolution. The agencies should work with SDCWA to address the cost concerns and come to an agreement. We do not know what the resolution is, but we do know we are stronger together. We encourage LAFCO to let the agencies work together and come to a resolution

Board of Directors
Kathleen Coates Hedberg, President
Daniel H. McMillan, Vice President
Andrea Beth Damsky, Division 2
Mark Gracyk, Division 3
Joel A. Scalzitti, Division 5

and take responsibility by all parties. We should know from years of experience that lawsuits do not solve problems, but only create further hostility, more problems and increase costs.

Therefore, we urge you during your July 10, 2023, special meeting to **support option four disapproving the proposals with prejudice**. Thank you for your time and consideration. Please contact me if you have any questions.

Respectfully,



Kathleen Coates Hedberg, PE, MPH
Board President
Helix Water District

cc: Chair Katz and Board Directors, San Diego County Water Authority



July 7, 2023

Priscilla Mumpower, Assistant Executive Officer
San Diego County Local Agency Formation Commission
Via email: priscilla.mumpower@sdcounty.ca.gov

Re: FPUD and RMWD Response to July 3, 2023 Correspondence from SDCWA

Dear Ms. Mumpower,

Fallbrook Public Utility District (FPUD) and Rainbow Municipal Water District (RMWD) apologize for having to send a letter to San Diego LAFCO (LAFCO) just a few days before the upcoming hearing, but we feel it is necessary to respond to a number of misleading statements from the San Diego County Water Authority (SDCWA) issued in July 3rd correspondence from its Acting General Manager.

Exit Fee: SDCWA has completed multiple different “analysis” of revenue impacts using inflated numbers throughout the processing and consideration of the FPUD and RMWD reorganization applications. The original correspondence from SDCWA, for example, calculated the revenue impact due to our districts leaving SDCWA at \$40 million annually, which is greater than the amount of total revenue paid by our districts in any given year. Dr. Hanemann reviewed all the information available, including SDCWA’s numerous submissions regarding revenue impacts, and other financial information, when he made a professional independent assessment. While SDCWA feels the calculation is too low, we would argue it is too high as it ignores not only the long-term trends that clearly show declining demands from both FPUD and RMWD, but also the value of assets our districts will leave behind for the benefit of the remaining member agencies. Now at the 11th hour, SDCWA wants to submit new information (again replacing its most recent previous analysis) with an analysis predicated on a single very dry year demand number which is an inaccurate assessment of future demands.

SDCWA also has recently proposed that the credit for the two ESP Pump Stations (ESP PS) is inappropriately calculated, claiming that because the facilities would be debt funded, only the annual debt payment should be included. There are a couple flaws with this approach, of which SDCWA is well aware. First, the ESP PS is planned to be built and owned by FPUD and RMWD and reimbursed by SDCWA. SDCWA cannot debt fund facilities it does not own. Second, even if it could debt fund the facilities, SDCWA’s financial plan is based on a mix of debt and pay as you go (PAYGO) funding. SDCWA could always choose to reallocate the debt funding to another project and use the savings to PAYGO fund another capital project. If our districts detach, SDCWA will save \$40 million that it can utilize to offset the revenue impact of our proposed detachments.

SDCWA has also requested that the numbers should be escalated—but only the numbers that support its position. For example, SDCWA appears to suggest some numbers be escalated (such as escalating water costs due to the recently adopted Calendar year 2024, 12% all in rate increase) but not escalate the ESP PS savings number (which would have also escalated significantly with increased construction costs). We remind the Commission that the delays in moving our applications forward since they were filed have been the result of SDCWA. As indicated in the letter from SDCWA special counsel Mark Hattam, it appears that

SDCWA intends to even further delay this process through litigation.¹ The delays have benefitted SDCWA, as our districts have continued to pay over \$7 million annually of additional revenue to SDCWA over what we would have paid to Eastern Municipal Water District. Accordingly, while we would be against anything to delay the LAFCO proceedings further, the added cost to our rate payers associated with any delay should be considered if there is going to be an updated analysis.

Last, as we have identified previously in detail, we want to reiterate a point we do not want to get lost in the shuffle: if detachment occurs FPUD and RMWD will leave behind substantial assets that will benefit the remaining agencies, including:

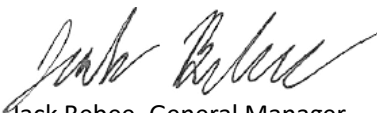
- Over \$250 million in assets we will leave behind
- Approximately \$20 million in our share of cash reserves
- Approximately \$10.5 million in our share of stored water

The value of these assets has not been specifically accounted for, and should there be an updated analysis, we request that it be considered as a means of immediately helping off-set revenue impacts to SDCWA.

Infrastructure Costs: SDCWA has claimed there are close to \$4 million dollars of infrastructure modification necessary to support our detachment. As noted above, our Districts are leaving behind for other remaining agencies over \$250 million in past investments in SDCWA infrastructure. This includes over \$30 million our districts have already spent to build SDCWA's Emergency Storage Project, a project we have not had access to. This past expenditure more than off-sets any need for our districts to pay for any SDCWA infrastructure. In addition, as with all estimates prepared by SDCWA during this process, the value developed by SDCWA is grossly over inflated and the suggested modifications to the aqueduct pipelines are unnecessary. The only infrastructure need for SDCWA that arises from our detachment relates to the flow control facilities that our agencies will no longer use. The costs proposed by SDCWA are exaggerated modifications to the flow control facilities that will be abandoned by FPUD and RMWD. SDCWA has multiple unused flow control facilities that have been out of service for decades and has isolated these facilities using a much simpler approach. The facilities can be repurposed as access points and drains with limited costs. FPUD and RMWD could perform any necessary modification to fully isolate the facilities. SDCWA is putting this forward at the last minute as an attempt to further delay or impact the process.

Again, we apologize for having to send LAFCO yet another letter to address misleading communications by SDCWA. We appreciate the work LAFCO has done to date and look forward to the upcoming LAFCO continued hearing on our proposals.

Sincerely,


Jack Bebee, General Manager
Fallbrook Public Utility District


Tom Kennedy, General Manager
Rainbow Municipal Water District

cc: Keene Simonds, LAFCO Executive Officer

¹ FPUD and RMWD disagree with the allegations set forth in Mr. Hattam's July 3, 2023 letter.

From: Brett Sanders
Sent: Friday, July 7, 2023 12:01 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Subject: [External] Fallbrook and Rainbow Detachment Comment

Hello Mr. Simonds,

I am concerned that LAFCO could make this momentous decision without ensuring the accuracy of the costs of detaching from the Water Authority or allowing residents countywide to vote on this proposal.

Like everything else, costs related to water supplies – such as treatment and energy costs – have significantly increased since LAFCO gathered its data. In addition, the LAFCO data doesn't reflect the fact that the financial impacts of detachment will continue far beyond LAFCO's five-year horizon, which does not reflect the actual lifespan of water infrastructure or the debt used to finance it.

The net effect is that while the LAFCO staff recommendation includes an exit fee of about \$4.8 million a year for five years, that isn't close to covering the actual costs that will be shifted to residents elsewhere in the county.

I respectfully request that LAFCO:

- Take the appropriate time to conduct an updated financial and environmental analyses that reflect the current financial and economic environment
- Require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.
- Review the ability of affected San Diego County residents be given the opportunity to vote on the proposal.

Respectfully,

Brett Sanders
General Manager
Lakeside Water District



July 7, 2023

Priscilla Mumpower, Assistant Executive Officer
San Diego County Local Agency Formation Commission
Via email: priscilla.mumpower@sdcounty.ca.gov

Re: FPUD and RMWD Response to July 3, 2023 Correspondence from SDCWA

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Last, as we have identified previously in detail, we want to reiterate a point we do not want to get lost in the shuffle: if detachment occurs FPUD and RMWD will leave behind substantial assets that will benefit the remaining agencies, including:

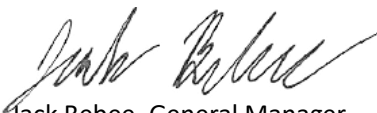
- Over \$250 million is assets we will leave behind
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The value of these assets have not been specifically accounted for, and should there be an updated analysis, we request that it be considered as a means of immediately helping off-set revenue impacts to SDCWA.

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Again, we apologize for having to send LAFCO yet another letter to address misleading communications by SDCWA. We appreciate the work LAFCO has done to date and look forward to the upcoming LAFCO continued hearing on our proposals.

Sincerely,


Jack Bebee, General Manager
Fallbrook Public Utility District


Tom Kennedy, General Manager
Rainbow Municipal Water District

cc: Keene Simonds, LAFCO Executive Officer

¹ FPUD and RMWD disagree with the allegations set forth in Mr. Hattam's July 3, 2023 letter.

From: Brett Sanders
Sent: Friday, July 7, 2023 12:01 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Subject: [External] Fallbrook and Rainbow Detachment Comment

Hello Mr. Simonds,

I am concerned that LAFCO could make this momentous decision without ensuring the accuracy of the costs of detaching from the Water Authority or allowing residents countywide to vote on this proposal.

Like everything else, costs related to water supplies – such as treatment and energy costs – have significantly increased since LAFCO gathered its data. In addition, the LAFCO data doesn't reflect the fact that the financial impacts of detachment will continue far beyond LAFCO's five-year horizon, which does not reflect the actual lifespan of water infrastructure or the debt used to finance it.

The net effect is that while the LAFCO staff recommendation includes an exit fee of about \$4.8 million a year for five years, that isn't close to covering the actual costs that will be shifted to residents elsewhere in the county.

I respectfully request that LAFCO:

- Take the appropriate time to conduct an updated financial and environmental analyses that reflect the current financial and economic environment
- Require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.
- Review the ability of affected San Diego County residents be given the opportunity to vote on the proposal.

Respectfully,

Brett Sanders
General Manager
Lakeside Water District

From: Lauren Cazares
Sent: Friday, July 7, 2023 3:41 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Subject: [External] Comments to LAFCO Staff

Good afternoon,

I am writing on behalf of the San Diego Regional Chamber of Commerce to share our deep concerns with the proposed detachment of Fallbrook Public Utilities District and Rainbow Municipal Water District. The proposed departure of the Water Authority and its member agencies to join a Riverside-based entity poses grave concerns for San Diego County's economy. Local businesses, especially those with narrow profit margins, would face millions in additional costs, compounding their challenges and hindering the region's competitiveness.

LAFCO must conduct thorough and updated financial and environmental analyses to accurately reflect the economic landscape of San Diego. Fallbrook and Rainbow must be held accountable, ensuring they fully cover their costs to prevent an unjust burden shift onto the rest of the region's water ratepayers. Protecting local businesses and avoiding an unnecessary water rate hike is crucial for sustaining San Diego's economic well-being.

Thank you for your consideration.

Kind regards,
Lauren Cazares
Policy Advisor
San Diego Regional Chamber of Commerce

From: Linda LeGerrette <linda@chavezclubs.org>

Sent: Friday, July 7, 2023 5:16 PM

To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>

Subject: [External] Fwd: Help protect San Diego County Water Bills From \$200M Increase

Honorable LAFCO Commissioners

As San Diego County resident, taxpayer and rate payer, I urge you to take the appropriate time to conduct an updated financial and environmental analyses that reflect the current financial and economic environment and that you require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.

Respectfully

Linda LeGerrette

--

Linda LeGerrette

Executive Director/CEO

Cesar Chavez Service Clubs Inc.

From: GARRY GALINDO >
Sent: Friday, July 7, 2023 12:07 PM
To: Sellen, Erica A <Erica.Sellen@sdcounty.ca.gov>
Subject: [External] Fallbrook and Rainbow Separation

To whom it may concern:

It is time for truth and honesty when San Diego comments on the request for separation. Saying it would be extreme hardship to the remaining stake holders if separation is allowed is disingenuous and deceitful. Yes there is consequences to their leaving, however it is a \$ 1.00 or so per month to the remaining members not the scary amounts that San Diego authorities claims.

Consider a reasonable separation fee for 5 years. Give credit for Fallbrook/Rainbow Storage Facility contributions and "let my people go." The benefit to all of San Diego County is sustainable agricultural production in Wine Grapes, Avocado. Citrus and Strawberry, to name a few. I personally grew grapes and sold to wineries here in Fallbrook. The high cost of water contributed to my exit from the business just a year ago.

Thank you for your consideration.

Garry Galindo

From: LEWIS SHELL

Sent: Friday, July 7, 2023 10:51 AM

To: Sellen, Erica A <Erica.Sellen@sdcounty.ca.gov>

Subject: [External] LAFCO Meeting

As a Fallbrook ratepayer I am very much in favor of FPUD changing suppliers. Water is a necessity to life. Current rates are skyrocketing. It is our supplier's and county representative's responsibility to see that water is in good supply at the best reasonable cost to their water users (everybody). Water cost is very much going out of control. Water and air are the necessities of life. Our current suppliers are chocking the life out of northern SD county!

LK Shell

Fallbrook, CA



Dear LAFCO Commissioners,

On July 10, you face an unprecedented decision that will affect generations of San Diego water ratepayers. Over the next several years, working families, farmers, and small businesses will be forced to pay nearly \$200 million more for water unless the agencies seeking to leave the San Diego County Water Authority are required to fully cover their costs.

We are deeply concerned that the Commission could make such a momentous decision without ensuring the accuracy of the costs of detaching from the Water Authority. The exit fee proposed by LAFCO staff is based on years-old data and questionable projections that understate the actual costs of detachment by at least 50%.

Like everything else, costs related to water supplies – such as treatment and energy costs – have significantly increased since LAFCO gathered its data, and that inflation isn't accounted for. In addition, the LAFCO data don't reflect the fact that the financial impacts of detachment will continue far beyond LAFCO's five-year horizon, which does not reflect the actual lifespan of water infrastructure or the debt used to finance it.

The net effect is that while the LAFCO staff recommendation includes an exit fee of about \$4.8 million a year for five years, that isn't close to covering the actual costs that will be shifted to residents elsewhere in the county. The chart below provides an updated impacts showing what each retail water agency in the region may have to pay each year to cover the projected \$18.9 million bill from Fallbrook and Rainbow leaving.

Unfortunately, LAFCO's staff recommendation to approve the detachment proposals by Fallbrook and Rainbow does not include substantive analysis of impacts to disadvantaged communities or to agriculture in the Water Authority service area. Nor does it include environmental analysis required by law.

We urge the LAFCO Commission to take the appropriate time to conduct an updated financial and environmental analyses – and to require Fallbrook and Rainbow to fully cover their costs so they don't unfairly shift the burden to the rest of the region's water ratepayers.



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

July 7, 2023

Delivered by Electronic Mail

Mr. Mark Hattam, Outside Counsel
 San Diego County Water Authority
 4677 Overland Avenue
 San Diego, California 92123
mhattam@sdcwa.org

SUBJECT: Fallbrook-Rainbow Reorganization Proposals | Responses to July 3, 2023 Comment Letter

Mr. Hattam:

Thank you for your letter to the Commission dated July 3, 2023. The letter has been posted online and will be part of the supplemental materials provided to the Commission as it continues the joint-public hearing on the proposals at a special meeting on July 10th. The remainder of this correspondence draws on my own review of your letter and its stated purpose to advise of potential legal challenges from the County Water Authority should the Commission proceed with the staff recommendation. This includes my interest as Executive Officer to address several pertinent and otherwise disconcerting misstatements in your letter regarding the staff analysis and other baseline facts underlying the administrative review process. My responses are organized in order of your letter and are as follows.

1. With respect to CEQA, your letter incorrectly states LAFCO staff has failed to comply with statute. This misstatement is at odds with the record and suggests a misunderstanding of the CEQA statutes. The following comments collectively serve as corrections, and in doing so, fully attests to LAFCO’s compliance under CEQA.
 - a) CEQA is a disclosure process where public agencies make independent findings on the potential impacts of qualifying projects on the environment based on uniform criteria. The criteria and related thresholds are codified in the State CEQA Guidelines and – materially – legislatively premised on practitioners, courts, etc. not interpreting and/or requiring any additional procedures beyond those explicitly stated in the Guidelines (Section 21083.1).

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103-6624 T 619.321.3380 www.sdlafco.org lafco@sdcounty.ca.gov</p>	<p>Chair Jim Desmond County of San Diego</p> <p>Joel Anderson County of San Diego</p> <p>Nora Vargas, Alt. County of San Diego</p>	<p>Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann City of Chula Vista</p>	<p>Vice Chair Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Jo MacKenzie Vista Irrigation</p> <p>Barry Willis Alpine Fire Protection</p> <p>David A. Drake, Alt. Rincon del Diablo</p>	<p>Andy Vanderlaan General Public</p> <p>Harry Mathis, Alt. General Public</p>
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- b) Specific to the reorganizations, the applicants – Fallbrook and Rainbow – serve as the lead agencies for their respective proposals as the initiating parties. LAFCO serves as the responsible agency for both proposals. These role assignments appropriately align with the Guidelines (Section 15051).
- c) In adopting their resolutions of application, both applicants made findings as lead agencies that their proposed reorganizations qualify as projects, but categorically exempt from further analysis – i.e., initial studies (Section 15061). Both applicants cite “Class 20” exemptions as defined below (Section 15320):

“Class 20 consists 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.”

- d) In the role of responsible agency, LAFCO staff recommends the Commission independently concur and make parallel findings that the proposals are projects but categorically exempt from further analysis under Class 20 in the Guidelines. As detailed in the June 5th agenda report, staff believes this exemption appropriately applies given the underlying jurisdictional changes involve the transfer of existing municipal service functions involving wholesale water within the same geographic areas with no additional powers or expansions therein.
 - e) As responsible agency, making Class 20 exemption findings for both proposals moot any justification in statute for LAFCO to assume the lead agency role and proceed with additional analysis (Section 15052). This relatedly includes – and in contrast with your letter’s misstatement of “clear evidence in the record” – LAFCO staff determining no “exceptions to the exemption” reasonably apply to the proposals (Section 15300.2). Specifically, there is no material evidence suggesting similar reorganizations are in the queue and/or unusual circumstances exist that would reasonably produce cumulative impacts or significant effects on the environment – including your letter’s reference to the Bay-Delta. This latter comment is substantiated given the expected flow increase on the Bay-Delta should both proposals proceed is less than 2% and measurably below – and specifically 15 times less – the annual fluctuations already occurring.¹
2. Additionally, with respect to CEQA, your letter incorrectly infers the recommendation by LAFCO staff for the Commission to proceed as responsible agency with Class 20 exemptions for both proposals as “contrary” to a Superior Court order. This misstatement presumably ties to the CEQA lawsuits and related settlement agreements between Otay Water District and the applicants. LAFCO is not a party to the lawsuits or the settlement agreements and accordingly unbounded by any of the terms – whatever they may be given the signatories themselves are on record with different interpretations of the negotiated outcomes.

¹ Recorded flows through the Bay-Delta portion of the State Water Project have experienced significant fluctuations on a year-to-year basis of no less than 25% over the last five-years of available data published in the Department of Water Resources’ Bulletin 132 (2014 to 2018).

3. With respect to the County Water Authority Act, your letter incorrectly states the LAFCO staff recommendation violates the principal act because it does not include a condition to require the affected territory (Fallbrook and Rainbow) continue to be taxed for purposes of paying bonded and other debts. This misstatement implies the County Water Authority has voter-approved debts secured on the property tax roll – which is not the case. Instead, all of the County Water Authority’s existing bonded and other debts have been incurred by Board action by pledging future water rate revenues. The Board decision to not secure bonded and other debts on the tax roll through voter approved charges, assessments, taxes, etc. negates the applicability of the referenced provision in the principal act. All other revenues presently collected off the tax roll within the affected territory by the County Water Authority would be redirected or terminated should the detachments proceed under statutes outside of LAFCO’s purview with additional details footnoted.²
4. With respect to the administrative review process, your letter incorrectly and hyperbolically states there are numerous violations under LAFCO statute, rules, and policies by staff failing to review certain topics. No where in your letter – pointedly – are any actual citations given to substantiate these alleged violations.
5. With respect to the data collection utilized in administrative review, your letter incorrectly asserts LAFCO staff is relying on “stale” information. This misstatement contrasts with the extensive documentation in the record showing all core analysis performed by LAFCO staff relies on a recent five-year window of data (revenues, expenses, demands, etc.) collected between 2018 and 2022. Similarly, the five-year window used by LAFCO staff purposefully replicates the data range used by Dr. Michael Hanemann in performing his own analyses as tasked by the Ad Hoc Committee with representation and related direction therein from three County Water Authority officials.
6. With respect to voter rights, your letter incorrectly states the LAFCO staff recommendation does not follow the Constitution and related protections regarding taxation without voter approval. This misstatement is unsubstantiated. It also relatedly disregards the purpose of the recommended five-year exit fee is to provide the County Water Authority with an adjustment period should the detachments proceed. This could include reducing costs and/or establishing new revenues that would alleviate the need to pass the monetary impacts on to member agencies.

² As detailed in the June 5th agenda report, California Revenue and Taxation Code Section 99(b)(6) requires the County of San Diego and subject agencies to submit an adopted resolution to LAFCO agreeing to accept the exchange of property tax revenues associated with the proposed reorganization. The County has determined one of their adopted master property tax transfer resolutions apply to the proposed reorganization. The application of the County’s adopted master exchange resolution will result in 100% of all AB8 monies (the portion of the 1% in property taxes biannually collected) transferring to Eastern MWD. In the absence of consent of the applicants and affected agencies, LAFCO does not have the power to override application of the master exchange resolution. The total value of the property tax transfer is \$0.382 million and divided between \$0.173 within Fallbrook PUD and \$0.209 million in Rainbow MWD. (All remaining revenues collected by the County Water Authority off of the property tax roll within the affected territory involves unitary fees and available charges would immediately cease at the time of recordation. These other revenues currently total \$0.723 million.)

7. With respect to the conducting authority proceedings, your letter incorrectly states LAFCO is denying the right of the County Water Authority to be in charge of any post-approval procedures. Your letter ties this misstatement with the County Water Authority having exercised its allowance for “non-district” status and in doing so bypass standard LAFCO conducting authority proceedings in favor of following the exit procedures in the County Water Authority Act. Substantively, your letter proceeds to infer the alternative conducting authority proceedings also convey administrative duties from LAFCO to the County Water Authority. This inference strays from statute and conflicts with the Legislature tasking LAFCOs’ responsibility to oversee conducting authority proceedings beginning in 1985 as part of the Cortese-Knox Act as successor to the District Reorganization Act of 1965 and Municipal Organization Act of 1977.
8. With respect to other financial considerations, your letter states the LAFCO staff recommendation would result in uncompensated asset takings from the County Water Authority. This statement is void of any specific details. Nonetheless, and drawing from recall of past communications, it is assumed the statement is referencing meters and valves presently used by Fallbrook and Rainbow in receiving wholesale flows from the County Water Authority. As previously shared, and consistent with discussions with the Ad Hoc Committee, LAFCO staff believes these assets are fully depreciated and no longer assigned any book values.
9. With respect to the Metropolitan Water District of Southern California (“MET”), your letter asserts the LAFCO staff recommendation is legally vulnerable given it does not include a condition requiring separate approvals by MET. This assertion is perplexing and leaning towards gaslighting. The affected territory is entirely within MET, and as their own counsel advises there are no approvals needed by the MET Board involving the reorganizations under consideration by LAFCO.

Should you have any questions of me, please contact me at your convenience by telephone at 619-321-3380 or by email at keene.simonds@sdcounty.ca.gov

Sincerely,



Keene Simonds
Executive Officer

Attachment:

- 1) Letter from Mark Hattam, July 3, 2023

cc by email:

Commissioners (bcc)
Assistant Executive Officer Priscilla Mumpower
Commission Counsel Holly O. Whatley
Deputy Commission Counsel Aleks Giragosian
Chris Cate, Commission Consultant
Adam Wilson, Commission Consultant
Gary Thompson, Riverside LAFCO Executive Officer
Jack Bebee, Fallbrook PUD General Manager
Paula de Sousa, Fallbrook PUD Counsel
Tom Kennedy, Rainbow MWD General Manager
Alfred Smith, Rainbow MWD Counsel
Bill Pellman, Rainbow MWD Outside Counsel
Nick Kanetis, Eastern MWD Assistant General Manager
Dan Denham, County Water Authority Acting General Manager
David Edwards, County Water Authority Counsel
Adrian Granda, City of San Diego Intergovernmental Affairs Director

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

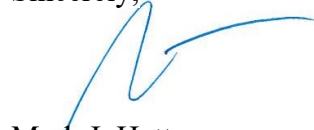
MEMBER AGENCIES

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

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 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.

Mr. Hattam,

LAFCO Executive Officer's letter of July 8 comprehensively outlined LAFCO's response to your letter of July 3, 2023, including SDCWA's CEQA claims. As your email from July 8, 2023, notes, the arguments in it are from SDCWA's submission in September 2020, which LAFCO has addressed throughout the administrative review of the application and in its June 5, 2023, staff report. The detachment squarely falls within the Class 20 exemption. The two districts will continue to provide water service within their existing geographic areas. And, as you know, the examples listed in Class 20 are illustrative but not exhaustive of all reorganizations that it may apply to, including the two detachment proposals before LAFCO now. In short, SDCWA's CEQA claims, and in particular its argument regarding "unusual circumstances," are unfounded. There is no evidence that the detachments are distinct from other projects qualifying for the Class 20 exemption generally. By contrast, there is substantial evidence to support no unusual circumstances exist to take either detachment proposal outside of Class 20. Simply repeating SDCWA's arguments does not change this fact, nor does it support changing the exemption determination in the first instance. Staff stands by the exemption determination, SDCWA's arguments notwithstanding.

Holly O. Whatley