

August 17, 2023

VIA EMAIL

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

Re: Protest Proceedings Hearing for the Conditional Approval of the Rainbow Municipal Water District Reorganization: Wholesale Water Services LAFCO File No. RO20-05

Dear Mr. Simmonds:

The San Diego County Water Authority (“Water Authority”) submits these comments for the protest hearing on LAFCO’s illegal and improper conditional approval of the Rainbow Municipal Water District (“Rainbow”) Reorganization. As the Water Authority has submitted to San Diego LAFCO many times during these proceedings, there are multiple fatal flaws with LAFCO’s conditional approval of Rainbow’s detachment from the Water Authority and annexation into the Eastern Municipal Water District. Among these flaws is the fact that LAFCO failed to comply with the California Environmental Quality Act (“CEQA”) in conditionally approving Rainbow’s detachment and annexation by finding that the annexation would be exempt from CEQA review. Neither the so-called “common sense” exemption (CEQA Guidelines section 15061(b)(3), nor the Class 20 Categorical Exemption (CEQA Guidelines section 15320) apply to exempt Rainbow’s detachment and annexation. LAFCO must rectify these errors before completing approval to the reorganization.

With regards to the common sense exemption, it cannot be seen with certainty that there is no possibility that the reorganization may have a significant effect on the environment. In fact, the opposite is true. Rainbow’s detachment and annexation will change both the water supply source and who delivers the water to the district. Furthermore, as the Water Authority has previously advised LAFCO, the change in water supply will necessitate the construction of new water infrastructure and change in water treatment. Chief among these required improvements are those planned to accommodate Rainbow’s change in water supply owned and delivered from the Water Authority, to delivery of Metropolitan Water District (MWD) owned water by the Eastern Municipal Water District. This is due to the fact that Rainbow would only be receiving water at the northern end of their service area with the reorganization. For example, Rainbow would, if the detachment and annexation are completed, need to either have a portion of their

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new water supply treated at the Robert A. Weese plant in the City of Oceanside, which would then be delivered back to Rainbow for distribution to its customers – as is currently being contemplated by Rainbow – or construct a brand new treated water conveyance pipeline from the northern part of their service area to connect to the southern part for the ability to serve treated water. As part of their plan to treat water at City of Oceanside’s Weese plant, Rainbow would need to construct a new pump station and a new conveyance pipeline to service the southern portion of Rainbow’s service area. Clearly construction of a new pump station and pipeline, as well as the energy costs for newly pumping water to from the City of Oceanside into Rainbow’s distribution system, has the possibility of significant effects on the environment including, but not necessary limited to: air quality, biological resources, cultural and tribal cultural resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, noise, transportation, and wildfire, as well as cumulative impacts.

Indeed, Rainbow itself recognized these potential impacts by studying the proposed project in the Rainbow Municipal Water District Water and Sewer Facilities Plan Draft Program Environmental Impact Report (“DPEIR”), which was published last year. (See Figure 3-1 and Table 3-1 of the DPEIR, located at https://files.ceqanet.opr.ca.gov/270322-2/attachment/LXO109pa28xHBI0QtKRj6iUxdghLgqdnE67viQlrG4K4sMbKVopHyR0202k_9PFI3saPekJ9tavLPb8s0.)¹ Rainbow published and certified the Final EIR in August 2022 (see <https://files.ceqanet.opr.ca.gov/270322-4/attachment/4cmCkAdaE6Uyn2DyM9gHUqLlloG4PVdbqIzQsekVd3ugBvK8WM52ZkXfViBcwZiE93jGiTKC0aRyJuh70.>) As such, LAFCO is required to examine the full impacts of the proposed reorganization before completing approval of the Reorganizations.

Moreover, the Class 20 exemption does not apply on its face. Class 20 applies only where the changes in organization “do not change the geographic area in which previously existing powers are exercised.” (CEQA Guidelines section 15320.) Examples of this type of reorganization include: 1) establishment of a subsidiary district; 2) consolidation of two or more districts having identical powers; and 3) merger with a city of a district lying entirely within the boundaries of the city. Here, the proposed detachment and reorganization would remove Rainbow from the Water Authority and annex Rainbow into an entirely different entity in an entirely different county. Plainly, this type or reorganization is one that changes the geographic area in which previously existing powers are exercised and, thus, the Class 20 exemption does not apply.

Even if the Class 20 exemption were to apply on its face, the Categorical Exemptions are subject to the exceptions in CEQA Guidelines section 15300.2. Section 15300.2(c) provides that 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.” As set forth above, the reorganizations contemplated by CEQA Guidelines section 15320 are of the type that result in no real change in the physical boundaries or powers of the entities involved in the reorganization, nor in the infrastructure necessary to service the newly created entity. Here, the switch from the Water Authority to Eastern Municipal Water District will involve an unusual change in boundaries and result in the extensive unusual environmental impacts

¹ The DPEIR is over 850 pages long and, as such, the Water Authority provides reference to the document through a link to the document stored on the CEQA Clearinghouse website.

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resulting from the change in water supply source as well as the need for Rainbow to construct new infrastructure to use that new water supply from a new provider, as described above.

For all of these reasons, San Diego LAFCO should use the opportunity of this protest proceedings to rescind its previous approvals and conduct appropriate CEQA review before taking any further action on the proposed detachment and annexation.

Respectfully Submitted,



David J. Edwards

General Counsel

cc via email:

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