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EXEMPT FROM FILING FEES
GOV'T CODE § 6103

12 Attorneys for Plaintiff and Petitioner SAN
DIEGO COUNTY WATER AUTHORITY
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**
16

17 SAN DIEGO COUNTY WATER
AUTHORITY, a county water authority,
18
Plaintiff and Petitioner,
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20 v.

21 SAN DIEGO COUNTY LOCAL AGENCY
FORMATION COMMISSION, a political
subdivision of the State of California;
22 FALLBROOK PUBLIC UTILITY
DISTRICT, a Public Utility District pursuant
23 to Division 7 of California Public Utilities
Code; RAINBOW MUNICIPAL WATER
DISTRICT, a municipal water district
24 organized under Section 71000 of the
California Water Code; EASTERN
25 MUNICIPAL WATER DISTRICT, a
municipal water district organized under
26 Section 71000 of the California Water Code;
27 DOES 1 through 50, inclusive;

28 Defendants and Respondents,

Case No.

**NOTICE OF REQUEST AND REQUEST
FOR HEARING PURSUANT TO PUBLIC
RESOURCES CODE § 21167.4**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT CASE]**

Action Filed: August 21, 2023
Trial Date: None Set

1 FALLBROOK PUBLIC UTILITY
2 DISTRICT, a Public Utility District pursuant
3 to Division 7 of California Public Utilities
4 Code; RAINBOW MUNICIPAL WATER
5 DISTRICT, a municipal water district
6 organized under Section 71000 of the
7 California Water Code; EASTERN
8 MUNICIPAL WATER DISTRICT, a
9 municipal water district organized under
10 Section 71000 of the California Water Code;
11 and DOES 51 through 100, inclusive,

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Defendants and Real Parties in
Interest.

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NOTICE OF ELECTION TO PREPARE ADMINISTRATIVE RECORD

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Pub. Res. Code § 21167.4, Plaintiff and Petitioner SAN DIEGO COUNTY WATER AUTHORITY (“SDCWA”) respectfully requests that the Court set a hearing date on the merits of its Petition for Writ of Mandate; and Civil Complaint for Inverse Condemnation and Declaratory Relief (“Petition”). The Petition in this matter was filed on August 21, 2023. Pursuant to Pub. Res. Code § 21167.4(c), upon the filing of a request for hearing by the petitioner, the court shall establish a briefing schedule and a hearing date.

Respectfully submitted,

DATED: August 21, 2023

MEYERS NAVE



By:

SHAYE DIVELEY
Attorneys for Plaintiff and Petitioner San Diego
County Water Authority

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20 SAN DIEGO COUNTY LOCAL AGENCY
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26 municipal water district organized under
Section 71000 of the California Water Code;
27 DOES 1 through 50, inclusive;

28 Defendants and Respondents,

Case No.

**PETITION FOR WRIT OF MANDATE;
AND CIVIL COMPLAINT FOR INVERSE
CONDEMNATION AND
DECLARATORY RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT CASE]**

Trial Date: None Set

1 FALLBROOK PUBLIC UTILITY
2 DISTRICT, a Public Utility District pursuant
3 to Division 7 of California Public Utilities
4 Code; RAINBOW MUNICIPAL WATER
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11 and DOES 51 through 100, inclusive,

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Defendants and Real Parties in
Interest.

1 Plaintiff and Petitioner San Diego County Water Authority, a public agency formed
2 pursuant to the County Water Authority Act, Chapter 45, Water Code Appendix (“Water
3 Authority”), petitions this Court for a writ of mandate (“Petition”) pursuant to Code of Civil
4 Procedure section 1085 and/or 1094.5 to set aside and challenge all approvals made on July 10,
5 2023, by Defendant and Respondent San Diego County Local Agency Formation Commission
6 (“LAFCO”) pursuant to Resolution Nos. 23-11 and 23-12 (“Resolutions”). True and correct
7 copies of Resolutions Nos. 23-11 and 23-12 are attached hereto as **Exhibits A and B**, and are
8 incorporated by reference. In those Resolutions, LAFCO conditionally approved (1) detachment
9 of Defendants and Respondents Fallbrook Public Utility District (“Fallbrook”) and Rainbow
10 Municipal Water District (“Rainbow”) from the Water Authority; and (2) annexation of Fallbrook
11 and Rainbow to Defendant and Respondent Eastern Municipal Water District (“Eastern”), with
12 various conditions (“Reorganizations”). As set forth herein, the Resolutions are unlawful on
13 multiple grounds, including but not limited to violations of the California Environmental Quality
14 Act (“CEQA”), the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000
15 (“LAFCO Act”), the Metropolitan Water District Act (“MWD Act”), and the San Diego County
16 Water Authority Act (“CWA Act”). The Water Authority also brings a civil Complaint for
17 Inverse Condemnation (“Complaint”) under Public Utilities Code sections 1503 and 1505.5,
18 Article I, section 19 of the California Constitution and the Fourteenth and Fifth Amendments to
19 the Constitution of the United States, and Declaratory Relief pursuant to Code of Civil Procedure
20 section 1060.

21 Additionally, by way of this action, the Water Authority provides notice of its intent to
22 bring an *in rem* reverse validation action, as necessary, pursuant to Government Code section
23 56103 and Code of Civil Procedure section 860 *et seq.* to invalidate all completed approvals made
24 pursuant to Resolution Nos. 23-11 and 23-12 approving the Reorganizations. As set forth herein,
25 the LAFCO approvals made in the Resolutions are unlawful on multiple grounds, including but
26 not limited to violations of CEQA, the LAFCO Act, the MWD Act and the CWA Act. By the
27 terms of the Resolutions, the effective date of the approvals for the Reorganizations is the date of
28 recordation of the certificates of completion, which have not occurred as of the date of this filing.

1 The Water Authority will amend this Petition and Complaint to bring a timely action under Code
2 of Civil Procedure section 860 *et seq.* in the event LAFCO completes the Reorganization and
3 records the certificates of completion.

4 The Water Authority, by and through its undersigned attorneys, upon knowledge as to
5 itself, and upon information and belief as to all other matters, further alleges for its Petition and
6 Complaint against LAFCO as follows:

7 **INTRODUCTION**

8 1. The Water Authority brings this action against LAFCO for abusing its discretion
9 and failing to act in a manner required by law by approving the detachment and annexation
10 applications of Fallbrook and Rainbow without regard to the significant impacts to the
11 environment, including the effects of taking water from the already over-extended Sacramento-
12 San Joaquin Bay-Delta; to ratepayers, including disadvantaged communities and farmers located
13 in other parts of San Diego County, who will bear the economic brunt of the shift in costs; and to
14 the statutory authority of the Water Authority and its 24 members to provide reliable water
15 services for the residents and users in San Diego County. LAFCO's acts and omissions were
16 arbitrary and capricious, totally lacking in evidentiary support, and a prejudicial abuse of
17 discretion.

18 2. LAFCO's approval of the Reorganization applications submitted by Fallbrook and
19 Rainbow allow them to detach from the county-wide Water Authority, created under state law (the
20 CWA Act), and annex into Riverside County's Eastern Municipal Water District and Metropolitan
21 Water District, for the purpose of obtaining, in the near-term, a cheaper, but less reliable and less
22 sustainable, source of water. This was no minor reorganization approved by LAFCO—no water
23 supplier has ever been mandated by LAFCO to detach from the Water Authority and annex to
24 another, or, to the Water Authority's knowledge, from any other regional wholesale water supplier
25 created by the state legislature. This is a fundamental and unprecedented action by LAFCO,
26 second-guessing the Water Authority Board of Director's authority to make regional water supply
27 decisions in place for decades. Fallbrook and Rainbow have been members of the Water
28 Authority for nearly 80 and 70 years, respectively, and have enjoyed the benefits of the Water

1 Authority’s hard work, investments, and dedication to its members and San Diego County,
2 generally. Any detachment from the Water Authority had to ensure the applicable requirements of
3 the relevant statutes (i.e., the LAFCO Act, the MWD Act and the CWA Act) were carefully
4 followed and that Fallbrook and Rainbow paid their fair share of the Water Authority’s
5 indebtedness and value of assets incurred on their behalf.

6 3. LAFCO, acting in its legislatively mandated role as the “watchdog” oversight
7 agency, was required to give meaningful substantive review of the Reorganization applications
8 and ensure that the rules were followed. Yet, LAFCO’s approach to this seismic shift in regional
9 water supply planning was, at once, both slapdash and pre-determined, with many “invented”
10 processes and little attention paid to staff impartiality, the relevant statutory requirements, the need
11 to disclose and analyze the environmental impacts under CEQA, or Rainbow and Fallbrook’s
12 responsibility for their fair share of existing indebtedness the Water Authority incurred to serve
13 their customers. As such, LAFCO failed to fulfill its statutory duty to act as a “watchdog” to
14 guard against haphazard organizational changes.

15 4. The Water Authority does not contend that Fallbrook and Rainbow cannot leave
16 the Water Authority—only that, for Fallbrook and Rainbow to do so, LAFCO was required to
17 follow certain procedures and laws, and Fallbrook and Rainbow were required to pay their fair
18 share of the Water Authority’s indebtedness. To that end, the Water Authority has been engaged
19 in ongoing discussions with Fallbrook and Rainbow for months to address these issues and avoid
20 the need for litigation. The Water Authority and others also raised concerns directly with LAFCO
21 throughout the three-year process, so that defects could be resolved before LAFCO acted on the
22 Reorganization applications.

23 5. LAFCO did not act to fix these deficiencies, which cumulated in the mockery of
24 the fair and open meeting process that was the July 10, 2023 public hearing, in which LAFCO
25 conditionally approved the Resolutions challenged in this case. In late April, LAFCO noticed a
26 public hearing on the Reorganization applications for June 5, 2023. At that well-attended hearing,
27 based on the complexity of the issues and vacation schedules of LAFCO members, LAFCO voted
28 to continue the public hearing to its next regularly scheduled August 7, 2023, meeting, as the

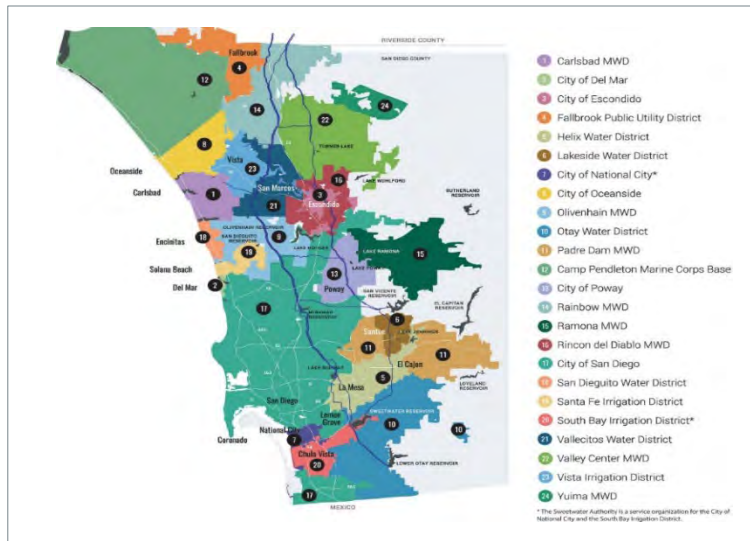
1 Commission is historically “dark” in July for summer recess, ending the discussion with a hearty
2 “See you in August!” But, a few days later, the LAFCO Board held a near-clandestine meeting
3 (with only 48-hour notice) on June 14, 2023, to approve the LAFCO staff’s request that LAFCO
4 re-calendar and advance the continued hearing by one month to a special meeting on July 10,
5 2023, to avoid the “potential enactment of legislation . . . that would require any approvals be
6 subject to a vote of the entire CWA electorate.” This was an improper pre-commitment by
7 LAFCO to approve the Reorganizations before the close of the public hearing, as the advancement
8 of the hearing date was admittedly designed to “position[] the Commission to consider the staff
9 recommendation to approve the proposals with special conditions ahead of the potential enactment
10 of legislation as detailed that would otherwise moot any approvals.” In manipulating the hearing
11 schedule this way and for these purposes, LAFCO failed to provide a fair and impartial review or a
12 meaningful public hearing process as mandated by LAFCO policies, state law, and constitutional
13 principles, and effectively denied the Water Authority and its members of their rights of due
14 process of law.

15 6. Despite the Water Authority’s efforts to reach an amicable resolution, LAFCO,
16 Fallbrook, and Rainbow are proceeding with the completion of the Reorganization process with
17 due haste. LAFCO issued Notices of Exemption (“NOE”) for its purported CEQA review on July
18 17, 2023 (despite the fact that its approval is conditional and not yet complete), and refused the
19 Water Authority’s request for a tolling agreement to extend any applicable statute of limitations
20 triggered by the NOEs. Fallbrook and Rainbow adopted resolutions on August 11, 2023 to place
21 the voter approvals of the detachments required by the LAFCO Resolutions on San Diego
22 County’s November 7, 2023, ballot. These actions are all improper and unlawful, in that they rely
23 upon and are in furtherance of LAFCO’s deficient and invalid approval of the Resolutions. Thus,
24 the Water Authority was forced to bring this action immediately to defend the interests of its
25 members and their water ratepayers, and to ensure that LAFCO properly complies with all laws
26 for the protection of ratepayers, taxpayers, and the environment before taking major steps that
27 would needlessly expend public resources and irreparably harm water service for the region.

28

SUMMARY OF LEGAL CLAIMS

7. Since its creation by the California Legislature in 1944, the Water Authority has played a critical role in developing and maintaining vital water supplies and infrastructure serving the San Diego region. The Water Authority sustains a \$268 billion regional economy and the quality of life for 3.3 million residents through a multi-decade water supply diversification plan, major infrastructure investments, and forward-thinking policies that promote fiscal and environmental responsibility. The Water Authority has grown from nine agencies in 1944 to 24 member agencies today, comprised of cities, special districts, and a federal military base, that deliver water across the metropolitan San Diego region.



The San Diego County Water Authority Member Agencies & Service Area

8. On June 9, 1944, voters in San Diego County approved the agency’s formation under the County Water Authority Act (“CWA Act”). For its first several decades, the Water Authority served mainly as a “pipeline” agency, depending almost exclusively on water supplies imported from the Colorado River and Northern California by its then-primary supplier, Metropolitan Water District of Southern California (“MWD”),¹ and delivering that water to local

¹ On October 4, 1946, MWD resolved under its Board resolution 3612 to consent to annexation of the Water Authority, fixing the terms and conditions of such annexation.

1 cities and water districts. A severe drought in the early 1990s resulted in MWD making dramatic
2 cuts to San Diego County’s water supply, and it became apparent that reliance on water imports
3 and near-total reliance on a single water provider, MWD, was unsustainable and unreliable. In
4 response, the Water Authority, working cooperatively and collaboratively with its members, San
5 Diego Association of Governments (“SANDAG”), cities and other local agencies, and
6 stakeholders, made significant strategic investments to diversify San Diego County’s sources of
7 water. This included the largest farm-to-urban water conservation-and-transfer agreement in the
8 nation, which now accounts for about half of San Diego County’s water supply, as well as
9 investing in seawater desalination facilities, regional long-term, seasonal and emergency storage,
10 and undertaking a host of capital improvement projects that have strengthened the region’s water
11 diversity, reliability, and emergency supply, sufficient not only for today, but to address current
12 and future growth and threats from climate change.

13 9. In the decades that followed, the Water Authority transformed itself into one of the
14 most visionary and agile water agencies in the world and is today considered a leader in modern
15 water management, conservation and innovation in the face of climate change. Through dynamic
16 leadership, thoughtful planning, and prudent fiscal policies, the Water Authority is managing the
17 region’s water portfolio, making investments to ensure the continued reliability of the region’s
18 water delivery and storage system, and improving water-use efficiency. As a result of these
19 investments, the Water Authority’s reliance on MWD water has reduced from 95% in 1990 to
20 13% in 2022, and its water supply portfolio serves as a state-wide model for resiliency.

21 10. Achieving a paradigm shift in the regional water supply network required the Water
22 Authority to make substantial investments and incur debt over decades. Safe, reliable and
23 affordable water is a fundamental right and public service provided by the Water Authority, and
24 the Water Authority seeks to ensure the lowest possible rates while maintaining a safe and reliable
25 water system. Approximately 90% of the Water Authority’s budget is for buying, treating and
26 delivering water, combined with debt service and infrastructure projects to ensure water is
27 available to meet the needs of member agencies and their customers. In recent years, the Water
28 Authority increased focus on affordability while ensuring reliability during the worst drought in

1 more than 1,200 years, by, among other things, maintaining strong credit ratings that reduce the
2 cost of infrastructure and saving more than \$250 million by refinancing debt. However, water
3 affordability requires coordinated efforts by all levels of government agencies—federal, state, and
4 regional wholesale and retail—because they all play a role in the investments and infrastructure
5 that transports, treats and delivers water to homes and businesses. All members of the Water
6 Authority, including Rainbow and Fallbrook, participated in the many long-term planning
7 processes for these resources, and the Water Authority incurred substantial bonded indebtedness
8 and contractual obligations to achieve these goals.

9 11. The Water Authority’s investments ensure the County’s water supply is safe,
10 resilient, reliable and affordable for everyone. That is why the Water Authority and its members
11 were surprised when, in 2019, Fallbrook and Rainbow indicated they were planning to detach
12 from the Water Authority, seeking instead, in the near term, a quick and cheap source of less
13 reliable imported water—in other words, a return to the past—and without paying their fair share
14 of the costs incurred by the Water Authority to serve their customers.

15 12. By design, LAFCO should have acted as a backstop to protect the region’s
16 ratepayers from this misguided and outdated attempt by these agencies to secure cheaper water
17 without regard to the loss of reliability to their ratepayers and at the expense of the entirety of the
18 Water Authority, i.e., its other 22 members, its constituents, and the region as a whole. “LAFCOs
19 were created by the Legislature for a special purpose: to discourage urban sprawl and to encourage
20 the orderly formation and development of local governmental agencies; such a commission is the
21 ‘watchdog’ the Legislature established to guard against the wasteful duplication of services that
22 results from indiscriminate formation of new local agencies or haphazard annexation of territory to
23 existing local agencies.” (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545.) Each
24 county has a designated LAFCO to serve this purpose, and each LAFCO has only the express
25 authority and jurisdiction established by the LAFCO Act; LAFCOs are prohibited to act without
26 express statutory authority. (*City of Ceres, supra*, 274 Cal.App.2d at 550.) This means the
27 LAFCO Act provided the statutory parameters of LAFCO’s review of the Reorganization
28 applications. For example, in considering the Reorganization applications, LAFCO was required

1 to use the Mandatory Proposal Review Factors under Government Code section 56668 of the
2 LAFCO Act, which mandates examination of certain factors such as, among others, “[t]he effect
3 of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic
4 interests, and on the local governmental structure of the county,” “[t]he effect of the proposal on
5 maintaining the physical and economic integrity of agricultural lands,” “[t]he comments of any
6 affected local agency or other public agency,” and “[t]he extent to which the proposal will
7 promote environmental justice.”

8 13. As a result, from a public policy standpoint, LAFCO should have approached the
9 Reorganization applications of Fallbrook and Rainbow with a preference in favor of maintaining
10 the status quo, and placed the burden on the applicants to demonstrate the compelling benefits for
11 their proposals. Yet, from the start, LAFCO did not meaningfully consider the possibility that the
12 Reorganization proposals could or should be disapproved under Government Code section 56668,
13 suggesting predetermination and bias toward approval. In fact, one of the applicants told the
14 Water Authority at the start of the process that everything had been lined up at LAFCO, and the
15 Reorganization was a *fait accompli*.

16 14. The record abounds with instances where LAFCO ignored the requirements of
17 Government Code section 56668 and comments of the Water Authority as the “affected agency”
18 by the Reorganization. For example, LAFCO staff treated Fallbrook and Rainbow’s express
19 purpose of their applications—“to achieve cost-savings to the applicants and their retail ratepayers
20 based on the difference in charges between the two wholesalers”—as a valid and worthwhile
21 objective, and used it to guide the entire LAFCO process, including recommending approval of
22 the applications and calculating exit fees favoring Fallbrook and Rainbow. However, cost savings
23 is not an express factor for LAFCO to consider when reviewing and approving reorganizations
24 under Government Code section 56668, and LAFCO’s singular reliance on this factor is a clear
25 violation of the LAFCO Act. (See *McBail & Co. v. Solano County Local Agency Formation Com.*
26 (1998) 62 Cal.App.4th 1223.) When cost is referenced under the Mandatory Proposal Review
27 Factors, it is as “cost and adequacy of services”—a consideration that cost savings must be
28 balanced with sufficiency and reliability of services.

1 15. This concept is fundamental to the Water Authority’s operations—the Water
2 Authority’s investments in reliability came at a cost, as there are no more “cheap” water supplies
3 left to develop. To be clear, the Water Authority does not intend to diminish that cost is a
4 significant concern for many customers, especially as water rates are rising across the state due to
5 inflation and greater outlays for water delivery and infrastructure. The Water Authority has taken
6 several tangible actions in recent years to address upward pressure on rates—pressures that are
7 almost entirely outside of the agency’s control. But cost cannot be the only driver when making
8 decisions of regional importance and long-term consequences.²

9 16. LAFCO’s focus on near-term costs savings for Fallbrook and Rainbow’s customers
10 is bad policy and short-sighted—promoting a “race to the bottom” mentality that is unsustainable
11 and poses significant risks. This was clearly evident in the Reorganization applications. For
12 Fallbrook and Rainbow’s customers, in return for paying lower rates, they will lose access to the
13 Water Authority’s more reliable water supplies of higher-priority Colorado River water and
14 seawater desalination, storage, and infrastructure in times of water shortage and emergency events,
15 and the other services that cannot be matched or achieved by buying imported water from MWD
16 via Eastern. LAFCO reached these conclusions even while daily news reports focused on drought,
17 draconian water cutbacks on 7 million people, and wildfire events across Southern California and
18 the southwest.

19 17. Under the Mandatory Proposal Review Factors, LAFCO had a duty to consider all
20 the effects of detachment and annexation, not just the aspects promoted by the applicants.
21 LAFCO ignored the impacts of the Reorganization on other ratepayers, improperly prioritizing the
22 interests of a select few Fallbrook and Rainbow agricultural users over all other uses and
23 agricultural users in the county. Indeed, more than 70% of the Water Authority’s agricultural
24 users are outside of Fallbrook and Rainbow. While the Water Authority and its member agencies
25 have worked very hard in an *esprit de corps* to meet the needs of all of San Diego County’s
26

27 ² MWD is now in the process of undertaking similar investments which it acknowledges are
28 essential for water supply reliability and resiliency and will come at a similar or higher cost.

1 agricultural users, including the implementation of a permanent discounted water rate meeting
2 legal requirements, that discounted rate may no longer be legally possible upon the
3 Reorganization. LAFCO failed to provide due consideration to the impacts to these customers,
4 including maintaining the “physical and economic integrity” of these other ratepayers and their
5 communities, which must now all assume the financial burden of Fallbrook and Rainbow leaving.

6 18. In addition to farmers served by other Water Authority member agencies,
7 residential customers will be shouldering the economic burden of investments made by the Water
8 Authority to serve Fallbrook and Rainbow customers—by paying higher rates. This includes
9 economically disadvantaged communities. Government Code section 56668(p) requires
10 consideration of “[t]he extent to which the proposal will promote environmental justice. As used
11 in this subdivision, ‘environmental justice’ means the fair treatment and meaningful involvement
12 of people of all races, cultures, incomes, and national origins, with respect to the location of public
13 facilities and the provision of public services, to ensure a healthy environment for all people such
14 that the effects of pollution are not disproportionately borne by any particular populations or
15 communities.” LAFCO’s disregard of the impacts of the Reorganization on the Water Authority’s
16 residential customers violates state policies under Water Code section 106, 106.3, and 106.5
17 concerning the importance of affordable and reasonable access to the use of water for domestic
18 purposes.

19 19. Furthermore, LAFCO also did not adequately consider the impacts to ratepayers
20 caused by the Reorganizations’ shift in voting rights at MWD, the water agency whose rates
21 directly affect San Diego County ratepayers. Any lands that leave San Diego County and go to
22 Riverside County for water supply purposes—which is what would happen under the
23 Reorganizations—automatically decrease San Diego County’s vote at MWD. LAFCO staff
24 summarily dismissed this concern as insignificant, contending that past votes of the MWD board
25 have not been very close and substituting its own uninformed judgment for the extensive
26 knowledge and program the Water Authority maintains to represent its interests at MWD. Again
27 this is extremely short-sighted, given, with climate change and other risk factors, there is a greater
28 likelihood of divergence in the future over water supply and rates, and the fact that losing voting

1 rights at MWD affects all San Diego County ratepayers and taxpayers.

2 20. LAFCO also had a mandatory duty to ensure the Reorganizations, if approved,
3 would comply with applicable provisions of the MWD Act and the CWA Act. LAFCO failed in
4 all these duties. Under the MWD Act, the Reorganizations would require an exchange of service
5 area or the annexation of Fallbrook and Rainbow to MWD, which will be the sole source of water
6 for Fallbrook and Rainbow under the Reorganizations. Under the MWD Act, LAFCO has no
7 authority to order an exchange of service area or annexation into MWD, and, thus, was required to
8 condition any approval of the Reorganizations on compliance with the MWD Act. To date, there
9 are no annexation requests or exchange of service area requested by any MWD member agency.
10 This is an important step, because LAFCO cannot merely assume MWD will approve the
11 annexation or exchange of service area, especially given MWD policies on agricultural uses and
12 the Bay-Delta.

13 21. LAFCO’s decision, focused solely on the cost benefits to Rainbow and Fallbrook’s
14 customers and without regard to the economic, social and other impacts to the Water Authority, its
15 remaining 22 members and their customers, also failed to follow and implement the CWA Act.
16 The plain terms of the CWA Act require Fallbrook and Rainbow—along with every other member
17 agency in the Water Authority—to pay their fair share of bonded and other indebtedness.
18 LAFCO’s actions violate these express provisions of the CWA Act by not requiring the departing
19 districts to pay their fair share of the Water Authority’s long-planned and implemented capital
20 projects, operations and maintenance expenses, and debt service incurred to serve Rainbow and
21 Fallbrook’s customers.

22 22. Incredibly, LAFCO staff took the position that the Water Authority cannot collect
23 Fallbrook and Rainbow’s shares of long-term indebtedness because the Water Authority’s debts
24 are not secured by property taxes (necessarily due to the constraints imposed by Proposition 13
25 (“Prop 13”)), but by future water revenue. LAFCO staff’s position was incorrect and inconsistent
26 with the Water Authority’s interpretation of the CWA Act, which is entitled to deference. The
27 CWA Act was enacted in 1944, prior to Prop 13, which limits the ability of the Water Authority to
28 impose property taxes. Following the effective date of Prop 13, revenues for wholesale water

1 agencies generally cannot be raised by taxing property without a vote of the electorate. Since Prop
2 13 was enacted, other propositions have further limited the Water Authority’s ability to impose
3 property taxes to cover its expenses. In particular, Proposition 26 (Cal. Const. Art. XIII C)
4 constitutionally requires every one of the member agencies in the Water Authority, including
5 Fallbrook and Rainbow, to pay its fair share of the costs of the Water Authority's capital projects
6 and operations and maintenance expenses, including debt repayment.

7 23. Indeed, LAFCO staff’s interpretation of the CWA Act is nothing more than an
8 attempt to game the system for the benefit of Fallbrook and Rainbow and to take unfair advantage
9 of the other Water Authority member agencies as a result of the passage of Prop 13 and later
10 voter-approved tax measures. Furthermore, as noted above, it ignores the greater costs to the
11 Water Authority’s remaining members and customers and impacts to disadvantaged communities
12 or agriculture in the Water Authority service area—factors that LAFCO is required to consider, if
13 not under the CWA Act, than definitely under the LAFCO Act.

14 24. The Water Authority and others repeatedly alerted LAFCO of the inherent
15 unfairness of allowing Fallbrook and Rainbow to escape their fair share of debt and the need to
16 ensure that its remaining members are not harmed by the Reorganizations. In response, LAFCO
17 should have conditioned its approval of the Reorganizations on compliance with the CWA Act
18 and required that Fallbrook and Rainbow work with the Water Authority to pay their fair share of
19 bonded and other indebtedness. Instead, LAFCO staff gave lip service to this concept by
20 inventing an “exit fee” to cover short-term financial losses. This “exit fee” was not based on any
21 requirements of the LAFCO Act or the CWA Act,³ and, despite comprehensive information
22 submitted by the Water Authority and experts, was not tethered to any economic modeling or
23 expert analysis. Instead, LAFCO staff reverse-engineered an exit fee that would impose the least
24 possible economic burden on Fallbrook and Rainbow, ignoring the guidance provided by its own
25 expert and relying on stale data and projections, despite the availability of updated revenue figures

26 _____
27 ³ Furthermore, LAFCO cannot extinguish the Water Authority’s right to tax within Fallbrook and
28 Rainbow until Fallbrook and Rainbow’s portion of the Water Authority’s long term indebtedness
and contractual obligations is retired simply by substituting an exit fee.

1 that could have been used in calculating the fee. As a result, even the minimal exit fees proposed
2 by LAFCO staff—a combined \$24.3 million total over five years—understated the actual costs of
3 detachment to the Water Authority over the five year period by at least 50% based on the only
4 actual financial evidence that was submitted in the record. This would not in any case cover a fair
5 share of the debt of Fallbrook and Rainbow, and, thus, was without any factual or legal support. It
6 would also necessitate an immediate average rate increase of 5% on top of the already high rate
7 increase adopted.

8 25. LAFCO was aware of these deficiencies and data needs associated with the staff-
9 proposed exit fee. At the public hearing set on June 5, 2023, LAFCO engaged in a discussion on
10 the adequacy and parameters of the exit fee, and decided to continue the hearing for 60 days to get
11 more information and “further the conversation” to reach a consensus on the exit fees.
12 Commissioner Jo MacKenzie, in particular, asked staff for further information and to come back
13 with other options on exit fee proposals, and announced on the record that she was not available in
14 July. Yet, mere days later, LAFCO decided to ignore this public discussion, and hastily scheduled
15 a procedurally suspect “public hearing” for July 10, 2023 (when the Commission is historically on
16 break). At this meeting, despite prior Commission discussion and the public discourse about the
17 need for more data and options, LAFCO approved the Resolutions that adopted staff’s arbitrary
18 number for exit fees without any substantial evidence or legal support. LAFCO did not even
19 bother to update calculations with the actual lost revenue figures submitted by the Water Authority
20 before approving the exit fee. At the hearing, LAFCO staff excused their failure to update the
21 calculations because it meant that they “would have to redo essentially everything” and “all these
22 analyses would just take more time to review everything.” In other words, LAFCO chose not to
23 use correct data because it would delay approval of the Reorganizations. As a result, even if such
24 an exit fee was legally authorized, which it is not, LAFCO’s adopted exit fees—\$15,798,250.00
25 from Rainbow and \$8,506,750.00 from Fallbrook—would not come close to covering the debt
26 incurred on behalf of Fallbrook and Rainbow and was unsupported by the evidence in the record.

27 26. The Resolutions are further flawed because, by allowing the detachment of
28 Fallbrook and Rainbow from the Water Authority without permitting all electors in the Water

1 Authority to vote on the detachment, they imposed a “LAFCO tax” on electors remaining in the
2 Water Authority following detachment, without approval of those voters, in violation of Prop 13
3 (Cal. Const. art. XIII A, § 4), Proposition 26 (Cal. Const. art. XIII C, §1(c) and (e)(7)), and
4 Proposition 62 (Gov. Code, § 53722). For this and other reasons, the Water Authority and some
5 of its members asked LAFCO to condition approval of the detachments on the majority vote of the
6 entire Water Authority service area. In yet another attempt to ensure approval of the
7 Reorganizations, LAFCO staff improperly advised LAFCO that it was legally prohibited from
8 imposing conditions on the conduct of the elections because it decided to treat the Water Authority
9 as a “non-district” for the purpose of Part 4 of the LAFCO Act, meaning the CWA Act would
10 apply to any post-approval proceedings. If this was legally permissible under the LAFCO Act, it
11 meant LAFCO should have considered and conditioned approval of the Resolutions on the Water
12 Authority’s conduct of elections under its own authorizing statute. Yet, not only did LAFCO not
13 do this, it also imposed conditions on the conduct of the elections under the CWA Act,
14 contravening LAFCO staff’s self-serving advice and further acting outside of its jurisdiction and
15 statutory authority.

16 27. Specifically, the Resolutions state that pursuant to “Water Code Appendix Section
17 45-11, subdivision (a)(2),” Fallbrook and Rainbow “shall submit to its electors at the next
18 available general or special election the proposition of detaching from CWA. The provisions of
19 the County Water Authority Act regarding such elections in effect at the time the Executive
20 Officer issued the Certificate of Filing for the proposal shall govern such election.” These are
21 express conditions on the conduct of the elections under the CWA Act, made even more
22 objectionable because LAFCO staff drafted them in an admitted attempt to avoid the preclusive
23 effect of the State’s possible adoption of AB 399, currently pending in the Legislature. AB 399
24 would amend the CWA Act to expressly require a vote of the entire Water Authority service area
25 before a detachment can be effective, aligning it with the original intent of the Act to have those
26 shouldering the economic burden of a reorganization vote affirmatively to accept that burden—
27 that is to say, accomplish the intended purpose of the CWA Act allowing members to leave but
28 only if they pay their fair share of debt. LAFCO staff stated that they asked for the public hearing,

1 originally set for August 7, 2023, to be advanced to July 10, 2023, for the express purpose of
2 avoiding the effect of the enactment of AB 399. This demonstrates a clear intent by LAFCO to
3 interfere with the constitutional right of voters to be heard on the imposition of the “LAFCO tax.”

4 28. On August 11, 2023, Fallbrook and Rainbow each passed a resolution ordering a
5 special election on November 7, 2023 that would allow their respective electorate to vote on the
6 detachment of Fallbrook and Rainbow from the Water Authority. If AB 399 passes and Fallbrook
7 and Rainbow still move forward with their elections on November 7, 2023, it will result in
8 repeated elections over the same issues, resulting in voter confusion and a misuse of public
9 resources.

10 29. LAFCO further violated the law in adopting the Resolutions by failing to comply
11 with CEQA. At its most basic level, CEQA requires public agencies to “look before they leap”
12 and ensure that government decision-makers and the public are fully informed about the potential
13 environmental effects of proposed activities and measures available to prevent significant,
14 avoidable environmental damage. Here, the Reorganization presented major changes to water
15 supply sources and delivery that would result in significant and adverse impacts on the
16 environment. Under CEQA, these impacts were required to be disclosed and addressed by
17 LAFCO before approving the Resolutions. But LAFCO refused to do that too.

18 30. LAFCO’s approach to CEQA was fundamentally flawed. In the Resolutions,
19 LAFCO contended it was acting as a “responsible agency” under CEQA and relied on Fallbrook
20 and Rainbow’s respective determinations that the submissions of Reorganization applications
21 were exempt pursuant to a Class 20 Categorical Exemption. The Class 20 Exemption “consists of
22 changes in the organization or reorganization of local governmental agencies where the changes
23 do not change the geographical area in which previously existing powers are exercised.” LAFCO
24 also relied on, as the “lead agency” for the approval of a change to the sphere of influence for the
25 Reorganizations, Guidelines 15061(b)(3), the “Common Sense Exemption,” which applies to
26 activities that can be seen with certainty to have no possibility for causing a significant effect on
27 the environment. Neither exemption is applicable here. At the outset, both Fallbrook and
28 Rainbow’s reliance on the Class 20 exemption were challenged in court, with stipulated judgments

1 entered that the Notices of Exemption could not be relied upon by other agencies such as LAFCO.
2 In a clear disregard for the court system, LAFCO claimed it was not a party to those lawsuits and
3 is not bound by the stipulated judgments, and can rely on the exemptions in the Resolutions. Even
4 so, LAFCO misunderstands its role under CEQA. Whether it is the lead agency or responsible
5 agency, LAFCO cannot merely rely on another agency’s CEQA exemption without confirming its
6 actions—here, approving the Reorganizations as a whole—meet the requirements of that
7 exemption. (*See Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006)
8 141 Cal.App.4th 677.) Here, LAFCO pointedly ignored the environmental impacts of its actions
9 and has failed to comply with its obligations under CEQA.

10 31. For instance, LAFCO (like Fallbrook and Rainbow before it) improperly concludes
11 the Reorganizations do not change the nature or location of the services provided. As noted
12 above, the Resolutions changed the water supply source for Rainbow and Fallbrook from the
13 Water Authority to MWD via Eastern. This is not a “paper” or mere organizational change;
14 LAFCO’s actions resulted in a change for Fallbrook and Rainbow to a *different* water supply from
15 the Water Authority’s supply—one that increased reliance on water supplies from the Sacramento-
16 San Joaquin Bay-Delta. The statewide concern about increasing the burden on the Bay-Delta
17 poses significant environmental issues that were required to be disclosed and analyzed under
18 CEQA, and violates state and MWD policies⁴ on the Bay-Delta. This includes the Sacramento-
19 San Joaquin Delta Reform Act of 2009, as codified at Water Code section 85021, which provides
20 it is “[t]he policy of the State of California . . . to reduce reliance on the Delta in meeting
21 California’s future water supply needs through a statewide strategy of investing in improved
22 regional supplies, conservation, and water use efficiency. Each region that depends on water from
23 the Delta watershed shall improve its regional self-reliance for water through investment in water
24 use efficiency, water recycling, advanced water technologies, local and regional water supply
25 projects, and improved regional coordination of local and regional water supply efforts.”

26 _____
27 ⁴ See MWD Bay-Delta Policies at
28 <https://mwdh2o.legistar.com/View.ashx?M=F&ID=11291746&GUID=939C5121-171B-499F-9E6A-0FA9B6C2ED67> .

1 32. There is no dispute that the Reorganizations would impose greater burdens and
2 impacts on this critically affected area—even LAFCO admits this. The LAFCO staff report for
3 the June 5, 2023 meeting stated that “the reorganization proposals would result in greater demands
4 on the Bay-Delta and in doing so stray from State policy (Water Code 85021) to reduce reliance
5 on the Delta.” The Delta Water Master said the same in a letter submitted to LAFCO. Yet,
6 despite LAFCO’s recognition that the Reorganizations place a greater burden on the Bay-Delta
7 and violate state and MWD policy, LAFCO declined to conduct any CEQA review prior to
8 approving the applications, again substituting its uninformed judgment for dozens of officials
9 serving on the Water Authority, MWD boards of directors, and the state legislature.

10 33. The environmental impacts of the Reorganizations are not limited to the impacts on
11 the Bay-Delta and state and MWD water policy. The record demonstrates that the Water
12 Authority’s supply is more reliable than MWD (being sold via Eastern), and with the
13 Reorganizations, Fallbrook and Rainbow’s customers face significant potential disruption and
14 emergency water supply risks in the event of an earthquake on the Elsinore Fault. LAFCO was
15 required under CEQA to disclose and analyze these environmental impacts and potential
16 disruption of essential services. LAFCO also failed to consider any CEQA impacts for the new
17 facilities needed by Fallbrook and Rainbow upon detachment from the Water Authority, even after
18 repeated requests by the Water Authority that LAFCO was required under CEQA to seek such
19 information from the applicants throughout the process. Indeed, the record shows that Rainbow
20 will be required to construct new pipelines, pumping facilities, and water mains, among other new
21 facilities, which pose potential impacts to air quality, greenhouse gas emissions, biological
22 resources and other environmental effects. LAFCO was required to disclose and analyze these
23 impacts under CEQA.

24 34. The Reorganizations also will result in significant inconsistencies with land use
25 plans. For example, any lands which leave San Diego County and go to Riverside County for
26 water supply purposes automatically decrease San Diego County’s vote at MWD, whose rates
27 directly impact San Diego County ratepayers and taxpayers. Losing voting rights at MWD will
28 impair the County’s regional cohesiveness and planning efforts, which was required to be

1 disclosed and discussed under CEQA. The reliance on water supplies that burden the Bay-Delta
2 would also violate the local and regional land use plans of SANDAG, Fallbrook, and Rainbow.

3 35. These impacts, which LAFCO was aware, but decided to ignore, make its reliance
4 on the Class 20 and Common Sense Exemptions a blatant violation of CEQA. Exemptions, when
5 properly applied, are intended to save time and cost related to CEQA compliance for certain
6 activities and projects. However, when used improperly by an agency, an exemption can deprive
7 decision-makers and the public of vital information about a project’s impacts. LAFCO’s reliance
8 on CEQA exemptions here was patently wrong—the decision-makers, the public, and the voters
9 were entitled to be informed of the Reorganizations’ environmental impacts to water supply,
10 biological resources, air quality, greenhouse gas emissions, public services and utilities, wildfire,
11 safety and seismic risks, land use planning and more, before LAFCO approved the Resolutions.
12 As such, LAFCO’s actions violate CEQA and should be set aside. The Water Authority requests
13 that this Court order LAFCO to prepare an environmental impact report (“EIR”) that discloses,
14 analyzes, and mitigates all significant environmental effects of the detachment and annexation
15 prior to any further reconsideration of the Reorganizations.

16 36. For all of the reasons set forth herein, LAFCO’s actions alleged herein are arbitrary
17 and capricious, an abuse of discretion, not supported by substantial evidence, and have no basis in
18 the law or in fact. The actions of LAFCO, Fallbrook, and Rainbow in furtherance and pursuant to
19 the Resolutions are also deficient and invalid, including, but not limited to, Fallbrook and
20 Rainbow’s resolutions placing the detachments for its voters’ respective approval on the
21 November 7, 2023 ballot.

22 **THE PARTIES**

23 37. Plaintiff and Petitioner San Diego County Water Authority is a public agency of the
24 State of California, formed pursuant to the County Water Authority Act. (Wat. Code App. § 45-
25 3.) The Water Authority is a regional wholesale water supplier for 24-member retail water
26 agencies—cities, public utility districts, municipal water districts, irrigation districts, and one
27 military base—located in San Diego County. The Water Authority is responsible for providing
28 water supplies to almost all of the population in San Diego County. The Water Authority

1 wholesales water to its member agencies, including Fallbrook and Rainbow. The Water Authority
2 is an interested party and has a beneficial interest in the enforcement of the statutes at issue here,
3 and, thus, has standing to pursue this action, including, but not limited to, as a party with a
4 beneficial interest in the enforcement of CEQA to contest LAFCO's compliance with CEQA in
5 adopting the Resolutions; and as a party with a beneficial interest in the enforcement of the CWA
6 Act, the MWD Act, and the LAFCO Act to contest LAFCO's adoption of the Resolutions.

7 38. Defendant and Respondent LAFCO is, and was at all times relevant hereto, a public
8 agency organized and existing pursuant to the Cortese-Knox-Hertzberg Local Government
9 Reorganization Act of 2000 (Gov. Code, § 56000 *et seq.*), which establishes a local agency
10 formation commission for each of California's 58 counties. LAFCO is a political subdivision of
11 the State of California authorized to regulate local government boundaries in the County of San
12 Diego, and is obligated to enforce certain laws and make certain decisions thereunder, including
13 the requirements and restrictions of the LAFCO Act, the MWD Act, and CWA Act at issue in this
14 action.

15 39. Defendant, Respondent, and Real party-in-Interest Fallbrook Public Utility District
16 is a public agency under the Public Utility District Act of the State of California that operates
17 within northern San Diego County. Fallbrook purchases water from and is a member agency of
18 the Water Authority and has been a member agency since creation of the Water Authority in 1944.

19 40. Defendant, Respondent, and Real Party-in-Interest Rainbow Municipal Water
20 District is a municipal water district that operates within northern San Diego County. Rainbow
21 purchases water from and has been a member agency of the Water Authority since 1954.

22 41. Defendant, Respondent, and Real Party-in-Interest Eastern Municipal Water
23 District is a municipal water district organized under section 71000 of the California Water Code
24 and is located in Riverside County.

25 42. Plaintiff and Petitioner Water Authority is informed and believes, and on that basis
26 alleges that the defendants/respondents designated as DOES 1 through 100, inclusive, are persons
27 or entities in some way responsible for the acts or omissions alleged, that they have some right,
28 title, or interest in the subject matter of this action, or that they otherwise are required to be joined

1 as a party in order for Plaintiff and Petitioner Water Authority to obtain all the relief to which it is
2 entitled.

3 43. The true names and capacities of defendants, respondents, and/or real parties-in-
4 interest identified as DOES 1 through 100, whether individual, corporate, associate, or otherwise,
5 are unknown to Plaintiff and Petitioner Water Authority at the time of filing this
6 Complaint/Petition and Water Authority, therefore, sues such defendants, respondents, and/or real
7 parties-in-interest by such fictitious names and will ask leave of Court to amend this
8 Complaint/Petition to show their true names or capacities when the same have been ascertained.
9 Plaintiff and Petitioner Water Authority is informed and believes, and thereon alleges that each
10 DOE defendant, respondent, and/or real party in interest is, in some manner, responsible for the
11 events described in this Petition and Complaint; that each has some right, title, or interest in the
12 subject matter of this action; or that they must otherwise be joined as a party in order for Water
13 Authority to obtain all the relief to which it is entitled.

14 **JURISDICTION AND VENUE**

15 44. Jurisdiction and venue are proper in this Court pursuant to Article VI, Section 10 of
16 the California Constitution; Code of Civil Procedure sections 1085 and 1094.5; Public Resources
17 Code sections 21167 and 21168.7; and Public Utilities Code sections 1503 and 1505.5. This
18 Court has personal jurisdiction over Defendants, Respondents, and Real parties because they are
19 present and transact business within San Diego County's jurisdictional limits.

20 45. Venue is proper in this Court under California Code of Civil Procedure sections
21 393, 394, and 395 because the Water Authority, LAFCO, Fallbrook, and Rainbow are located in
22 San Diego County.

23 46. A Writ of Mandate is proper because the Water Authority has a clear, present, and
24 beneficial right to LAFCO's adherence to the rule of law, including, but not limited to, CEQA, the
25 LAFCO Act, the MWD Act, and the CWA Act. The Water Authority has no plain, speedy, or
26 adequate remedy at law.

27 47. This action is timely brought as LAFCO adopted Resolution Nos. 2023-11 and
28 2023-12 on July 10, 2023, which Resolutions, and issued Notices of Exemption on July 17, 2023,

1 for those approvals under CEQA stating its actions are exempt from the requirements of CEQA.

2 48. This action is subject to Public Utilities Code sections 1503, 1504, and 1505.5
3 because LAFCO's approval of the Resolutions will extend Eastern's water service into Fallbrook
4 and Rainbow's jurisdictional area, which already is provided water service by the Water
5 Authority.

6 49. This action is subject to Article I, Section 19 of the California Constitution and the
7 Fourteenth and Fifth Amendments to the United States Constitution because LAFCO's approval
8 of the Resolutions will take the Water Authority's property interests in Fallbrook and Rainbow's
9 contributions to Water Authority's debt service, operations, and maintenance and will require the
10 Water Authority to abandon infrastructure to preserve and protect the integrity of its water
11 conveyance and delivery systems.

12 50. The Water Authority is entitled to calendar preference pursuant to Public Resources
13 Code section 21167.1(a).

14 **THE WATER AUTHORITY EXHAUSTED ITS ADMINISTRATIVE REMEDIES**

15 51. The Water Authority has performed any and all conditions precedent to filing this
16 Petition and Complaint, and has exhausted any and all administrative remedies. At various times,
17 the Water Authority has submitted written correspondence, objections, and appeals to LAFCO
18 regarding its failure to proceed in the manner required by law and its prejudicial abuse of
19 discretion, participating in and appearing at public hearings on the Fallbrook and Rainbow
20 applications, including on June 5, 2023, June 10, 2023, and July 10, 2023, and made several
21 attempts to advocate to LAFCO for the proper compliance with CEQA, the LAFCO Act, the
22 MWD Act, and the CWA Act.

23 52. Although not required to exhaust, the Water Authority has also attempted to resolve
24 these issues directly with Fallbrook and Rainbow, and is engaged in ongoing settlement
25 discussions with Fallbrook and Rainbow. The Water Authority also asked LAFCO to agree to toll
26 any applicable statute of limitations under CEQA to allow these ongoing discussions to continue,
27 but LAFCO refused, necessitating the filing of this Petition and Complaint.

28 53. The Water Authority elects to prepare the administrative record, as per the notice

1 attached as **Exhibit C**.

2 54. At all times mentioned in this Petition and Complaint, LAFCO has been able to
3 perform the ministerial and mandatory duties imposed on them consistent with applicable law.
4 Accordingly, the Water Authority had no recourse but to file this litigation.

5 **INADEQUATE REMEDY AT LAW AND REQUEST FOR STAY/INJUNCTION**

6 55. The Water Authority and its constituents will continue to suffer adverse and
7 irreparable environmental harm from LAFCO's actions and LAFCO's failure to comply with
8 CEQA, the CWA Act, the MWD Act, the LAFCO Act and other laws in approving and carrying
9 out the LAFCO actions, as described herein, until and unless this Court provides the relief prayed
10 for in this Petition/Complaint. The Water Authority has no plain, speedy or adequate remedy at
11 law for this irreparable harm.

12 56. LAFCO, Fallbrook, and Rainbow are taking steps to complete the Reorganizations
13 as soon as possible, despite being aware of the deficiencies in the Resolutions and the LAFCO
14 process and the Water Authority's settlement efforts with the parties. LAFCO issued Notices of
15 Exemption for its purported CEQA review of its actions on July 17, 2023 (despite the fact that its
16 approval is conditional and not yet complete). Fallbrook and Rainbow adopted resolutions on
17 August 11, 2023 to place the voter approvals of the detachments required by the LAFCO
18 Resolutions on San Diego County Registrar's November 7, 2023, ballot. These actions are all
19 improper and unlawful in that they rely upon and are in furtherance of LAFCO's deficient and
20 invalid approval of the Resolutions and will irreparably harm the environment as described in this
21 Petition. A stay or preliminary and permanent injunction should issue preventing LAFCO,
22 Fallbrook, Rainbow, and Eastern from proceeding with actions authorized in or conducted
23 pursuant to the Resolutions.

24 **THE WATER AUTHORITY MAY RECOVER ITS ATTORNEYS' FEES AND COSTS**

25 57. The Water Authority has hired lawyers and incurred attorneys' fees to enforce
26 public rights affecting the public interest and threatened by the illegal conduct of LAFCO,
27 Fallbrook, Rainbow, and Eastern, as alleged herein. Accordingly, it is entitled to recover costs
28 pursuant to Code of Civil Procedure sections 1029, 1032, and 1033.5.

1 LAFCO, initiating proceedings to obtain approval for detachment from the Water Authority and
2 annexation to Eastern in order to buy MWD water. Rainbow determined that this action was
3 categorically exempt from CEQA review pursuant to a Class 20 Exemption. On or about March
4 19, 2020, Fallbrook filed a resolution of application with LAFCO, initiating proceedings to obtain
5 approval for detachment from the Water Authority and annexation to Eastern in order to buy
6 MWD water. Like Rainbow, Fallbrook found its action was categorically exempt under CEQA's
7 Class 20 Exemption. Rainbow and Fallbrook's Notices of Exemption were challenged in San
8 Diego Superior Court Case Nos. 37-2020-00001510-CU-WM-CTL and 37-2020-00004572-CU-
9 MC-CTL. In those cases, both Fallbrook and Rainbow stipulated, and the Superior Court ordered,
10 that the Fallbrook and Rainbow Notices of Exemption could not be relied upon by other agencies
11 such as LAFCO. True and correct copies of the Court Orders are attached hereto as **Exhibits F**
12 **and G**, and are incorporated by reference.

13 65. On or about April 2, 2020, at the prompting of LAFCO, the Water Authority
14 applied to LAFCO for "non-district" status for the purpose of implementing Part 4 of the LAFCO
15 Act. Part 4 of the LAFCO Act addresses the procedures that occur after LAFCO approves a
16 proposal, providing property owners and registered voters in the affected territory an opportunity
17 to protest the proposal. If the protests are sufficient, it can either terminate the proceeding or
18 trigger an election. Treating the Water Authority as a "non-district" would mean that this post-
19 approval process would be conducted under the CWA Act, which expressly requires an election
20 on a proposal for detachment. The Water Authority made this application accompanied by the
21 request that any detachment approved by LAFCO include a condition of approval that it be
22 approved by a majority of the Water Authority service area. On May 4, 2020, LAFCO determined
23 that the Water Authority is not a district or special district for purposes of Part 4 of the LAFCO
24 Act.

25 66. Shortly thereafter, on or about April 28, 2020, LAFCO's Executive Officer
26 combined Rainbow and Fallbrook's applications administratively.

27 67. Early in the process, the Water Authority informed LAFCO that the Fallbrook and
28 Rainbow reorganization proposals were complicated with several far-reaching public policy and

1 safety issues and intersection of various statutes. On September 18, 2020, the Water Authority
2 submitted its detailed, formal response to Fallbrook and Rainbow’s applications. A true and
3 correct copy of the San Diego County Water Authority Combined Response to Reorganization
4 Applications by Fallbrook/Rainbow (the “Combined Response”) is attached hereto as **Exhibit H**,
5 and is incorporated by reference.

6 68. The Combined Response identified the extensive legislative, administrative, factual
7 and legal considerations that LAFCO needed to evaluate and account for in any LAFCO decision
8 on the Fallbrook and Rainbow applications. These included such issues as the need for LAFCO to
9 reconcile specific provisions of the CWA Act with the LAFCO Act, with due attention paid to
10 decisional law holding that specific provisions in the CWA Act cannot be contradicted by general
11 terms in the LAFCO Act. The Water Authority also drew LAFCO’s attention to Part 5 of the
12 LAFCO Act, in particular the provisions that govern imposition of conditions by LAFCO and the
13 requirement that Government Code section 57354 requires Fallbrook and Rainbow to continue to
14 be liable for the payment of principal, interest, and any other amounts which become due on Water
15 Authority bonds, contracts, and other obligations that remain outstanding as of the date of
16 detachment.

17 69. The Water Authority also notified LAFCO that it needed to consider the
18 ramifications of Fallbrook and Rainbow’s applications on the Sacramento-San Joaquin Bay-Delta,
19 including environmental impacts and obligations imposed by the Delta Reform Act, codified at
20 Water Code sections 85000 *et seq.* The Water Authority further notified LAFCO that it needed to
21 undertake a robust review of potential environmental impacts of the Fallbrook and Rainbow
22 applications, including new construction needed by Rainbow. The Water Authority alerted
23 LAFCO to the reality that, by switching their water source from the Water Authority to MWD’s
24 imported supply (purchased via Eastern), Fallbrook and Rainbow were swapping a more reliable,
25 diversified water supply for a less reliable source to which it would also have no preferential right
26 in times of extreme shortage, making Fallbrook and Rainbow the least reliable among MWD
27 water buyers, the rest of whom have a preferential right to MWD water. More importantly, the
28 Water Authority identified for LAFCO that Fallbrook and Rainbow’s application represented a

1 new 30,000-acre-foot demand for MWD water because Fallbrook and Rainbow, by detaching
2 from the Water Authority, would lose access to the Water Authority’s share of the Quantification
3 Settlement Agreement in the Imperial Valley (“QSA water”) and other local sources of supply
4 such as seawater desalination. The Water Authority advised LAFCO that it needed to remain
5 attentive to its own legislative policies, including L-108 (Water Supply and Reliability Regulatory
6 Guidelines) and L-109 (Water Supply and Reliability Legislative Guidelines).

7 **B. The Ad Hoc Committee Retains an Economist to Guide Its Review, Analysis,
8 and Ultimate Recommendation Regarding the Applications to LAFCO**

9 70. On or about June 1, 2020, LAFCO established an advisory committee—the so-
10 called “Ad Hoc Committee”—to assist in the administrative review of the Rainbow and Fallbrook
11 applications in accordance with LAFCO Policy L-107. Before it was recently dissolved by
12 LAFCO, the Ad Hoc Committee consisted of the following members: Jack Bebee, Fallbrook’s
13 General Manager; Tom Kennedy, Rainbow’s General Manager; Nick Kanetis, Eastern’s Assistant
14 General Manager; Sandy Kerl, the Water Authority’s General Manager; Gary Croucher, Water
15 Authority Board Member; Nick Serrano, Water Authority Board Member; Lydia Romero, City
16 Manager, City of Lemon Grove; Kimberly Thorner, General Manager, Olivenhain Municipal
17 Water District; Brian Albright, Parks Director, County of San Diego (at large); and Keith Greer,
18 Regional Planner for San Diego Association of Governments (at large). In addition, LAFCO’s
19 Executive Officer contracted with Adam Wilson to serve as moderator of the Ad Hoc Committee.

20 71. In acknowledgement of the complex issues involved with the Reorganization
21 applications and admitted lack of LAFCO expertise in the subject, the Ad Hoc Committee retained
22 Dr. Michael Hanemann, an environmental economist with experience in the areas of water
23 economics and policy, climate change and non-market valuation, to advise LAFCO.
24 Dr. Hanemann issued a draft report in September 2021, which, following public review and
25 comment, was finalized in December 2021, and presented to the Ad Hoc Committee in February
26 2022.

27 72. Dr. Hanemann’s final report covered several topics related to the Reorganization
28 proposal, including water rates and reliability issues. Among other things, Dr. Hanemann

1 concluded that Fallbrook and Rainbow were “taking something of a gamble on supply reliability if
2 they switch from SDCWA to EMWD, the gamble ultimately is not one of running out of water
3 but, rather, paying a higher price than they had anticipated to get by in a drought.” He also made
4 clear that it was incorrect for anyone to claim that Fallbrook and Rainbow would be receiving the
5 same MWD water with the Reorganizations because the water supplies would be “legally different
6 with regard to their underlying water right and reliability.”

7 73. Although he did not have any expertise in exit fees, consistent with the scope of
8 work prepared by LAFCO staff, Dr. Hanemann’s final report contained his views on how to
9 calculate the novel and potential departure fees, with suggestions on the purpose for such a fee,
10 possible methodologies for calculating fees, reasonable timelines and other information. Dr.
11 Hanemann did not recommend or propose a specific exit fee. Dr. Hanemann explained his
12 perspectives on the purpose of an exit fee in his report as follows:

13 The purpose of a departure fee is to assist SDCWA in covering its
14 financial obligations that are fixed, ongoing and unavoidable for a
15 limited period while it adjusts to the changed financial situation. It is
16 not intended as payment for water being received; it is payment for
17 obligations incurred when receiving water in the past, given that
18 water supply is highly capital-intensive, requires long-term
19 commitments, and is not operated on a PayGo basis.

17 If San Diego LAFCO were inclined to require a departure fee as a
18 condition for approving detachment by FPUD or RMWD, it would
19 need to decide what is the appropriate share to assign to FPUD or
20 RMWD, of which SDCWA ongoing financial obligations, and for
21 what length of time.

20 74. Although he admitted he had no legal expertise, Dr. Hanemann concluded that
21 there was an economic justification for LAFCO to impose a continuing financial obligation on
22 Fallbrook and Rainbow. As concluded by Dr. Hanemann, “[o]ver the past two decades, SDCWA
23 has made major infrastructure investments and has made major long-term commitments to obtain
24 some independent, and highly reliable, sources of water. It will be paying for those commitments
25 for the next 20-25 years or more.” He also observed that the detachments would not be completed
26 quickly, so that any exit fee should be paid annually over a time period between 3-10 years.

27 75. Dr. Hanemann’s report was prepared using certain assumptions and data based on
28 the information available at the time; for example, in his 2021 final report, Dr. Hanemann used

1 2022 adopted rates and estimated CY 2022 demands for his suggested methodology. This meant
2 that if LAFCO decided to use a suggested methodology to calculate an exit fee from Dr.
3 Hanemann’s report, it would need to input the relevant and current data to ensure accuracy and
4 reasonableness. This was called out at the August 11, 2022, meeting of the Ad Hoc Committee by
5 member Kim Thorner, who stated: “[It] would be a simple calculation that LAFCO staff could do
6 to maybe true up those numbers to today’s dollars whenever they do take it the Commission.”

7 **C. LAFCO’s Own Advisory Committees Do Not Support the Reorganizations**

8 76. LAFCO’s Cities Advisory Committee, comprised of 18 cities within San Diego
9 County, is tasked with advising LAFCO on all germane topics under LAFCO’s planning and
10 regulatory responsibilities. The Cities Advisory Committee met on March 17, 2023 to consider
11 the recommendations in a draft report prepared by LAFCO staff to approve the Reorganizations.
12 After a lengthy discussion, the Committee voted to disapprove the Reorganization proposals by a
13 vote of 10 to 1 with two abstentions.

14 77. LAFCO’s Special Districts Advisory Committee, comprised of 16 independent
15 special districts, is tasked with advising LAFCO on all germane topics under LAFCO’s planning
16 and regulatory responsibilities. The Committee met on March 17, 2023, to consider the
17 recommendations in a draft report prepared by LAFCO staff to approve the Reorganizations.
18 After a lengthy discussion, the Committee did not vote on the proposals, but recommended that in
19 any case the data used for the exit fee be updated.

20 **D. LAFCO Considers and Approves the Reorganization Applications in a Series
21 of Contrived Hearings**

22 78. According to its public website, LAFCO holds its regular meetings on the first
23 Monday of each month. Agenda materials are posted online generally no less than one week in
24 advance of a regular meeting.

25 79. At its May 1, 2023, meeting, LAFCO staff proposed a change to the LAFCO rules
26 of procedure to change the number of votes needed to pass a motion from five members to a
27 majority of a quorum, so as to allow only three members to pass a motion if only a quorum is
28 present. Public debate of the proposal questioned its necessity, as there had been not a time where

1 LAFCO business could not go forward due to the existing rule. After public debate of the issue,
2 LAFCO adopted a modified rule that any motion required at least four votes to pass, even if only a
3 quorum is present.

4 80. On April 24, 2023, LAFCO published a notice setting the public hearing on the
5 Fallbrook and Rainbow applications for June 5, 2023. A short time thereafter, LAFCO staff
6 posted the Agenda Report for the applications. Although LAFCO had, at that point, engaged in an
7 almost three-year administrative process, the final Agenda Report prepared by LAFCO staff ahead
8 of the June 5, 2023, hearing failed to address many of the issues that the Water Authority and
9 others had brought to LAFCO’s attention, devoted only half a page to the environmental review of
10 the Fallbrook and Rainbow proposals, and advocated for approval of the applications with a
11 minimal exit fee, and no vote of the full electorate of the Water Authority.

12 81. With respect to the election issue, the staff report acknowledged that the Water
13 Authority and some of its member agencies had from the outset requested that any confirming
14 votes be expanded to include all registered voters within the Water Authority to be consistent with
15 the Water Authority Act provisions that those who bear the financial burden of detachment have
16 an opportunity to vote on it. LAFCO staff advised LAFCO that it was without the legal authority
17 to impose this condition on the detachments, claiming that because LAFCO granted the Water
18 Authority’s application to be treated as a “non-district” for the purpose of Part 4 of the LAFCO
19 Act, it had no discretion to impose any conditions related to the election under other parts of the
20 LAFCO Act. The Water Authority submitted a letter to LAFCO on May 22, 2023, attached hereto
21 as **Exhibit I**, and incorporated by reference, that, among other things, explained how this was in
22 legal error and urged LAFCO to obtain an independent legal review of the scope of its discretion
23 under the LAFCO Act.

24 82. Regarding the proposed exit fee, LAFCO staff based it on one chart in
25 Dr. Hanemann’s report regarding Fallbrook and Rainbow’s projected share of the Water
26 Authority’s annual payment (\$285 million in CY 2022) for QSA water. Dr. Hanemann suggested
27 this calculation (which was based on estimates and presented by Dr. Hanemann as a hypothetical)
28 could be used as “a starting point for thinking about what a fair and reasonable departure fee could

1 be” and “could be adjusted in many different ways.” LAFCO staff did not take this advice, and
2 instead selected the estimate “as-is” as the proposed exit fee—a combined total of \$24.3 million
3 paid over five years—seemingly because it was the lowest of the suggestions proffered by Dr.
4 Hanemann (due to it being “a starting point”). LAFCO staff did not update the projections
5 underlying the exit fee, despite knowing it was not based on current data.

6 83. The June 5 hearing lasted several hours with robust public comment and board
7 questions about the complex process and issues. Near the close of its meeting, the LAFCO Board
8 determined that the issues regarding the exit fee deserved further consideration, and adopted a
9 motion to “table this [consideration of the proposals] and come back with other options at our
10 August 7 meeting.” The LAFCO Board specifically rejected setting a special meeting in July
11 because one member, Jo MacKenzie, who expressed particular concern about the exit fee issue,
12 could not attend. After the LAFCO Board adopted the motion 5-3, the board chair told the public,
13 “See you in August!”

14 84. On June 14, 2023, with 48 hours’ notice, the LAFCO Board held a special meeting
15 to consider the LAFCO staff’s recommendation that LAFCO re-calendar and advance the
16 continued hearing by one month to July 10, 2023—a meeting date that was rejected just a few
17 days prior based on the unavailability of Commissioner MacKenzie, and the fact that the
18 Commission is historically dark during July as a break for summer recess. LAFCO staff’s stated
19 purpose to advance the hearing date was “to accommodate the Commission in taking actions on
20 the proposals ahead of the potential enactment of legislation . . . that would require any approvals
21 be subject to a vote of the entire CWA electorate.” Staff recommended that the hearing date be
22 advanced because “[a]dvancing the continued hearing by one month positions the Commission to
23 consider the staff recommendation to approve the proposals with special conditions ahead of the
24 potential enactment of legislation as detailed that would otherwise moot any approvals.” The
25 LAFCO Executive Director noted that Fallbrook and Rainbow supported the change in advancing
26 the date. The LAFCO Board agenda for the June 14, 2023 meeting included the item under its
27 Business Calendar, which included “items involve regulatory, planning, or other items that do not
28 require a noticed hearing.” The LAFCO Board approved the advancement of the hearing date to

1 July 10, 2023.

2 85. LAFCO staff prepared and posted a new Agenda Report for the noticed July 10,
3 2023 hearing on July 3, 2023. Appended to the updated Agenda Report was a memorandum
4 prepared by Chris Cate of 3MC Strategies that purported to address the LAFCO Board’s request
5 for additional options to consider with respect to the exit fees. Mr. Cate proposed six new
6 alternative exit fees, all of which were a variation of LAFCO staff’s original proposal, either
7 extended for different time periods or omitting certain costs. All six alternatives presented were
8 higher than LAFCO staff’s original recommendation, and five of the six were not recommended
9 by Mr. Cate as they failed to provide cost savings to Fallbrook and Rainbow, which is what
10 LAFCO staff set as the sole driver and predetermined outcome of any approval from the
11 beginning. LAFCO staff also again did not update the projections underlying the exit fees with
12 the actual revenue and other confirmed data, despite the availability of the information. Indeed,
13 the Water Authority submitted a letter to LAFCO on July 3 ,2023 attached hereto as **Exhibit J**,
14 and is incorporated by reference, explaining how the proposed exit fees were based on outdated
15 information in Dr. Hanemann’s 2021 report and then provided an update of all of the numbers
16 used in Dr. Hanemann’s report and trued them up to today’s status (with 2024 adopted rates and
17 actual CY 2022 demands).

18 86. On July 10, 2023, LAFCO held the continued hearing on the Reorganization
19 applications. Commissioner Whitburn specifically asked LAFCO staff to explain the reasoning
20 for the outdated projections used for the exit fees and why they were not updated using the actual
21 numbers and available data. He was told by Mr. Cate that updating the projections would mean
22 that they “would have to redo essentially everything” and “all these analyses would just take more
23 time to review everything.” In the end, LAFCO adopted Resolutions 23-11 and 23-12, which
24 approved (1) detachment of Fallbrook and Rainbow from the Water Authority; and (2) annexation
25 of Fallbrook and Rainbow to Eastern, with various conditions. The Resolutions conditioned the
26 detachments upon payment of a total “exit fee” to the Water Authority in the amount of \$24.3
27 million, the same exit fee proposed by LAFCO staff.

28 87. As to Fallbrook, Resolution 23-11 provides: “Pursuant to Government Code

1 Section 56886, subdivision (v), the Commission imposes an exit fee of \$8,506,750.00 to be paid to
2 CWA in five annual installments of \$1,701,350.00. The first payment shall be made to CWA
3 within 30 days of the certification of the election results described below, if a majority of the
4 electorate votes in support of Fallbrook’s proposal.”

5 88. As to Rainbow, Resolution 23-12 provides: “Pursuant to Government Code Section
6 56886, subdivision (v), the Commission imposes an exit fee of \$15,798,250.00 to be paid to CWA
7 in five annual installments of \$3,159,650.00. The first payment shall be made to CWA within 30
8 days of the certification of the election results described below if a majority of the electorate votes
9 in support of Rainbow’s proposal.”

10 89. In contravention of LAFCO staff’s own admonition that LAFCO did not have any
11 discretion to impose conditions on the conduct of the elections, the Resolutions nonetheless
12 required that Fallbrook and Rainbow submit to its electors at the next available general or special
13 election the propositions of detaching from the Water Authority, specifying that “The provisions
14 of the County Water Authority Act regarding such elections in effect at the time the Executive
15 Officer issued the Certificate of Filing for the proposal shall govern such election.”

16 90. In adopting the Resolutions, LAFCO relied on, adopted, and ratified its staff’s
17 determination that Fallbrook and Rainbow’s Class 20 Exemptions were correct because the
18 underlying action involves the transfer of existing municipal service functions within the same
19 area with no additional powers or expansions therein. LAFCO further found that the conforming
20 sphere of influence actions associated with accommodating the Reorganizations collectively
21 qualified as a project under CEQA but were exempt from further review under State Guidelines
22 15061(b)(3) (the “Common Sense Exemption”). LAFCO found that the Common Sense
23 Exemption applied “given it can be seen with certainty that spheres are planning policies and any
24 associated actions (establishment, update, or amendment) in and of itself does not change the
25 environment or authorize any new uses or services.”

26 91. The Resolutions did not adopt any of the conditions requested by the Water
27 Authority and others, and so LAFCO did not require a majority of the electorate of the Water
28 Authority service area to vote on the detachment, a vote by Fallbrook and Rainbow for the Water

1 Authority to continue to collect taxes as needed, payment by Fallbrook and Rainbow of their
2 respective fair share of indebtedness, or any other provision to ensure compliance with the CWA
3 Act. The Resolutions also did not condition the Reorganizations on (or even mention) compliance
4 with the MWD Act, including exchange of service area or annexation to MWD, which will be the
5 sole supplier of water to Fallbrook and Rainbow under the proposed detachments.

6 92. On July 17, 2023, although LAFCO’s approvals were not complete, LAFCO filed
7 four Notices of Exemption (“NOE”) under CEQA with the San Diego County Clerk’s Office for
8 its actions, per the language of the NOEs, to “conditionally approve” the Reorganizations of
9 Rainbow and Fallbrook.

10 **E. Fallbrook and Rainbow, In Reliance on the LAFCO Resolutions, Have Set**
11 **Improper Elections on the Detachments**

12 93. On August 11, 2023, Fallbrook and Rainbow each passed a resolution ordering a
13 special election on November 7, 2023 that would allow their respective electorate vote on the
14 detachment of Fallbrook and Rainbow from the Water Authority, conditionally approved in the
15 Resolutions. Fallbrook and Rainbow’s resolutions requested that the San Diego County Registrar
16 of Voters conduct these elections and place them on the County-issued ballot for November 7,
17 2023.

18 **FIRST CAUSE OF ACTION**

19 **(For Writ of Mandate Against LAFCO for Violation of CEQA; Improper Reliance on**
20 **Categorical Exemptions Under CEQA)**

21 94. The Water Authority incorporates by reference the allegations in paragraphs 1
22 through 93, above, as if set forth in full.

23 95. CEQA requires LAFCO to conduct an adequate environmental review prior to
24 making any formal decision regarding projects subject to the Act. (CEQA Guidelines,
25 § 15004). LAFCO failed to do so before approving the Resolutions, in violation of CEQA.

26 96. LAFCO has failed to comply with CEQA in the following respects: (a) the
27 improper adoption of Fallbrook and Rainbow’s Board approvals to merely submit applications to
28 LAFCO as a substitute for CEQA review; (b) finding that the Reorganizations of Rainbow and

1 Fallbrook are exempt pursuant to a Class 20 Categorical Exemption (despite San Diego Superior
2 Court Orders to the contrary); and (c) finding that LAFCO's action is exempt under Guidelines
3 15061(b)(3), the “Common Sense Exemption,” despite clear evidence in the record that the
4 Reorganizations will cause material adverse environmental impacts, and no CEQA review of such
5 impacts. LAFCO’s reliance on these categorical exemptions is legally inadequate for several
6 reasons, including, but not limited to, the following:

7 **A. LAFCO Failed to Prove the Class 20 Exemption Applies**

8 97. CEQA Guidelines section 15320 [the “Class 20 exemption”] applies to projects that
9 consist of “changes in the organization or reorganization of local governmental agencies where the
10 changes do not change the geographical area in which previously existing powers are exercised.”
11 (Guidelines, § 15320; emphasis added.)

12 98. LAFCO contends it is acting as a “responsible agency” under CEQA and relied on
13 Fallbrook and Rainbow’s respective determinations that the submissions of Reorganization
14 applications were exempt pursuant to a Class 20 Categorical Exemption. By its own terms, the
15 Class 20 exemption does not apply to the Resolutions approving the detachments and annexations.
16 By detaching from the Water Authority and annexing into the Riverside County-based Eastern,
17 Rainbow and Fallbrook will change the geographic areas in which the Water Authority, by
18 subtraction, and Eastern, by addition, exercise their powers.

19 99. LAFCO’s adoption of Fallbrook and Rainbow’s flawed Class 20 Categorical
20 Exemption determinations repeats Fallbrook and Rainbow’s errors by stating in the Agenda
21 Report that the “underlying action involves the transfer of existing municipal service functions
22 within the same area with no additional powers or expansions therein.” Fallbrook and Rainbow’s
23 framing mischaracterizes the impact of their applications. Fallbrook and Rainbow will continue to
24 provide water service in their same geographic areas, respectively, but the water they will be
25 providing is different water. Instead of serving the Water Authority’s QSA Water and other local
26 sources such as seawater desalination, Fallbrook and Rainbow will now exclusively serve MWD
27 water purchased via Eastern as a conduit. The only right Eastern has to MWD water supply is its
28 own preferential right to water under MWD Act Section 135, which it has not pledged to or

1 contracted with Fallbrook or Rainbow to receive. The only water supply that will be available to
2 Fallbrook and Rainbow will be whatever water supply is available from MWD, potentially after
3 all other agencies' preferential rights have been satisfied. As a result, Fallbrook and Rainbow will
4 have the least reliable water supply in the MWD service area. This fact has not been disclosed
5 and, in fact, has been misrepresented to Fallbrook and Rainbow customers, who have been assured
6 that they will have "the same" water supply they have today at a lower cost. The risk of
7 emergency events such as wildfires or earthquakes and the associated impact on property values
8 have not been considered in the LAFCO process due to the misrepresentations that the agencies'
9 customers will continue to receive "the same" water.

10 100. A Class 20 Categorical Exemption is limited to organizational changes in local
11 agencies "where the changes do not change the geographical area in which previously existing
12 powers are exercised." Fallbrook and Rainbow are not contemplating an internal reorganization;
13 they are changing the source of their municipal water supply and also have to construct new
14 facilities to implement detachment in their service areas. The Class 20 Categorical Exemption is
15 therefore inapplicable. LAFCO's adoption of the Resolutions removes Fallbrook and Rainbow
16 from the Water Authority's jurisdictional area. By adopting the Resolutions, LAFCO purported to
17 annex Fallbrook and Rainbow to a different jurisdictional area, located in another county, that is
18 not contiguous with either Fallbrook or Rainbow, and fails entirely to address annexation or
19 exchange of service territory at MWD. As such, the Class 20 Categorical Exemption also does not
20 apply because Fallbrook and Rainbow are not reorganizing internally; they are forcing an internal
21 reorganization of the Water Authority and attempting to force an exchange or annexation at
22 MWD.

23 101. Furthermore, Fallbrook and Rainbow's reliance on the Class 20 exemption was
24 also challenged in court, with stipulated judgments entered that the Notices of Exemption could
25 not be relied upon by other agencies such as LAFCO. LAFCO's reliance on the Class 20
26 Exemption violates these court orders.

27 102. For all these reasons, LAFCO's approval of the Resolutions does not fall within the
28 Class 20 Exemption

1 **B. LAFCO Failed to Prove the Common Sense Exemption Applies**

2 103. The Common Sense Exemption takes a project out of CEQA “where it can be seen
3 with certainty that there is no possibility that the activity in question may have a significant effect
4 on the environment[.]” (CEQA Guidelines, § 15061(b)(3).)

5 104. LAFCO staff determined that Fallbrook and Rainbow’s switch of water supplies
6 from the Water Authority to Eastern (in reality, MWD) necessitated a change in sphere of
7 influence for water provided to Fallbrook and Rainbow by Eastern. LAFCO staff determined it is
8 the lead agency for the sphere of influence actions necessary to accommodate Fallbrook and
9 Rainbow’s applications and determined the Common Sense Exemption applied because “spheres
10 are planning policies and any associated actions (establishment, update, or amendment) in and of
11 itself does not change the environment or authorize any new uses or services.”

12 105. The Common Sense Exemption is inapplicable because ample evidence in the
13 record demonstrates that detachment by Fallbrook and Rainbow has the potential to have a
14 significant effect on the environment by causing a new water demand for Fallbrook and Rainbow
15 that will have to be satisfied, in part, by drawing more water from the Bay-Delta, in contravention
16 of California law. The record contains factual information, including data and expert analyses,
17 demonstrating that by switching to Eastern as its wholesaler, Fallbrook and Rainbow will be
18 buying all their water solely from MWD. Because MWD obtains more of its water from the Bay-
19 Delta than the Water Authority, by switching to MWD water exclusively, Fallbrook and Rainbow
20 will necessarily be buying more water from, and causing additional burden on, and impacts to, the
21 Bay-Delta. This is undisputed by LAFCO and the Delta Water Master.

22 106. To the extent Fallbrook and Rainbow’s water needs will be met by MWD, the
23 switch to Eastern is not simply changing whom Fallbrook and Rainbow pay, as alleged. MWD’s
24 water rights are junior to the Water Authority’s Colorado River water rights. Seniority of water
25 rights becomes important quickly in times of shortage because holders of junior rights see their
26 supplies cut before senior water rights holders. Accordingly, if MWD has to cut back on water
27 deliveries in the future, Fallbrook and Rainbow risk a loss of supply they will have to find
28 elsewhere. And that need—to obtain water elsewhere—has a direct, material impact on the

1 environment. The risk that Fallbrook and Rainbow may have to seek water elsewhere in times of
2 shortage represents a likelihood of a significant effect on the environment..

3 107. The record also demonstrates, with detaching from the Water Authority, Fallbrook
4 and Rainbow’s customers face significant disruption and emergency water supply risks in the
5 event of an earthquake on the Elisnore Fault or wildfires, resulting in environmental impacts and
6 potential disruption of essential services. The Reorganizations will also necessitate the
7 construction of the new facilities needed by Fallbrook and Rainbow, including, but not limited to,
8 Rainbow’s construction of new pipelines, pumping facilities, and water mains, among other new
9 facilities, which pose potential impacts to air quality, greenhouse gas emissions, biological
10 resources, and other environmental effects. The Reorganizations are also inconsistent with
11 applicable land use plans and impairs the County’s regional cohesiveness and planning efforts,
12 which was required to be disclosed and discussed under CEQA. Finally, the additional risk of
13 wildfire in these rural areas has not been addressed.

14 108. Yet LAFCO assessed none of these environmental impacts. Instead, LAFCO, in
15 adopting the “common-sense” exemption found that “it can be seen with certainty that there is no
16 possibility that the [Fallbrook and Rainbow proposals] may have a significant effect on the
17 environment[.]” This finding violates CEQA, including its mandates on information disclosure
18 and informed decision-making and mandatory findings of significance, and should be set aside.

19 **C. Exceptions to the Categorical Exemptions Apply**

20 109. Even if LAFCO’s approval of the Resolutions fit the requirements of the Class 20
21 or Common Sense Exemptions, the Exemptions would not be appropriate because several
22 exceptions apply here.

23 110. Categorical exemptions are also inapplicable if an exception to the exemption
24 applies to the projects. This exception applies where a reasonable possibility exists that the
25 project may have significant impacts because of unusual circumstances. (CEQA Guidelines
26 § 15300.2(c).) An “unusual circumstance” is some feature of the project which distinguishes it
27 from others in the exempt class. (*Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal. 4th
28 1086, 1105-1106.)

1 111. Unusual circumstances apply in this case, including but not limited to the
2 following: (a) the detachment and annexation will require Rainbow to accelerate the construction
3 of “improvement projects”; (b) there has been no environmental analysis of the potential
4 cumulative impacts of the detachments and annexations or inability to secure annexation or
5 exchange of service area at MWD; and (c) the Project will increase the reliance of Fallbrook and
6 Rainbow upon water imported from the Bay-Delta, a unique ecosystem, in direct contradiction to
7 the Delta Reform Act (Water Code § 85000, *et seq.*). These types of impacts are not part of the
8 usual “reorganization” project covered by Class 20, and constitute “unusual circumstances” under
9 CEQA Guidelines section 15300.2(c). Therefore, the Class 20 exemption cannot apply, and
10 LAFCO must produce an EIR to perform a full environmental analysis of the Project.

11 112. An exemption is also not applicable “when the cumulative impact of successive
12 projects of the same type in the same place, over time is significant.” (CEQA Guidelines,
13 § 15300.2.) As stated, the cumulative effects of other users relying more on the Bay-Delta for
14 water supply will result in significant impairment to the environmental conditions there. The
15 Reorganization applications are not categorically exempt from CEQA for the additional reason
16 that the cumulative impact of Fallbrook and Rainbow abandoning the Water Authority’s
17 diversified wholesale supply for an MWD imported water supply to be purchased via Eastern will
18 have a considerable and significant effect on the environment. (See CEQA Guidelines § 15130.)
19 These risks are now widely recognized with climate change impacts, ongoing threats of wildfire
20 and widespread, historic drought conditions.

21 113. In sum, CEQA review requires a full examination of a project’s potential changes
22 to the environment, and for the lead agency to identify the significant effects of the proposed
23 actions, along with feasible alternatives or feasible mitigation measures. LAFCO did not comply
24 with these requirements. Substantial evidence in the record (as documented in the extensive
25 CEQA comments in the Water Authority’s letters submitted to LAFCO) shows that the proposed
26 Reorganizations are not eligible for the above-referenced CEQA exemptions. Reasons why the
27 exemptions cannot be used include (but are not limited to) the following: (1) The cumulative
28 effect of the proposed Reorganizations is significant; (2) Due to the unique nature and

1 circumstances of the Reorganizations and their expansive scope, there is a reasonable possibility
2 that the proposed Reorganizations will have a significant effect on the environment due to unusual
3 circumstances; (3) The proposed Reorganizations have the potential to substantially degrade the
4 quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a
5 fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or
6 animal community, or substantially reduce the number or restrict the range of a rare or endangered
7 plant or animal species; and (4) The environmental effects of the proposed Reorganizations will
8 have a substantial adverse effects on human beings.

9 114. CEQA mandates a finding of significant impacts, and thus preparation of an EIR,
10 when substantial evidence, in light of the whole record, shows that a project has a significant
11 cumulative effect, or has “effects [that] will cause substantial adverse effects on human beings,
12 either directly or indirectly.” (Pub. Resources Code, § 21083, subd. (b)(2), (3); Guidelines,
13 § 15065, subd. (a)(3), (4).) Here, the Resolutions will result in potentially significant
14 environmental impacts, including but not limited to the following: (a) air quality impacts,
15 including impacts from construction of new infrastructure projects necessitated by the
16 Reorganizations; (b) biological resources, including fish and protected species; (c) greenhouse gas
17 emissions; (d) hydrology and water quality; (e) land use and planning; (f) utilities and service
18 systems; and (g) safety, emergency response, and seismic issues. The Resolutions will also result
19 in mandatory findings of significance and cumulative impacts.

20 115. Without properly completing a CEQA review, LAFCO was not authorized to
21 approve the Resolutions for the detachment of Fallbrook and Rainbow from the Water Authority,
22 and any actions taken by LAFCO, Fallbrook, Rainbow, or Eastern in reliance on the Resolutions
23 are deficient and invalid.

24 116. Because the record in this case contains substantial and indisputable evidence of
25 significant direct, indirect, and cumulative impacts of the approvals of the Resolutions, and
26 associated adverse environmental effects, Respondents’ failure to prepare an EIR constitutes a
27 prejudicial abuse of discretion under CEQA and the Guidelines. Accordingly, a writ of mandate
28 relief as requested in the prayer to this pleading is required.

1 **SECOND CAUSE OF ACTION**

2 **(For Writ of Mandate Against LAFCO for Failure to Perform Acts Required by Law and**
3 **Prejudicial Abuse of Discretion —CCP 1085/1094.5)**

4 117. The Water Authority incorporates by reference the allegations in paragraphs 1
5 through 116, above, as if set forth in full.

6 118. The Water Authority states this claim under California Code of Civil Procedure
7 section 1085, or, in the alternative, under California Code of Civil Procedure section 1094.5.

8 119. Code of Civil Procedure section 1085, subdivision (a), authorizes this Court to
9 issue a writ of mandate “to compel the performance of an act which the law specially enjoins, as a
10 duty resulting from an office, trust or station.” Under section 1085, mandamus can compel public
11 officials to perform an official act required by law. Mandamus can compel an official to exercise
12 its discretion under a proper interpretation of applicable law. An abuse of discretion within the
13 meaning of Code of Civil Procedure section 1085 occurs when, among other actions, an agency
14 improperly interprets and enforces a statute.

15 120. In the alternative, to the extent that LAFCO’s approval of the Reorganizations was
16 administrative in nature, it is subject to California Code of Civil Procedure section 1094.5. Under
17 section 1094.5, LAFCO’s approval of the Reorganization applications constituted a prejudicial
18 abuse of discretion in that LAFCO’s actions were not supported by findings, and any findings
19 were not supported by the evidence in the record.

20 121. LAFCO failed to enforce the LAFCO Act, the CWA Act, the MWD Act, and other
21 state laws and constitutional provisions, and its obligations thereunder. In doing so, LAFCO has
22 failed to perform an act required by law, reached conclusions totally lacking in factual and legal
23 support, and has prejudicially abused its discretion, requiring its decision to be set aside under
24 Code of Civil Procedures sections 1085/1094.5, among other provisions. These violations of law
25 include, but are not limited to, the following:

26 **D. Violations of the CWA Act**

27 122. LAFCO violated the CWA Act by, among other things, failing to comply with its
28 mandatory provisions, abusing its discretion by acting outside of its statutory authority, failing to

1 support its actions with substantial evidence, and improperly interfering with the Water
2 Authority’s statutory authority and discretion under the Act.

3 123. Under the CWA Act, member agencies such as Fallbrook and Rainbow, may
4 exclude themselves from the Water Authority, provided:

5 The taxable property within the excluded areas shall continue to be
6 taxable by the county water authority for the purpose of paying the
7 bonded and other indebtedness of the county water authority
8 outstanding or contracted for at the time of the exclusion and until
9 all the bonded or other indebtedness has been satisfied[.]

8 (Wat. Code App. § 45-11(a)(2).)

9 124. The plain terms of Section 11 of the CWA Act require Fallbrook and Rainbow—
10 along with every other member agency in the Water Authority—to pay their fair share of bonded
11 and other indebtedness if they wish to detach from the Water Authority. The Resolutions violate
12 the CWA Act because LAFCO failed to impose a condition that assures that “the taxable property
13 within the excluded area shall continue to be taxable by the county water authority for the purpose
14 of paying the bonded and other indebtedness of the county water authority outstanding or
15 contracted for at the time of the exclusion....”

16 125. The Water Authority entered into long-term agreements for the supply and delivery
17 of water for the benefit of its member agencies, including Fallbrook and Rainbow. Fallbrook and
18 Rainbow benefitted from these investments, indebtedness, and contractual obligations, which are
19 actually being used to serve their customers. The Water Authority incurred indebtedness for the
20 benefit of all its member agencies and their customers, including Fallbrook and Rainbow, and
21 submitted this information to LAFCO before it approved the Resolutions. Specifically, the Water
22 Authority demonstrated to LAFCO that it issued long-term bonded indebtedness to finance capital
23 investment in water infrastructure, including nine separate series of bonds, along with two other
24 debt issuances, totaling more than \$1.8 billion in debt.

25 126. Under the CWA Act, Fallbrook and Rainbow are liable for their fair share of Water
26 Authority bonded and other indebtedness. The Water Authority’s limited ability to impose
27 property taxes to fund its expenditures or repay indebtedness does not relieve Fallbrook and
28 Rainbow of their obligations for their proportionate share of Water Authority’s bonded and other

1 long-term indebtedness under the CWA Act. In order to properly address the impact of Fallbrook
2 and Rainbow’s detachments from the Water Authority, LAFCO was required to reconcile the
3 CWA Act with the LAFCO Act, and impose conditions of approval on the Reorganizations that
4 required compliance with the terms and intent of the CWA Act. By failing to tether the proposed
5 exit fee to the Water Authority’s actual long-term indebtedness and other financial obligations,
6 LAFCO did not require Fallbrook and Rainbow to pay their fair share as a condition of detaching
7 from the Water Authority. LAFCO acted arbitrarily and capriciously, and cannot show that
8 substantial evidence supports its determination of the exit fee. Without substantial evidence to
9 support its decision, LAFCO has abused its discretion in setting the exit fees for Fallbrook and
10 Rainbow and, thus, its actions violate the CWA Act.

11 127. Moreover, the CWA Act detachment provision requires all taxable property to
12 remain taxable by the Water Authority until the debt is retired. (Wat. Code App. § 45-11(a)(2).)
13 Unless conditioned, when Fallbrook and Rainbow detach, the Water Authority is without power to
14 tax property in their districts. LAFCO failed its obligation to comply with the CWA Act to avoid
15 stranded indebtedness and impose the required conditions of approval on the detachments.
16 LAFCO also failed to consider Prop 13 and its progeny Propositions 26 and 62, nor made any
17 effort to reconcile California’s property tax laws post-dating the CWA Act with the Act’s
18 requirement that detaching members continue to pay for long term indebtedness until the
19 indebtedness is retired.

20 128. LAFCO further violated the CWA Act by imposing improper conditions of
21 approval with respect to the voting requirements for the detachment. The Resolutions state that
22 pursuant to “Water Code Appendix Section 45-11, subdivision (a)(2),” the boards of Fallbrook
23 and Rainbow “shall submit to its electors at the next available general or special election the
24 proposition of detaching from CWA. The provisions of the County Water Authority Act
25 regarding such elections in effect at the time the Executive Officer issued the Certificate of Filing
26 for the proposal shall govern such election.” Water Code Appendix Section 45-11 cross-
27 references the provisions of CWA Act Section 45-10, Annexation, which provides that in the case
28 of annexation of any water district—defined by Section 45-10(a) to include any municipal water

1 district, such as Rainbow and any municipal public utility district, such as Fallbrook, the
2 governing body of the water district may submit the proposition of annexation to the electors of
3 that district. (Wat. Code App. § 45-10(c).) The plain terms of the CWA Act demonstrate that any
4 vote on detachment from or annexation to the Water Authority was intended to be submitted to a
5 vote by all of the electors of the affected territory. Thus, LAFCO violated the law by ignoring the
6 CWA Act's requirements and the Water Authority's statutory role in the proceedings.

7 129. LAFCO's exit fee is not a substitute for the Water Authority's right to tax under the
8 CWA Act within Fallbrook and Rainbow until Fallbrook and Rainbow's portion of the Water
9 Authority's long-term indebtedness and contractual obligations is retired. The Resolutions appear
10 to foreclose the Water Authority's rights to recover for long term indebtedness and contractual
11 obligations incurred to serve Fallbrook and Rainbow customers, in further violation of the CWA
12 Act.

13 130. The Resolutions' election provisions are further unlawful in that LAFCO staff
14 drafted them in an admitted attempt to avoid the preclusive effect of the State's possible adoption
15 of AB 399, currently pending in the Legislature. AB 399 would amend the CWA Act to expressly
16 require a vote of the entire Water Authority service area before a detachment can be effective,
17 consistent with the intent of the Water Authority Act, passed at a time when virtually all of the
18 agency's revenues were from taxes. This would align with the original intent of the Act to have
19 those shouldering the economic burden of a reorganization vote affirmatively to accept that
20 burden. LAFCO staff stated that they asked for the public hearing, originally set for August 7,
21 2023, to be advanced to July 10, 2023 for the express purpose of avoiding the effect of the
22 enactment of AB 399. This demonstrates a clear intent by LAFCO to interfere and frustrate the
23 voting rights of the rest of the Water Authority's membership and their ratepayers. On August 11,
24 2023, Fallbrook and Rainbow each passed a resolution ordering a special election on November 7,
25 2023 that would allow their respective electorates to vote on the detachment of Fallbrook and
26 Rainbow from the Water Authority. If AB 399 passes and Fallbrook and Rainbow still move
27 forward with their elections on November 7, 2023, it will result in repeated elections over the
28 same issues, resulting in voter confusion and a misuse of public resources. Moreover, due to

1 LAFCO’s failures to follow the law, there are material unknown facts and conditions regarding the
2 full impacts of the detachment that would render a vote by the electorate meaningless, including
3 environmental impacts, uncertainty of exchange or annexation to MWD, wildfire and emergency
4 risks, and other matters.

5 **E. Violations of the LAFCO Act**

6 131. LAFCO further violated the LAFCO Act by, among other things, improperly
7 complying with its requirements, abusing its discretion by acting outside of its statutory authority,
8 failing to support its actions with substantial evidence, and improperly limiting its discretion under
9 the Act.

10 132. LAFCOs are special agencies created by the Legislature to oversee the boundaries
11 of cities and special districts in each county in the state. (Gov. Code, § 56325.) Under the
12 LAFCO Act, LAFCOs have authority to deny, approve, or approve with conditions reorganization
13 requests. (Gov. Code, § 56375.) It is well-established that LAFCOs can only act under express
14 authority of the LAFCO Act, and that they are prohibited to act without express statutory
15 authority. (See, e.g., Gov. Code, § 56100.)

16 133. LAFCO violated these requirements of the LAFCO Act throughout the process for
17 its consideration of the Reorganization applications. The violations started with allowing
18 Fallbrook and Rainbow to each submit a single proposal for both detaching from the Water
19 Authority and annexing to Eastern, and then determining, under Government Code sections 56127
20 and 56128, that the Water Authority was not a district for the purposes of Part 4 for the two
21 proposals. In most cases, Part 4 provides for LAFCO to act as the “conducting authority” for the
22 post-LAFCO-approval process; LAFCO’s determination of a “non-district” status transfers that
23 “conducting authority” to the “non-district” as set forth in the non-district’s operating statute (also
24 referred to as its principal act). Sections 56127 and 56128 provide no legal authority for
25 approving a non-district status in a situation—like here—in which the proposals are for a
26 reorganization consisting of both a change of organization of an agency that is eligible to be
27 determined not to be a district and a change of organization of another agency. Furthermore, there
28 is no statutory authority under the LAFCO Act for holding two or more separate conducting

1 authority proceedings on a reorganization proposal, as LAFCO did here. As LAFCO only has the
2 powers expressly provided by statute, LAFCO was without statutory authority when it determined
3 that the Water Authority was a “non-district” on May 4, 2022, and when it approved the
4 Resolutions on July 10, 2023, purporting to authorize two different conducting authority
5 proceedings. As such, the Resolutions must be invalidated as *ultra vires* of the LAFCO Act.

6 134. LAFCO’s disregard for the requirements of the LAFCO Act continued from there.
7 LAFCO was required to consider the Reorganization applications in compliance with the
8 Mandatory Proposal Review Factors under Government Code section 56668 of the LAFCO Act,
9 which mandates examination of certain factors such as, among others, “[t]he effect of the proposed
10 action and of alternative actions, on adjacent areas, on mutual social and economic interests, and
11 on the local governmental structure of the county,” “[t]he effect of the proposal on maintaining the
12 physical and economic integrity of agricultural lands,” “the comments of any affected local agency
13 or other public agency,” and “the extent to which the proposal will promote environmental
14 justice.”

15 135. LAFCO must “ensure that an agency has adequately considered all relevant
16 factors, and has demonstrated a rational connection between those factors, the choice made, and
17 the purposes of the enabling statute.” (*McBail & Co. v. Solano County Local Agency Formation*
18 *Com.* (1998) 62 Cal.App.4th 1223.) Reliance solely on factors outside of section 56668 cannot be
19 grounds for reorganization actions. LAFCO failed to adequately consider the Mandatory Review
20 Factors and, to the extent LAFCO claims to have considered the Mandatory Review Factors, such
21 claims are not supported by substantial evidence in the record, and were in fact contrary to
22 substantial evidence. LAFCO’s approval of the Resolutions violates the LAFCO Act, rules,
23 policies and other legal requirements by, among other things: (a) failing to review and adequately
24 consider the economic effect of anticipated water rate increases on agriculture in the Water
25 Authority’s service area following detachment of Fallbrook and Rainbow; (b) failing to review
26 and adequately consider economic justice issues in the Water Authority's service area following
27 detachment; (c) relying on staff reports and recommendations that omit and skew material facts,
28 downplay facts presented by expert interested parties, and dismiss material risks; (d) relying on

1 outdated and missing evidence and data; (e) failing to condition its actions on compliance with
2 other laws, including, but not limited to, the MWD Act and the CWA Act, (f) failing to properly
3 apply and reconcile the CWA Act, Prop 13, and constitutional amendments regarding taxation
4 without voter approval; and (g) failing to fully account for the financial impacts of the
5 detachments on the Water Authority.

6 136. LAFCO also ignored and failed to ensure compliance with its own policies,
7 including legislative policies L-108 (Water Supply and Reliability Regulatory Guidelines) and L-
8 109 (Water Supply and Reliability Legislative Guidelines), which stress the importance of water
9 supply and reliability to the region. Policy L-108 provides that long range planning should be
10 integrated with local agencies, that decision making should be focused at the regional and local
11 level, and that LAFCO must place primary reliance on the input and recommendations of the local
12 agency responsible for availability of water supply and delivery. That agency is the Water
13 Authority. Policy L-109 provides that decision-making should be kept at the regional and local
14 level, that water supply should be “diversified where possible yet under local agency control and
15 management,” and that LAFCO should encourage long-range planning that is integrated with local
16 entities. LAFCO’s approval of the Resolutions also violated state and MWD policies on reducing
17 burdens on the Bay-Delta, including the Delta Reform Act of 2009, which established that it is
18 state policy to “reduce reliance” on the Delta in meeting the state’s future water supply needs by
19 investing in improved water use efficiency, water recycling, advanced water technologies, and
20 other regional water supply projects.

21 137. LAFCO’s approval of the Resolutions improperly prioritized agricultural use of
22 water over domestic uses, in violation of state policies. Water Code section 106 states: “It is
23 hereby declared to be the established policy of this State that the use of water for domestic
24 purposes is the highest use of water and that the next highest use is for irrigation.” Water Code
25 section 106.5 reflects a similar policy: “It is hereby declared to be the established policy of this
26 State that the right of a municipality to acquire and hold rights to the use of water should be
27 protected to the fullest extent necessary for existing and future uses....” LAFCO’s actions further
28 undermine the State’s establishment of a human right to water under Water Code section 106.3.

1 138. Furthermore, LAFCO violated statutory duties to reconcile tax issues arising from
2 the detachments by adopting the purported exit fees. The exit fees adopted by LAFCO are not
3 authorized by the LAFCO Act, are arbitrary and capricious and are not supported by substantial
4 evidence in the record. The exit fees were based on admittedly stale projection and outdated data,
5 and were not updated based on the predetermination of LAFCO to approve the Reorganizations
6 without delay or regard to significant economic impacts to the Water Authority and its members.
7 LAFCO had updated information within its record when it adopted the exit fees and refused to use
8 this data. Indeed, the only available and valid evidence in the record demonstrates that the exit
9 fees lack factual and legal support. Moreover, LAFCO’s minimal exit fees in no way compensate
10 in any case the Water Authority for its losses caused by Fallbrook and Rainbow abandoning their
11 fair share of the Water Authority’s long-term indebtedness and contractual obligations.

12 139. LAFCO also improperly restrained its discretion in determining it was without
13 statutory authority to impose a condition of approval on the Resolutions requiring a vote of the full
14 electorate of the Water Authority’s service area. From the outset, the Water Authority and some
15 of its members asked LAFCO to condition approval of the detachments on the majority vote of the
16 entire Water Authority service area. At the last minute, LAFCO staff improperly advised LAFCO
17 that it was legally prohibited from imposing conditions on the conduct of the elections because
18 LAFCO approved an application to treat Water Authority as a “non-district” for the purpose of
19 Part 4 of the LAFCO Act. As noted above, this approval was unlawful under the LAFCO Act, but
20 even so, LAFCO had full authority to order such an election under Government Code section
21 56876 (in *Part 5* of the LAFCO Act), which provides:

22 In any order approving a proposal for an annexation to, or
23 detachment from, a district, the commission may determine that any
24 election called upon the question of confirming an order for the
25 annexation or detachment shall be called, held, and conducted upon
26 that question under either of the following conditions:

- 27 (a) Only within the territory ordered to be annexed or detached.
- 28 (b) Both within the territory ordered to be annexed or detached and
 within all or any part of the district which is outside of the territory.

28 Accordingly, LAFCO improperly and arbitrarily refused to consider such a condition to protect

1 the rights of impacted parties and their ratepayers.

2 140. Moreover, even if LAFCO staff was correct that LAFCO lacked authority to place
3 conditions on the conduct of elections under the CWA Act, LAFCO’s approval of the Resolutions
4 then acted in excess of the so-called limitations of that authority. The Resolutions state that
5 pursuant to “Water Code Appendix Section 45-11, subdivision (a)(2),” Fallbrook and Rainbow
6 “shall submit to its electors at the next available general or special election the proposition of
7 detaching from CWA. The provisions of the County Water Authority Act regarding such
8 elections in effect at the time the Executive Officer issued the Certificate of Filing for the proposal
9 shall govern such election.” These are express conditions on the conduct of the elections,
10 including interpreting the appropriate electorate for such a vote. Either LAFCO could impose
11 conditions on the election or it couldn’t—it wasn’t for LAFCO staff to cherry-pick what
12 limitations to place on LAFCO’s authority based on a desired outcome. The Resolutions should
13 be set aside as either in excess of LAFCO’s authority or an abuse of discretion.

14 **F. Other Violations**

15 141. LAFCO further violated other laws, policies and provisions, including as follows:

16 142. **Violation of MWD Act.** LAFCO also had a mandatory duty to ensure the
17 Reorganizations, if approved, would comply with applicable provisions of the MWD Act and
18 applicable MWD policies. Under the MWD Act, the Reorganizations would require exchange of
19 service area or annexation of Fallbrook and Rainbow to MWD, which will be the sole source of
20 water for Fallbrook and Rainbow under the Reorganizations. Under the MWD Act, LAFCO has
21 no authority to order annexation into MWD, and, thus, was required to condition any approval of
22 the Reorganizations on compliance with the requirements of that statute. LAFCO cannot merely
23 assume MWD will approve the annexation.

24 143. **Violation of Prohibitions Against Special Taxes.** Furthermore, because the exit
25 fee imposed by LAFCO is not adequate to cover Fallbrook and Rainbow’s share of costs (i.e.,
26 bonded indebtedness), LAFCO’s Resolutions effectively impose a special “LAFCO tax” on the
27 electors remaining in the Water Authority after Fallbrook and Rainbow detach. Proposition 62—
28 codified at Government Code section 53722—requires the imposition of any special tax be

1 submitted to the electorate on which the special tax is to be imposed. Proposition 62 requires that
2 the electorate approve the special tax by a margin of two-thirds. The electorate on which LAFCO
3 intends to impose this special tax are the electors remaining in the Water Authority following
4 Fallbrook and Rainbow's detachment. Yet, in contravention of Proposition 62, LAFCO allows
5 only the electors in Fallbrook and Rainbow to vote on detachment from the Water Authority.

6 144. **Violation of Fair and Open Meeting Policies.** LAFCO failed to conduct public
7 hearings in accordance with due process and failed to conduct fair and impartial hearings as
8 required by law by improperly advancing the continuance of the public hearing on the
9 Reorganization applications to an earlier date than was announced at the public hearing,
10 misleading the public and depriving the public and the Water Authority of a fair hearing, and acted
11 in excess of LAFCO's authority and jurisdiction, effectively denying the Water Authority and its
12 members' constituents due process of law. LAFCO further acted with animus, bias, and lack of
13 impartiality with respect to the Water Authority and its members.

14 145. In sum, for all of these reasons and others, LAFCO failed to comply with its
15 statutory and mandatory duties under the CWA Act, the LAFCO Act, the MWD Act, and other
16 laws and policies. LAFCO's approval of the Reorganizations was an abuse of discretion,
17 arbitrary, capricious, entirely lacking in evidentiary support and/or unlawfully or procedurally
18 unfair. Based on these violations and others, the Water Authority is entitled to a writ of mandate
19 under California Code of Civil Procedure section 1085 because LAFCO has a duty to follow
20 California law, including the California Constitution and Government Code, and the Court can
21 compel LAFCO to follow these laws and Constitutional requirements, including but not limited to,
22 allowing voters within the Water Authority's boundaries to vote on the Reorganizations that
23 would result in a tax being levied on all ratepayers outside of Rainbow and Fallbrook's respective
24 boundaries, while limiting the plebiscite to Fallbrook and Rainbow only.

25 146. The Water Authority has no plain, speedy or adequate remedy in the ordinary
26 course of the law, except those remedies requested by this action and petition for writ.

27 147. The Water Authority has a direct and beneficial interest in the issuance of a writ of
28 mandate because it has suffered, and is continuing to suffer, damages because of LAFCO's

1 actions.

2 **THIRD CAUSE OF ACTION**

3 **(Violation of the Service Duplication Act Pub. Util. Code §§ 1503, 1504, and 1505.5**
4 **Against LAFCO and Eastern)**

5 148. The Water Authority incorporates by reference the allegations in paragraphs 1
6 through 147, above, as if set forth in full.

7 149. LAFCO and Eastern are political subdivisions of the State of California. By
8 adoption of the Resolutions, LAFCO has extended water service by Eastern into the Water
9 Authority's territory, which lawfully is being served by the Water Authority, also a political
10 subdivision of the State of California.

11 150. The actions taken by LAFCO and Eastern constitute a taking of the Water
12 Authority's property for a public purpose because LAFCO and Eastern are extending water
13 service to a territory already being lawfully served by the Water Authority with facilities designed
14 and constructed to provide the same type of service, subject to the specific terms and conditions
15 applying to annexation of the Water Authority. When a political subdivision extends water
16 service to territory being lawfully served by another political subdivision with facilities designed
17 and constructed to provide the same type of service, that act constitutes a taking of property for a
18 public purpose by the encroaching political subdivision. (Pub. Util. Code §§ 1503, 1504, 1505.5.)

19 151. The Water Authority is damaged by LAFCO's taking because its property
20 employed in providing water service has been made inoperative, reduced in value, or rendered
21 useless to the Water Authority for the purpose of providing water service to the service area. The
22 Water Authority has constructed facilities and appurtenances to provide water service to Fallbrook
23 and Rainbow. If the Water Authority will not serve Fallbrook and Rainbow in the future, the
24 Water Authority-owned facilities currently serving Fallbrook and Rainbow may be rendered
25 useless to the Water Authority and are expected to be permanently decommissioned (disconnected
26 and demolished) from the Water Authority aqueduct pipelines to ensure safe and reliable water
27 delivery to the remaining member agencies of the Water Authority.

28 152. The Water Authority is entitled to just compensation in the form of actual and

1 compensatory damages, including reasonable costs, expenses, and attorneys' fees. (Pub. Util.
2 Code § 1504; Code Civ. Proc. § 1036.)

3 **FOURTH CAUSE OF ACTION**

4 **(Inverse Condemnation—Cal. Const., art, I, §19 and**
5 **U.S. Const. 5th & 14th Amend.)**
6 **Against LAFCO, Fallbrook, and Rainbow**

7 153. The Water Authority incorporates by reference the allegations in paragraphs 1
8 through 152, above, as if set forth in full.

9 154. The Water Authority owns water infrastructure and property.

10 155. The Water Authority, pursuant to the CWA Act, has an interest in its member
11 agencies paying a fair share of its long term indebtedness incurred to supply water to their
12 customers, including but not limited to contractual obligations to purchase QSA water.

13 156. The CWA Act establishes the Water Authority's interest in the proportionate
14 contribution from Fallbrook and Rainbow toward its debt service and long-term contractual
15 obligations incurred to provide their customers with a water supply and service.

16 157. Detachment by Fallbrook and Rainbow from the Water Authority does not relieve
17 the Water Authority of these obligations.

18 158. The Water Authority will be required to continue to service its long term
19 indebtedness.

20 159. The Water Authority will be required to continue to purchase the same quantity of
21 QSA water.

22 160. LAFCO, by failing to account for the full share of Fallbrook and Rainbow's
23 respective obligations to service the Water Authority's long-term indebtedness and other
24 obligations, has intruded on the Water Authority's property rights and has taken its rights in those
25 contributions from the Water Authority without just compensation.

26 161. This intrusion is direct and special to the Water Authority.

27 162. LAFCO owed a duty to the Water Authority and its member agencies and their
28 ratepayers to fully cover Rainbow and Fallbrook's share of Water Authority's financial obligations
incurred to serve their customers.

1 completed; and thus, if the Legislature by passing AB 399 amends the CWA Act effective before
2 the entire detachment process is completed, the decision of the Legislature must be honored and a
3 service area-wide vote would also be required.

4 171. The Water Authority further contends it will have no duty to file a certificate of
5 proceedings with the Secretary of State until all required votes are completed and duly certified.

6 172. The Water Authority contends that Fallbrook, Rainbow, and Eastern must have
7 approval of the MWD Board of Directors of the exchange or annexation of the new service area to
8 Eastern, subject to terms and conditions established by the MWD Board as applicable thereto.

9 173. The Water Authority also contends that it is a waste of time and resources to put
10 the detachment measures on the November 7, 2023 ballot given the ongoing dispute about the
11 validity of LAFCO’s actions regarding detachment and that any vote approving the detachment
12 measures will have no force or effect where the underlying LAFCO action is invalid. Fallbrook
13 and Rainbow have moved forward with the ballot measures for the November 2023 election
14 despite the fact that there is an ongoing dispute regarding the legality of the underlying LAFCO
15 actions and despite the fact that there is no urgency or timing requirements regarding submitting
16 these detachment measures to the voters. Indeed, neither agency nor LAFCO even knows if it will
17 be supplied water from MWD as planned, since none have applied for annexation of exchange of
18 service, or what the terms and conditions of that service will be. LAFCO conditionally approved
19 the Resolutions on July 10, 2023. The 30-day protest period for the portion of the action related to
20 potential annexation into Eastern Municipal Water District following LAFCO’s filing concluded
21 on August 18, 2023. Therefore, the Fallbrook and Rainbow Resolutions calling for a special
22 election were premature as the required protest period for the annexation under the LAFCO Act
23 had not yet been fulfilled. Furthermore, Fallbrook had previously represented that they would not
24 place detachment measures on the ballot until spring of 2024.

25 174. The Water Authority further contends that because the exit fee imposed by LAFCO
26 is not adequate to cover Fallbrook and Rainbow’s share of costs (i.e., bonded indebtedness),
27 LAFCO’s Resolutions effectively impose a special “LAFCO tax” on the electors remaining in the
28 Water Authority after Fallbrook and Rainbow detach. Proposition 62—codified at Government

1 Code section 53722—requires the imposition of any special tax be submitted to the electorate on
2 which the special tax is to be imposed. Proposition 62 requires that the electorate approve the
3 special tax by a margin of two-thirds. The electorate on which LAFCO intends to impose this
4 special tax are the electors remaining in the Water Authority following Fallbrook and Rainbow’s
5 detachment.

6 175. The Water Authority also contends it may continue to tax property within
7 Fallbrook and Rainbow pursuant the CWA Act until Fallbrook and Rainbow’s portion of Water
8 Authority’s long-term indebtedness and contractual obligations is retired.

9 176. There is a current dispute between LAFCO, Fallbrook, and Rainbow, and the Water
10 Authority as to their legal rights and duties with respect to one another that is suitable for this
11 Court to issue a declaration as to such rights and duties. As allowed by Code of Civil Procedure
12 section 1060, the declaration may be had before there has been any breach of the obligation in
13 respect to which said declaration is sought. A judicial decision is necessary so that the parties
14 know their rights and duties as to these issues.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff and Petitioner prays for judgment against Defendants and
17 Respondents, and each of them, jointly and severally, as follows:

18 1. For a writ of mandate commanding LAFCO to set aside and vacate approval of
19 Resolution No. 23-11;

20 2. For a writ of mandate commanding LAFCO to set aside and vacate approval of
21 Resolution No. 23-12;

22 3. For a writ of mandate and order prohibiting LAFCO from issuing, granting,
23 adopting, executing or taking any further action in connection with the Reorganization
24 applications, including, but not limited to, until LAFCO has taken such actions as may be
25 necessary to comply fully with the requirements of CEQA, the LAFCO Act, the MWD Act, and
26 the CWA Act and all other applicable statutes, ordinances and laws, and commanding LAFCO to
27 undertake environmental review of Fallbrook and Rainbow’s respective Reorganization
28 applications, and each of them, in compliance with CEQA;

1 4. For an alternative writ commanding LAFCO, if Fallbrook and Rainbow's
2 detachments are not enjoined, to prepare a complete and updated economic analysis of the
3 detachments and recalculate the amount of the exit fee to be imposed on Fallbrook and Rainbow,
4 and each of them;

5 5. For a declaration that LAFCO violated CEQA, the LAFCO Act, the MWD Act, the
6 CWA Act, the Constitution, and California statutes by approving the Resolutions;

7 6. For a declaration that the Water Authority may continue to tax property within
8 Fallbrook and Rainbow pursuant the CWA Act until Fallbrook and Rainbow's portion of Water
9 Authority's long-term indebtedness and contractual obligations are retired.

10 7. For a declaration that a vote to approve the Fallbrook Public Utility District
11 Detachment Measure by the electorate at the general election held on November 7, 2023 has no
12 force or effect if LAFCO's actions related to the detachment are found to be illegal, invalid or
13 deficient;

14 8. For a declaration that a vote to approve the Rainbow Public Utility District
15 Detachment Measure by the electorate at the general election held on November 7, 2023 has no
16 force or effect if LAFCO's actions related to the detachment are found to be illegal, invalid or
17 deficient;

18 9. For a declaration that the Resolutions impose a special tax on the electors
19 remaining in the Water Authority after Fallbrook and Rainbow detach, in violation of .
20 Government Code section 53722 and other provisions, and that the imposition of any such special
21 tax is ineffective without approval by a margin of two-thirds of the electors remaining in the Water
22 Authority following Fallbrook and Rainbow's detachment.

23 10. For a Temporary Restraining Order and/or Preliminary and Permanent Injunction,
24 enjoining,

25 A. LAFCO from any further proceedings relating to the detachment of
26 Fallbrook and Rainbow;

27 B. Fallbrook and Rainbow from proceeding with detachment from the Water
28 Authority;

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- C. Enjoining any election by electors of Defendant and Respondent Fallbrook as set forth in Resolution No. 23-11;
- D. Enjoining any election by electors of Defendant and Respondent Rainbow as set forth in Resolution No. 23-12;
- E. Enjoining any certification of completion or otherwise relating to the detachments of Fallbrook and Rainbow from the Water Authority; and
- F. Detachment of Fallbrook and Rainbow from the Water Authority.

11. For just compensation from Defendants and Respondents LAFCO, and Eastern, and each of them, for violation of the Service Duplication Act;

12. For just compensation from Defendants and Respondents Fallbrook and Rainbow, and each of them, for the taking of the Water Authority property;

13. For attorneys' fees and litigation expenses under California Code of Civil Procedure section 1021.5 and Government Code section 800;

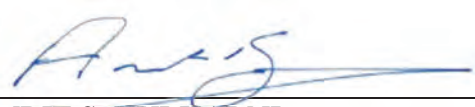
14. For attorneys' fees pursuant to Code of Civil Procedure section 1036;

15. For costs of suit; and

16. For such further and other relief as the Court deems just and proper.

DATED: August 21, 2023

MEYERS NAVE

By: 

AMRIT S. KULKARNI
SHAYE DIVELEY
Attorneys for Plaintiff and Petitioner SAN DIEGO
COUNTY WATER AUTHORITY

5429339.10

PETITION and COMPLAINT

EXHIBIT A

RESOLUTION NO. 2023-11

SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION

MAKING DETERMINATIONS, APPROVING, AND ORDERING A REORGANIZATION

**“FALLBROOK PUBLIC UTILITY DISTRICT REORGANIZATION:
WHOLESALE WATER SERVICES”**

**CONCURRENT ANNEXATION TO EASTERN MUNICIPAL WATER DISTRICT AND DETACHMENT
FROM SAN DIEGO COUNTY WATER AUTHORITY WITH RELATED ACTIONS
LAFCO FILE NO. RO20-05**

WHEREAS, on March 18, 2020 and March 19, 2020, the Rainbow Municipal Water District (MWD) and Fallbrook Public Utility District (PUD), respectively, filed a resolution of application to initiate proceedings with the San Diego County Local Agency Formation Commission, hereinafter referred to as “Commission,” pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, on April 28, 2020 the Executive Officer administratively combined the proposals for hearing purposes (Combined Proposals); and

WHEREAS, each application seeks approval to reorganize and transfer wholesale water service responsibilities within each applicant’s jurisdictional boundaries – totaling approximately 79,050 acres – from the San Diego County Water Authority (CWA) to Eastern Municipal Water District (MWD); and

WHEREAS, of that total acreage, the jurisdictional boundaries of Fallbrook total approximately 28,193 acres; and

WHEREAS, the Combined Proposals necessitate concurrent annexations to Eastern MWD and detachments from San Diego CWA with conforming sphere of influence amendments to accommodate the jurisdictional changes; and

WHEREAS, on October 24, 2019, pursuant to Government Code Section 56124, San Diego LAFCO entered into a memorandum of understanding (MOU) with Riverside LAFCO. The MOU delegates to San Diego LAFCO the responsibility to process the Combined Proposals and prepare related analyses – including, but not limited to – a municipal service review on Eastern MWD to inform a conforming sphere of influence action; and

WHEREAS, on April 2, 2020, pursuant to Government Code Section 56127, CWA applied for “non-district” status for purposes of Part 4 (conducting authority proceedings) of CKH as it relates to the Combined Proposals; and

WHEREAS, on May 4, 2020, pursuant to Government Code Section 56128, San Diego LAFCO determined CWA is not a district or special district for purposes of Part 4 (conducting

authority proceedings) of CKH as it relates to the Combined Proposals, resulting in protest and election proceedings taking place under CWA's principal act should the Commission approve Fallbrook PUD and/or Rainbow MWD's reorganization proposals; and

WHEREAS, on June 1, 2020, San Diego LAFCO approved the establishment of an advisory committee to directly assist the Executive Officer in the administrative review of the Combined Proposals; and

WHEREAS, on February 7 & March 7, 2022, San Diego LAFCO received and approved a final report on a scheduled municipal service review on the Fallbrook region and the local agencies operating therein subject to the Commission's oversight – including Fallbrook PUD and Rainbow MWD; and

WHEREAS, an applicable master property tax transfer agreement, dated December 2, 1982, applies to the Combined Proposals; and

WHEREAS, the Commission's Executive Officer has reviewed the proposed reorganization and prepared a report with recommendations; and

WHEREAS, the Executive Officer's report and recommendations on the proposal have been presented to the Commission in the manner provided by law; and

WHEREAS, staff published an advertisement notice of public hearing regarding this proposal in the San Diego Tribune and Village News on April 24th and May 4th, respectively; and

WHEREAS, the Commission heard and fully considered all the evidence presented at a noticed public meeting on the proposal on June 5, 2023 and July 10, 2023; and

WHEREAS, the Commission considered all the factors required by law under Government Code Sections 56425, subdivision (a), and 56668 and adopted local policies and procedures.

NOW, THEREFORE, THE COMMISSION DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

1. The Recitals above are incorporated herein by reference.
2. At the hearing, the Commission called for, heard, and considered all public comments by interested parties and read and considered the Executive Officer's report.
3. The Commission serves as responsible and lead agency under the California Environmental Quality Act (CEQA) in considering the two distinct "projects" associated with the proposed reorganization and as detailed in the Executive Officer's report: (a) reorganization and (b) the related conforming sphere of influence action. The Commission's findings follow.

- a) Fallbrook PUD's and Rainbow MWD's initiating actions involving the reorganization proposals position these agencies to serve as lead agencies in assessing the potential impacts - and specifically the annexation to Eastern MWD and detachment from County Water Authority - under CEQA. In their roles as lead agency, both Fallbrook PUD and Rainbow MWD have made findings that the proposal qualifies as a project but is exempt from further review under State CEQA Guidelines Section 15320. Staff independently concurs this exemption appropriately applies given the underlying action involves the transfer of existing municipal service functions within the same area with no additional powers or expansions therein.
 - b) San Diego County LAFCO serves as lead agency under CEQA for the conforming sphere of influence actions associated with accommodating the reorganizations. It is recommended the Commission find these actions – and specifically establishing a sphere for Eastern MWD covering its wholesale function to include the affected territory and concurrently removing these lands from the County Water Authority sphere – collectively qualify as a project under CEQA but exempt from further review under State Guidelines 15061(b)(3). This exemption appropriately applies given it can be seen with certainty that spheres are planning policies and any associated actions (establishment, update, or amendment) in and of itself does not change the environment or authorize any new uses or services.
4. The Commission APPROVES an amendment to Eastern MWD's sphere of influence to include the affected territory and concurrently remove these lands from the County Water Authority sphere as further shown and described subject to all conditions below and in doing so makes the statements provided in the agenda report.
5. The Commission APPROVES the reorganization without modifications and subject to conditions as provided. Approval involves all of the follow
 - a) Annexation of the affected territory to the Eastern MWD as shown in "Exhibit A-1" and described in "Exhibit A-2."
 - b) Detachment of the affected territory from the San Diego CWA as shown in "Exhibit A-1" and described in "Exhibit A-2."
6. The Commission CONDITIONS all approvals on the following terms being satisfied by July 10, 2024 unless an extension is requested in writing and approved by the Executive Officer:
 - a) Completion of the 30-day reconsideration period provided under Government Code Section 56895.

- b) Submittal to the Commission of final map and geographic description of the affected territory as approved by the Commission conforming to the requirements of the State Board of Equalization – Tax Services Division.
 - c) Submittal to the Commission of the following payments:
 - A check made payable to LAFCO in the amount of \$100.00 for the County of San Diego-Clerk Recorder to reimburse for filing a CEQA Notices of Determination for the Sphere of Influence update and the reorganization consistent with the findings in the resolution.
 - A check made payable to the State Board of Equalization for processing fees in the amount of \$3,500.00.
 - A check made payable to San Diego LAFCO in the amount of \$1,439.96 to reimburse one-half of the cost of the public hearing notice published in the San Diego Union Tribune.
 - A check made payable to San Diego LAFCO in the amount of \$400 to reimburse one-half of the cost of the public hearing notice published in the Village News.
 - d) Within 30 days of the adoption of this Resolution, the execution of an obligation to indemnify and hold harmless, to the fullest extent permitted by law, the Commission, including its officers, agents, employees and volunteers, from and against any and all claims, losses, costs and expenses for any damage or injury arising out of or in connection with the Combined Proposals, and, upon the Commission's request, the deposit of funds for the defense of the Commission. Such costs and expenses shall include reasonable attorneys' fees due to counsel of Commission's choice, expert fees and all other expenses of litigation.
 - e) Pursuant to Government Code Section 56886, subdivision (v), the Commission imposes an exit fee of \$8,506,750.00 to be paid to CWA in five annual installments of \$1,701,350.00. The first payment shall be made to CWA within 30 days of the certification of the election results described below, if a majority of the electorate votes in support of Fallbrook's proposal.
7. The four remaining annual installments of \$1,701,350.00 for the exit fee described in 6.e above shall each be paid to CWA on the successive yearly anniversaries of the initial payment until completed.
 8. The Commission assigns the proposal the following short-term designation:
"Fallbrook PUD Reorganization"
 9. The affected territory as designated by the Commission is inhabited as defined in Government Code Section 56046.

10. The Commission delegates to the Executive Officer the performance of all conducting authority proceeding requirements under Government Code Section 57000 for purposes of the Eastern MWD annexation.
11. Pursuant to Water Code Appendix Section 45-11, subdivision (a)(2), the Board of Directors of Fallbrook PUD shall submit to its electors at the next available general or special election the proposition of detaching from CWA. The provisions of the County Water Authority Act regarding such elections in effect at the time the Executive Officer issued the Certificate of Filing for the proposal shall govern such election.
12. In the above-referenced election, the voters shall approve the proposition of detaching from CWA.
13. The Eastern MWD is a registered-voter district.
14. The Eastern MWD utilizes the County of Riverside assessment roll.
15. The affected territory will be liable for any existing bonds, contracts, and/or obligations of the Eastern MWD as provided under Government Section 57328, and will be subject to any previously authorized taxes, benefit assessments, fees, or charges of Eastern MWD provided under Government Code Section 57330, which Eastern MWD shall be authorized to assess, levy, and/or collect within its boundaries.
16. Pursuant to Government Code section 57202, the effective date of the approval shall be the date of recordation of the certificate of completion, but only after all terms set forth in Number 6 above have been completed as attested by the Executive Officer.
17. As allowed under Government Code Section 56107, the Commission authorizes the Executive Officer to make non-substantive corrections to this resolution to address any technical defects, errors, irregularities, or omissions.
18. Under Government Code Sections 56880-56882, the Executive Officer is hereby authorized and directed to mail copies of this Resolution.
19. The Executive Officer is further authorized and directed to prepare, execute, and record a Certificate of Completion, make the required filings with the County Assessor, County Auditor, and the State Board of Equalization as required by Section 57200, et seq., of the Government Code.

**

PASSED AND ADOPTED by the Commission on the 10th of July 2023 by the following vote:

AYES: Desmond, Drake (voting), Willis, White, and Vanderlaan

NOES: Anderson, Becker, and Whitburn

ABSENT: Mackenzie

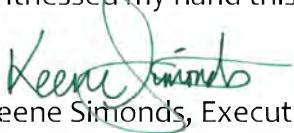
ABSTAIN: None

**

**STATE OF CALIFORNIA |
COUNTY OF SAN DIEGO**

I, KEENE SIMONDS, Executive Officer of the Local Agency Formation Commission of the County of San Diego, State of California, hereby certify that I have compared the foregoing copy with the original resolution adopted by said Commission at its regular meeting on July 10, 2023, which original resolution is now on file in my office; and that same contains a full, true, and correct transcript therefrom and of the whole thereof.

Witnessed my hand this 8th day of August 2023.



Keene Simonds, Executive Officer
San Diego Local Agency Formation Commission

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EXHIBIT A-1
MAP OF THE AFFECTED TERRITORY

-Placeholder-

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EXHIBIT A-2
GEOGRAPHIC DESCRIPTION OF THE AFFECTED TERRITORY

-Placeholder-

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PETITION and COMPLAINT

EXHIBIT B

RESOLUTION NO. 2023-12

SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION

MAKING DETERMINATIONS, APPROVING, AND ORDERING A REORGANIZATION

**“RAINBOW MUNICIPAL WATER DISTRICT REORGANIZATION:
WHOLESALE WATER SERVICES”**

**CONCURRENT ANNEXATION TO EASTERN MUNICIPAL WATER DISTRICT AND DETACHMENT
FROM SAN DIEGO COUNTY WATER AUTHORITY WITH RELATED ACTIONS
LAFCO FILE NO. RO20-04**

WHEREAS, on March 18, 2020 and March 19, 2020, the Rainbow Municipal Water District (MWD) and Fallbrook Public Utility District (PUD), respectively, filed a resolution of application to initiate proceedings with the San Diego County Local Agency Formation Commission, hereinafter referred to as “Commission,” pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, on April 28, 2020 the Executive Officer administratively combined the proposals for hearing purposes (Combined Proposals); and

WHEREAS, each application seeks approval to reorganize and transfer wholesale water service responsibilities within each applicant’s jurisdictional boundaries – totaling approximately 79,050 acres – from the San Diego County Water Authority (CWA) to Eastern Municipal Water District (MWD); and

WHEREAS, of that total acreage, the jurisdictional boundaries of Rainbow total approximately 50,857 acres; and

WHEREAS, the Combined Proposals necessitate concurrent annexations to Eastern MWD and detachments from San Diego CWA with conforming sphere of influence amendments to accommodate the jurisdictional changes; and

WHEREAS, on October 24, 2019, pursuant to Government Code Section 56124, San Diego LAFCO entered into a memorandum of understanding (MOU) with Riverside LAFCO. The MOU delegates to San Diego LAFCO the responsibility to process the Combined Proposals and prepare related analyses – including, but not limited to – a municipal service review on Eastern MWD to inform a conforming sphere of influence action; and

WHEREAS, on April 2, 2020, pursuant to Government Code Section 56127, CWA applied for “non-district” status for purposes of Part 4 (conducting authority proceedings) of CKH as it relates to the Combined Proposals; and

WHEREAS, on May 4, 2020, pursuant to Government Code Section 56128, San Diego LAFCO determined CWA is not a district or special district for purposes of Part 4 (conducting

authority proceedings) of CKH as it relates to the Combined Proposals, resulting in protest and election proceedings taking place under CWA's principal act should the Commission approve Fallbrook PUD and/or Rainbow MWD's reorganization proposals; and

WHEREAS, on June 1, 2020, San Diego LAFCO approved the establishment of an advisory committee to directly assist the Executive Officer in the administrative review of the Combined Proposals; and

WHEREAS, on February 7 & March 7, 2022, San Diego LAFCO received and approved a final report on a scheduled municipal service review on the Fallbrook region and the local agencies operating therein subject to the Commission's oversight – including Fallbrook PUD and Rainbow MWD; and

WHEREAS, an applicable master property tax transfer agreement, dated December 2, 1982, applies to the Combined Proposals; and

WHEREAS, the Commission's Executive Officer has reviewed the proposed reorganization and prepared a report with recommendations; and

WHEREAS, the Executive Officer's report and recommendations on the proposal have been presented to the Commission in the manner provided by law; and

WHEREAS, staff published an advertisement notice of public hearing regarding this proposal in the San Diego Tribune and Village News on April 24th and May 4th, respectively; and

WHEREAS, the Commission heard and fully considered all the evidence presented at a noticed public meeting on the proposal on June 5, 2023 and July 10, 2023; and

WHEREAS, the Commission considered all the factors required by law under Government Code Sections 56425, subdivision (a), and 56668 and adopted local policies and procedures.

NOW, THEREFORE, THE COMMISSION DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

1. The Recitals above are incorporated herein by reference.
2. At the hearing, the Commission called for, heard, and considered all public comments by interested parties and read and considered the Executive Officer's report.
3. The Commission serves as responsible and lead agency under the California Environmental Quality Act (CEQA) in considering the two distinct "projects" associated with the proposed reorganization and as detailed in the Executive Officer's report: (a) reorganization and (b) the related conforming sphere of influence action. The Commission's findings follow.

- a) Fallbrook PUD's and Rainbow MWD's initiating actions involving the reorganization proposals position these agencies to serve as lead agencies in assessing the potential impacts - and specifically the annexation to Eastern MWD and detachment from County Water Authority - under CEQA. In their roles as lead agency, both Fallbrook PUD and Rainbow MWD have made findings that the proposal qualifies as a project but is exempt from further review under State CEQA Guidelines Section 15320. Staff independently concurs this exemption appropriately applies given the underlying action involves the transfer of existing municipal service functions within the same area with no additional powers or expansions therein.
 - b) San Diego County LAFCO serves as lead agency under CEQA for the conforming sphere of influence actions associated with accommodating the reorganizations. It is recommended the Commission find these actions – and specifically establishing a sphere for Eastern MWD covering its wholesale function to include the affected territory and concurrently removing these lands from the County Water Authority sphere – collectively qualify as a project under CEQA but exempt from further review under State Guidelines 15061(b)(3). This exemption appropriately applies given it can be seen with certainty that spheres are planning policies and any associated actions (establishment, update, or amendment) in and of itself does not change the environment or authorize any new uses or services.
4. The Commission APPROVES an amendment to Eastern MWD's sphere of influence to include the affected territory and concurrently remove these lands from the County Water Authority sphere as further shown and described subject to all conditions below and in doing so makes the statements provided in the agenda report.
 5. The Commission APPROVES the reorganization without modifications and subject to conditions as provided. Approval involves all of the following.
 - a) Annexation of the affected territory to the Eastern MWD as shown in "Exhibit A-1" and described in "Exhibit A-2."
 - b) Detachment of the affected territory from the San Diego CWA as shown in "Exhibit A-1" and described in "Exhibit A-2."
 6. The Commission CONDITIONS all approvals on the following terms being satisfied by July 10, 2024 unless an extension is requested in writing and approved by the Executive Officer:
 - a) Completion of the 30-day reconsideration period provided under Government Code Section 56895.

- b) Submittal to the Commission of final map and geographic description of the affected territory as approved by the Commission conforming to the requirements of the State Board of Equalization – Tax Services Division.
 - c) Submittal to the Commission of the following payments:
 - A check made payable to LAFCO in the amount of \$100.00 for the County of San Diego-Clerk Recorder to reimburse for filing a CEQA Notices of Determination for the Sphere of Influence update and the reorganization consistent with the findings in the resolution.
 - A check made payable to the State Board of Equalization for processing fees in the amount of \$3,500.00.
 - A check made payable to San Diego LAFCO in the amount of \$1,439.96 to reimburse one-half of the cost of the public hearing notice published in the San Diego Union Tribune.
 - A check made payable to San Diego LAFCO in the amount of \$400 to reimburse one-half of the cost of the public hearing notice published in the Village News.
 - d) Within 30 days of the adoption of this Resolution, the execution of an obligation to indemnify and hold harmless, to the fullest extent permitted by law, the Commission, including its officers, agents, employees and volunteers, from and against any and all claims, losses, costs and expenses for any damage or injury arising out of or in connection with the Combined Proposals, and, upon the Commission's request, the deposit of funds for the defense of the Commission. Such costs and expenses shall include reasonable attorneys' fees due to counsel of Commission's choice, expert fees and all other expenses of litigation.
 - e) Pursuant to Government Code Section 56886, subdivision (v), the Commission imposes an exit fee of \$15,798,250.00 to be paid to CWA in five annual installments of \$3,159,650.00. The first payment shall be made to CWA within 30 days of the certification of the election results described below if a majority of the electorate votes in support of Rainbow's proposal.
7. The four remaining annual installments of \$3,159,650.00 for the exit fee described in 6.e above shall each be paid to CWA on the successive yearly anniversaries of the initial payment until completed.
 8. The Commission assigns the proposal the following short-term designation:
"Rainbow MWD Reorganization"
 9. The affected territory as designated by the Commission is inhabited as defined in Government Code Section 56046.

10. The Commission delegates to the Executive Officer the performance of all conducting authority proceeding requirements under Government Code Section 57000 for purposes of the Eastern MWD annexation.
11. Pursuant to Water Code Appendix Section 45-11, subdivision (a)(2), the Board of Directors of Rainbow MWD shall submit to its electors at the next available general or special election the proposition of detaching from CWA. The provisions of the County Water Authority Act regarding such elections in effect at the time the Executive Officer issued the Certificate of Filing for the proposal shall govern such election.
12. In the above-referenced election, the voters shall approve the proposition of detaching from CWA.
13. The Eastern MWD is a registered-voter district.
14. The Eastern MWD utilizes the County of Riverside assessment roll.
15. The affected territory will be liable for any existing bonds, contracts, and/or obligations of the Eastern MWD as provided under Government Section 57328, and will be subject to any previously authorized taxes, benefit assessments, fees, or charges of Eastern MWD provided under Government Code Section 57330, which Eastern MWD shall be authorized to assess, levy, and/or collect within its boundaries.
16. Pursuant to Government Code section 57202, the effective date of the approval shall be the date of recordation of the certificate of completion, but only after all terms set forth in Number 6 above have been completed as attested by the Executive Officer.
17. As allowed under Government Code Section 56107, the Commission authorizes the Executive Officer to make non-substantive corrections to this resolution to address any technical defects, errors, irregularities, or omissions.
18. Under Government Code Sections 56880-56882, the Executive Officer is hereby authorized and directed to mail copies of this Resolution.
19. The Executive Officer is further authorized and directed to prepare, execute, and record a Certificate of Completion, make the required filings with the County Assessor, County Auditor, and the State Board of Equalization as required by Section 57200, et seq., of the Government Code.

**

PASSED AND ADOPTED by the Commission on the 10th of July 2023 by the following vote:

AYES: Desmond, Drake (voting), Willis, White, and Vanderlaan

NOES: Anderson, Becker, and Whitburn

ABSENT: Mackenzie

ABSTAIN: None

**

**STATE OF CALIFORNIA |
COUNTY OF SAN DIEGO**

I, KEENE SIMONDS, Executive Officer of the Local Agency Formation Commission of the County of San Diego, State of California, hereby certify that I have compared the foregoing copy with the original resolution adopted by said Commission at its regular meeting on July 10, 2023, which original resolution is now on file in my office; and that same contains a full, true, and correct transcript therefrom and of the whole thereof.

Witnessed my hand this 8th day of August 2023.


Keene Simonds, Executive Officer
San Diego Local Agency Formation Commission

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EXHIBIT A-1
MAP OF THE AFFECTED TERRITORY

-Placeholder-

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EXHIBIT A-2
GEOGRAPHIC DESCRIPTION OF THE AFFECTED TERRITORY

-Placeholder-

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PETITION and COMPLAINT

EXHIBIT C

1 DAVID J. EDWARDS (SBN 237308)
General Counsel
2 SAN DIEGO COUNTY WATER AUTHORITY
4677 Overland Avenue
3 San Diego, California 92123
Telephone: (858) 522-6790
4 Facsimile: (858) 522-6566
Email: dedwards@sdcwa.org
5

6 AMRIT S. KULKARNI (SBN 202786)
akulkarni@meyersnave.com
7 SHAYE DIVELEY (SBN 215602)
sdiveley@meyersnave.com
8 EDWARD GRUTZMACHER (SBN 228649)
egrutzmacher@meyersnave.com
9 MEYERS NAVE
707 Wilshire Blvd., 24th Floor
10 Los Angeles, California 90017
Telephone: (213) 626-2906
11 Facsimile: (213) 626-0215

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

12 Attorneys for Plaintiff and Petitioner SAN
DIEGO COUNTY WATER AUTHORITY
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**
16

17 SAN DIEGO COUNTY WATER
AUTHORITY, a county water authority,
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Plaintiff and Petitioner,
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20 v.

21 SAN DIEGO COUNTY LOCAL AGENCY
FORMATION COMMISSION, a political
subdivision of the State of California;
22 FALLBROOK PUBLIC UTILITY
DISTRICT, a Public Utility District pursuant
23 to Division 7 of California Public Utilities
Code; RAINBOW MUNICIPAL WATER
DISTRICT, a municipal water district
24 organized under Section 71000 of the
California Water Code; EASTERN
25 MUNICIPAL WATER DISTRICT, a
municipal water district organized under
26 Section 71000 of the California Water Code;
27 DOES 1 through 50, inclusive;

28 Defendants and Respondents,

Case No.

**NOTICE OF ELECTION TO PREPARE
ADMINISTRATIVE RECORD**

Action Filed: August 21, 2023
Trial Date: None Set

1 FALLBROOK PUBLIC UTILITY
2 DISTRICT, a Public Utility District pursuant
3 to Division 7 of California Public Utilities
4 Code; RAINBOW MUNICIPAL WATER
5 DISTRICT, a municipal water district
6 organized under Section 71000 of the
7 California Water Code; EASTERN
8 MUNICIPAL WATER DISTRICT, a
9 municipal water district organized under
10 Section 71000 of the California Water Code;
11 and DOES 51 through 100, inclusive,

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Defendants and Real Parties in
Interest.

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NOTICE OF ELECTION TO PREPARE ADMINISTRATIVE RECORD

Pursuant to Public Resources Code section 21167.6(b)(2), Plaintiff and Petitioner San Diego County Water Authority (“SDCWA”) hereby notifies all parties that SDCWA elects to prepare the record of proceedings (“Administrative Record”) relating to the above-captioned action.

Defendants and Respondents are directed not to prepare the administrative record for this action filed pursuant to the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.*, and other laws and statutes as set forth in the Petition for Writ of Mandate.

DATED: August 21, 2023

MEYERS NAVE



By:

SHAYE DIVELEY
Attorneys for Plaintiff and Petitioner San Diego
County Water Authority

5437792.1

PETITION and COMPLAINT

EXHIBIT D



1999 Harrison Street, 9th Floor
Oakland, California 94612
tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

Shaye Diveley
sdiveley@meyersnave.com

August 21, 2023

Via E-mail and U.S. Mail

Keene Simonds, Executive Officer
Local Agency Formation Commission
San Diego County
1550 Fifth Avenue, Suite 725
San Diego California 92103
Email: Keene.simonds@sdcounty.ca.gov

**Re: NOTICE OF INTENT TO FILE PETITION FOR WRIT OF MANDATE; AND
CIVIL COMPLAINT FOR INVERSE CONDEMNATION AND
DECLARATORY RELIEF
[CALIFORNIA ENVIRONMENTAL QUALITY ACT CASE]**

Dear Mr. Simonds:

Please take notice that, pursuant to Public Resources Code section 21167.5, San Diego County Water Authority (SDCWA), on August 21, 2023, intends to file a Petition for Writ of Mandate and Civil Complaint for Inverse Condemnation and Declaratory Relief (Petition) in San Diego County Superior Court under the provisions of the California Environmental Quality Act (CEQA) against the San Diego County Local Agency Formation Commission (LAFCO).

The Petition will seek a writ of mandate commanding LAFCO to set aside and vacate LAFCO's approval of Resolution No. 23-11 and Resolution No. 23-12 and prohibiting LAFCO from issuing, granting, adopting, executing or taking any further action in connection with the Reorganization applications of Fallbrook Public Utility District and Rainbow Municipal Water District until LAFCO has taken such actions as may be necessary to comply fully with the requirements of CEQA.

Sincerely yours,

Shaye Diveley

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1999 Harrison Street, 9th Floor, Oakland, CA 94612.

On August 21, 2023, I served true copies of the following document(s) described as **NOTICE OF INTENT TO FILE PETITION FOR WRIT OF MANDATE; AND CIVIL COMPLAINT FOR INVERSE CONDEMNATION AND DECLARATORY RELIEF [CALIFORNIA ENVIRONMENTAL QUALITY ACT CASE]** on the interested parties in this action as follows:

Keene Simonds, Executive Officer
Local Agency Formation Commission
San Diego County
2550 Fifth Avenue, Suite 725
San Diego California 92103
Email: Keene.simonds@sdcounty.ca.gov

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Meyers Nave for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2023, at Oakland, California.



Melissa Bender

PETITION and COMPLAINT

EXHIBIT E

1 DAVID J. EDWARDS (SBN 237308)
General Counsel
2 SAN DIEGO COUNTY WATER AUTHORITY
4677 Overland Avenue
3 San Diego, California 92123
Telephone: (858) 522-6790
4 Facsimile: (858) 522-6566
Email: dedwards@sdcwa.org
5

6 AMRIT S. KULKARNI (SBN 202786)
akulkarni@meyersnave.com
7 SHAYE DIVELEY (SBN 215602)
sdiveley@meyersnave.com
8 EDWARD GRUTZMACHER (SBN 228649)
egrutzmacher@meyersnave.com
9 MEYERS NAVE
707 Wilshire Blvd., 24th Floor
10 Los Angeles, California 90017
Telephone: (213) 626-2906
11 Facsimile: (213) 626-0215

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

12 Attorneys for Plaintiff and Petitioner SAN
DIEGO COUNTY WATER AUTHORITY
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**
16

17 SAN DIEGO COUNTY WATER
AUTHORITY, a county water authority,

18 Plaintiff and Petitioner,

19 v.

20 SAN DIEGO COUNTY LOCAL AGENCY
21 FORMATION COMMISSION, a political
subdivision of the State of California;
22 FALLBROOK PUBLIC UTILITY
DISTRICT, a Public Utility District pursuant
23 to Division 7 of California Public Utilities
Code; RAINBOW MUNICIPAL WATER
24 DISTRICT, a municipal water district
organized under Section 71000 of the
25 California Water Code; EASTERN
MUNICIPAL WATER DISTRICT, a
26 municipal water district organized under
Section 71000 of the California Water Code;
27 DOES 1 through 50, inclusive;

28 Defendants and Respondents,

Case No.

**NOTICE TO CALIFORNIA ATTORNEY
GENERAL OF COMMENCEMENT OF
CEQA ACTION**

[Public Resources Code § 21167.7]

Action Filed: August 21, 2023
Trial Date: None Set

1 FALLBROOK PUBLIC UTILITY
2 DISTRICT, a Public Utility District pursuant
3 to Division 7 of California Public Utilities
4 Code; RAINBOW MUNICIPAL WATER
5 DISTRICT, a municipal water district
6 organized under Section 71000 of the
7 California Water Code; EASTERN
8 MUNICIPAL WATER DISTRICT, a
9 municipal water district organized under
10 Section 71000 of the California Water Code;
11 and DOES 51 through 100, inclusive,

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Defendants and Real Parties in
Interest.


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PLEASE TAKE NOTICE that on August 21, 2023, Plaintiff and Petitioner San Diego County Water Authority, a county water authority, filed a PETITION FOR WRIT OF MANDATE; AND CIVIL COMPLAINT FOR INVERSE CONDEMNATION AND DECLARATORY RELIEF (“Petition”) alleging, inter alia, that the San Diego Local Agency Formation Commission (“LAFCO”) violated the California Environmental Quality Act by relying on a Class 20 Categorical Exemption and the so-called “common sense” exemption to find that LAFCO Resolutions Nos. 2023-11 & 2023-12 were exempt from environmental review under CEQA, as more fully alleged in the attached Petition.

Pursuant to Public Resources Code section 21167.7 and Code of Civil Procedure section 388, a copy of the Petition is included herewith as **Exhibit 1**.

DATED: August 21, 2023

MEYERS NAVE

By: 

SHAYE DIVELEY
Attorneys for Plaintiff and Petitioner SAN DIEGO
COUNTY WATER AUTHORITY

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1999 Harrison Street, 9th Floor, Oakland, CA 94612.

On August 21, 2023, I served true copies of the following document(s) described as **NOTICE TO CALIFORNIA ATTORNEY GENERAL OF COMMENCEMENT OF CEQA ACTION** on the interested parties in this action as follows:

Office of the California Attorney General
CEQA Coordinator
Environmental Section
1300 "I" Street
Sacramento CA 95814-2919
Email: CEQA@doj.ca.gov

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Meyers Nave for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2023, at Oakland, California.



Melissa Bender

PETITION and COMPLAINT

EXHIBIT F

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/26/2020 at 08:00:00 AM

Clerk of the Superior Court
By Candace Schaeffer, Deputy Clerk

1 ARTIANO SHINOFF
2 Jeanne Blumenfeld, Esq. (SBN 157441)
3 jblumenfeld@as7law.com
4 Daniel R. Shinoff, Esq. (SBN 99129)
5 DShinoff@as7law.com
6 2488 Historic Decatur Road, Suite 200
7 San Diego, California 92106
8 Telephone: 619.232.3122
9 Facsimile: 619.232.3264

10 Attorneys for Petitioner and Plaintiff
11 OTAY WATER DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

OTAY WATER DISTRICT,

Petitioner and Plaintiff,

v.

RAINBOW MUNICIPAL WATER
DISTRICT and DOES 1 through 20,
inclusive,

Respondent and Defendant .

Case No. 37-2020-00001510-CU-WM-CTL

STIPULATION AND ~~PROPOSED~~ ORDER FOR JUDGMENT

Petitioner and Plaintiff Otay Water District (“Petitioner”) and Respondent and Defendant Rainbow Municipal Water District (“Respondent”), after meeting to discuss settlement of this matter pursuant to Public Resources Code section 21167.8, subdivision (a) and by signature of their representatives authorized to stipulate hereunder, hereby stipulate to the entry of an order and judgment by this court as follows:

1. On December 3, 2019 Respondent approved the “Resolution of Application Authorizing the GM to Prepare and Submit an Application to San Diego LAFCO to Detach from SDCWA and Annex to EMWD” and Respondent’s related Notice of Exemption (“NOE”), which was posted and filed with the County Clerk on December 5, 2019. Prior to

1 the approval, Respondent examined the aforementioned Resolution and Application to
2 determine whether they were subject to the California Environmental Quality Act, Public
3 Resources Code section 21000 et seq., (“CEQA”) and determined that they were exempt.
4 The NOE is valid and applies only to the aforementioned Resolution and the related
5 submittal of Respondent’s application for detachment and annexation to the San Diego Local
6 Agency Formation Commission, and not to any other agency’s action on any potential
7 detachment or annexation.

8 2. The NOE may not be utilized or relied upon by the San Diego LAFCO or any
9 other agency for the purpose of that agency’s CEQA compliance in connection with any
10 potential detachment by Respondent from the San Diego County Water Authority, or for
11 any potential annexation by Respondent into Eastern Municipal Water District. Nothing in
12 this Stipulation and Order for Judgment is intended to limit the discretion of any agency to
13 independently determine the appropriate level of CEQA review required for any potential
14 detachment by Respondent from the San Diego County Water Authority, or for any potential
15 annexation by Respondent into Eastern Municipal Water District.

16 3. Petitioner’s January 17, 2020 request to Respondent for the record of
17 proceeding documents is withdrawn.

18 4. Each of the parties in this case shall bear its own fees and costs.

19 5. Judgment shall be entered in this case in accord with this Stipulation and Order
20 for Judgment, and no further proceedings in this case are required.

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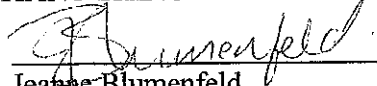
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6. The invalidity of any portion of this Stipulation and Order for Judgment shall not invalidate the remainder.

So stipulated:

Dated: March 18, 2020

ARTIANO SHINOFF

By: 

Jeanne Blumenfeld
Attorneys for Petitioner OTAY WATER DISTRICT

Dated: March 19, 2020

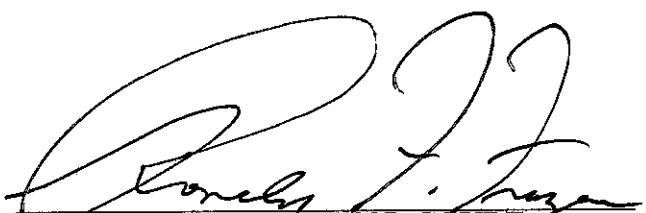
~~Rainbow Municipal Water District~~

By: 

Elizabeth Klebaner, Esq.
Attorneys for Respondent Rainbow Municipal Water District

So Ordered:

Dated: 5/28/20


JUDGE OF THE SUPERIOR COURT

RONALD F. FRAZIER

1 ARTIANO SHINOFF
Jeanne Blumenfeld, Esq. (SBN 157441)
2 jblumenfeld@as7law.com
Daniel R. Shinoff, Esq. (SBN 99129)
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Telephone: 619-232-3122
5 Facsimile: 619-232-3264

6 Attorneys for Petitioner
7 OTAY WATER DISTRICT

*Exempt from filing fee -
Government Code sections 6103 & 26857*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO - CENTRAL JUSTICE CENTER**

11 OTAY WATER DISTRICT,

Case No.: 37-2020-00001510-CU-WM-CTL

12 Plaintiff,

PROOF OF SERVICE

13 v.

IMAGED FILE

14 RAINBOW MUNICIPAL WATER
DISTRICT and DOES 1 through 20,
15 inclusive,

Judge: Hon. Ronald F. Frazier
Dept.: C-65

16 Respondent.

Complaint Filed: January 9, 2020
Trial Date: Not Yet Set

ARTIANO SHINOFF

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20
21 I am and was at all times herein mentioned over the age of 18 years and not a party to
22 the action in which this service is made. At all times herein mentioned I have been employed
23 in the County of San Diego in the office of a member of the bar of this court at whose direction
24 the service was made. My business address is 2488 Historic Decatur Road, Suite 200, San
25 Diego, California 92106.

26 On April 16, 2020, I served the following document(s):

27 **STIPULATION AND [PROPOSED] ORDER FOR JUDGMENT**

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ARTIANO SHINOFF

BY ELECTRONIC SERVICE via email sent to the attorneys listed below and sent without electronic error on April 16, 2020, by bpaape@as7law.com.

Elizabeth Klebaner, Esq.
Alfred E. Smith, II, Esq.
Nossaman LLP
777 South Figueroa Street, 34th Floor
Los Angeles, CA 90017
Fax: (213) 612-7801
Email: asmith@nossaman.com
lklebaner@nossaman.com

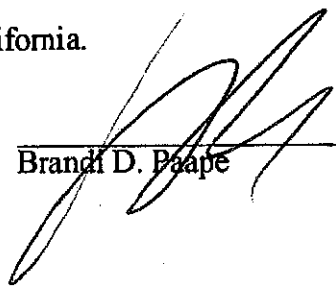
Attorneys for Rainbow Municipal Water District

Stephanie N. Clark, Esq.
Nossaman LLP
8101 Von Karman Avenue, Suite 1800
Irvine, CA 92612
Tele.: (949) 833-7800
Fax: (949) 833-7878
Email: sclark@nossaman.com

Attorneys for Rainbow Municipal Water District

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 16, 2020, at San Diego, California.



Brandi D. Paape

PETITION and COMPLAINT

EXHIBIT G

05/26/2020 at 08:00:00 AM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

1 ARTIANO SHINOFF
Jeanne Blumenfeld, Esq. (SBN 157441)
2 jblumenfeld@as7law.com
Daniel R. Shinoff, Esq. (SBN 99129)
3 dshinoff@as7law.com
2488 Historic Decatur Road, Suite 200
4 San Diego, California 92106
Telephone: 619-232-3122
5 Facsimile: 619-232-3264

6 Attorneys for Petitioner
OTAY WATER DISTRICT

*Exempt from filing fee -
Government Code sections 6103 & 26857*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO - CENTRAL JUSTICE CENTER**

11 OTAY WATER DISTRICT,
12 Petitioner and Plaintiff,

13 v.

14 FALLBROOK PUBLIC UTILITY
DISTRICT,
15 Respondent and Defendant.

Case No.: 37-2020-00004572-CU-MC-CTL

**STIPULATION AND [PROPOSED]
ORDER FOR JUDGMENT**

IMAGED FILE

Judge: Hon. Kenneth J. Medel
Dept.: C-66

Complaint Filed: January 24, 2020
Trial Date: Not Yet Set

19
20 Petitioner and Plaintiff Otay Water District (“Petitioner”) and Respondent and
21 Defendant Fallbrook Public Utility District (“Respondent”), after discussing settlement of
22 this matter on March 11, 2020 pursuant to Public Resources Code section 21167.8 and by
23 signature of their representatives authorized to stipulate hereunder, hereby stipulate to the
24 entry of an order and judgment by this court as follows:

25 1. On December 9, 2019 Respondent approved the “Request to San Diego Local
26 Agency Formation Commission to Commence Proceedings for the Detachment/Exclusion of
27 Fallbrook Public Utility District from the San Diego County Water Authority and
28 Annexation into the Eastern Municipal Water District” through adoption of Resolution No.

1 4985 and directed staff to file a Notice of Exemption with the County Clerk for the County
2 of San Diego. Respondent’s related Notice of Exemption was posted and filed with the
3 County Clerk on December 24, 2019 (“2019 NOE”). A copy of the Resolution and the 2019
4 NOE are attached as Exhibit A. The Resolution includes Respondent’s finding that the
5 Request is not subject to environmental review under the California Environmental Quality
6 Act, Public Resources Code section 21000 et seq., (“Respondent’s CEQA Finding”).
7 Respondent’s CEQA Finding and the 2019 NOE are valid and apply only to the
8 aforementioned Resolution and the related submittal of Respondent’s application for
9 detachment and annexation to the San Diego Local Agency Formation Commission, and not
10 to any other agency’s action on any potential detachment or annexation.

11 2. Respondent’s CEQA Finding and the 2019 NOE may not be utilized or relied
12 upon by the San Diego LAFCO or any other agency for the purpose of that agency’s CEQA
13 compliance in connection with any potential detachment by Respondent from the San Diego
14 County Water Authority, or for any potential annexation by Respondent into Eastern
15 Municipal Water District. Nothing in this Stipulation and Order for Judgment is intended to
16 limit the discretion of any agency to independently determine the applicability of CEQA, or
17 what level of CEQA review may or may not be required, for any potential detachment by
18 Respondent from the San Diego County Water Authority, or for any potential annexation by
19 Respondent into Eastern Municipal Water District.

20 3. Petitioner’s February 14, 2020 request to Respondent for the record of
21 proceeding documents is withdrawn.

22 4. Each of the parties in this case shall bear its own fees and costs.

23 5. Judgment shall be entered in this case in accord with this Stipulation and Order
24 for Judgment, and no further proceedings in this case are required.

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1 6. The invalidity of any portion of this Stipulation and Order for Judgment shall
2 not invalidate the remainder.

3 So stipulated:

4 Dated: March 24, 2020

ARTIANO SHINOFF

Bv: 

Jeanne Blumenfeld

Attorneys for Petitioner OTAY WATER
DISTRICT

8 Dated: March 24, 2020

FALLBROOK PUBLIC UTILITY DISTRICT

Bv: 

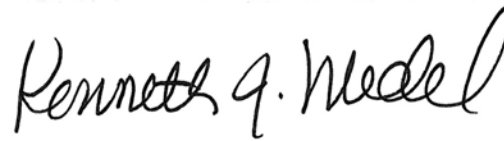
Amy Hoyt

Lindsay D. Puckett

Attorneys for Respondent Fallbrook Public
Utility District

12 So Ordered:

15 Dated: 6/2/2020



JUDGE OF THE SUPERIOR COURT

Kenneth J Medel

ARTIANO SHINOFF

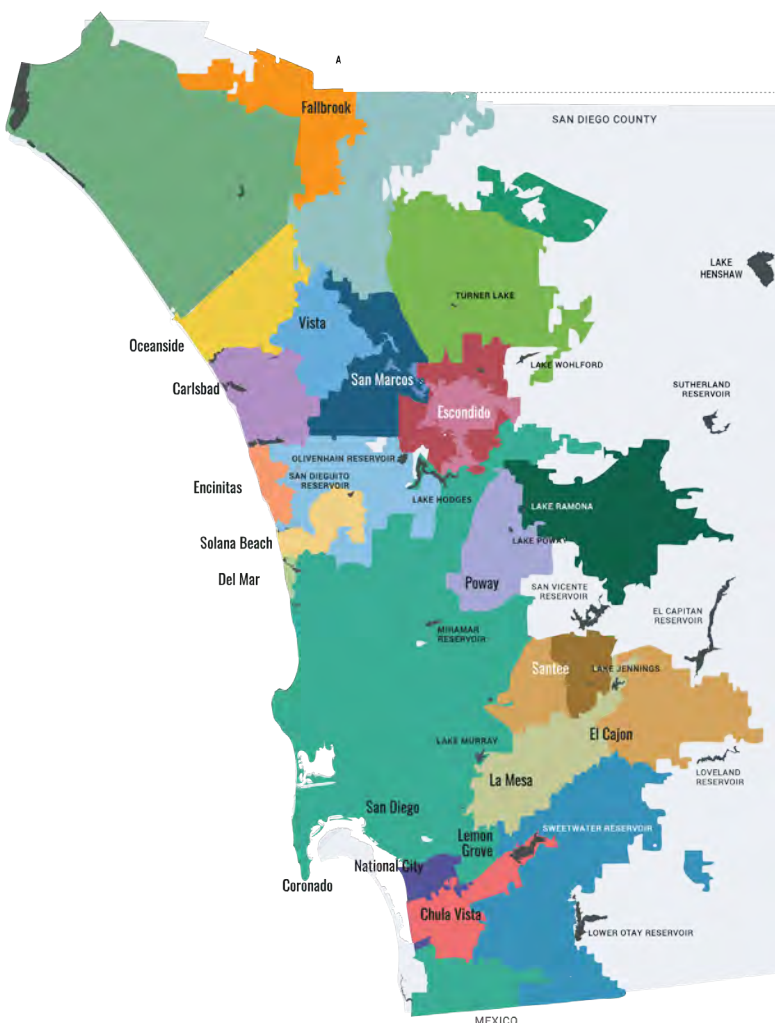
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PETITION and COMPLAINT

EXHIBIT H

San Diego County Water Authority Combined Response to Reorganization Applications by Fallbrook/Rainbow

September 18, 2020



Prepared by:
San Diego County Water Authority

Submitted to:
**San Diego County Local Agency Formation
Commission (LAFCO)**

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Section 1

Executive Summary

A. Introduction

This detailed report constitutes the combined initial response (the “Response”)¹ by the San Diego County Water Authority (“Water Authority”) to the reorganization applications submitted by the Fallbrook Public Utility District (“Fallbrook”) and the Rainbow Municipal Water District (“Rainbow”) to the San Diego Local Agency Formation Commission (“LAFCO”) to detach from the Water Authority and annex into Riverside County’s Eastern Municipal Water District (“Eastern”), where all their imported water needs would be serviced by the Metropolitan Water District of Southern California (“MWD”)(collectively the “proposals” or “proposed reorganizations”)².

The Response is combined as to both Fallbrook and Rainbow because the detachments and annexations they seek would have significant cumulative effects, and are generally based on the same assumptions, claims, and alleged rights. Nonetheless, where appropriate the Water Authority does address their applications separately, such as in Section 8 below on the Detachment Applications.

It should be noted at the outset that the applications are without precedent, in several respects. First, the applications are for detachments from a county-wide Water Authority, created under state law, in which they have each been members for over 60 years, requiring a LAFCO process for which there is no precedent or comparison. Second, the applications seek concurrent annexations into an entirely different county and for significantly diminished service. Third, because water supply is a statewide issue, and the relevant wholesalers have different water supply portfolios, the applications require an environmental analysis that extends far past the local and regional boundaries that typically provide the analytical scope for a LAFCO reorganization. The novelty of the proposed reorganizations raises many issues of first impression.

As further described in this Response, the Water Authority maintains that the proposed reorganizations:

- Will degrade water reliability for Rainbow and Fallbrook customers, without any demonstrated rate benefits over a reasonable planning horizon.

¹ Additionally, the Water Authority lodges an Appendix with reference materials as part of this Response. All references to exhibits in the Response are to exhibits found in the Appendix.

² LAFCO reference numbers RO20-04 and RO20-05.

- Could cause an inequitable financial impact to the Water Authority’s other member agencies and their ratepayers.
- May cause significant impacts to the environment, including Bay-Delta ecological impacts.
- Will impair the County’s regional cohesiveness and planning efforts, and its important voting rights at MWD.

This Response details the history of the Water Authority and its critical role in providing water planning and supply for the greater San Diego region since 1944, reviews certain important facts about the two applicants and their LAFCO proceeding a few years ago as context for those entities’ current claimed financial situation, and then provides LAFCO with the Water Authority’s detailed analysis of the actual and projected effects of the proposed reorganizations in various critical categories. The Response then identifies missing and misstated elements of the applications, and numerous important public policy and legal issues LAFCO must consider.



San Diego County water supplies

B. LAFCO and the Regional Water Supply

California's Local Agency Formation Commissions (“LAFCOs”) serve as a regional arm of the State of California to advance the legislative priorities of the State, which must include consideration of the competing, complex, and challenging interests involved in California water policy. This is reflected in the legislative mission statutorily established in LAFCO’s enabling legislation, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as amended (Government Code §§56000 et seq.) (the “LAFCO Statutes” or the “Reorganization Act”). Government Code Section 56001 sets forth the State’s policy to “encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state ...” while balancing the “state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.”

The Reorganization Act was the most sweeping legislative reform of the LAFCO Statutes since their original enactment in 1963. It was the outcome and work product of the Commission on Local Governance for the 21st Century, a blue-ribbon commission composed of local and regional government experts, charged with making recommendations to the Legislature about how California could accommodate exponential population growth through efficient and effective local governance and service delivery.

The Commission’s recommendations were embodied in a comprehensive report, “Growth Within Bounds,” submitted to the Legislature through the Governor’s Office of Planning and Research.³

One of the many critical issues addressed in Growth Within Bounds was the reliability of California’s water supply, including the high-profile efforts of a consortium of state and federal agencies to find “long-term solutions to protect the vital Bay-Delta ecological system while meeting demands for water supply reliability, protection from natural disasters, and maintenance of water quality.” The report goes on to recognize that “although no one expects LAFCO to resolve the evolving water crisis, LAFCO decisions should recognize the critical role of water to California’s future. Low density suburban development, continued urban sprawl, and intense development in regions not having adequate water supplies will contribute to the impending water shortage. LAFCOs should be required to consider these factors when reviewing annexation or sphere of influence requests.”

The Commission’s Recommendation No. 5-10, “that water supply considerations be integrated into LAFCO decision-making regarding boundary changes,” was codified in Section 56668(l) of the Reorganization Act, establishing that among the factors a LAFCO must review in considering a proposal is “Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.”

It is clear that the proposed reorganizations are not consistent with San Diego LAFCO’s own policies.

Water supply and reliability is so important to the region that these issues are also reflected in two of San Diego LAFCO’s own legislative policies L-108 (Water Supply and Reliability Regulatory Guidelines) and L-109 (Water Supply and Reliability Legislative Guidelines). No other essential public service has two legislative policies dedicated to it by LAFCO (in fact, the only other policy related to a specific public service is for fire protection contracts). Policy L-108 provides that long range planning should be integrated with local agencies, that decision making should be focused at the regional and local level, and that the Commission must place primary reliance on the input and recommendations of the local agency responsible for availability of water supply and delivery. That agency is the Water Authority. Policy L-109 provides that decision-making should be kept at the regional and local level, that water supply should be “diversified where possible yet under local agency control and management,” and that the Commission should encourage long-range planning that is integrated with local entities.

The timely availability and reliability of water supplies, both today and decades from now, is at the very core of the important public policy decision that San Diego LAFCO must make

³ Growth Within Bounds: Planning California Governance for the 21st Century, Report of the Commission on Local Governance for the 21st Century, January 2000. Appendix, Exhibit “1.”

about the present reorganization proposals. It is clear that the proposed reorganizations are not consistent with San Diego LAFCO's own policies.

C. Past Initiatives to Enhance Water Reliability in San Diego County

San Diego LAFCO, the Water Authority and its 24 members, the San Diego Association of Governments ("SANDAG"), and other local agencies and stakeholders have cooperatively and collaboratively partnered over decades to proactively enhance regional water supply diversification and reliability in San Diego County.

Since its inception in 1944, the Water Authority has played a critical role in developing and maintaining vital water supplies and infrastructure throughout our region. But following the devastating cuts to San Diego County's water supply by its (then) primary supplier MWD in the early 1990s, the Water Authority made significant strategic investments to diversify San Diego County's sources of water. These investments included securing the transfer of conserved agricultural water from the Imperial Irrigation District ("IID"), investing in ocean desalination, and undertaking a host of capital improvement projects that have strengthened the region's water diversity and emergency supply. This history is further detailed in Section 2. These investments in reliability and water independence were broadly supported across San Diego County by SANDAG, the County, the Grand Jury, the San Diego Regional Chamber of Commerce, and the agricultural sector. All members of the Water Authority, including Rainbow and Fallbrook, participated in the many long-term planning processes for these resources, and the Water Authority incurred substantial bonded indebtedness and contractual obligations to achieve these goals, with the understanding that each member would use and pay for their share of the supplies and facilities in the long-term.

The reorganizations, if implemented as proposed, would undermine many years of coordinated regional planning efforts, and the investments all ratepayers in San Diego County have made to secure their water future, quality of life, and economy. As detailed in the pages that follow, the proposals are inconsistent with decades of coordinated public policy and investments necessary to secure San Diego County's water independence and supply reliability for residents, businesses, and the agricultural sector.

D. Core Issues and Relationship to Municipal Service Reviews and Sphere of Influence Updates

The Water Authority has identified a number of significant issues with Rainbow and Fallbrook's applications that are core to the State's priorities and LAFCO's mission to oversee jurisdictional service boundaries that, among other things, must seek to promote and enhance water reliability in the region. These core issues directly relate to the determinations LAFCO is required to make when determining spheres of influence ("SOI") for local agencies, pursuant to Government Code Section 56425(e), and conducting municipal service reviews ("MSR") pursuant to Government Code Section 56430(a).

While this Response addresses a wider breadth of important considerations for LAFCO, among the most critical issues are water reliability, stranded costs, environmental impacts, regional planning and cohesion, and a clear understanding of the true rate impacts.

1. *Degradation of Water Reliability for Rainbow and Fallbrook Customers*

Fallbrook and Rainbow propose changing their wholesale water supplier from the Water Authority in San Diego County, which provides highly reliable water from a diversified water portfolio, to Eastern in Riverside County, acting merely as a pass-through for MWD water. Fallbrook and Rainbow are not proposing to be annexed into Eastern’s entire system, with access to Eastern’s independent water supplies, storage, and infrastructure. Rather, they are – for \$11 per acre-foot paid to Eastern – only buying access to an imported water supply from MWD. This has very important water supply ramifications for Fallbrook and Rainbow customers. They will not only lose access to the Water Authority’s more reliable water supply, storage, and infrastructure in times of drought and other water shortage periods and emergency events, but will also lose access to the other services provided by the Water Authority to member agencies that are not matched by just receiving MWD wholesale water via Eastern.

In addition, the proposed reorganizations would potentially result in a new 30,000 acre-foot demand for water in the County. Contrary to the applicants’ assertions, a water supply received from MWD via Eastern will not be the same water supply those agencies receive from the Water Authority. Because Rainbow and Fallbrook’s demands will no longer be drawn from the Water Authority’s fixed QSA supply, Eastern will be required to obtain and supply to Rainbow and Fallbrook a new source of water from the already-impacted State Water Project via MWD.

2. *Avoiding Inequitable Impacts to Other Water Authority Agencies and their Ratepayers & No Long-Term Rate Benefits to Applicants*

Fallbrook and Rainbow propose a detachment with essentially no payments for outstanding Water Authority debt and long-term service obligations. These financial commitments, which were made to meet the planned and projected baseline water demands of all 24 member agencies, total about \$21.1 billion. The obligations they seek to avoid are estimated at about \$16.4 to \$45.7 million per year, combined. Such amounts, if recovered on volumetric water rates, would be about a \$50 to \$130 per acre-foot increase for all the remaining member agencies.

The obligations they seek to avoid are estimated at about \$16.4 to \$45.7 million per year, combined. Such amounts, if recovered on volumetric water rates, would be about a \$50 to \$130 per acre-foot increase for all the remaining member agencies.

Fallbrook and Rainbow assert, without demonstrating over any reasonable planning horizon that it will be the case, that Fallbrook and Rainbow customers will have “lower

rates” as a result of relying directly on MWD’s imported water supplies. But that assumes they do not pay their fair share of the Water Authority’s obligations that were incurred while they were member agencies. Because many elements of the costs of operating the Water Authority’s system are fixed (or not based on volumetric water delivery), the financial obligations Rainbow and Fallbrook seek to avoid would result in cost increases for all the remaining Water Authority member agencies.⁴

Avoiding paying their fair share of bonded and other forms of indebtedness, and saddling the Water Authority’s remaining member agencies with this debt increases the risk of downgraded financial ratings for the Water Authority, and thus higher debt repayments by the remaining member agencies.

If the reorganizations are approved, Fallbrook and Rainbow should be required to continue to pay their fair share of the obligations incurred by the Water Authority over a reasonable period of time and planning horizon. LAFCO should evaluate whether these costs, combined with the costs to obtain water from Eastern based on reasonable long-term projections of MWD water rates and charges, actually result in lower long-term customer rates in Fallbrook and Rainbow. Based on long-term major projects MWD must undertake to protect its water supplies this is unlikely. LAFCO must then also assess whether these projected customer rates are reasonable in light of the risks associated with a lower level of water supply reliability from MWD water service. If so, LAFCO should also consider the form of payment to the Water Authority, including whether it should be by contract between the detaching agencies and the Water Authority or by requiring local voters to approve a property assessment in connection with an election on the reorganization.

Particularly with regard to water reliability and stranded costs, it is vital that LAFCO pay close attention to its Municipal Service Review and Sphere of Influence determination requirements and how LAFCO addresses these issues as part of the pending MSR and SOI update for the North County Region. They are not separable policy issues, and any MSR/SOI update process should not only run parallel to the LAFCO proceedings on the proposals, but create a broader policy platform for deliberations on financial, legal, and technical issues of both regional and statewide importance.

3. *Potentially Significant Impacts to the Environment, including Bay-Delta Ecological Impacts*

The environmental impacts of the proposed reorganizations must be reviewed by LAFCO. These include a review of the impacts of construction projects in Rainbow that have not been fully identified in the application documents, and more importantly the increased reliance on the environmentally sensitive Bay-Delta region, as detailed in Sections 6 and 9. The Water Authority’s portfolio is far less dependent on water from Northern California than are MWD supplies, and it is growing even less dependent with each passing year. LAFCO cannot ignore the legislative mandate to move water reliance off the Bay-Delta.

⁴ The reasons for the annual fluctuation on effect is detailed in Section 4 below.

No meaningful review under the California Environmental Quality Act (“CEQA”) has been performed on the proposed reorganizations, and LAFCO must require it to be done in connection with its evaluation of these applications. LAFCO should assume the lead agency role, and should not rely on categorical CEQA exemptions, especially in light of the proposals’ cumulative impact on water demand/supply issues, reliability, and Bay-Delta ecology.

The Water Authority’s portfolio is far less dependent on water from Northern California than are MWD supplies, and it is growing even less dependent with each passing year. LAFCO cannot ignore the legislative mandate to move water reliance off the Bay-Delta.

4. *Regional Cohesiveness and Planning Efforts*

San Diego County is a diverse region, but unified in its identity. Our local metropolitan planning organization, SANDAG, collaborates extensively with the Water Authority in regional planning efforts, and County policies have reflected the Water Authority’s role as the regional water planning organization, as have LAFCO’s own policies. The detachments of Rainbow and Fallbrook from the Water Authority threaten San Diego County’s regional cohesiveness. They would require significant changes to a variety of planning approaches, intergovernmental relationships and entitlement processing requirements. These changes, quite simply, are therefore not a “logical formation and determination of local agency boundaries” under LAFCO’s articulated purpose in Government Code Section 56001.

Political boundaries may in many ways be arbitrary, but they are meaningful for planning, governance, and financial purposes – as well as for our County residents’ sense of identity. The Water Authority’s current boundaries are the basis for the county-wide Urban Water Management Plan, the Integrated Regional Water Management Plan, SANDAG forecasts, and individual water supplier’s own plans. A united San Diego County is also able to work to best position our region for success in connection with MWD policies and in state and federal legislation. The proposed reorganizations threaten that regional cohesiveness.

Most importantly, detachment would mean that critical voting rights at MWD now held by the Water Authority for the benefit of San Diego County would be transferred to Eastern in Riverside County, an agency which has worked, and actively litigated, to prevent San Diego County’s ratepayers from recovering unlawful rate amounts charged by MWD. The Water Authority has worked diligently to safeguard our region’s interests at MWD, but Eastern has actively opposed the interests of San Diego County. Now, these reorganizations seek to take voting power from the San Diego area over what MWD charges our region, and hand it to Eastern, which vigorously supports MWD’s excess charges.

E. Application Deficiencies

The Rainbow and Fallbrook applications contain some mischaracterizations and omit important elements LAFCO must consider. For example, the powers of LAFCO to condition its approvals are not accurately characterized in the applications. The statutory powers of LAFCO importantly complement the County Water Authority Act because the applications are for reorganizations, not just detachments. LAFCO has broad authority to craft conditions to any approval as required by equity to ensure that the detaching applicants pay their fair share of all existing

Water Authority financial obligations. The Water Authority's principal act provides one mechanism, but not the only mechanism, for ensuring that a separating agency pays its fair share of bonded and other contractual debts.

The factual and financial discrepancies point to the need for an independent, comprehensive financial analysis that looks at least 20 years out for both the Rainbow and Fallbrook Service Areas and the rest of the Water Authority, with a focus on ratepayer and agency impacts.

Additionally, the applicants will need to perform infrastructure changes in order to accomplish the proposed detachments. These include not only changes to the Water Authority system, but also system changes within the applicant service areas, particularly in Rainbow. Much of this detail is skimmed over or ignored in the applications.

Finally, the applications contain significant missing and incorrect data. Not included are facts about what specific services Fallbrook and Rainbow will, and will not, receive for their \$11 per acre-foot at Eastern, and what representation they would receive at Eastern. LAFCO should require the applicants and Eastern to clarify a number of important factual matters before this process proceeds. The factual and financial discrepancies point to the need for an independent, comprehensive financial analysis that looks at least 20 years out for both the Rainbow and Fallbrook Service Areas and the rest of the Water Authority, with a focus on ratepayer and agency impacts. In Section 8, the Water Authority poses certain important questions LAFCO should require Fallbrook, Rainbow, and Eastern to answer for more complete applications.

F. Application Review Process

In order to adequately evaluate the complex and competing issues included in the reorganization proposal, LAFCO should hire appropriate, qualified third-party consultants to independently analyze and prepare a report on the proposed changes.

The report should include recommendations on the interplay between the reorganization and the MSR/SOI process; an analysis of policy considerations; a financial analysis that includes a planning forecast of at least 20 years as required by state law for urban water management planning; impacts to both member agencies and ratepayers; and a technical engineering analysis of the infrastructure impacts. An independent environmental consultant should also evaluate the potential environmental impacts under CEQA.

G. Conclusion

The issues described in this Response are critically important to the Water Authority, and to all San Diego County water customers, including those in Fallbrook and Rainbow. The Water Authority has a statutory obligation to protect its ratepayers, protect the reliability of the region's water supply and system, and protect the environment.

In May 2020, the Water Authority Board of Directors voted to oppose detachment unless all the following could be shown:⁵

- 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 determined 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.

The Water Authority will have to await the remainder of the LAFCO process to see if these conditions can be satisfied. If they are not, then the Water Authority will oppose detachment.

This Response is, by necessity, only partial. This is because there are so many areas of missing or incomplete data in the applications, all as explained more fully below. However, the Response is an important first step in presenting LAFCO with the "rest of the story" that is missing in the application materials, which by their nature are advocacy for Rainbow and Fallbrook's proposal.

In the pages that follow, the Water Authority provides extensive detail on the above issues, both as to the facts and as to applicable law. The Water Authority looks forward to working with LAFCO and all interested parties to evaluate the full scope and potential effects of the reorganization proposals on San Diego County.

⁵ The Resolution is in the Appendix as Exhibit "2."

Section 2

Water Authority Background

“Water is king and the basis of all value in [San Diego] county is water.”

- Edward Fletcher, founder of Cuyamaca Water Company⁶

Over its 76-year history, the San Diego County Water Authority has provided the backbone for the growth and development of San Diego County. San Diego County has scarce native water resources compared to its population and agricultural demands, and the Water Authority adapted its approach to water supply to meet the changing demands of a dynamic region. Today, the Water Authority provides water to nearly all of San Diego County's population, serving homes, businesses, farms, large university campuses and military installations.

Since the rapid growth of the population in the early 1940s due to the wartime military industrial complex, the Water Authority has imported, developed, and managed water supplies to ensure water reliability for the County. Making San Diego County drought-proof has required significant investments in infrastructure and long-term water supply contracts, a strategy made in collaboration with and supported by the Water Authority's member cities and water districts, regional planning organizations such as SANDAG and the Regional Water Management Group, business and environmental stakeholders and the public. Surveys of San Diego County residents have consistently supported the investments necessary to ensure water reliability.

As a result, the Water Authority, in collaboration with other local county planning agencies, has transformed San Diego County from one of the most water-insecure regions of the state to one of the most reliable and resilient.

A. Growth and Water Supply from the 1900s to the 1980s

The same semi-arid climate and limited rainfall that make San Diego County region attractive to residents, businesses, and visitors have also historically challenged the region's ability to maintain a reliable water supply sufficient to keep pace with our population and economy. The county's coastal plains receive an average of just 10 inches of rain a year, while the mountains receive an average of 30 inches. San Diego County has virtually no aquifer storage. Native water supplies have not been sufficient to support San Diego's population for decades. The last time the County's annual precipitation met the annual water demand of its population was in 1946.

⁶ As quoted at page 25 in “To Quench a Thirst.” Appendix, Exhibit “3.”

In the early part of the 20th century, San Diego County's limited native water resources were unable to keep pace with the demands posed by rapid population growth and agricultural development, as well as dramatic drought cycles. In the 1920s, in order to improve water reliability, the City of San Diego staked a 112,000 acre-foot claim on the Colorado River, and the resulting contract with the U.S. government allotted that water to both the City and the County. But there was no pipeline to bring that water across the desert to San Diego. San Diego wanted to build an extension from the All-American Canal to take delivery of its Colorado River water, partly for economic reasons and partly to remain independent of MWD, which was building its own aqueduct for the delivery of Colorado River water.



Early San Diego County pipeline segments

In order to import and distribute the 112,000 acre-foot allotment of Colorado River water to support the City and County of San Diego and supplement existing water supplies, San Diego state senator Ed Fletcher authored the County Water Authority Act in 1943. Under that Act, the San Diego County Water Authority was formed in 1944 by the nine member agencies that had existing water supplies.⁷ Under pressure to deliver a reliable water supply to support the war effort, President Roosevelt ultimately signed an executive order directing the Navy to connect to MWD's aqueduct, rather than one planned by the region to connect to the All-American Canal. The Water Authority joined MWD in 1946, and in November 1947, San Diego County began receiving an imported water supply, just as the County's native water reservoirs ran dry.

By the mid-1950s, the Water Authority had grown to 18 member agencies,⁸ and in 1954 it built a second pipeline, doubling the capacity for imported water. But San Diego County continued to grow and the demand exceeded even this supply, so a third pipeline—three times larger—was built in 1961. By this time, the Water Authority served 95 percent of the County's residents.

In the 1970s, the County's population continued to outpace expectations and available water supplies, and in 1973 a fourth pipeline was built, doubling the existing capacity of the first three pipelines.

While water supply projects were evolving on the Colorado River, MWD also began to look to the north, as the state itself began to recognize that its natural abundance of water was in Northern California, while the population and economic growth was occurring in

⁷The nine original member agencies were five cities (Chula Vista, Coronado, Oceanside, San Diego, and National City) and four districts (Fallbrook Public Utility District, Lakeside Irrigation District, Ramona Irrigation District, and the La Mesa, Lemon Grove & Spring Valley Irrigation District.)

⁸Rainbow Municipal Water District was formed in 1953, and joined the Water Authority shortly thereafter in 1954.

Southern California. Thus was born the idea of redistribution of the state’s water supply from north to south via the State Water Project (“SWP”) proposal. Deeply controversial from the beginning—both between north and south and between different groups of water users across the state and within Southern California itself—the SWP was nonetheless approved by voters in 1962, and in 1978 the Water Authority began importing Northern California water from the State Water Project through MWD.

By 1980, the Water Authority served 99 percent of San Diego County’s population of 1.8 million people. It built a fifth pipeline in 1982, more than doubling existing capacity, at which point the Water Authority provided the county with approximately 1 million acre-feet of capacity per year. Within 35 years, the Water Authority had increased water supply capacity by 15 times more than the original pipeline’s capacity.

In 1982, however, a statewide referendum defeated construction of the Peripheral Canal portion of the SWP, resulting in the SWP being able to deliver only half the water that MWD and other agencies had contracted for. The State Water Project (and the federal government’s Central Valley Project or “CVP”) were constructed just as environmental awareness began to increase in California and the United States, beginning in the 1960’s and early



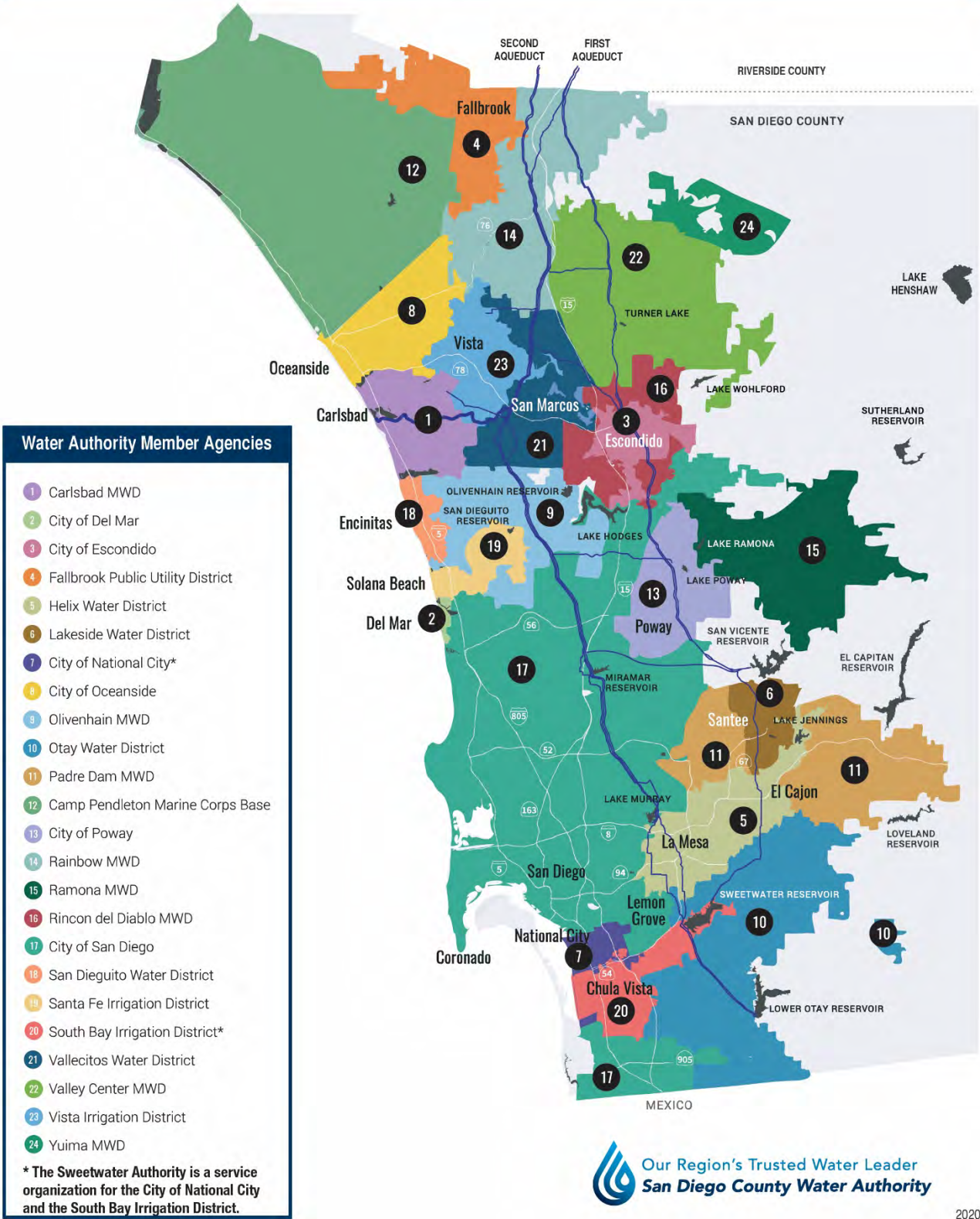
Sacramento-San Joaquin Bay-Delta

1970’s, focusing on growing concerns about water quality and protection of areas of natural beauty and recreational value such as the Bay Delta, which were being impacted by the CVP and SWP. Although the state and federal governments remained committed to varying degrees over time to trying to find a solution to the full delivery of contracted SWP water, after the defeat of the Peripheral Canal—including numerous planning iterations conducted by a host of agencies including MWD at a cost of hundreds of millions of dollars—no agreement was reached.

In 2009, the California State Legislature adopted the Delta Reform Act, establishing a Delta Stewardship Council to create a Delta Plan to achieve the state’s “co-equal” goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

As the water wars continued, Governor Jerry Brown reached an agreement in 2012 with the federal government for the construction of two large tunnels under the Delta, a solution that was strongly advocated by MWD. The Water Authority conditioned its support for this Delta fix on MWD and the State making a business case to justify the investment of ratepayer dollars for the project, the cost of which was then estimated at almost \$18 billion, with no CVP parties committed to pay for the new facilities. The Water Authority also supported an alternative “portfolio” approach to be evaluated alongside the Twin Tunnels.

San Diego County Water Authority Service Area



After much planning, controversy and litigation, Governor Gavin Newsom officially pulled support for the Twin Tunnels in his first State of the State address in 2019.

B. The 1990s Water Crisis and a Plan for Reliability

1. *95 Percent Reliance on MWD*

San Diego County, in the southernmost part of the state, is literally the “end of the pipeline” for MWD water. And by 1990, the Water Authority relied on MWD for more than 95 percent of San Diego County’s water supply. But a dark cloud was looming over San Diego County as a result of its dependence on imported water from MWD, especially since the amount of water it was using was substantially greater than the amount it was entitled to under Section 135 of the MWD Act.

Here is how one reporter aptly described the situation in 1991:

Today, the County is the fastest growing metropolitan area in the nation—and one of the thirstiest. Cursed with scarcely any ground water, it relies more heavily on buying imported water than any other county in Southern California. Among the 27 agencies that buy water from the region’s wholesaler, the Los Angeles-based Metropolitan Water District, the...Water Authority is by far the biggest and most needy customer.

And every year, that dependency gets worse: last year, the authority bought a record 95% of its water from MWD. By contrast, the city of Los Angeles, MWD’s next biggest buyer, purchased 57% of its water from the agency during the same period—the rest coming from mostly from the Owens River Valley via Los Angeles’ own 300-mile aqueduct.

For San Diego, a city that chafes at the merest hint of outside control, this extreme dependence on the Los Angeles-based MWD is nothing less than paradoxical. San Diegans are notorious for blaming their air quality on Los Angeles’ “transport” smog, for heralding the Camp Pendleton Marine base as their last stand against “Los Angelization” and for opposing a proposed utility merger that would take the San Diego out of San Diego Gas & Electric.

Yet, perhaps the most crucial link between San Diego and its larger northern neighbor—water—has gone largely unnoticed by the public. Until now. As the MWD threatens to constrict the region’s liquid lifeline by as much as 50%, the unprecedented pinch is prompting some San Diegans to ask how their city got so needy—and who let it get this way.

County water authority officials say that, throughout the agency’s history, establishing other sources of water has proved to be prohibitively expensive. But critics of the authority charge that continually, at key junctures, San Diego’s water agency has taken the easy way out, accepting MWD’s water

instead of developing a more costly, but ultimately more reliable independent water lifeline.

And that is particularly irresponsible, these critics say, because San Diego does not have an uncontested right to the water it now uses . . . San Diego County is guaranteed only about half of the water it now receives . . . In short, under Section 135, San Diego has been built on borrowed water.

...with Section 135 hanging over their heads, San Diego water officials felt uneasy about their growing dependence and their “last in line” status at the end of the [MWD] pipeline⁹.

2. *Drought and Emergency Cutbacks*

One of California’s longest droughts lasted from 1986 to 1993. In early 1991, the State Water Project had severely reduced flows, and water emergencies were declared across California. On April 17, 1990, the MWD Board approved a first-ever drought management plan, urging all water users within its service area to reduce water usage by at least 10 percent. Four months later, MWD presented a different drought plan – its “Incremental Interruption and Conservation Plan” (IICP) – which unlike the earlier plan, cut agricultural water at a higher percentage than municipal and industrial uses.

MWD adopted the IICP in November 1990 and immediately implemented Stage I, calling for a 5 percent voluntary reduction of both agricultural and municipal deliveries. Less than one month later, MWD implemented Stage II, requiring 20 percent and 5 percent reductions, respectively, by agricultural and municipal water users. In January 1991, MWD went to Stage III, increasing supply cutbacks to 30 percent and 10 percent cuts to agricultural and municipal water users, respectively. In February, MWD imposed Stage V, cutting agricultural deliveries by 50 percent and municipal users by 20 percent.

Finally, on March 4, 1991, MWD added a new Stage VI to the IICP, to be effective April 1, 1991, cutting agricultural water deliveries by 90 percent and municipal deliveries by 30 percent.

Newspaper headlines declared the dire situation in extreme terms – “State Water Project cuts off water to farms”; “50% Water-Delivery Cut Will Be Blow to San Diego.” The full cutbacks were ultimately only avoided by luck—as a result of the “March Miracle” rainfall. But the MWD cutbacks had major financial impacts on San Diego County’s then-2.5 million residents (now 3.3 million) and regional economy. San Diego County’s agricultural sector avoided devastation in 1991 from the 90 percent cutbacks, largely because the Water Authority’s Board voted to share the available water supply between urban and agricultural uses.

⁹ Appendix, Exhibit “4.”

3. Saving Agriculture in San Diego County

Although MWD imposed its water supply cutbacks uniformly within municipal and agricultural deliveries, the cutbacks had very different actual impacts on its member agencies, depending on how much agricultural water they used and how dependent they were on MWD. For agencies such as Los Angeles, which had developed independent water supplies, a 30 percent cutback on 60 percent of a water supply equated to an 18 percent cutback, while in San Diego, a 30 percent cutback on 95 percent of a water supply equated to a 28.5 percent cutback. Due to the Water Authority's nearly total dependence on MWD's imported water at the time, water supply cuts to municipal and industrial users were deeper in San Diego County than in the other MWD-service -area counties.

But these cuts paled by comparison to MWD cutbacks to agricultural water users, the largest of which was the Water Authority – these cuts would have completely decimated San Diego County agriculture. In 1991, the Water Authority accounted for 62.67 percent of MWD's agricultural water sales, so San Diego County was also taking the brunt of the impacts of MWD's IICP cutbacks.

Grappling with the certainty of that outcome, the Water Authority Board came together to protect San Diego County and its agricultural water users and economy. Rather than passing through to its members and customers the different supply cutbacks by user type

Never Again!

WATER: Authority to Vote Today on Mandatory Restrictions

50% Water-Delivery Cut Will Be Blow to San Diego

Drought: Metropolitan Water District directors also vote a 90% cut in allocation for agricultural users.

Water Dependence Bodes a Dry San Diego Future

Drought: A twisted history of water politics has left the county at the vulnerable end of the supply pipeline.

S.D. Faces 31% Cut in Imported Water Supply

With record-low rainfall prospects for relief, the Water District, the water emergency on and cut by 31% the amount of water it delivers to 27 agencies from Ventura to San Diego.

Companies cringe at 50 percent cut in water

Firms offer conservation plans to mayor; some say cutbacks could cripple growth

How The Drought Will Kill Big Chunks Of Business

At the Coronado Golf Course in San Diego, the drought means that very soon, the water will be cut off. "We are going to be very adversely affected by the drought," says a spokesman for the course.

Water cutbacks threaten loss of lush lawns

State Water Project cuts off water to farms; urban slash expected

Supervisors Call Water Emergency

Action Gives Board Broad Powers In & Out Of Cities

L.A. Ready to Battle San Diego Over Water

Conservation: THP officials weigh legal action as neighbors refuse to impose conservation

In Drought, Fair May Not Always Mean Equal

Water: As the country scrambles to deal with a 50% cut in supply, debate has begun over whether some must suffer more than others.

No More Water Shortages!

as imposed by MWD, *the Water Authority Board voted to meld the MWD water supply cutbacks and impose a uniform rate on all Water Authority member agencies and their customers.*¹⁰ This was a historic moment of leadership and a demonstration of the spirit of San Diego County coming together, as representatives of urban water users and their customers voluntarily agreed to take deeper cuts to their available water supplies, so that the County's agricultural water users could have more water.

In February 1991, as the drought continued into another year, the Water Authority Board adopted a Drought Response Plan for San Diego County, which continued to implement a regional, melded uniform rate but otherwise coordinated all Water Authority activities with the implementation of MWD's IICP.¹¹ In March, the water shortage became so severe that the Water Authority's Board of Directors adopted Ordinance No. 91-1, declaring a water shortage emergency.¹²

Then, the Miracle March rains came, and San Diego was spared.

4. *"Never Again!" – The Drought Serves as Turning Point for Water Independence*

But a new future was being set in San Diego County as elected officials, business leaders and communities coming out of the drought said, "Never Again."

Perhaps no one has better described the water crisis and San Diego County's recovery and far-sighted planning resulting from it than former California Governor, U.S. Senator, and San Diego Mayor Pete Wilson, who said in his Foreword to "To Quench a Thirst: A Brief History of Water in the San Diego Region":

Water, quite simply, is the San Diego region's most precious natural resource. Its value is immeasurable, sustaining and growing our economy, and supporting this region's enviable quality of life. Ensuring a safe, reliable water supply has been a consistent challenge for San Diego (and for the rest of California, for that matter) for centuries. Many times while in public office I saw up close the highs and lows connected with how well our taps were flowing.

While serving as mayor of San Diego, the region enjoyed strong economic growth and began to emerge as a diverse business hub as a steady stream of imported water flowed to the region. Later, in my last years as a U.S. Senator and in my first years as governor, I saw San Diego and many other parts of the state suffer severe blows to their economies and livelihoods as California weathered a six-year drought.

¹⁰ Appendix, Exhibit "5."

¹¹ Appendix, Exhibit "6."

¹² Appendix, Exhibit "7."

That drought was a fundamental turning point for San Diego County, as this book later describes. Out of that crisis came a unified regional resolve to use visionary planning and smart investments to ensure San Diego’s water supplies would be much more resilient to shortages. In 1998, I was privileged to play a role in helping San Diego diversify its water supplies by signing into law a bill that provided essential funding and authorizations that enabled the Water Authority to obtain its own Colorado River water supplies through a historic water conservation and transfer agreement, and two major canal-lining projects. It was a major milestone that will benefit San Diegans for generations. But the challenge of providing a safe, reliable water supply has increased since then, owing to population growth, climate uncertainties, and the needs of our modern, diverse and complex economy.¹³

5. *Demand for Reliability through Diversification*

The severity of the MWD water supply crisis that occurred during the drought led residents and business leaders to recognize the danger of depending on MWD for virtually all of San Diego County’s water, and the County rallied around how to diversify water sources to create a reliable long-term water supply. Although the need for diversification was clear, implementation required complicated and time-consuming efforts on the part of the regional water providers. Under the auspices of and in collaboration with SANDAG, the Water Authority planned and invested in major infrastructure projects to protect San Diego County’s economy and quality of life. These projects – which have had strong bipartisan and broad community support for more than 25 years – required major financial commitments by the region to guarantee reliable water now and for future generations.

These projects – which have had strong bipartisan and broad community support for more than 25 years – required major financial commitments by the region to guarantee reliable water now and for future generations.

6. *Investing in Water Independence*

Since the 1990’s drought, MWD has again periodically curtailed water deliveries to the region due to dry conditions and regulatory restrictions on water deliveries from Northern California – including the sensitive Bay-Delta from which the State Water Project derives its supplies. In addition to the steep water supply cutbacks it experienced, the Water Authority developed other concerns about its business relationship with MWD as a result of the drought. Although the State created a water bank, MWD refused to buy any additional water for sale to its member agencies—even though its Laguna Declaration promised MWD would supply enough water to meet the needs of its member agencies. The Water Authority ended up buying the water directly from the water bank. Perceived as adding insult to injury, MWD also charged the Water Authority the full price of MWD water to transport the Water Authority’s independently purchased State water bank water through MWD facilities. All of these factors, coupled with the Water Authority’s later

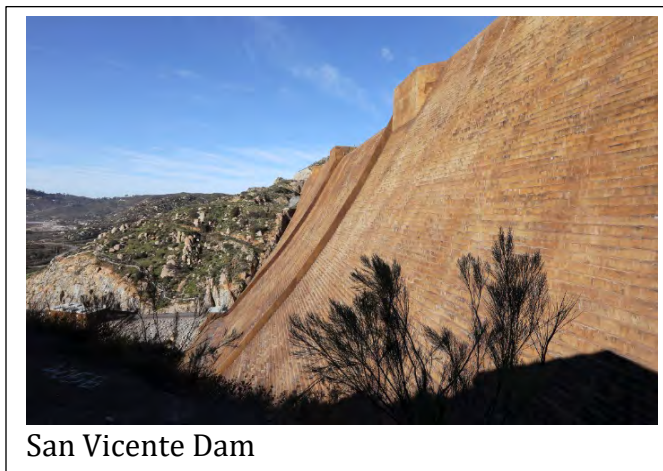
¹³ Appendix, Exhibit “3.”

confirmation of the enforceability of MWD Act Section 135 by legal action, solidified the County's commitment to the diversification strategy.

To prevent the recurrence of economic harm caused by an unreliable water supply, the Water Authority has continued to make strategic long-term investments to diversify San Diego County's water sources and reduce its dependence on imports from MWD in order to provide reliable and affordable supplies of water to meet all member agencies' needs. This diversification is in accord with statewide goals and objectives, regional studies and policies undertaken with SANDAG and others. Diversification has solidified San Diego County's water supply reliability, and MWD water now represents only 11 percent of the San Diego region's supply, and MWD's share of the supply is expected to shrink to 2 percent by 2035.

C. Development of a Diverse Regional Water Infrastructure and Supply

Over the past three decades, the Water Authority has coordinated with its members and regional organizations to diversify the region's portfolio of water supply sources, improve its water storage and delivery infrastructure, and promote water conservation and re-use efficiency. By 2035, local water supplies are projected to meet nearly half of the region's water demands. Because of its coordinated regional planning efforts and strategic investments, the Water Authority has reduced its reliance on MWD, its only source of Bay Delta supplies, from 95 percent in 1991 to less than 40 percent in 2018, to a projected 11 percent and 2 percent by 2020 and 2035, respectively.¹⁴



San Vicente Dam

The Water Authority's investment in a diversified, reliable water storage and delivery system has enhanced the region's resilience in the face of changing state and federal policy and legislative mandates, climate change, and unpredictable amounts of imported water. Pursuant to its power under the County Water Authority Act, the Water Authority has incurred long-term bonded and other indebtedness in order to make the critical water supply and infrastructure investments necessary to meet the projected baseline demands of all 24 of its member agencies. These investments were made to reliably meet all of the County's needs, with the active engagement by all member agencies for their long-term benefit.

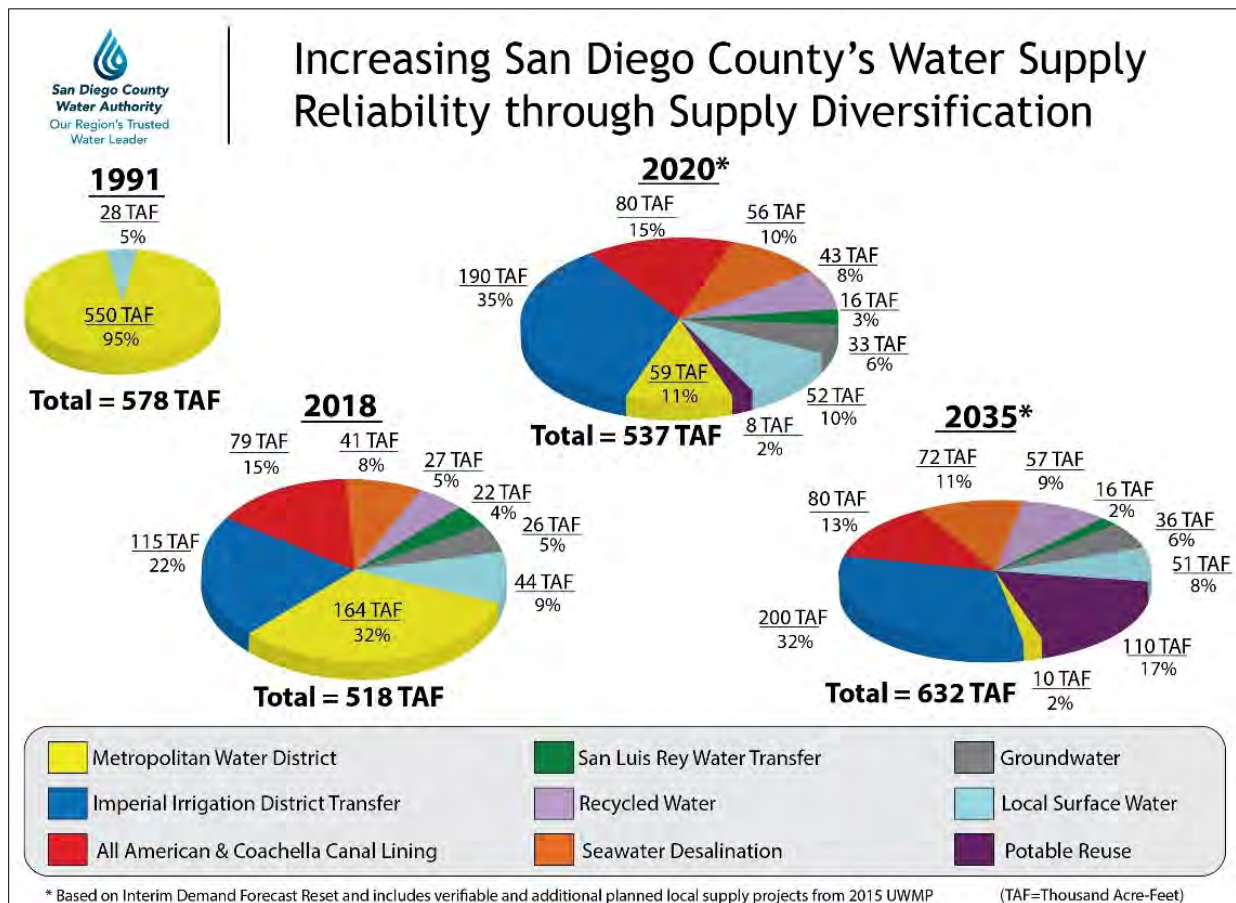
Some of the Water Authority's key investments are as follows:

¹⁴ *The Importance of Water Reliability to San Diego's Economy*, <https://www.sandiegobusiness.org/sites/default/files/Water%20Study%202018.compressed.pdf>

1. Quantification Settlement Agreement

In a series of complex agreements known as the Quantification Settlement Agreement (“QSA”), the Water Authority secured the transfer of conserved agricultural water from the Imperial Irrigation District (“IID”) to the Water Authority. Under the IID-Water Authority water transfer agreement, the Water Authority received 10,000 acre-feet in the first year, with amounts ramping up to 200,000 acre-feet annually by year 19 and thereafter. This represents a new supply of nearly 13 million acre-feet of water over the 75-year term of the agreement.¹⁵

As part of the agreement, the Water Authority agreed to construct concrete-lined canals alongside sections of the existing All-American and Coachella earthen canals. The Water Authority will receive about 80,000 acre-feet of conserved water per year for 110 years from these projects.¹⁶ The result of this diversification is seen here:



¹⁵<https://www.sdcwa.org/quantification-settlement-agreement> Also, a few of the QSA and related agreements (which exceed 30) are in the Appendix as Exhibit “8.”

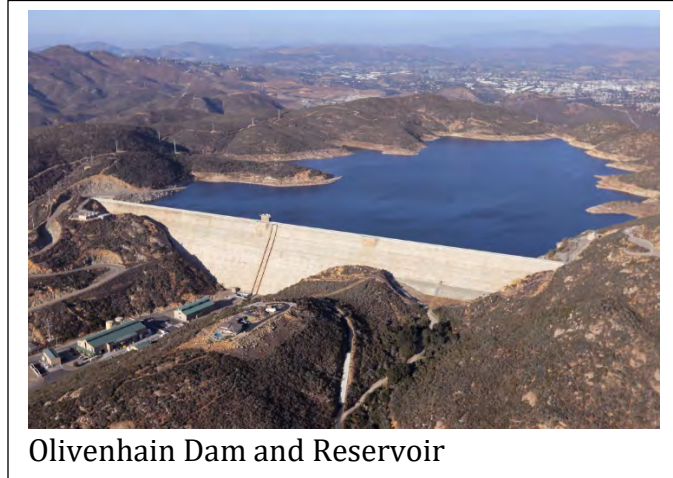
¹⁶<https://www.sdcwa.org/history>

2. *Seawater Desalination*

The Water Authority helped develop the nation's largest seawater desalination plant, the Claude "Bud" Lewis Carlsbad Desalination Plant, which produces approximately 50 million gallons of high-quality drinking water each day.¹⁷ The Water Authority has invested approximately \$1 billion in desalination to secure this drought-proof source of drinking water.

3. *Capital Improvement Program*

The Water Authority has invested in a \$2.8 billion Capital Improvement Program to allow the Water Authority to store and transport imported and local water supplies through a system of interconnected reservoirs, pipelines, and pumping stations. The Water Authority's regional water infrastructure network includes seven pump stations, five primary pipelines, 310 miles of large-diameter pipeline, and one seawater desalination plant, delivering approximately 426 million gallons per day to 1.1 million households, 98,000 businesses, and 251,000 acres of agriculture.¹⁸



Olivenhain Dam and Reservoir

Importantly, the Capital Improvement Program has increased water reliability and resiliency in the region. These improvements now provide up to six months of emergency water storage in San Diego County to improve reliability and resilience during drought, fire, earthquakes, and other emergencies. Ken Weinberg, expert for both Fallbrook and Rainbow in their applications, has noted that the Water Authority's service would be more reliable than Eastern and MWD if there were an earthquake on the Elsinore Fault:

In a catastrophic emergency, such as an earthquake that cuts off imported supplies, MWD has emergency storage supplies that would provide a 75% level of Service to its member agencies similar to SDCWA Emergency Storage Project (ESP). However, SDCWA would be able to provide emergency service in the event of an earthquake on the Elsinore Fault that would disrupt Lake Skinner and other associated facilities that serve San Diego county. This would result in a lower level of reliability for those customers in an annexation to EMWD compared to remaining in SDCWA.¹⁹

¹⁷<http://carlsbaddesal.sdcwa.org/>

¹⁸<https://www.sandiegobusiness.org/sites/default/files/Water%20Study%202018.compressed.pdf>

¹⁹ Appendix, Exhibit "9," page 3.

4. *Infrastructure Planning*

The Water Authority's 2013 *Regional Water Facilities Optimization and Master Plan Update*²⁰ outlines the agency's roadmap for infrastructure investments through 2035.²¹ The update focuses on optimizing the existing infrastructure system while being flexible enough to provide for a range of future operating and member agency water demand scenarios, including local water supply projects which may have direct and indirect impacts to the operation of the Water Authority's system.

All of the Water Authority's member agencies participated in the development and review of the 2013 Master Plan Update, and provided recommendations to optimize the region's water system.

5. *Groundwater and Recycled Water*

The Water Authority has worked with a number of water and wastewater agencies in San Diego County to implement and expand water recycling programs. Approximately 30,000 acre-feet of recycled water are beneficially reused within the Water Authority's service area annually, and this number continues to increase.²²

The San Diego region's groundwater is limited by several factors, including little groundwater recharge due to sparse rainfall. Although groundwater supplies are much less plentiful than elsewhere in California, pockets of undeveloped brackish – or saline – groundwater could help meet more of the region's future water demand. While the Water Authority does not hold groundwater rights, it does provide financial and technical assistance to member agencies that are evaluating, planning and implementing groundwater recovery projects. In fact, several local water agencies have identified potential projects that could nearly double groundwater production in coming years by treating brackish groundwater to potable standards.²³

6. *Water Shortage and Drought Response Planning*

The Water Authority's resource planning program also encompasses water shortage and drought response management. The primary planning document addressing water supply shortages is the Water Shortage Contingency Plan ("WSCP"). The WSCP includes a series of orderly, progressive steps for the Water Authority and its member agencies to take during shortages to minimize impacts on the region's economy and quality of life. Unlike MWD's Act, which establishes in Section 135 each agency's statutory right to available MWD water, the Water Authority Board has discretion how to allocate available supplies. For a more in-

²⁰ <https://www.sdcwa.org/master-plan-documents>

²¹ <https://www.sdcwa.org/sites/default/files/master-plan-fs.pdf>; <https://www.sdcwa.org/master-plan-documents>

²² <https://www.sdcwa.org/recycled-water>

²³ <https://www.sdcwa.org/groundwater>

depth discussion of preferential rights issues related to the proposed detachments, *see* Section 6.

7. *Water-Use Efficiency Planning*

Water-use efficiency is a critical component of the region’s long-term strategies for a reliable and sustainable water supply. The Water Authority has emerged as state-wide leader in improving water-use efficiency, and has worked with water providers to develop water efficient landscape programs, incentive programs, and education and outreach programs to reduce commercial and residential water use.²⁴ The Water Authority has sponsored legislation to update the Urban Water Management Planning Act, and also legislation allowing the conservation of hundreds of thousands of acre-feet of water via its historic water conservation agreement with the Imperial Irrigation District and lining of the All-American and Coachella Canals.



Water-efficient landscape in San Diego County

8. *Investments Yield Economic Benefits*

The above described investments have provided quantifiable economic benefits to San Diego County. As outlined in the San Diego Regional Economic Development Corporation’s report, *The Importance of Water Reliability to San Diego’s Economy*, “Direct investments in water infrastructure, such as the construction of pipelines, dams, or treatment plants, ripple throughout the entire economy by creating new jobs, expanding business opportunities, and fostering economic competitiveness.” The report illustrates how the Water Authority’s \$2.4 billion investment in regional water reliability projects over the past 20 years has yielded an approximate \$4.8 billion economic impact, with 1,475 jobs supported annually and \$1.8 billion in local wages and salaries.²⁵ The investment has also strengthened the resiliency of San Diego County against future drought, climate change, and economic and political changes that threaten the future of the region.

D. **Specific Relief for Agricultural Customers – The Special Agricultural Water Rate**

1. *MWD’s Interim Agricultural Water Program Winds Down*

The severity of the cutbacks to agriculture during the drought spurred the Water Authority to take specific action to protect San Diego County’s agricultural water supply. In the early

²⁴<https://www.watersmartsd.org/>

²⁵<https://www.sandiegobusiness.org/sites/default/files/Water%20Study%202018.compressed.pdf>

1990s, all MWD water sales for agricultural use were at a discount but subject to determination under MWD Act Section 132 that it had “surplus water” available for sale. In May 1994, as San Diego County’s representatives were working to avoid a repeat of what happened during the last drought, MWD established an Interim Agricultural Water Program (“IAWP”), providing a discounted water rate in exchange for reduced deliveries to agriculture in times of shortage. But by 2008, MWD voted to phase out the IAWP, because it determined that MWD did not have, and was not expected to have in the future, any “surplus” water available for agricultural uses. On December 31, 2012, the IAWP was permanently phased out. San Diego County representatives were successful working with MWD to secure an amendment to the MWD Act, adding Section (b) to allow water to be sold for agricultural purposes so long as the water was sold at the same MWD rates being paid by municipal and industrial users.

2. *The Water Authority Adopts & Extends a Special Agricultural Rate*

As MWD was winding down its surplus discounted water program, the Water Authority took steps to mitigate those effects on the agricultural sector by establishing a Transitional Special Agricultural Water Rate (“TSAWR”) program. Agricultural customers receive a lower level of water service during water shortages or emergencies and in exchange, they are exempt from paying storage and other charges from the Water Authority that help fund programs that provide greater water supply reliability during shortages or emergencies.²⁶ The Water Authority has maintained its water supply discount for agriculture even though no discounted water supply is available from MWD for agricultural users.

With the TSAWR Program set to expire on December 31, 2020, the Water Authority Board, on November 21, 2019, authorized the development of program-specific policies and procedures for the new Permanent Special Agricultural Water Rate (“PSAWR”⁶) Program. PSAWR Program policies and procedures were modeled after the TSAWR Program requirements.

The PSAWR class of service is implemented at the Water Authority Board’s discretion – with the PSAWR cost benefit components subject to annual review as part of the Water Authority’s rate-setting process. The PSAWR Program will continue to offer certain farmer and grower member agency customers, who choose to voluntarily participate in the program, a lower agricultural water rate tied to a reduced level of water service during water shortages and emergencies. Agricultural water customers may



Water Authority farm water efficiency program

²⁶ Appendix, Exhibit “10,” December 9, 2009 Water Authority Board memo and Appendix, Exhibit “11,” 2019 Transitional Special Agricultural Water Rate handbook.

choose not to participate and instead pay the full rate for a reliable supply, and many growers do just that: In Rainbow, 35 percent of agricultural water users do not take the discount, while in Fallbrook about 28 percent do not take the discount. These agricultural water users choose to pay the higher rate in exchange for reliable supplies. The PSAWR Program will begin on January 1, 2021.

3. *Coordination with San Diego County Farm Bureau*

The first San Diego Regional Agricultural Water Management Plan (Ag Management Plan) was prepared in 2015, pursuant to the Governor’s 2015 Executive Order allowing urban water suppliers to deduct commercial agricultural deliveries from conservation targets if they have an Agricultural Water Management Plan in place. Rainbow submitted the Ag Management Plan to DWR, but it was a joint effort among 14 public water suppliers in collaboration with the San Diego County Farm Bureau and in coordination with and reliance upon the Water Authority and its regional water supplies.

But planning for a reliable supply for agriculture is only a component of the larger, long-term regional water planning that the Water Authority performs for the entire San Diego County region. Below is a summary of the Water Authority’s planning role, and how Rainbow and Fallbrook as members of the Water Authority participate in and benefit from the efforts of long-term planning that is integrated and aligned with San Diego County’s regional economic interests.

E. The Water Authority’s Role as a Regional Planning Agency

The management of a regional water supply requires extensive, coordinated planning among a variety of stakeholders. San Diego LAFCO’s policies acknowledge this, finding that “The Commission shall encourage that long range planning for availability of water supply and reliability should be integrated within the local water agencies, cities, special districts, County of San Diego, SANDAG and San Diego LAFCO Decision-making with regard to development of water supply and reliability should be focused at the regional and local level through coordinated activities and planning of local water agencies, cities, special districts and the County of San Diego. The Commission shall support these efforts where possible to meet legislative and regulatory goals and mandates.”²⁷

A detachment of Rainbow or Fallbrook from the Water Authority would not be consistent with this policy. As demonstrated below, the Water Authority together with SANDAG, provides the long-range planning for availability of water supply and reliability. A focus on retaining decision-making locally, to keep all of the region’s interests coordinated, means that the whole of the Water Authority – and San Diego County – is greater than the sum of its parts.

Similarly, LAFCO Policy L-109 further provides, “Decision-making with regard to water supply and reliability should be kept at the regional and local level through coordinated

²⁷San Diego LAFCO Policy L-108, 1, 2. Policies are available at <https://www.sdlafco.org/home/showdocument?id=3042>

activities of local water agencies, cities, special districts and the County of San Diego Water supply development, reliability, conservation and sustainability are essential principles to ensure an adequate and viable economic environment for present and future residents in San Diego County. Resources should be developed to be diversified where possible yet under local agency control and management.”²⁸

The detachment of Rainbow and Fallbrook are not consistent with LAFCO’s policies, which prioritize regional and local decision making, and coordinated activities of local water agencies.

The County Water Authority Act requires the Water Authority, as far as practicable, to provide each of the Water Authority’s member agencies with adequate supplies of water to meet their expanding and increasing needs.²⁹ In order to do so, it engages in a large number of planning activities that are essential to ensuring a reliable water supply for San Diego County and for managing potential water supply shortages and emergencies. The Water Authority also collaborates closely with other regional agencies and stakeholders on long-term planning to ensure a reliable water supply will be available for future generations. The Water Authority isn’t planning for the next five years—it is planning for the next 50 and 100 years.

The Water Authority’s success has been developed over many years by collaboratively working with Water Authority member agencies, other regional planning agencies, governments, ratepayers, and other stakeholders to provide safe and reliable water for San Diego County.

The Water Authority, since its inception in the 1940s, has worked with all stakeholders in the San Diego County region to develop and establish vital water supplies and infrastructure, as discussed above. This success has not gone unnoticed. In May 2013, the San Diego County Grand Jury issued a report that said the Water Authority “has made substantial progress in diversifying water supply sources” that bolster the region’s economy and quality of life. ³⁰ It concluded that the Water Authority should “continue to pursue a vigorous policy to lessen dependence on imported water by continued conservation, reuse and reclamation, additional emergency storage projects and new desalination projects.”

The Water Authority’s success has been developed over many years by collaboratively working with Water Authority member agencies, other regional planning agencies, governments, ratepayers, and other stakeholders to provide safe and reliable water for San Diego County.

²⁸San Diego LAFCO Policy L-109, 1, 2.

²⁹ County Water Authority Act Section 45-5.

³⁰Appendix, Exhibit “12.”

1. *Coordination with SANDAG*

LAFCO Administrative Policy No. A-101 recognizes the interdependent roles of LAFCO and SANDAG, stating:

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

1. Recognize the programs and studies of SANDAG when evaluating jurisdictional changes, spheres of influence, and other San Diego LAFCO programs and policies;
2. Utilize the most recent SANDAG growth forecast for planning purposes;
3.
4. Implement the relevant portions of the Regional Growth Management Strategy;

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In 1992, the Water Authority and SANDAG entered into a Memorandum of Agreement (“MOA”), which details how the two regional agencies coordinate in order to ensure the availability of water.³² SANDAG is a public agency made up of 18 cities and county government bodies that serve as the forum for regional decision-making.³³ Under the MOA, the Water Authority agrees to use SANDAG’s most recent regional growth forecasts for regional water supply planning purposes, provide updated information on changes in plans or programs, and implement relevant actions contained in the water element of the Regional Growth Management Strategy. The MOA ensures that the water demand projections for the San Diego region are linked with SANDAG’s growth forecasts and that water supply is a component of the overall growth management strategy.

The 2002 Water Element of SANDAG’s Growth Management Strategy³⁴ included the following objectives and recommendations for San Diego County which are worth quoting at length because they have been honored by the Water Authority:

Quality of Life Standards and Objectives

The objectives for water supply are set locally, primarily by the CWA, based in part on decisions made by MWD, CWA member agencies, and other agencies such as the wastewater treatment agencies that produce recycled water. In addition, the objectives are based on the most recent regional growth forecasts in use by SANDAG.

³¹ San Diego LAFCO Policy A-101.

³²Appendix, Exhibit “13.”

³³<https://www.sandag.org/index.asp?fuseaction=about.home>

³⁴ Appendix, Exhibit “14”

The supply of water depends on three components: water resources, infrastructure (pipelines, pumps and reservoirs) and demand management (water conservation). Achieving the following objectives would ensure a sufficient water supply to meet existing and future needs of the San Diego region.

1. A safe and reliable supply of water should be provided to serve existing and future residents, businesses, institutions and agricultural uses in the region.
2. The CWA and its member agencies should fully implement the existing and proposed Best Management Practices (BMPs) that are included in the Memorandum of Understanding Regarding Urban Water Conservation in California to obtain a conservation savings of approximately 93,000 acre-feet by 2020.
3. Local and regional water projects such as recycling, groundwater usage and seawater desalination should be pursued to achieve a goal of producing close to 140,000 acre-feet by 2020 within the CWA service area. The objective is to develop these supplies in five-year increments as follows: 64,000 acre-feet by 2005, 98,000 acre-feet by 2010, 109,000 acre-feet by 2015, and 138,000 acre-feet by 2020.
4. Evaluate other local supply options to determine whether these supplies are cost-effective and reliable sources of supply for the region.
5. Implement the 1998 CWA-Imperial Irrigation District (IID) Water Conservation and Transfer Agreement for the long-term transfer of conserved Colorado River water to San Diego County. Under the CWA-IID Agreement, Colorado River water will be conserved by Imperial Valley farmers, who voluntarily participate in the program, and then transferred to the CWA for use in San Diego County. Deliveries into San Diego County from the transfer are expected to begin by 2003. The CWA will receive between 130,000 and 200,000 acre-feet per year after an initial 10-year ramp-up in the water deliveries.
6. Seek clarification regarding the amount of water the CWA can legally depend upon from the MWD. As calculated by MWD, the CWA has a preferential right to less than 15% of Metropolitan's water, but on average purchases an estimated 25% of Metropolitan's supplies.
7. Continue implementation of the CWA's Capital Improvement Program that is designed to: 1) increase reliability and operational flexibility of the region's aqueduct system, 2) increase the capacity of the region's aqueduct system, and 3) provide the region with adequate emergency storage needs.

Recommended Actions.

To achieve the water supply objectives, the following actions will need to be taken by SANDAG, local jurisdictions, the CWA, its member agencies and water users, such as residents, businesses, institutions, and agriculture.

1. To plan for a safe and reliable supply, the CWA and its member agencies should review and update, as appropriate, their Urban Water Management Plans (UWMPs) in accordance with the California State Water Code. Implementation of the UWMPs should be coordinated for the benefit of the entire region.
2. SANDAG and CWA should pursue a legislative program that follows and takes positions on bills consistent with the quality of life standards and objectives and recommended actions for water availability.
3. Continue implementation of the existing and proposed BMPs to obtain the water conservation savings objective. One opportunity for future conservation savings is adoption of higher water conservation standards for commercial coin operated washing machines.
4. The CWA should continue to provide loans for studies of potential local supply projects through the Financial Assistance Program and grant funding for implementation of water recycling projects through the Reclaimed Water Development Fund.
5. The CWA, its member agencies and other local agencies should continue to pursue funding through existing and future federal, state and regional programs for development of local projects. The existing programs include, but are not limited to, U.S. Bureau of Reclamation Title XVI Grant Program, California Proposition 13 Funding, and MWD Local Resources Program and Seawater Desalination Funding Program.
6. The contingencies associated with implementation of the CWA-IID Water Transfer Agreement must be resolved by 2002 in order to allow deliveries to begin in 2003. One of the primary items is successful completion of the environmental documents associated with the transfer. State and federal legislation will be pursued to allow expeditious obtainment of the necessary environmental compliance.
7. The CWA adopted Seawater Desalination Action Plan should be completed with the goal of developing at least 25,000 acre-feet of supply provided it is determined to be cost-effective and feasible by 2020. The Action Plan calls for a comprehensive evaluation of the potential for development of seawater desalination within San Diego County. The plan consists of examining partnership opportunities with the city of Carlsbad for implementation of a potential seawater desalination facility adjacent to the Encina Power Plant in Carlsbad; initiating discussions with interested parties on seawater

desalination opportunities near the South Bay Power Plant in Chula Vista; and conducting a study of other potential locations where seawater desalination facilities could be developed on a regional scale.

8. Local jurisdictions should review, update and adopt, as appropriate, regulations that would require water conservation mechanisms such as separate irrigation meters for commercial and large residential common-use areas to better manage landscape water use, installation of high efficiency dishwashers and coin-operated clothes washers in commercial businesses, and encourage the use of recycled water when this supply is available and meets all regulatory requirements.

9. The CWA should continue their efforts to clarify current application and legality of MWD preferential rights under the MWD Act.

10. The regional Emergency Storage Project (ESP) should be fully implemented by 2010, which is the expected completion date. The CWA in partnership with the Olivenhain Municipal Water District has initiated construction of the Olivenhain Reservoir, which is the first phase of the ESP. The ESP is a regional project with a system of reservoirs, pipelines and other facilities that will provide water to the county during prolonged interruption of imported water due to earthquake, drought or other disaster.

11. Following MWD's adoption of a shortage allocation formula as part of its Water Surplus and Drought Management Plan, the CWA and its member agencies, as soon as practicable, should review and adopt, as appropriate, drought allocation plans to cope with potential future shortages within the region.

12. Complete the Regional Water Facilities Master Plan, which identifies what regional water facilities will be needed to serve San Diego County through 2030. Facilities identified through this planning process may become part of the Capital Improvement Program when it is updated to extend beyond 2010.

The Water Authority has made material progress in achieving SANDAG objectives and implementing its recommended actions, some of which are discussed above. These actions include but are not limited to:

- Adoption of Urban Water Conservation BMPs
- Implementation of the Quantification Settlement Agreement with Imperial Irrigation District, which included the lining of the All-American and Coachella Canals
- Prevailed against legal challenges to the QSA agreements and environmental review

- Construction of the Carlsbad Seawater Desalination plant under a long-term contract with Poseidon Resources including full environmental review
- Confirmed the Water Authority's statutory entitlement to MWD water under § 135 of the MWD Act
- Confirmed entitlement to increased share of preferential right to MWD water
- Implementation of the Water Authority's Capital Improvement Program including increasing emergency storage
- Reduced reliance on MWD (including Bay-Delta supplies)
- Timely filing of Water Authority UWMPs every five years in coordination with our member agencies and region
- Conducted active state and federal legislative programs to protect San Diego County ratepayers and taxpayers³⁵
- Secured from MWD grant funding of almost \$500 million for San Diego County local water supply programs following a successful legal challenge to its "Rate Structure Integrity" clause which had barred San Diego County from applying for these program benefits and was found unconstitutional by the Court of Appeal
- Adopted water shortage and contingency plan for San Diego County
- Completed updates to the Regional Water Facilities Master Plan

2. *Coordination with San Diego County*

The Water Authority regularly coordinates with the County of San Diego. While the San Diego County Board of Supervisors is not directly involved in the region's water supply planning, it has an *ex-officio* member on the Water Authority's Board of Directors, currently filled by Supervisor Jim Desmond.

The San Diego County Grand Jury's May 15, 2013 report *Reduce Dependence on Imported Water* recommended that the Water Authority "[c]ontinue to pursue a vigorous policy to lessen dependence on imported [i.e. MWD] water by continued conservation, reuse and reclamation, additional emergency storage projects and new desalination projects with an ultimate goal of sustainable and reliable water independence for the County."³⁶ The Water Authority has aggressively pursued this goal, in compliance with the Grand Jury's report. But the proposals now before LAFCO would contravene this goal, resulting in Rainbow and

³⁵ See list of legislative efforts in Appendix "15."

³⁶https://www.sandiegocounty.gov/grandjury/reports/2012-2013/Reduce_Dependence_Imported_Water_Report.pdf

Fallbrook having 100 percent reliance on MWD imported water supplies, more than half of which are from the Bay-Delta.

The proposals also appear inconsistent with the County's General Plan policy. Relevant County requirements and potential concerns to be addressed relative to detachment include the following:

- San Diego General Plan, Chapter 5 Conservation and Open Space Element GOAL COS-4 Water Management. A balanced and **regionally integrated** water management approach to achieve the long-term viability of the County's water quality and supply.
- COS-4.1 Water Conservation. Require development to reduce the waste of potable water through use of efficient technologies and conservation efforts that **minimize the County's dependence on imported water** and conserve groundwater resources.
- SB 610/Water Supply Assessments (WSAs). For a project over 500 dwelling units or meeting any of the other thresholds under Water Code § 10912, the County as lead agency must request that the public water supplier for the development project provide an assessment explaining whether the supplier's "total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses."

Water Code § 10915 sets forth a special procedure for compliance by the County of San Diego, under which the County is deemed compliant with WSA requirements so long as the CEQA document for the development project is consistent with the Water Authority's most recent update to the SANDAG Water Element of the San Diego Growth Management Strategy, and achieves the purposes of a WSA. If Fallbrook and Rainbow detach from the Water Authority, the County would be required to evaluate water supply assessments based on Eastern or more likely, MWD's urban water management plan and other applicable water supply forecasts. This is because Eastern is merely a pass-through agency that is not making any of its own water supplies or facilities available to serve Fallbrook and Rainbow customers; instead, they will be 100 percent dependent on MWD's imported water supply sources.

Further, for projects within Rainbow or Fallbrook's boundaries, if those Districts detached from the Water Authority then the County would no longer be able to avail itself of the alternative compliance procedure under Water Code §10915 because that section is expressly predicated on the Water Authority's water supply planning analysis, which would no longer be relevant.

- Another potential issue is the ability of the detaching agencies to access accelerated forecasted growth (AFG) water. Because of the coordination with SANDAG, the Water Authority is able to provide retailers water for new development that is consistent with long-term regional forecasts but not yet accounted for in local general plans and/or urban water management plans.

The Water Authority's current diverse water supply portfolio is demonstrably among the most reliable in the State of California, including its high priority conserved Colorado River water and seawater desalination plant. MWD's imported water supplies are less reliable due to risks associated with the Bay Delta and Colorado River, where its water supplies have a lower priority. (*See* Section 6).

3. *Urban Water Management Planning*

Pursuant to California Water Code §10610-10656 and §10608, Urban Water Management Plans ("UWMPs") are required to be prepared by urban water suppliers every five years. The UWMP is intended to support the supplier's long-term resource planning to ensure that adequate water supplies are available to meet existing and future water needs.

In its UWMP, every urban water supplier must:

- Assess the reliability of water sources over a 20-year planning time frame (which the Water Authority believes is the minimum time frame over which the rate and reliability impacts of the Fallbrook and Rainbow applications must be assessed)
- Describe demand management measures and water shortage contingency plans
- Report progress toward meeting a targeted 20 percent reduction in per-capita (per-person) urban water consumption by the year 2020
- Discuss the use and planned use of recycled water

In collaboration with its 24 member agencies, the Water Authority completed its 2015 UWMP update, which was adopted by the Water Authority Board in June 2016 and accepted by the State Department of Water Resources ("DWR") in September of the same year.³⁷ The Water Authority is in the process now of preparing its 2020 UWMP Update.

4. *Integrated Regional Water Management Planning*

Integrated Regional Water Management ("IRWM") is still a relatively new initiative in California, aimed at developing long-term water supply reliability, improving water quality, and protecting natural resources. The Statewide IRWM Program is supported by bond

³⁷ *See* Appendix, Exhibits "16" and "17."

funding provided by the DWR to fund competitive grants for projects that improve water resources management.

Recognizing the evolving Statewide trend toward more integrated regional planning, the San Diego IRWM Program began in 2005 as an interdisciplinary effort by water retailers, wastewater agencies, stormwater and flood managers, watershed groups, the business community, tribes, agriculture, and non-profit stakeholders to improve water resources planning in San Diego County. The program here has achieved remarkable success. In 2007, San Diego published its first IRWM Plan and received \$25 million from DWR to support 19 high-priority water management projects. In 2011, San Diego obtained another \$8 million to support 11 more important projects and \$1 million to fund a comprehensive update of the 2007 IRWM Plan. In 2013 and 2014, respectively, \$10 million was awarded to support an additional seven high-priority projects, and \$15.1 million awarded for drought relief projects. The region was awarded almost \$31 million for 13 high-priority projects in 2015. Most recently, the region received \$5.5 million for Disadvantaged Communities Involvement planning projects. In total, the region has received approximately \$96 million, which has funded 67 priority projects and the 2019 IRWM Plan update.

5. *Regional Representation*

In addition to its planning functions, the Water Authority and its Board of Directors and government relations team are actively engaged at various government decision-making levels to ensure that San Diego ratepayers' interests are protected. This includes working closely with the Governor's office,

state legislators, federal officials, state agencies, other water agencies and a large number of stakeholder groups who play a vital role in the evolution of state and federal including Colorado River water law and policy. The region as a whole has a great stake in the outcome of these various

The region as a whole has a great stake in the outcome of these various Statewide water supply and fiscal decisions, such as ensuring that San Diego ratepayers' interests are protected in the allocation of costs associated with any Bay-Delta solution.

Statewide water supply and fiscal decisions, such as ensuring that San Diego ratepayers' interests are protected in the allocation of costs associated with any Bay-Delta solution. While a complete discussion of the Water Authority's legislative initiatives is beyond the scope of this Response, a list of the Water Authority's successfully sponsored state legislation from 1991 to the present is attached at Appendix Exhibit "15" (highlighted to show conservation efforts).

It is not possible to describe in detail in this Response all of the planning and work of the Water Authority staff and Board of Directors to provide a reliable water supply and represent the interests of all ratepayers in San Diego County. More information is available at:

- <https://www.sdcwa.org/urban-water-management-plan>
- <https://www.sdcwa.org/2013-regional-water-facilities-optimization-and-master-plan-update>

- <https://www.sdcwa.org/integrated-regional-water-management-plan> ³⁸
- <https://www.watersmart.org/>
- <https://www.sdcwa.org/water-shortage-contingency-plan>
- <https://water.ca.gov/News/Events/Agricultural-Water-Management-Plan-Guidebook-Workgroup>

In summary, the Water Authority is continually engaged in numerous regional and statewide long-term planning processes through a plethora of board committees, workgroups and public meetings. By these processes—which are conducted working in close collaboration with the Water Authority’s member agencies, SANDAG and other key stakeholders—information and data are developed, projections and plans are voted on and investments made accordingly to meet the baseline water demand of the Water Authority’s 24 member agencies. Fallbrook and Rainbow have participated in these planning and implementation processes—since 1944 and 1954—respectively, without ever disclosing a desire, intention or plan to detach from the Water Authority. The Water Authority was only informed of this plan in May 2019.

There is a material difference between the abrupt change proposed by Fallbrook and Rainbow and long-term planning to manage changing circumstances, as every planning agency must do.

Over the past decade, many agencies including the Water Authority and its member agencies have developed water supplies to meet conservation adjusted baseload demand and reduce demand on imported water purchased from MWD and the Water Authority. As discussed in Section 9, this is consistent with 2009 state law mandating regional self-

Fallbrook and Rainbow have participated in these planning and implementation processes—since 1944 and 1954—respectively, without ever disclosing a desire, intention or plan to detach from the Water Authority. The Water Authority was only informed of this plan in May 2019.

sufficiency and reduced demand on the Bay-Delta and is part of a sound long-term planning process designed to permanently replace demand for imported water.

Some Water Authority member agency projects will, when implemented, be expected to permanently lower demand for Water Authority and MWD water. Appendix, Exhibit “16” includes the most recent 2015 Urban Water Management Plan list of Water Authority member agencies’ projects which the Water Authority factors into its own long-term water supply and financial planning processes. This list is currently being updated as part of the 2020 UWMP process. Similarly, MWD is informed of the planned projects of its member agencies as part of its UWMP process and should be making planning and spending adjustments accordingly.

The Water Authority fully supports its member agencies’ development of local water supplies, and as noted, includes these projects in its long-term plan for the region. The rate

³⁸ And at Appendix Exhibit “73.”

impacts of member agency projects coming on line cannot be determined without knowing the total water supply and demand on the Water Authority, and without knowing what costs and rates and charges are in place at both the Water Authority and MWD, over time and from time to time. It is the responsibility of the Water Authority Board of Directors, in collaboration with SANDAG and regional planning initiatives, to manage the regional portfolio consistent with the planned implementation of these projects and the demand for Water Authority water. It is also the Board's responsibility to ensure rates and charges that are lawful, fairly apportioned and sufficient at all times to pay the Water Authority's operating costs and debt.

Detachment, however, has nothing to do with managing water supplies, local water supply development, regional planning or fiscal sustainability. Instead, it is an abrupt action to permanently extinguish member agency status and withdraw from the regional planning portfolio that was designed to meet the long-term base load demand of all agencies, including projects with a 50+ year life cycle. Fallbrook and Rainbow are asking to be absolved of any responsibility to pay any current or future rates and charges or property taxes for water supplies that were planned for, and are actually being used now to meet the respective agencies' conservation adjusted baseline demand.

Fallbrook and Rainbow are asking to be absolved of any responsibility to pay any current or future rates and charges or property taxes for water supplies that were planned for, and are actually being used now to meet the respective agencies' conservation adjusted baseline demand.

In contrast to detachment, when a Water Authority member agency reduces its water purchases from the Water Authority as part of the regional plan (referred to, sometimes, as "rolling off"), that member agency remains subject to Water Authority rates and charges and taxation, the specifics of which will depend on then-existing circumstances and actions by the Water Authority Board of Directors. Ideally, the implementation of local projects over time can be managed to minimize the need to increase fixed charges. However, if water sales revenue along with other sources of revenue should be insufficient to pay the Water Authority's costs (including its long-term debt), it has the authority to impose fixed charges as necessary. Regional water agencies such as the Water Authority and MWD should avoid any policy or pricing structures that have the effect of thwarting or impeding cost-effective local water supply investment.

6. *MWD Representation and Issues*

The Water Authority has four seats on the MWD Board, appointed by the Water Authority's Board of Directors. The Water Authority and its representatives are supported by the Water Authority's MWD Program, the purpose of which is to understand the complex issues and risks to San Diego County presented by the MWD environment, and to develop and implement strategies to achieve the Water Authority's long-term reliability and fiscal sustainability goals at MWD, in accordance with Water Authority Board of Directors' strategic objectives. The Water Authority focuses on advancement of policies at MWD that:

- provide transparent governance

- ensure legal rate-setting and tax policies
- ensure fiscal responsibility and reliable supplies
- create equity and fairness among MWD member agencies
- facilitate water transfers and effective resource management

Since the early 1990s, the price of MWD’s supplies has risen dramatically, while the reliability of those supplies has become increasingly problematic. Forward-looking leaders in San Diego County charted a new course to insulate the region’s residents and its economy from the whims of Mother Nature and the actions of judges, regulators and politicians in faraway places. Through visionary planning and persistent effort, those leaders fashioned a more balanced and resilient water supply portfolio. By 2011, the Water Authority no longer relied on MWD for the majority of its water.

As the Water Authority has continued to implement its diversification strategy, conflicts have arisen with MWD. MWD unsuccessfully opposed the Water Authority’s water conservation and transfer agreement with IID for many years; however, that agreement ultimately became the foundation of California’s 4.4 Plan and Quantification Settlement Agreement which also provided many water supply benefits for MWD.

Over the years, MWD also adopted various water rate and tax policies that the Water Authority does not believe are consistent with the California Constitution or state law. The Water Authority filed litigation in 2010 to protect San Diego County ratepayers from improper rates and charges set by MWD. MWD owns the only large-scale conveyance facilities currently available in Southern California for transporting water from the Colorado River, and the Water Authority pays MWD to transport the Water Authority’s owned Colorado River supplies to San Diego County. The lawsuits were focused on the price MWD may charge to deliver that water. Eastern joined MWD in opposing rate relief for San Diego County ratepayers, as detailed in Section 6.

Since the early 1990s, the price of MWD’s supplies has risen dramatically, while the reliability of those supplies has become increasingly problematic.

After more than 10 years of litigation, a San Francisco Superior Court judge in August 2020 awarded the Water Authority \$44,373,872.29 for two cases against MWD covering rates paid by San Diego County ratepayers during 2011-2014.³⁹ With a judgment now issued in the first two cases, the Water Authority is working to narrow the scope of the remaining 2014, 2016 and 2018 cases. (MWD sets new rates every two years which necessitated a new court filing on the same schedule since MWD did not change its rates.)

Entry of final judgment caps this long-term effort by the Water Authority Board of Directors on behalf of San Diego County ratepayers. While the damages and interest award

³⁹Appendix, Exhibit “18.”

are important, the entry of judgment will also help avoid future overcharges and thereby minimize future disputes based on rulings by the Court of Appeal. MWD's improper charges – if they had continued – would have cost San Diego County residents more than \$500 million over the life of the Water Authority's water delivery contract with MWD.

The Court also issued a Peremptory Writ of Mandate ordering MWD:

to enact only legal wheeling and transportation rates in the future, and, specifically, not to do the things that Division Three of the First Appellate District of the court of Appeal held were unlawful in its opinion dated June 21, 2017. (citation omitted)

[MWD] is further hereby specifically commanded to henceforth exclude the costs of conservation programs and other demand management programs, enacted in the above-named cases as the Water Stewardship Rate, from [MWD's] wheeling rate published in Section 4405 of [MWD's] Administrative Code and from the transportation rates charged under the October 10, 2003 Exchange Agreement between [MWD] and the San Diego County Water Authority.⁴⁰

The rate case lawsuits generated other substantial benefits to San Diego County, such as requiring an increase in the Water Authority's preferential rights to MWD water by approximately 100,000 acre-feet a year, equivalent to about twice the annual production of the \$1 billion Carlsbad Desalination Project.

In February 2020, the Water Authority's Board of Directors voted to dismiss certain remaining issues from the litigation after successfully securing more than \$350 million in local project subsidy benefits for the San Diego region, beginning late last year (an additional \$115 million in potential benefits was subsequently added to this total). Cases remain pending for the rates set from 2014 through 2018, covering the 2015-2020 calendar years.

The rate case lawsuits generated other substantial benefits to San Diego County, such as requiring an increase in the Water Authority's preferential rights to MWD water by approximately 100,000 acre-feet a year, equivalent to about twice the annual production of the \$1 billion Carlsbad Desalination Project.

As litigation issues continue to be resolved, the Water Authority is also representing regional interests in all of the planning and contexts described at above. While the Water Authority and its member agencies have achieved much over the past two decades, many water supply challenges remain for San Diego County, MWD and California.

On July 28, 2020, Governor Gavin Newsom released a final version of his Water Resilience Portfolio, the Administration's blueprint for equipping California to cope with more

⁴⁰ Appendix, Exhibit "19."

extreme droughts and floods, rising temperatures, declining fish populations, over-reliance on groundwater and other challenges. The report well-describes the complexities, risks and challenges facing California and its urban and agricultural water suppliers.

F. Conclusion

As described above, the Water Authority's role in water supply and planning is woven into the very fabric of San Diego County's history, the phenomenal success of its economy and quality of life, and its future planning. So important is the role of water supply reliability to the region that San Diego LAFCO has two policies, L-108 and L-109, dedicated to it, more than any other resource or type of local agency. It is in this context that the rest of this Response—the historical, financial, environmental, engineering, legal and policy issues—is best understood.

Section 3

Fallbrook and Rainbow

There are meaningful facts about Fallbrook and Rainbow, particularly related to the potential merger issue that came before LAFCO several years ago, that provide relevant context for the present proposals.

In 2014, Fallbrook submitted an application to LAFCO to dissolve Rainbow, annex Rainbow's territory into Fallbrook and to activate Fallbrook's latent sewer service powers in the newly annexed service area. The application was based on Fallbrook's confidence in the financial and service benefits for the Fallbrook and Rainbow service areas that would result from consolidated operations.

Upon receiving the amended application in April 2014, LAFCO engaged in a robust and transparent process to identify outstanding stakeholder issues and process Fallbrook's application. This included two public hearings, an independent LAFCO staff analysis of the application materials, and a special charge to, and report from, the LAFCO Special Districts Advisory Committee.

Ultimately, LAFCO staff concluded in September 2015 that consolidated operation of Fallbrook and Rainbow would likely result in wage and benefit cost savings between \$2,162,947 and \$2,371,449 annually (2015 dollars).

Fallbrook submitted a draft Consolidation Study to support the cost savings claims in its application. The Consolidation Study Report utilized a "worst case scenario" planning methodology to prudently assess the potential impacts of a consolidation and analyzed how to ensure fiscal equity between the agencies upon consolidation.

In December 2014, LAFCO's Special Districts Advisory Committee concluded that Fallbrook's assertions regarding operational cost savings and efficiency were valid, and Rainbow's objections were irrelevant to the legal framework for processing Fallbrook's application. Also, LAFCO staff performed its own independent analysis of the potential for cost savings and, with some minor caveats, supported the report's findings.

Ultimately, LAFCO staff concluded in September 2015 that consolidated operation of Fallbrook and Rainbow would likely result in wage and benefit cost savings between \$2,162,947 and \$2,371,449 annually (2015 dollars). Staff also assumed there were additional, as-yet-unquantified miscellaneous savings to be had, tentatively estimated to reach up to \$300,000 per year. Fallbrook identified additional costs in the 18 months between termination of the North County Joint Powers Authority and September 2015 to

include \$1,250,000 in unnecessary duplicate administrative costs, \$250,000 in billing software costs and \$300,000 in consolidation opposition costs.

As to CEQA, Fallbrook's application included its Board-adopted Notice of Exemption stating that the application for consolidation was exempt from CEQA review. LAFCO staff also concluded that the Fallbrook's application was exempt from CEQA review. Rainbow repeatedly disagreed, asserting Fallbrook's application required a full CEQA review.

Regarding water rates, Rainbow asserted that Fallbrook's higher water rates for agricultural customers would immediately increase water rates for Rainbow's agricultural customers upon a consolidation. LAFCO staff disagreed. In addition, Rainbow also disputed LAFCO's assumption that an increase in wholesale water rates from the Water Authority equated to an increase in retail costs at either Fallbrook or Rainbow, since water rates at each agency are based on *local financial conditions* in addition to wholesale costs.

While LAFCO staff concluded that justification existed for approval of the reorganization, ultimately, the LAFCO Commission voted to disapprove the Fallbrook application at its September 14, 2015, Board meeting. Those voting against the consolidation cited their concerns with a loss of local control because Rainbow did not consent to the consolidation.

There were various statements and events made in the proceeding which are germane to the instant reorganization applications:

- Just five years ago, when faced with a merger with Fallbrook that LAFCO determined would have saved ratepayers in the Fallbrook and Rainbow service areas millions of dollars per year, Rainbow General Manager Tom Kennedy told LAFCO: "[T]here are no financial concerns about Rainbow that would justify LAFCO intervention."⁴¹
- Rainbow apparently misrepresented material facts to LAFCO: "However, the Advisory Committee concluded that the Rainbow MWD had misrepresented the matter by overstating the assessed value of land provisions in State Law by \$2 billion (in Rainbow's favor). As discussed in the LAFCO staff report, these land value figures are of major importance when implementing protest and election provisions."⁴² The San Diego LAFCO Executive Officer notified the Special Districts Advisory Committee that Rainbow had seriously misunderstood and misapplied applicable law, resulting in material misrepresentations.⁴³
- LAFCO staff determined that not only does the Water Authority provide water supply service, it also supplies other important services to its member agencies as

⁴¹Reporter's Transcript in re: SD LAFCO MEETING AGENDA ITEMS 8A - 8D, September 14, 2015, San Diego, California, page 46, lines 19-20. Appendix, Exhibit "20."

⁴²LAFCO Staff Report on Fallbrook Application for Reorganization, Executive Summary at p.3. Appendix, Exhibit "21."

⁴³ Appendix, Exhibit "74."

well: “[M]embership in the San Diego CWA not only provides for shared financing, construction, operation, and maintenance of the water supply system, but also allows access to the water authority’s public information, education, and water conservation programs.”⁴⁴

- Just a few years ago Rainbow told LAFCO that its future was based on increased residential users: “Rainbow rests on strong financial footing, and stands to gain further strength from anticipated growth of residential, educational and commercial developments. Rainbow has ample growth opportunities, whereas FPUD is nearly built out and is trying to capitalize on Rainbow’s growth. For example, Rainbow expects to add 2,546 new homes in the next five years through planned and approved development projects.”⁴⁵ Because annexations will draw land out of San Diego County if the reorganizations are approved, LAFCO must investigate this and it is one of the areas of inquiry noted in Section 8.
- Rainbow noted the value of the Water Authority’s Carlsbad desalination plant reducing reliance on MWD water: “The SDCWA continues to pursue seawater desalination from the Carlsbad desalination plant. The desalination project will reduce the dependence of purchased [imported] water on the entire San Diego County region.”⁴⁶
- LAFCO staff determined that there were numerous contradictory claims of law made by Rainbow as to whether LAFCO could only follow an agency’s principal act: “The Rainbow MWD’s legal counsel originally opined on this matter on December 12, 2013 and concluded that LAFCO can essentially approve any board structure, including a requirement that all board members be elected by division per Government Code Section 56000, et seq., rather than deferring to the Principal Act of a PUD. On April 20, 2015, the Rainbow MWD General Manager contradicted this determination and indicated that ‘LAFCO does not have authority to unilaterally change the Fallbrook PUD from their current system of elections to a district-based election.’ And then on May 12, 2015, the President of the Rainbow MWD provided yet another contradictory statement indicating that the Fallbrook PUD may convert to a district-based election system in light of case law. Such position reversals make it very difficult to discern a coherent position from the Rainbow MWD on this important matter.”⁴⁷ The application of principal acts is an issue in this proceeding, as addressed in Section 9 below.

⁴⁴*Id.*, page 25.

⁴⁵Rainbow Resolution 14-13: Objection to FPUD’s Resolution and Application for Reorganization to the SD LAFCO, p.2. Appendix Exhibit “22.”

⁴⁶Rainbow 2014 “Report on Examination of Financial Statements for the Fiscal Year End,” p.12 of pdf. Appendix Exhibit “23.”

⁴⁷Exhibit “21,” page 6.

- Rainbow and Fallbrook were back and forth with one another as to accusations about the other’s financial status and needs, with LAFCO responding. *See*, for example, Appendix, Exhibits “24” and “25.” The Water Authority explained the benefit the agencies received from the agricultural discount program. Exhibit “23,” pages 10-11. All are issues in this present proceeding.
- As noted below in Section 5, how current Fallbrook and Rainbow residents will be represented at Eastern is undisclosed in the applications, but is an important issue LAFCO must inquire into. The issue of how representation was to occur was very important to residents at the time of the proposed merger. As stated in the LAFCO staff report at page 4⁴⁸:

The Rainbow MWD and a considerable number of residents demand that the PUD Board instead consist of members elected exclusively by territorial unit (division). The Rainbow MWD believes that unless the board of the reorganized Fallbrook PUD consists of all board members elected by division, voting rights would be adversely affected and challenges would occur under the California Voting Rights Act (CVRA).

- Rainbow and Fallbrook themselves determined that combining forces would save millions of dollars. As stated in the LAFCO staff report⁴⁹ at page 8:

[T]he 2012 consolidation study jointly prepared by the Rainbow MWD and Fallbrook PUD concluded that reorganizing the two districts would result in annual operational savings of about \$2.8 million (\$2.5 million in labor savings and \$300,000 in miscellaneous savings from insurance premiums, combined training, etc.).

- Both Rainbow and Fallbrook had aging water infrastructure issues called out by LAFCO staff. In regards to Rainbow, staff noted at page 46 of its report⁵⁰:

Rainbow MWD has a large percentage of pipelines that are reaching the end of their predicted useful life; approximately 17 percent of the pipelines are older than 50 years.

As for Fallbrook, staff noted at page 47:

The average age of the pump stations is 20 years. The District’s pump stations require ongoing investment and maintenance, but are considered

⁴⁸ Appendix, Exhibit “21.”

⁴⁹ *Id.*

⁵⁰ *Id.*

reliable. Due to the age of facilities, the older pumping facilities will need to be replaced in the future.

LAFCO should require updates as to all water infrastructure issues in the two districts.

- LAFCO staff noted that the LAFCO Statutes mandate that a LAFCO consider water supply issues in reorganization requests, and that the local San Diego LAFCO implemented policies to do just that. As stated on page 49 of the staff report⁵¹:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 has directed each LAFCO to consider the availability of a reliable and adequate long term water supply when the Commission makes a decision on pending proposals. Per State law, local agencies must examine the factors outlined in Government Code Section 56668– 56668(k) states “Timely availability of water supplies adequate for projected needs” and includes the requirement to comply with Government Code Section 65352.5 (adequacy of existing and planned water supplies).

In April 2008, the Commission requested that staff and the Special Districts Advisory Committee review and consider how San Diego LAFCO should address water supply and reliability in the context of project review. With input from LAFCO’s Special Districts Advisory Committee members, policy guidelines were drafted and then approved in May 2010 to deal with water issues particularly in light of existing and potential future drought conditions.

- LAFCO staff determined, as stated at page 50 of the staff report⁵², that a price disparity in what Rainbow charged for water in comparison to what Fallbrook charged could affect local agriculture:

Over 50 percent of Fallbrook PUD’s water sales are currently to groves and nurseries and farmers within the PUD pay 15 to 20 percent less for water, compared to Rainbow MWD farmers. Fallbrook PUD also claims that it sells water to farmers with no markup in price in contrast to Rainbow MWD. If the Fallbrook PUD rate-setting policies were applied to agricultural rates within Rainbow, it could potentially benefit the physical and economic integrity of agricultural lands.

LAFCO should fully analyze how Fallbrook and Rainbow set their rates and compare the districts, as was done before.

⁵¹ *Id.*

⁵² *Id.*

- The issue of how the Water Authority charges Fallbrook and Rainbow, and the meaningful discounts they each receive from the Water Authority, were detailed in an October 23, 2014, letter to Rainbow General Manager Tom Kennedy.⁵³ In that letter Ms. Stapleton noted that Rainbow and Fallbrook are not charged the Water Authority's transportation rate for the water from the MWD pipes, and also that Fallbrook and Rainbow benefit from the Water Authority's special agricultural rate.

It should also be noted that in the same approximate timeframe as the proposed Fallbrook/Rainbow merger, both agencies clearly agreed as to the water supply benefits of the Water Authority's diversified supplies, and supported the Water Authority's investment in such water supplies for the San Diego County region. In its 2015 Urban Water Management Plan Fallbrook stated on page 40:

During dry year events, FPUD will likely rely entirely on the Water Authority to meet potable water demands. Planning for shifts in supply and demand has been an integral component of the Water Authority's efforts to diversify and secure the region's water supplies. Projects such as canal lining in the Imperial and Coachella valleys, construction and expansion of local storage facilities, and the construction of the nation's largest desalinization plant in Carlsbad exemplify San Diego's commitment to diverse and secure supplies of water.⁵⁴

Similarly, Rainbow's 2015 Urban Water Management plan⁵⁵ noted on page 28 that Rainbow benefited from the Water Authority's diversified portfolio, including Rainbow being able to be served with water from the desalination plant at Carlsbad:

The District is currently 100 percent reliant on the Water Authority for its potable water supply and therefore, the water supply reliability assessment in this chapter is based upon the Water Authority assessment from its 2015 Regional UWMP (www.sdcwa.org/uwmp). SDCWA has a number of sources of water including MWD, the recently completed Carlsbad Seawater Desalination Project, and water conserved from the Imperial Irrigation District and the lining of the All American and Coachella Canals and other sources as described in their UWMP. . . .

The RMWD potable water supply is produced by the SDCWA Carlsbad Seawater Desalination Project, the SDCWA Twin Oaks Valley Water Treatment Plant in San Marcos, or the MWD Skinner Water Treatment Plant in Riverside County.

⁵³ Appendix, Exhibit "24," letter from Maureen Stapleton (pages 10-11).

⁵⁴ Appendix, Exhibit "26."

⁵⁵ Appendix, Exhibit "27."

The above Urban Water Management Plans provide a useful review of what Fallbrook and Rainbow stated about the extensive benefits of the Water Authority supplies before their sudden desire to move into Riverside County.

In summary, just a few years ago there was a possible merger of Fallbrook and Rainbow that would have saved millions of dollars each year for Fallbrook and Rainbow ratepayers, and would have hurt no other Water Authority member agency. Yet that did not occur, mainly because Rainbow succeeded in convincing the LAFCO Commission that no changes were needed at all, and that Rainbow was financially secure. Now, Rainbow and Fallbrook ask LAFCO to approve a radical and unprecedented move: detachments that will have serious impacts on all the rest of San Diego County (explained in other sections of this Response), and moving into Riverside County.

Here are a few additional issues raised by this history:

1. If Rainbow’s projected growth and future financial viability rest on the potential premature conversion of agricultural land for development, this would be directly contrary to LAFCO’s charge under Government Code Section 56377. It also raises CEQA issues related to growth inducement and agricultural resources. It further suggests a reduction in volumetric consumption, higher ad valorem property tax revenues, and broader revenue base, all of which should be analyzed in connection with Rainbow’s financial claims.
2. A loss of local control, identified as one reason the Commission did not approve the consolidation recommended by staff in the prior Rainbow-Fallbrook proceeding, is a serious concern in the present reorganization proceeding. As detailed in the prior section, San Diego County has operated as one unified region for the purposes of water supply for over 65 years. A reorganization that results in Rainbow and Fallbrook joining Eastern’s service area would result in a loss of local control by the Water Authority, and by extension San Diego County and the other member agencies, over the County’s water future. Also, how would Fallbrook and Rainbow be represented at Eastern? (*See* questions in Section 8.)
3. Although Rainbow General Manager Kennedy claimed in 2015 that “there are no financial concerns about Rainbow that would justify LAFCO intervention,” the present proposals are predicated on a financial benefit to customers, “permitting the continuation of agricultural activities as well as general

ratepayer reductions in costs” in Rainbow. The proposal also details \$4 million in necessary annual investments at Rainbow to maintain the water main breakage rate. Rainbow states, at Page 12 of its Supplemental Information Package, that “Apart from imported water costs, the largest driver for RMWD rate increases is the generation of revenue to address critical infrastructure that has served well beyond it’s [sic]design lifespan.” This continued deferred maintenance, which was also described five years ago in the LAFCO staff report, may signal a lack of either planning for replacement infrastructure and repairs, or absence of rate and budget management to cover costs of infrastructure replacement and repairs. At least some of this amount would have been offset by the proposed consolidation. LAFCO’s analysis of the proposals should consider a new look at the potential benefits of consolidation of the two retail agencies, in an effort to evaluate whether the financial concerns stemming from aging infrastructure replacement costs could be remedied through the economies of scale achieved through consolidation.

In summary, the previous LAFCO proceeding in 2015 raises some of the same issues facing LAFCO in this current review. The 2015 proceeding is not “irrelevant” as asserted by the applicants, but is directly relevant to understanding today’s Rainbow and Fallbrook and this proceeding.

Section 4

Financial Impacts of Detachment/Annexation

There are many critical areas which LAFCO should review as to the potential effects of Rainbow and Fallbrook's proposed detachment from the Water Authority, and annexation into Riverside County's Eastern Municipal Water District. Some of these areas have effects that could potentially be mitigated by LAFCO conditions, but others may not be mitigable.

LAFCO is mandated to consider "[t]he effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county." (Gov. Code § 56668.) Therefore, LAFCO cannot ignore what happens to the rest of the Water Authority members if Fallbrook and Rainbow were to leave San Diego County and move into Riverside County. This section details the projected financial impacts of the proposed reorganizations, including financial effects on the other San Diego County Water Authority member agencies.

Overview

The reorganization applications raise significant financial issues for the Water Authority and all of its members, including Fallbrook and Rainbow. This section pertains to financial issues regarding detachment and annexation.⁵⁶ It is separated into various major segments. The key results of the analyses provided below are these:

- The Water Authority has about \$21.1 billion in bonded and other indebtedness and certain water supply contracts (collectively, "Indebtedness," or overall existing obligations). Of the \$21.1 billion total, about \$19.1 billion is for long-term "take or pay" water supply contracts, and the remainder is for various forms of debt, such as bonds, CalPERS obligations, etc.
- Should Fallbrook and Rainbow abruptly detach without compensation to the Water Authority, as is their current plan,⁵⁷ then all remaining member agencies would have to make up the revenue shortfall to fund unavoidable expenses. Based on current facts, base year shortfalls going forward are

⁵⁶ Certain financial information listed below is the most up to date but is unaudited as of June 30, 2020. The final FY 2020 audit will be completed November 2020. Additionally, some data is through FY 2019, but can be updated later.

⁵⁷Based on the financial benefits analyses presented in the applications. The legal issues related to detachment are addressed in Section 9 below.

estimated to range between a base year of \$16.4 million per year, to a maximum of \$45.7 million per year (that spread is explained below). Shortfalls vary based on water sales and the ability to incur/avoid incremental unit costs. If recovered on volumetric water rates, this could result in about a \$50-\$130 per acre-foot increase for the remaining member agencies.

- In addition to direct revenue and cost reallocation, detachment risks the potential downgrading of the Water Authority's debt, which would also increase future borrowing costs for remaining members. The ratings agencies have publicly expressed concern about detachment, particularly the possible risks of a "domino effect" if member agencies can detach without paying their share of incurred indebtedness. The ratings agencies have noted that other member agencies may see an opportunity to try and avoid our region's planned and incurred water supply and service resilience debt.

The ratings agencies have publicly expressed concern about detachment, particularly the possible risks of a "domino effect" if member agencies can detach without paying their share of incurred indebtedness.

- Fallbrook and Rainbow ratepayers would not benefit financially, as their managements claim, if they detach and have to pay their share of incurred expenses at the Water Authority. Indeed, they would financially be in a worse condition.
- There are certain engineering issues regarding detachment that would cost the Water Authority. These are estimated to be at least about \$2 million.

A. Water Authority Obligations

The Water Authority's Capital Improvement Program spending peaked in 2007 with a focus on construction of long-term assets, requiring a large issuance of associated indebtedness. That Program has since transitioned into asset maintenance. Debt service payments related to the previous construction projects continue to be made over the years, resulting in annual decreases in the agency's overall debt load. Similarly, the Water Authority has long-term water supply contracts, and as the years remaining in the contracts decrease, so do the levels of obligation slowly decrease on those contracts. However, as explained below, notwithstanding reducing obligations over time, the Water Authority overall Indebtedness totals nearly \$21.1 billion.

Where applicable, the debt and contractual supply obligations addressed in this section have been updated to reflect current levels. For financial positions, such as other liabilities

and reserves, the Water Authority’s most recent Comprehensive Annual Financial Report (CAFR) is utilized.

To build and operate its extensive infrastructure and provide a reliable water supply, the Water Authority has entered into numerous material financial obligations, including bonds, loans, employment obligations, and long-term contracts such as the water transfers associated with the Quantification Settlement Agreement (“QSA”), and the Claude “Bud” Lewis Carlsbad Desalination Plant (“Desalination Agreement”).

Currently, though most member agencies do not have contractual obligations to buy set amounts of water from the Water Authority, as member agencies they are all subject to various fixed and variable rates and charges, and their territories are all taxable. For example, *see* County Water Authority Act Sections 45-5(8); 45-5(13); 45-5.2; 45-5.9; and 45-9. Therefore, subject to cost-of-service limitations, the Water Authority has various statutory mechanisms to recover its costs from its member agencies and/or lands in their service areas.⁵⁸ Once a member agency detaches from the Water Authority, however, the Water Authority would no longer be able to charge for ongoing costs from that agency as a member agency.⁵⁹

At present, the Water Authority has meaningful financial obligations in the following major areas:

- Long-Term Debt Obligations
- Short Term Debt Obligations
- Contractual Supply Obligations
- Other Noncurrent Liabilities

1. *Long-Term Debt Obligations*

The Water Authority ended FY 2020 with just over \$1.88 billion in outstanding long-term debt obligations. These obligations reflect the significant assets and infrastructure built in order to service the current and forecasted planned needs of the Water Authority and its member agencies. The long-term debt better matches the expected useful service life of the Water Authority assets ranging from 25 to 100 years and helps mitigate the immediate rate impacts. Rate mitigation is further enhanced by the Water Authority’s ability to “wrap” the new debt around the existing debt to normalize annual debt expense. Debt longer than 30 years has become more common among utilities as a result of a relatively flat yield curve, with 40-year interest rates being only moderately higher than 30-year rates. In 2010, the Water Authority issued a 39-year Build America Bond (BABs).

⁵⁸The right to tax, however, has been affected by changes to the State Constitution, as discussed in Section 9.

⁵⁹The issue as to what legally may or may not be some sort of “exit fee” for detachment is a separate matter, and is addressed in Section 9.

The table below outlines the principal balance and unamortized premium by for each series at the end of FY 2020.

Table 4.1

Series	Principal Balance	Unamortized Premium	Total, net
1998A	\$11,685,000	\$0	\$11,685,000
2005A	\$13,800,000	\$1,531,792	\$15,331,792
2010B	\$526,135,000	\$0	\$526,135,000
2011A	\$77,585,000	\$7,175,389	\$84,760,389
2011B	\$94,540,000	\$6,796,527	\$101,336,527
2013A	\$270,475,000	\$34,137,597	\$304,612,597
2015A	\$170,150,000	\$21,890,303	\$192,040,303
2016S-1 [^]	\$87,685,000	\$2,651,826	\$90,336,826
2016A	\$98,945,000	\$19,591,516	\$118,536,516
2016B	\$197,395,000	\$39,561,125	\$236,956,125
2019*	\$183,155,000	\$18,539,815	\$201,694,815
Total	\$1,731,550,000	\$166,627,000	\$1,883,425,890

[^] 2016S-1 is a 5-year fixed rate note

2. Short-Term Debt Obligations

Under Section 8.2 of the County Water Authority Act, the Water Authority may issue short-term revenue certificates with a maturity of up to 270 days. This provision accommodates the issuance of Commercial Paper (CP), a form of variable-rate financing. Like Certificates of Participation Obligations (COPs), the Water Authority's CP is secured by net revenues, but on a subordinate basis to the Water Authority's long-term debt (i.e., COP payments). The rate covenant related to CP requires the Water Authority to maintain net revenues at a level that covers all Indebtedness by 100 percent.

In 2014, the Water Authority authorized the issuance of Extendable Commercial Paper (ECP) in its debt policy. Mechanically, ECP is similar to traditional CP. The notes also carry the same security provisions as CP, wherein principal and interest are paid from a subordinate lien on net revenues and the rate covenant requiring that net revenues cover all indebtedness by 100 percent still applies. The main difference is that ECP does not require a bank liquidity facility which is why ECP offers a lower cost of funds than traditional CP.

While some entities use CP for temporary financing during construction and refund their CP with some form of long-term debt, the Water Authority has utilized this form of financing to create a more permanent variable interest rate component of its capital structure. The table below outlines the various series and principal balance amounts:

Table 4.2

Series	Principal Balance (As of 6/30/2020)
1	\$100,000,000
9	\$135,000,000
10	\$110,000,000
Total	\$345,000,000

3. *Contractual Supply Obligations*

The Water Authority has two main contractual water supply obligations, the QSA and the Carlsbad Desalination Plant.⁶⁰ Pursuant to the QSA, signed on October 10, 2003, and its related contracts, the Water Authority obtains 200,000 AFY of conserved water from the Imperial Irrigation District (“IID”) and receives 77,700 AFY of conserved water from lining of the All-American and Coachella Canals. Per the existing agreement, IID is contracted through 2047 (unless both sides agree to extend), while the Canal water is contracted through 2112. In addition, in parallel with these supplies, the Water Authority procures deliveries of these water supplies through the Exchange Agreement with Metropolitan Water District of Southern California (“MWD”).

On December 20, 2012, the Water Authority entered into a 30-year Water Purchase Agreement to purchase potable water from the Claude “Bud” Lewis Carlsbad Desalination Plant. The Water Authority has an annual obligation to purchase or pay (a take-or-pay contract) for 48,000 acre-feet, the minimum annual demand commitment by the Water Authority, of Product Water that meets the requirements of the WPA and may request up to 56,000 acre-feet each year, the maximum annual supply commitment, of Product Water produced by the desalination plant.

The table below outlines the annual cost, remaining contract terms, and net present value of these supply obligations. The annual cost is calculated at the various contracted acre-foot amounts and the current (CY 2021) unit cost. These costs are then escalated by each component’s historical escalation factor. An estimated 4.6 percent annual escalation factor is used for MWD transportation of QSA water.⁶¹

⁶⁰ The Water Authority has numerous smaller contracts that are not all included in the numbers listed in this Response.

⁶¹ Earlier preliminary data used a lower MWD transportation rate escalation factor, but MWD then subsequently publicly stated in formal correspondence that annual transportation increases of 4.6% per year were the norm, so that is the most recent information and is therefore included in these calculations. See page 6 of the November 15, 2019, letter from MWD’s counsel at Appendix, Exhibit “28.”

Table 4.3

Desc.	CY 2021 Cost	Remaining Term (as of 1/1/2021) (yrs)	Escalation Factor	Net Present Value (3% Discount)
IID	\$135,000,000	27	2.5%	\$3,401,733,753
MWD Exchange - IID	\$106,800,000	27	4.6%	\$3,642,717,018
Canal	\$1,233,099	93	3.0%	\$114,678,207
MWD Exchange - Canal	\$41,491,800	93	4.6%	\$9,029,224,611
Desal	\$111,846,000	26	3.0%	\$2,907,996,000
Total	\$396,370,899			\$19,096,349,589

4. *Other Noncurrent Obligations*

Through the normal course of business, the Water Authority has incurred additional long-term obligations. These noncurrent obligations are related to employee benefits and identified in the table below. As just one example, numerous employees have served at the Water Authority over the years, benefiting Rainbow, Fallbrook, and all other member agencies, and as retirees they are now owed pensions for their service via Water Authority contractual obligations with CalPERS. These are costs that were not fully funded when the services were rendered and total nearly \$71 million (as of June 30, 2020).

Table 4.4

Desc.	Balance (6/30/20)
Net Pension Liability	\$64,924,751
Net OPEB Asset	(\$1,110,981)
Compensated Abs.	\$6,997,964
Total	\$70,811,734

5. *Assets & Reserves*

Many liabilities have been incurred to fund the Water Authority’s capital and infrastructure development, and its development of a water supply. However, much of this infrastructure has no external or intrinsic value outside the delivery of wholesale water to member agencies. Once invested, these assets serve only to deliver water and its related service to Water Authority members. Because many of these assets take years to plan and develop, they are also built to serve forecasted demands – all based on the premise of maintaining member agency status.

While no value of the facilities or infrastructure assets is listed here, because they have no realistic open market sales value as in-place water infrastructure, the Water Authority maintains various cash reserves that have been funded through rates (and therefore

member agencies). It is reasonable to offset the previously detailed liabilities by the available cash balances of these reserves, as shown here:

Table 4.5

Desc.	Balance (6/30/20)
Operating	\$53,798,915
RSF	\$152,731,082
Equipment Replacement	\$235,531
Debt Service	\$21,959,150
PAYGO	\$35,039,210
Total	\$263,763,888

6. Summary of Obligations

Based on the above, the Water Authority has a current present value net-liability of about \$21.1 billion. This includes outstanding short and long-term debt principal (\$2.2B), contractual supply obligations through respective terms (\$19.1B), other liabilities (\$70.8M), and reserves (\$263.7M). The vast majority of the Water Authority’s obligations are directly tied to water supplies planned to be used to meet the current and future baseload water demands of the Water Authority’s 24 member agencies. The table below outlines each component.

Table 4.6

Desc.	Total Balance (PV)
Long-Term Obligations	(\$1,883,425,890)
Short-Term Obligations (Commercial Paper)	(\$345,000,000)
Contractual Supply Obligations	(\$19,096,349,589)
Other Liabilities (long-term)	(\$70,811,734)
Assets & Reserves	\$263,763,888
Total Net Liabilities	-\$21,131,823,325

B. Effects on Member Agencies

This section details the estimated financial effects of the proposed detachment of Fallbrook and Rainbow on the Water Authority and its remaining member agencies if there were to be detachments without any form of payment for the above-listed \$21.1 billion in Indebtedness, which is what the detaching agencies propose.⁶² Should provisions not be

⁶²As discussed in Section 9 below, the applications apparently posit the Water Authority retaining the approximately \$300,000-\$400,000 in annual ad valorem taxes it currently receives from assessed lands in the Fallbrook/Rainbow areas. Because the outcome of the issue is unclear, the property taxes are not included in this Section. If they were retained, they would reduce the overall impact slightly.

made to cover the revenue shortfall created by the detaching agencies no longer using the water supplies all parties planned for and the facilities built, that cost burden would be shifted to the then remaining agencies, each of which is already paying its own proportionate share of costs. As explained below, that effect is estimated to range between a base year shortfall of \$16.4 million per year and a maximum shortfall of \$45.7 million per year. This equates to a minimum base year additional \$49.70 per acre-foot in extra charges to remaining member agencies if the total shortfall were recovered on volumetric rates, or over 3.4% rate increase for those other member agencies. This impact already accounts for nearly \$27 million in avoided expenses.

Current sales forecasts show that if detachment were to take place, adding to existing and planned water supply reductions, the Water Authority and its member agencies would be faced with certain unavoidable costs associated with the overall Indebtedness. In this reality, the rate impacts to member agencies would balloon to \$132 per acre-foot or a 9.0% rate increase. Should that occur, and because Water Authority rate impacts are passed along by its retail agency members to the end users, this would result in corresponding rate increases for water ratepayers in San Diego County, including those in disadvantaged communities.

1. *Rate Impacts*

The Water Authority maintains various rates and charges to collect the necessary revenues to fund operations and capital needs. These rates and charges are reviewed and set annually to meet cost of service standards and full cost recovery. Rates and charges are comprised of fixed and volumetric charges. Volumetric charges set at \$ per acre-foot are those that vary with the amount of water purchased and are forward looking (based on forecasted sales). These rates are the Melded Supply Rate and Melded Treatment Rate, and Transportation Rate. Fixed charges are those that generate a set amount of revenue from each member agencies, regardless of the amount of water purchased. These are the Supply Reliability Charge, Customer Service Charge, Storage Charge, and Infrastructure Access Charge (IAC). While fixed, the allocation of these charges will vary year to year as most are based on trailing-averages (3 or 5 year). The only truly fixed charge that does not apply a trailing average is the IAC, as it is based on physical meter equivalents.

Following development and implementation of the IAC, the Water Authority reviewed and redesigned the existing rate structure in 2002, working in close collaboration with its member agencies. Ordinance No. 2002-03 transitioned the rate structure from a historically single unit price water rate to assigning the revenue requirements to several functional categories. The rate structure was split into fixed and variable components. The fixed water rate categories are comprised of the Storage and Customer Service charges. The variable water rate categories encompass the Transportation, Melded M&I Treatment, and Melded M&I Supply rates. This transition further aligned the Authority's expenditure and cost recovery nexus.

Due to this being a time of historic change in the water industry, the Water Authority reviews its existing rates and charges on an ongoing basis both internally and with Board

and member agency committees. The Board adopted in the CY 2015 Rates and Charges a new fixed charge. The creation of the Supply Reliability Charge (SRC) has meaningfully improved the Water Authority's ratings profile, and increased its fixed cost recovery by 6% (as of CY 2020).

As long as member agencies continue as members, Water Authority costs and issues can continue to be addressed to ensure both a reliable water supply and the continued financial health of the Water Authority and its member agencies. Should any detachments (Rainbow, Fallbrook, or otherwise) occur, the Water Authority and its remaining member agencies lose the ability to recover a fair share of costs from those agencies, unless specifically provided for by LAFCO as a condition of the detachment.

Should any detachments (Rainbow, Fallbrook, or otherwise) occur, the Water Authority and its remaining member agencies lose the ability to recover a fair share of costs from those agencies, unless specifically provided for by LAFCO as a condition of the detachment.

To provide a baseline financial impact estimate of detachment, a financial analysis was performed based on the June 2020 Board Adopted CY 2021 Rates and Charges. The approved rates include a forecasted \$100 million draw (use) of the Rate Stabilization Fund between CY 2020 and CY 2022. The values and impacts presented herein reflect a reasonable single-year estimate. The estimated impact is likely to fluctuate year-to-year based on future rate-setting and demand levels. The actual impacts will be higher in some years, and lesser in others, all depending on factors such as overall water demand, supply source pricing, and other variables.

Table 4.7 defines the forecasted financial (revenue and expenditure) impacts related to Rainbow and Fallbrook for an estimated base year. Given CY 2021 Rates and Charges, the Water Authority revenues would be reduced by \$40.2 million for the year. This amount would increase an additional \$3.6 million had it not been for the use of rate stabilization funds suppressing the full cost of water. These revenue losses, however, are presumed to be mitigated by reductions to the water supply and treatment purchases associated with those revenues that would be avoided. Based on the current staffing and operations, no additional operating costs are estimated to be avoided.

After performing the applicable reductions, *the net overall impact in this base year is \$16.4 million*. This means that if Rainbow and Fallbrook detached without any payment to the Water Authority, the Water Authority would have a revenue shortfall, on average based on current facts, of \$16.4 million per year that would have to be made up from the other member agencies.⁶³

⁶³The Water Authority earlier in 2019 arrived at a preliminary base year forecast of over \$13 million per year. However, since that time MWD updated its rate projections with higher escalated transportation rates, and therefore the newest data is used for this analysis.

Table 4.7: Base Year De-Annexation Net Impact

	Fallbrook	Rainbow	Total
Anticipated Avoided Costs			
Avoided Supply Purchases	\$6,653,011	\$12,525,318	\$19,178,328
Avoided Treatment Expense	\$2,799,916	\$5,271,273	\$8,071,188
Avoided SDCWA O&M	\$0	\$0	\$0
Total Avoided Costs	\$9,452,926	\$17,796,590	\$27,249,517
Anticipated Revenue Shortfall			
Supply Reliability Charge	\$673,272	\$963,060	\$1,636,332
Customer Service Charge	\$558,036	\$1,074,492	\$1,632,528
Storage Charge	\$1,021,164	\$1,530,660	\$2,551,824
Infrastructure Access Charge	\$603,192	\$745,800	\$1,348,992
Melded Supply Rate	\$7,690,555	\$14,033,209	\$21,723,764
Melded Treatment Rate	\$2,525,918	\$4,755,430	\$7,281,347
Transportation Rate	\$177,029	\$1,356,472	\$1,533,501
Property Tax	\$157,111	\$185,931	\$343,042
Standby Charge	\$257,637	\$463,673	\$721,311
Capacity Charges	103,396	1,146,946	\$1,250,342
Total Anticipated Revenue	\$13,767,310	\$26,255,673	\$40,022,983
Use of Reserves	\$1,424,698	\$2,202,383	\$3,627,081
Net Impact	(\$5,739,081)	(\$10,661,466)	(\$16,400,547)

Assuming detachment and assuming \$27.2 million in avoided costs, the net financial impact would have to be redistributed to appropriate rate and charge categories to meet full cost recovery from the remaining member agencies. Without this adjustment, the rates would not generate sufficient revenue to pay the Water Authority costs.

Table 4.8 provides a base year breakdown of revenues by rate component (fixed revenues, transportation rate, melded supply rate, and melded treatment rate) and reflects the estimated rate impact required to fully recover costs.

Table 4.8: Base Year Revenue Impact by Rate Category (With Cost Avoidance)

Fixed Charge Impact	CY2021	Notes
Revenue Loss (from Table 4.7)	\$7,169,676	Breakdown detailed later in Table 3
Transportation Rate Impact		
Revenue Loss + Use of Reserve	\$1,729,794	Excluding RSF Benefits
CY 2021 Deliveries (less R&F)	329,643	
Rate Impact	\$5.25 AF	
Melded Supply Impact		
Revenue Loss (Supply + Reserves)	\$6,104,921	Other Revenues applied to Melded Supply as a reasonable proxy; however, actual impact would reflect on CoS defined allocations.
Revenue Loss (Other Revenues)	\$2,979,800	
CY 2020 Deliveries (less R&F)	329,643	
Rate Impact	\$25.54 AF	
Melded Treatment Impact		
Revenue Loss + Reserves	(\$937,936)	Avoiding MWD's higher treatment rate results in cost savings (rate benefit).
CY 2020 Deliveries (less R&F)	329,643	
Rate Impact	(\$2.85 AF)	
Variable Rate Impact		
Transportation Rate	\$5.25	
Melded Supply Rate	\$25.54	
Treatment Rate	(\$2.85)	
Volumetric (Only) Rate Impact	\$27.95 AF	Excludes \$7.2M in lost Fixed Charge revenues

Therefore, the Water Authority's volumetric rates would have to increase by \$27.95 per acre-foot to make up just for the shortfall from volumetric sales. One then also has to add the \$7,169,676 in fixed revenues shortfall, which results in the total of \$49.70 per acre-foot to be charged to the remaining member agencies if one were to recover all the lost revenue via a volumetric rate increase.⁶⁴ Given the fixed take-or-pay nature of the Water Authority's supply obligations, this forecasted rate impact reflects the base year minimum outcome. Should the Water Authority be unable to avoid these water supply and treatment costs, the rate impact would nearly triple to \$132 per acre-foot. Based on current demand forecasts, continued avoidance is less likely if detachment supply reduction were to occur. Table 4.9 defines how the reduced revenue, Fixed Charge and Volumetric impacts, would be reallocated to the remaining member agencies in the base year in order for the Water Authority to recover its full costs.

⁶⁴The Water Authority Board might decide to allocate some or all of this amount to increased fixed charges. However, showing all lost revenue recovery in the volumetric category provides a clearer understanding of the scope of the loss, since most water agencies think in terms of per acre-foot costs.

Table 4.9: Base Year Reallocation of Detachment Reduced Revenue

	Supply Reliability Charge	Customer Service Charge	Storage Charge	IAC	Estimated Fixed Charge Annual Impact	FY 2020 Deliveries (AF)	Est. Variable Impact (AF*\$27.95)	Total Net Annual Impact* (Fixed + Variable)
Carlsbad M.W.D.	\$59,287	\$54,029	\$89,307	\$54,553	\$257,176	11,957	\$334,157	\$591,333
Del Mar, City of	\$4,240	\$4,267	\$7,052	\$3,746	\$19,304	954	\$26,661	\$45,965
Escondido, City of	\$70,865	\$74,868	\$112,199	\$53,156	\$311,089	5,791	\$161,826	\$472,915
Fallbrook P.U.D.	\$0	\$0	\$0	\$0	\$0		\$0	\$0
Helix W.D.	\$115,659	\$108,083	\$178,656	\$97,953	\$500,351	20,711	\$578,818	\$1,079,169
Lakeside W.D.	\$11,664	\$11,580	\$19,141	\$12,313	\$54,699	2,879	\$80,453	\$135,153
Oceanside, City of	\$91,844	\$91,206	\$148,763	\$86,351	\$418,163	19,844	\$554,568	\$972,732
Olivenhain M.W.D.	\$77,840	\$76,971	\$126,606	\$42,301	\$323,718	17,189	\$480,386	\$804,104
Otay W.D.	\$122,528	\$120,382	\$198,987	\$90,342	\$532,238	28,309	\$791,138	\$1,323,376
Padre Dam M.W.D.	\$41,274	\$41,522	\$67,744	\$40,331	\$190,871	9,589	\$267,976	\$458,847
Pendleton Military Reserve	\$288	\$311	\$514	\$0	\$1,113	52	\$1,448	\$2,561
Poway, City of	\$40,590	\$39,019	\$64,242	\$25,541	\$169,392	8,714	\$243,515	\$412,907
Rainbow M.W.D.	\$0	\$0	\$0	\$0	\$0	14,479	\$404,634	\$404,634
Ramona M.W.D.	\$18,256	\$21,618	\$29,040	\$15,368	\$84,282	3,755	\$104,929	\$189,211
Rincon Del Diablo M.W.D.	\$22,394	\$21,760	\$35,856	\$15,350	\$95,360	4,839	\$135,232	\$230,592
San Diego, City of	\$716,158	\$673,788	\$1,112,548	\$591,116	\$3,093,609	151,865	\$4,244,135	\$7,337,745

San Dieguito W.D.	\$17,209	\$14,400	\$23,802	\$22,678	\$78,090	3,128	\$87,404	\$165,494
Santa Fe I.D.	\$31,250	\$28,229	\$46,662	\$15,929	\$122,070	5,626	\$157,223	\$279,293
Sweetwater Authority	\$41,421	\$29,183	\$48,238	\$64,599	\$183,441	950	\$26,544	\$209,985
Vallecitos W.D.	\$51,168	\$49,156	\$75,939	\$40,904	\$217,167	10,860	\$303,505	\$520,672
Valley Center M.W.D.	\$31,687	\$85,836	\$51,374	\$21,972	\$190,869	16,684	\$466,259	\$657,128
Vista I.D.	\$65,536	\$63,914	\$105,287	\$53,574	\$288,312	3,361	\$93,940	\$382,252
Yuima M.W.D.	\$4,643	\$21,960	\$9,867	\$916	\$37,386	4,652	\$130,020	\$167,406
South Coast W.D.	\$531	\$445	\$0	\$0	\$976		\$0	\$976
Total	\$1,636,332	\$1,632,528	\$2,551,824	\$1,348,992	\$7,169,676	346,185	\$9,674,772	\$16,844,450

** Total does not match Table 4.7 due to use of actual FY 2020 AF deliveries, rather than Forecasted CY 2021 demands.*

Should Rainbow and Fallbrook detach without any financial reconciliation for planned and incurred costs, the full burden of cost recovery must be reapportioned to the remaining member agencies in some manner.⁶⁵

It is important to note that the potential rate impacts of detachment can far exceed the base year analysis, and in some years could be a bit lower. Forecasting the future impacts of detachment is challenging, given the numerous factors impacting rates. However, based on current financials and demand forecasts (including local supply development from the 2018 Demand Reset), the Water Authority ran parallel 10-year forecasts – with the only variable being *with* or *without* detachment. Both forecasts were analyzed to achieve equivalent ending financial positions in CY 2031, while maintaining appropriate debt coverage levels and other Board policies. Given the forecasted demand levels and the assumed demand bounce-back by 2030 (using the 2018 interim demand reset), the financial impacts are significantly greater than the above-identified base year. This greater impact reflects the possibility of demands falling below the Water Authority’s contractual take-or-pay obligations. Without detachment, sales remain above this threshold. However, with detachment, the Water Authority may be below this threshold in certain years, and not be able to mitigate the impact with avoided costs. Table 4.10 below outlines the combined Rainbow and Fallbrook detachment impact that would be reallocated and recovered from the then remaining agencies.

Table 4.10: Forecasted Net Revenue Impact of Detachment by Year

	Total
CY 2022	\$35,284,140
CY 2023	\$38,613,447
CY 2024	\$32,501,811
CY 2025	\$35,549,084
CY 2026	\$43,783,416
CY 2027	\$45,748,709
CY 2028	\$28,172,440
CY 2029	\$11,197,175
CY 2030	\$11,797,066
CY 2031	\$12,028,693

As shown from the above table, the proposed detachments expose the remaining member agencies to potential significant cost increases.

⁶⁵A planned Water Authority infrastructure program for the Rainbow/Fallbrook service areas has been temporarily deferred by the Water Authority Board, with the concurrence of the applicants, pending this reorganization proceeding. If the Water Authority did not have to construct this infrastructure, it would save about \$40 million in planned costs. This would in essence cover roughly about 2.5 years of uncompensated Rainbow/Fallbrook detachment under the base year. However, that offset would be short-lived, and after those 2.5 years, the full impact of uncompensated detachment would be felt by all remaining member agencies.

Therefore, actual annual losses to remaining member agencies could be far higher than the \$16.8 million base year analysis would indicate. It should be noted, of course, that one cannot predict the future with certainty. However, one must consider risks based on the best available data.

2. *Indebtedness Allocation (or “Exit Fee”)*

To ensure that the remaining member agencies are not harmed by shortfalls caused by the reorganizations proposed by Fallbrook and Rainbow, there would need to be some sort of pro rata method of apportionment of the existing obligations outlined above, or “exit fee.”⁶⁶ What precisely that would be will have to await further discussions between the parties, LAFCO, and LAFCO’s hired expert consultants. Various methods could potentially be utilized.

However, whatever method may be used, it must be noted that the 22 remaining member agencies are not made completely whole *without* Fallbrook and Rainbow paying their fair share of the \$21.1 billion. Such share, however determined, will likely be a practical impossibility for Fallbrook and Rainbow to pay no matter how much time the debt might be stretched over. Additionally, a large portion of the Water Authority’s obligations are for the long-term water supply contracts, and Fallbrook/Rainbow would not be acquiring any water from the Water Authority if they were outside the Water Authority service area, as they propose. This means that these agencies would be far better off staying with the Water Authority and receiving the water supply and reliability benefits that go with the water supplies developed by the Water Authority.

The promises by Fallbrook and Rainbow to their constituents that detachment would save them money assumes these agencies and their ratepayers avoid the repayment of their fair share of Water Authority debt incurred over the past decades. If Fallbrook and Rainbow (or lands in their service areas) had to pay their actual fair share, they would be worse off by annexing to Eastern than they would be staying at the Water Authority.

C. **Risks of Downgraded Debt, and the “Domino Effect”**

The Water Authority is currently rated AAA/Aa2/AA+ by S&P Global, Moody’s Investors Service and Fitch Ratings, respectively. However, the rating agencies have made clear that the proposed detachments are a concern, including in particular the risk that they may encourage other agencies to seek detachment. Here are statements from ratings agencies just this summer (2020):

- In the Water Authority’s June 25th (2020) Ratings Report⁶⁷, S&P Global states at page 4: “While we do not believe this will immediately effect the authority’s financial position, we do believe an approved detachment could

⁶⁶ The legal basis for this is detailed in Section 9.

⁶⁷Appendix, Exhibit “29.”

set a poor precedent if members can easily detach from the authority, especially if they are not required to pay for their portion of the associated debt and infrastructure costs that the authority has undertaken to provide reliable water sources.”

- Fitch’s June 29, 2020, New Issue Summary⁶⁸ states at page 3: “Two of the CWA’s members, Rainbow Municipal Water District and Fallbrook Public Utility District, accounting for 3.9% and 2.1% of revenues, respectively, or a total of \$35 million, have begun the process of separating from the Authority. If the separation eventually occurs, the authority estimates the negative net financial impact at about \$13 million. Rates could be increased on the remaining members to make up for the loss.”

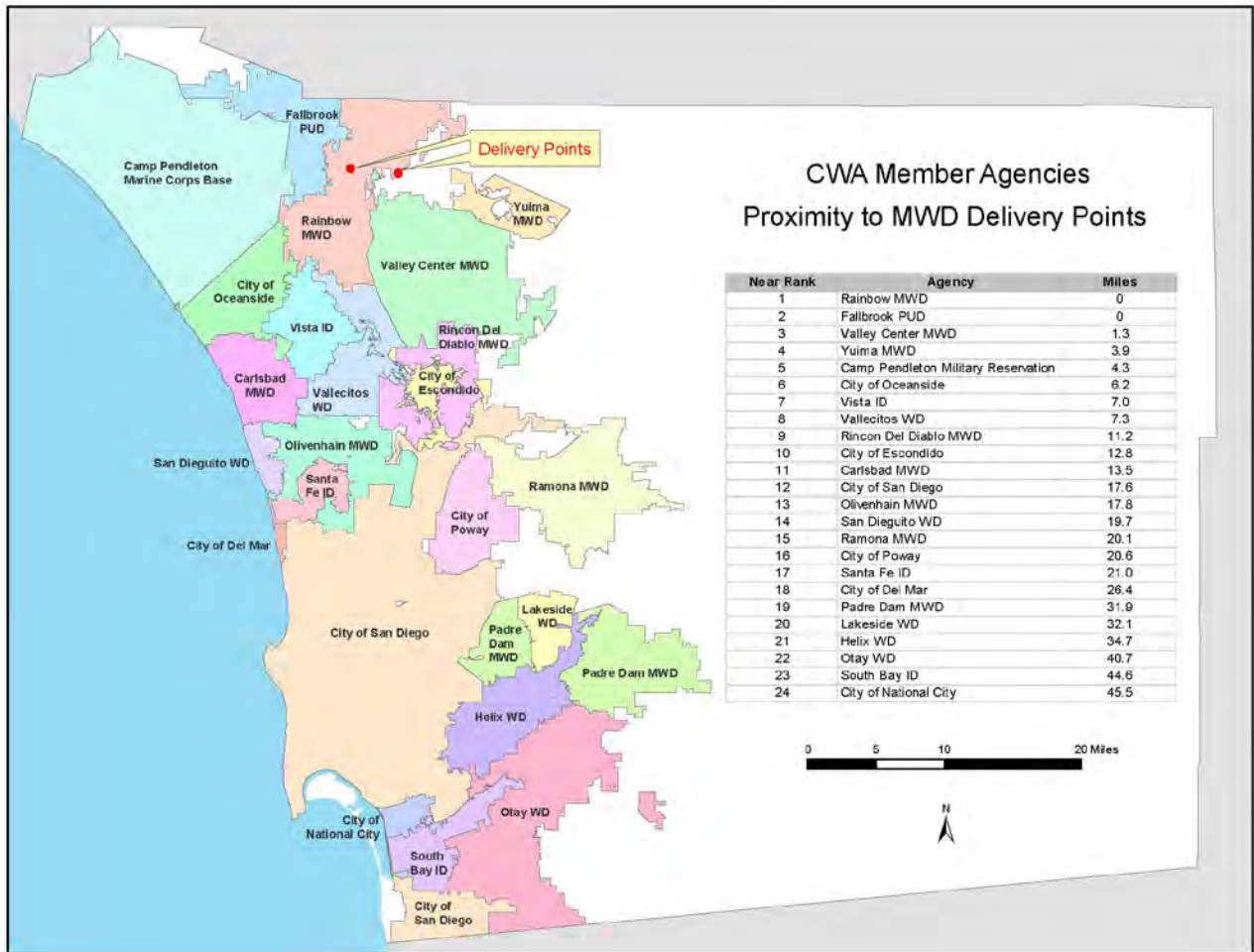
If Fallbrook and Rainbow are able to leave the Water Authority without payment of their proportionate share of such incurred commitments, it would be an incentive for other agencies to pursue detachment as well. Though Fallbrook and Rainbow may be the only two agencies with

If Fallbrook and Rainbow are able to leave the Water Authority without payment of their proportionate share of such incurred commitments, it would be an incentive for other agencies to pursue detachment as well.

current direct connections to MWD pipelines, this does not mean that other agencies could not potentially construct pipes to also connect their own systems to the MWD pipelines.

Below is an overview of the Water Authority service area showing how far MWD’s current pipelines extend into San Diego County, and where the southernmost end points of those pipes are – called “Delivery Points” on the map. The table on the right shows the closest distance from each Water Authority member agency service area to the Delivery Points.

⁶⁸ Appendix, Exhibit “30.”



One can see that many of the northernmost districts in the County are not far from the MWD pipes.⁶⁹ Certainly, if sufficient financial incentives were present from not having to pay Water Authority Indebtedness, construction costs for a few miles of pipe could potentially “pencil out” for some agencies.

That is not to say that proximity is the only factor. To truly know whether other Water Authority member agencies could effectuate cost-effective detachments, one would need to have a full understanding of each member agency’s water infrastructure and their overall internal water delivery systems, which the Water Authority does not possess. One would also have to examine existing easements, rights-of-way, and numerous other property

⁶⁹ Because Fallbrook is already tied in to MWD pipes it is listed at “0 Miles” even though its service area is a few miles away.

records and geographic data to make determinations as to pipeline pathways, infrastructure locations, the need for pump stations, etc.

In order to even pursue detachment further, Fallbrook and Rainbow should be required to establish at LAFCO that detachment is not economically possible for other Water Authority member agencies. Fallbrook and Rainbow have done none of this necessary work.⁷⁰ Without such detailed and necessary technical data, there must be a presumption that the significant cost incentives of a “free ride” exit from Water Authority obligations risks further detachment requests to LAFCO – precisely as noted by the S&P Global citation noted above.

D. “Rolling Off” the Water Authority Is Not Like Detachment

There are contentions in the applications and public relations materials from the applicants that member agency reductions in Water Authority purchases are the same as detachment. This is not correct. “Rolling off” is generally a hydrologic or long-term planned event, which leaves the agency in either case still subject to payments of Water Authority costs. Detachment, in contrast, is an abrupt and unplanned abandonment of long-range water planning, and potentially removes the practical ability to collect for incurred expenses. Further, there are significant cost recovery differences between the two scenarios.

Historically, “rolling on” and “rolling off” a wholesale water agency referred to the impacts of individual member agency customers buying more or less of a wholesale agency’s water supply depending on weather, or hydrologic variation, over a number of years. This is different than “peaking” factors in the course of a day, week or month which also reflect the greater or lesser dependence on a wholesale provider at different times but are generally easier to plan for due to factors that are easier to predict than the weather.

The Water Authority’s highly reliable water supply portfolio was designed to meet the conservation adjusted base load demand of its member agencies and as a result, it has not incurred excess carrying costs for stored water supplies (historically it has peaked off of MWD). The financial impact of hydrologic “rolling off” by Water Authority member agencies has not been significant because the region has had limited reservoir capacity. At MWD, however, hydrologic variation has significant financial impacts when member agencies roll on the MWD system in dry years (increased sales and revenue) and roll off in

⁷⁰The only publicly announced study of potential detachment by another member agency was a cursory exercise by Rainbow consultant Ken Weinberg in 2019 for Valley Center. Mr. Weinberg hedgingly concludes in his abbreviated report -- found in the Appendix at Exhibit “9” -- that Valley Center may not be able to financially support detachment. However, if one reads the paper one will see that there is no cost analysis, no engineering study, no data comparisons, no mapping of transport routes, indeed no foundational factual data at all as to what it would actually cost to connect Valley Center’s water infrastructure to the nearby MWD pipelines. Rather, Mr. Weinberg spends pages of the report talking about the proposed Fallbrook/Rainbow detachments, and then with absolutely no factual basis at all simply leaps to a sudden and completely unsupported tentative conclusion about Valley Center. Real data, not rhetoric, will be needed for LAFCO to accurately review this issue.

wet years (reduced sales and revenue). Water purchases by the Los Angeles Department of Water and Power (“LADWP”) alone can vary by hundreds of thousands of acre-feet from year to year, depending on hydrology (for example a high in FY 2014 of 441,871 acre feet and a low in FY 2019 of 141,866 acre-feet). Because MWD is more dependent on water supplies that vary greatly according to hydrology (State Water Project and lower priority Colorado River water; discussed in Section 6), MWD incurs significant costs in order to store water, both in terms of having storage facilities available (owning or leasing) and the carrying costs of having water to store and make available during dry years.

More recently, particularly over the past decade, many agencies including the Water Authority have developed their own water supplies to meet conservation adjusted baseload demand. While some refer to this as “rolling off” a wholesale water supplier, these projects are more properly described as part of a sound long-term planning process designed to reduce the reliance on a single water supply and develop a diverse, reliable water supply portfolio. This is consistent with state law mandating regional self-sufficiency and reduced demand on the Bay Delta (addressed in Section 6).

Similarly, member agencies working in collaboration with the Water Authority and MWD have planned or are planning local projects that will, when implemented, be expected to permanently lower demand for Water Authority (and MWD) water. In Appendix, Exhibit “16” the Water Authority’s 2015

Urban Water Management Plan (UWMP) lists member agencies’ projects which the Water Authority factors into its own long-term water supply and financial planning processes. This list is currently being updated as part of the 2020 UWMP process.

The Water Authority fully supports its member agencies’ development of local water supplies, and as noted includes these projects in its long-term plan for the region. The rate impacts of member agency projects coming on line cannot be determined without knowing the total water supply and demand on the Water Authority, and without knowing what costs and rates and charges are in place at both the Water Authority and MWD, over time and from time to time. It is the responsibility of the Water Authority Board of Directors, in collaboration with SANDAG and regional planning initiatives, to manage the regional portfolio consistent with implementation of these projects and the demand for Water Authority water. It is also the Water Authority Board’s responsibility to ensure rates and charges that are lawful, fairly apportioned and sufficient at all times to pay the Water Authority’s operating costs and debt.

Detachment has nothing to do with managing hydrologic variation, local water supply development, regional planning or fiscal sustainability. Instead, it is an abrupt action to permanently extinguish member agency status and withdraw from the regional planning portfolio that was designed to meet the long-term base load demand of these agencies, including projects with a 50+ year life cycle.

Detachment has nothing to do with managing hydrologic variation, local water supply development, regional planning or fiscal sustainability. Instead, it is an abrupt action to permanently extinguish member agency status and withdraw from the regional planning portfolio that was designed to meet the long-term base load demand of these agencies, including projects with a 50+ year life cycle.

In contrast, when a Water Authority member agency reduces its water purchases from the Water Authority as part of the regional plan, it remains subject to Water Authority rates and charges and taxation, the specifics of which will depend on then-existing circumstances and actions by the Water Authority Board of Directors. If water sales revenue along with other sources of revenue should be insufficient to pay the Water Authority's costs (including its long-term debt), it has the authority to impose fixed charges on member agencies (subject to cost of service limitations). In contrast, in detachment there is no guaranteed ability to recover for all incurred obligations.⁷¹

There is therefore a major difference between abrupt detachment and "rolling off" or orderly, planned local water supply development. The Water Authority will continue to plan prudently to manage the regional water portfolio consistent with the plans of its member agencies to develop local water supplies over time. By contrast, an abrupt detachment by Fallbrook and Rainbow in which they do not pay for the water supplies that were acquired to meet their baseload demands would not allow for such a planning period or transition.

E. Engineering Costs of Detachment

The preliminary estimated costs of detachment related to engineering are about \$2 million. These costs, and engineering issues associated with detachment, are detailed in Section 7 of this Response.

⁷¹This is covered in detail in Section 9 on legal issues.

Section 5

Governmental Impacts of Detachment/Annexation

There are potential meaningful governmental impacts that would take place if Rainbow and Fallbrook were to detach and annex into Eastern, all of which LAFCO should carefully review.

A. MWD Governance Loss of Influence for San Diego County

Both Eastern and the Water Authority are members of MWD. MWD imports water coming into the Southern California region from the Bay-Delta region via the State Water Project, and it also controls the sole conveyance mechanism from the Colorado River into urban Southern California, the Colorado River Aqueduct. The majority of Water Authority water, and thus water for all of San Diego County, comes through MWD facilities. Therefore, governance at MWD is a critically important issue for San Diego County because, subject to constitutional and cost-of-service legal requirements, MWD controls how much our region pays for delivery of our Colorado River supplies.

Voting rights at MWD are determined by assessed valuation of land in the member agency's service area. Should the detachment of Fallbrook and Rainbow proceed as proposed, the San Diego region will lose voting rights at MWD, and lose them to a Riverside County district that has a history of adversity to San Diego County interests. The weighted vote entitlements of both the Water Authority and Eastern at MWD would be affected by detachment and annexation, having a direct negative impact on the interests of San Diego County, and benefiting Riverside County.

Though Eastern told LAFCO that it has “no skin in the game” as to the Fallbrook/Rainbow proposed detachment/annexation,⁷² this is simply not true. With the annexation of Fallbrook and Rainbow, Eastern's weighted voting rights at MWD would immediately increase by about 10.2% (a gain of 0.28% voting rights at MWD, going from 2.75% to 3.03%), at the direct expense of the Water Authority. *The Water Authority would lose about 1.7% of its vote entitlement at MWD* (reducing from 17.34% to 17.05%). This would mean that political influence at MWD could meaningfully shift from the Water Authority to Eastern on voting issues as to which they disagree (the Water Authority's loss being Eastern's gain on disputed MWD Board votes, thus doubling the overall vote impact at

⁷²Stated at the July 6, 2020, LAFCO Advisory Committee meeting by Eastern representative Nick Kanetis.

MWD to 0.56% on each and every vote). There could be even greater impacts going forward, depending on future growth in assessed property value in the affected regions.⁷³

A shift in voting rights at MWD from the Water Authority to Eastern would not be neutral as to the interests of San Diego County. Eastern has a long history of being adverse to the San Diego County Water Authority and to our local ratepayers. Eastern has been a regular litigant against the Water Authority for many years, including in the extensive MWD/Water Authority rate litigation that is still pending. In that litigation the Water Authority is seeking to recover, and will recover, tens of millions of dollars for local ratepayers, all of which Eastern has actively opposed.⁷⁴ Attached to the Appendix as Exhibit “18” is the recent August 13, 2020, judgment from the San Francisco Superior Court awarding the

Water Authority over \$44 million in contract damages from MWD, and this is just for the earliest cases covering only four years, with further damages at issue and likely to be recovered for local ratepayers in later cases.

10	4. Final judgment is ENTERED in favor of the Water Authority and against Metropolitan on
11	the Fourth Cause of Action in the 2010 and 2012 Cases, for breach of contract, because Metropolitan
12	breached the Exchange Agreement by including the Water Stewardship Rate in the transportation rates
13	charged under the Exchange Agreement. <i>SDCWA v. MWD</i> , 12 Cal.App.5th at 1130, 1154–55. The
14	Court awards the Water Authority a total of \$44,373,872.29, comprised of: (A) \$28,678,190.90 in
15	damages for payments of the Water Stewardship Rate on exchanges in the years 2011-2014; (B)
16	prejudgment interest at the rate of 10 percent per annum through November 18, 2015 (the date of the
17	initial judgment), in the amount of \$7,484,315.54; and (C) post-judgment interest at the rate of 7 percent
18	per annum from November 19, 2015 until February 15, 2019 (the date of Metropolitan’s tender of
19	\$44,373,872.29 to the Water Authority), in the amount of \$8,211,365.85.

The judgment in the 2010 and 2012 rate cases.

Eastern is an active participant in the cases, *but supporting MWD*. Why? Because the higher the charges MWD can impose on the Water Authority and San Diego County ratepayers, the lower the costs paid to MWD by Eastern and other MWD member agencies. San Diego ratepayers’ losses are Eastern’s gains.

Indeed, long-time Eastern Board member and MWD Board member and immediate past Chair Randy Record has actively advocated in the San Diego region against the Water Authority and its attempt to seek rate relief for San Diego area ratepayers. *See* Appendix Exhibit “31,” an anti-Water Authority op-ed placed in the *San Diego Union Tribune* by Mr. Record.

⁷³ Close votes at MWD on key San Diego interests are not impossible, and indeed one occurred very recently. On July 14, 2020, the MWD Board voted on whether to approve conservation funding agreements for two Water Authority member agencies, Padre Dam Municipal Water District and the City of Escondido. The final vote tally was a narrow win for the Water Authority and its ratepayers at 53.04%.

⁷⁴An exemplar Answer filed by Eastern in the litigation in support of MWD, and adverse to the Water Authority, is in the Appendix as Exhibit “33.” In that Answer Eastern asked the Court that San Diego County ratepayers “take nothing” from the Complaint. *See* Prayer, pages 27-28.

Eastern was also involved in an earlier broad-based campaign in San Diego County to undermine the Water Authority and promote MWD's interests, all as set out in extensive detail in the 2014 Water Authority Board memorandum attached to Appendix as Exhibit "32." Eastern was also a participant in the "Partnership for Regional Water Reliability" which improperly and in secret with MWD sought to interfere in San Diego County governance and resulted in the Legislature taking action in the form of SB 1885 (Ayala, 1998) and SB 60 (Hayden, 1999), mandating that MWD establish an ethics office to stop abuses. The LAFCO Commissioners, LAFCO staff, and the public are strongly encouraged to read Appendix Exhibit "32" with care, as it spells out Eastern's long and concerted efforts to undermine San Diego County's plan to seek water reliability and independence from MWD.

Recently, Public Records Act responses from Fallbrook and Rainbow show that Eastern, without the knowledge of the Water Authority, in 2018 was directly involved in helping Fallbrook and Rainbow plan their detachment from the Water Authority so those agencies could move out of the San Diego County regional water supply system and into Eastern's system in Riverside County. *See*, for example, Appendix Exhibit "34" e-mails to and from Eastern General Manager Paul Jones in November 2018. Just as with its earlier hidden meddling in San Diego County, neither Mr. Jones or Eastern ever informed the Water Authority what was occurring, or that it was providing assistance to Water Authority member agencies to facilitate their detachment. It was not until May of 2019 that Rainbow suddenly sprung the detachment announcement on the Water Authority.

Eastern's claims of non-interest in supporting these reorganizations is belied by the historic facts and by practical reality. A shift in voting rights away from the Water Authority to Eastern, which would necessarily happen should the reorganizations occur, would mean that San Diego County would be losing representative voting rights at MWD, and that Riverside County and Eastern, with a long history of adversity to San Diego County water and taxpayer interests, would gain voting rights adverse to San Diego County.

For this analysis, changes in present MWD Board representation and vote entitlement are estimated based on the MWD Act, whereby MWD Board members – representing member agencies such as the Water Authority – receive one vote for each ten million dollars of assessed valuation in the agency's service area.⁷⁵ The following tables are explanatory of the shifts in interests described above. Assessed values in the MWD service area were collected from MWD Board letters. Assessed values in Fallbrook and Rainbow were collected from San Diego County Auditor and Controller Property Values, Tax Rates, Useful Information for Taxpayers reports. The 2020 assessed valuations and estimated valuations as a result of detachment and annexation into Eastern are shown in Table 5.1. Table 5.2 shows 2020 MWD member agency vote entitlements, and estimated vote entitlements as a result of detachment and annexation into Eastern.

⁷⁵ *See* MWD Act Section 55, found at West's California Water Code – Appendix Section 109; Deering's California Water Code Uncodified Act 570.

Table 5.1: Assessed Values With and Without Detachment/Annexation

MWD Member Agency	Assessed Valuation (as of August 2020)	Current (2020) Assessed Valuation with Detachment/Annexation
Anaheim	50,827,184,760	50,827,184,760
Beverly Hills	38,956,717,957	38,956,717,957
Burbank	26,141,123,217	26,141,123,217
Calleguas Municipal Water District	111,618,780,405	111,618,780,405
Central Basin Municipal Water District	163,841,107,803	163,841,107,803
Compton	5,317,323,800	5,317,323,800
Eastern Municipal Water District	89,360,565,565	98,474,793,415
Foothill Municipal Water District	20,523,777,475	20,523,777,475
Fullerton	22,375,441,140	22,375,441,140
Glendale	35,169,758,778	35,169,758,778
Inland Empire Utilities Agency	126,454,139,655	126,454,139,655
Las Virgenes Municipal Water District	26,486,631,207	26,486,631,207
Long Beach	55,981,628,720	55,981,628,720
Los Angeles	679,724,957,408	679,724,957,408
Municipal Water District of Orange County	550,132,942,332	550,132,942,332
Pasadena	33,945,712,922	33,945,712,922
San Diego County Water Authority	563,102,159,967	553,987,932,117
Fallbrook Public Utility District	4,119,846,849	4,119,846,849
Rainbow Municipal Water District	4,994,381,001	4,994,381,001
San Fernando	2,162,763,122	2,162,763,122
San Marino	7,112,212,432	7,112,212,432
Santa Ana	28,885,250,705	28,885,250,705
Santa Monica	41,988,358,140	41,988,358,140
Three Valleys Municipal Water District	75,351,151,920	75,351,151,920
Torrance	31,358,048,464	31,358,048,464

MWD Member Agency	Assessed Valuation (as of August 2020)	Current (2020) Assessed Valuation with Detachment/Annexation
Upper San Gabriel Municipal Water District	115,436,487,268	110,164,081,915
West Basin Municipal Water District	227,757,273,626	213,221,019,324
Western Municipal Water District	118,236,059,481	75,351,151,920

Table 5.2: Vote Entitlement With and Without Annexation

MWD Member Agency	Vote Entitlement (as of August 2020)	Current (2020) Vote Entitlement with Detachment/Annexation
Anaheim	1.56%	1.56%
Beverly Hills	1.20%	1.20%
Burbank	0.80%	0.80%
Calleguas Municipal Water District	3.44%	3.44%
Central Basin Municipal Water District	5.04%	5.04%
Compton	0.16%	0.16%
Eastern Municipal Water District	2.75%	3.03%
Foothill Municipal Water District	0.63%	0.63%
Fullerton	0.69%	0.69%
Glendale	1.08%	1.08%
Inland Empire Utilities Agency	3.89%	3.89%
Las Virgenes Municipal Water District	0.82%	0.82%
Long Beach	1.72%	1.72%
Los Angeles	20.93%	20.93%
Municipal Water District of Orange County	16.94%	16.94%
Pasadena	1.05%	1.05%
San Diego County Water Authority	17.34%	17.05%
San Fernando	0.07%	0.07%
San Marino	0.22%	0.22%
Santa Ana	0.89%	0.89%
Santa Monica	1.29%	1.29%
Three Valleys Municipal Water District	2.32%	2.32%
Torrance	0.97%	0.97%
Upper San Gabriel Municipal Water District	3.55%	3.55%
West Basin Municipal Water District	7.01%	7.01%
Western Municipal Water District	3.64%	3.64%

B. Additional San Diego County Lands

In addition to the above adverse MWD voting effects of detachment by Fallbrook and Rainbow, there is also the question of how to deal with potential further lands being moved, for water service purposes, from San Diego County to Riverside County. These issues that LAFCO must consider come in two main categories: (a) potential requests by other Water Authority member agencies to detach and move to Eastern; and (b) potential annexations of land into Fallbrook and or Rainbow.

1. *Other Member Agencies*

It is correct that currently only Fallbrook and Rainbow are directly connected to MWD pipelines. However, as detailed in Section 4 of this Response, if detachment is allowed without consideration of supply and infrastructure investments made by the Water Authority, other member agencies may also seek detachment as a near-term strategy. If any other agencies were to detach and annex into Eastern, this would further increase the loss of San Diego County influence in MWD governance.

2. *Annexations*

If Fallbrook and Rainbow are allowed to annex into Eastern, any future annexations into Fallbrook and Rainbow would be moving more land out of San Diego County and into Riverside County for assessed valuation and MWD governance issues. Every acre of land that is annexed into Eastern automatically moves the land's assessed value out of the San Diego County Water Authority's boundaries, thus reducing San Diego County's voting rights at MWD further each time it occurs.

The proposed reorganizations by Fallbrook and Rainbow, by their basic nature, not only effectively move the current land in those agencies out of San Diego County, but also open the door to further erosion of San Diego County's control over long-term integrated planning for its water supplies by successive detachments and/or land annexations.

This risk cannot be whitewashed by the applicants saying, "We are the only agencies currently connected to MWD pipes." That may be a true fact, but it is not the relevant question. What is relevant is whether a proposed "free ride" exit from the Water Authority creates an economic incentive for other agencies to exchange the benefits of long-term planning and reliability for a short-term gain. As noted earlier in Section 4, to accurately review such matters would require intimate knowledge of each member agency's system, and actual costs to connect those systems to MWD pipes, none of which has been performed by the applicants or presented to LAFCO.

If nearby lands annex into Fallbrook or Rainbow, those lands would effectively move out of San Diego County and into Eastern and Riverside County for water supply purposes, with a corresponding loss of the rights of San Diego County to control its own future.

C. Representation at Eastern

Currently, both Fallbrook and Rainbow hold seats on the Water Authority Board of Directors. They thus have direct input all into local and regional Water Authority actions that affect them.

In contrast, the applications and Eastern are completely silent as to how Fallbrook and Rainbow ratepayers would be represented at Eastern. Are they to be given Board seats at Eastern, as they have at the Water Authority? Or are the interests of Rainbow and Fallbrook ratepayers to be diluted at Eastern by way of merging them in with large numbers of ratepayers in other portions of Eastern?

Eastern and the applicants must detail for LAFCO and the public precisely how Fallbrook and Rainbow ratepayers will, or will not, have input into decisions at Eastern.

D. Conclusion

In summary, there would be multiple adverse governmental effects caused by detachments and annexations into Eastern. San Diego County will suffer a loss of voting rights at MWD to Eastern in Riverside County, an agency with a long track record of adversity to San Diego County interests. Those rights are statutory under the Metropolitan Water District Act, and thus cannot be altered by LAFCO. The only way the rights could be protected would be by changing the applicable statutes via the Legislature, none of which is contemplated or likely.

The practical effects on land use planning, tax allocation, and governance must also be analyzed for a complete understanding of the governmental impacts of detachment.

Section 6

Service Impacts of Detachment/Annexation

Fallbrook and Rainbow have framed the proposed detachments as simply providing a strategy to achieve a lower cost for the same water. This oversimplification masks the larger service impacts that would result from a detachment, and is misleading. The service-related benefits that Fallbrook and Rainbow receive from Water Authority membership must be accurately compared to the supposed benefits of membership with Eastern, the reliability of the Water Authority's water supplies versus those of MWD via Eastern, the estimated price increases of the Water Authority versus those of MWD supplies via Eastern, and the alleged lack of impacts on the Bay-Delta by increased reliance on MWD.

This section of the Response presents facts in these areas and addresses various related issues. The key points addressed below are these:

- Both Fallbrook and Rainbow use Water Authority supplies and infrastructure, and benefit from the system and services our region has invested and built. The Water Authority also provides additional services to its member agencies to benefit their ratepayers, services that are not matched by Eastern.
- Eastern does not provide the “same water” as the Water Authority; instead, the proposed reorganization would result in Rainbow and Fallbrook trading more reliable water for less reliable water. Annexation into Eastern would result in sole reliance not on Eastern's supplies, but on MWD. MWD has an established history of shortages in droughts, and the Water Authority has had lesser shortages in those same droughts because of diversifying and acquiring more sustainable supplies. The Water Authority's diversified water portfolio is demonstrably more reliable than that of MWD. Additionally, the proposed reorganizations create a new water supply need by new demand on MWD, contrary to the claims made by the applicants and Eastern.
- Emergency access to water is not correctly described in the applications, and by staying with the Water Authority, a more reliable supply of emergency water will be provided.
- The Water Authority was awarded a significant increase in preferential rights at MWD by the Court of Appeal. This gives it a much larger access to MWD's water supply in times of shortage than rights held by Eastern.

Further, the applications do not discuss whether Eastern’s preferential rights at MWD will even be used for the benefit of Fallbrook and Rainbow, at the expense of historic Eastern customers who paid for them.

- Fallbrook and Rainbow are proposing a move that would increase reliance on the Bay-Delta water system, in contravention of the Legislature’s instruction in Water Code Section 85021 and important state policy.

A. Background for a Water Supply Comparison

To make a fair comparison between what Fallbrook and Rainbow receive at the Water Authority, and what they expect at Eastern, one needs to understand precisely what Fallbrook and Rainbow propose. They do not propose becoming full and regular members of Eastern, with access to Eastern’s infrastructure, storage, local supplies, and water rights. Rather, they propose to only pay Eastern \$11 per acre-foot so they can be registered on paper as an Eastern “wholesale member,” thus able to receive imported water solely from MWD via the MWD pipelines that extend into San Diego County. They would in essence go from being a Water Authority customer to a *de facto* new MWD customer.⁷⁶

Because Fallbrook and Rainbow do not propose receiving any benefits at all from Eastern’s storage, local supplies, or water system other than MWD water, Eastern’s own

infrastructure, water storage, local supplies, and water rights will not be accessible by Fallbrook or Rainbow. In the paperwork submitted with the LAFCO applications, Eastern has provided a detailed summary of its water supplies, water rights and water system. However, Eastern’s own non-MWD water portfolio is not relevant for Fallbrook or Rainbow. Eastern notes in its February 12, 2020, Technical Memorandum on page 1 that “Fallbrook and RMWD would remain dependent on the reliability and availability of *Metropolitan* supplies.” (Emphasis added.) Though Eastern notes that its own water supply for its regular retail members is made up of close to 50/50 imported versus local supplies (“For calendar year 2018, approximately 52 percent of EMWD’s retail demand was met with local water supplies, while the remaining 48 percent was met via imported water”; Technical Memorandum,

Because Fallbrook and Rainbow do not propose receiving any benefits at all from Eastern’s storage, local supplies, or water system other than MWD water, Eastern’s own infrastructure, water storage, local supplies, and water rights will not be accessible by Fallbrook or Rainbow.

⁷⁶ Any assertions by MWD that it has no interest in this proceeding would be as hollow as similar claims made by Eastern. The latter gets increased voting rights at MWD under a reorganization (as detailed in Section 5), while MWD would be functionally getting two new customers, because as explained in this Section, if Fallbrook and Rainbow stayed at the Water Authority they would in a few years be receiving almost no MWD water, but by the reorganizations their full water demands would move to MWD. Also, even currently in some months Fallbrook and Rainbow’s needs are met in part by QSA water and not all by MWD water, and thus in some months that demand would shift completely to MWD after reorganization.

p.5), it is clear that for their \$11 per acre-foot⁷⁷ Fallbrook and Rainbow would have no access to Eastern's non-MWD water supplies:

Fallbrook and RMWD are currently being supplied with imported water from Metropolitan's Robert A. Skinner Water Treatment Plant via the Metropolitan/San Diego Aqueduct, and would continue to be supplied with the *same water* by EMWD. Fallbrook and RMWD would remain dependent on the reliability and availability of *Metropolitan* supplies.⁷⁸

Fallbrook and Rainbow's lack of access to Eastern's own water or infrastructure, at least for \$11 per acre-foot, was also made clear by Eastern General Manager Paul Jones, who claimed that Eastern's other members would be unaffected in any manner by Rainbow and Fallbrook joining Eastern: "[W]e have the resources to serve them as wholesale water customers without any impacts or cost to our existing customers." Fallbrook and Rainbow joint press release of March 19, 2020, at Appendix Exhibit "35."

This is not surprising, since for \$11 per acre-foot Eastern proposes to give Fallbrook and Rainbow absolutely nothing but access to MWD water. What Eastern and the applicants are not being straightforward about to LAFCO or the public is that for further access to Eastern's actual developed assets, the applicant agencies would have to pay much more than the \$11 per acre-foot price. For example, if one wants to move water in Eastern's system, one must pay \$736.33 per acre-foot to do so.⁷⁹ That is the cost for compensating Eastern for use of its infrastructure.⁸⁰

Therefore, there is no point in comparing Eastern's water system and supplies to the Water Authority's, because what Fallbrook and Rainbow propose to do is move from a diversified water portfolio at the Water Authority that acquires water from three main sources (QSA, Carlsbad seawater desalination, and MWD), to 100% reliance on MWD as a "paper" member of Eastern.⁸¹ The proper comparison is between what Fallbrook and Rainbow receive as *Water Authority member agencies* versus what they would receive relying solely on *MWD* for imported water.

⁷⁷Rainbow Supplemental Information for Application, page 11, "an additional \$11/AF for EMWD (*See* Figure 4)," and Figure 4 on page 12. *See also* Fallbrook application, page 24: "FPUD is charged by SDCWA over \$450/AF on top of the MWD price versus an additional \$11/AF if the water was supplied by EMWD (*See* Figure 9)."

⁷⁸ Eastern Technical Memorandum, pp. 9-10. (Emphasis added.)

⁷⁹ Appendix, Exhibit "36" (Eastern wheeling charge found at page 34).

⁸⁰ The Water Authority's 2020 transportation rate, in contrast, is set at \$132 per acre-foot.

⁸¹ Therefore, statements such as those in Rainbow's Resolution for Application to LAFCO that "Eastern . . . [was] awarded a \$36.3 million grant from the State Water Resources Control Board which will improve groundwater quality and supplies and reduce its reliance on imported water supplies" is not relevant as to Rainbow or Fallbrook's supplies, because the applicants will have access to nothing but MWD water for their \$11 per acre-foot cost.

B. Supply and Benefits Comparisons

The Fallbrook and Rainbow detachment applications to San Diego LAFCO are filled with assertions pertaining to supply reliability issues and claims that the Fallbrook and Rainbow service areas do not benefit from the Water Authority's infrastructure or supply system. They also assert that they will be getting the same exact water from MWD (via Eastern), with no possible impact at all on the environmentally sensitive Bay Delta. These claims are demonstrably false.

1. *Supply: Water Authority v. MWD*

The Water Authority's supplies provide more water reliability than the imported supplies Eastern purchases and delivers from MWD. By detaching from the Water Authority and moving onto dependence on direct MWD deliveries for all their imported water, the Fallbrook and Rainbow service areas are clearly moving from a more reliable to a less reliable system and water supply. This was even admitted by Fallbrook's own expert report submitted to the Fallbrook Board in December 2019 on the agency's vote to seek detachment: "[T]he above reliability analysis supports that *the overall range in reliability is better under SDCWA . . .*"⁸² (Emphasis added.) That report also aptly summarized the result of the Water Authority's supply diversification as creating a more dependable water supply than relying solely on MWD supplies:

Because of the success of supply diversification and the significant reduction in water demand through conservation, SDCWA's dependence on imported water from MWD has been reduced and the reliability of its service area has substantially *improved* in the last two droughts as compared to the maximum of 32% combined agricultural and non-agricultural shortages SDCWA experienced in 1991-1992 prior to the region's diversification program. *The more reliable local supplies available to MWD member agencies, the less reliant they are on MWD imported water supplies in a drought induced shortage, and the **higher** the agencies level of reliability.* (Emphasis added.)⁸³

Indeed, Mr. Ken Weinberg, the very expert relied on by both Fallbrook and Rainbow in their applications⁸⁴, has again recently admitted that the Water Authority's reliability is superior to that of MWD:

As evidenced in the last two droughts where cutbacks were initiated by MWD (2010-2011 and 2015-2016) *SDCWA reliability was greater and cutbacks*

⁸²Fallbrook Public Utility District "Plan for Providing Service December 2019," at pp.43-44 of pdf application. It also states, "Although MWD planning documents anticipate that it will not experience cutbacks if its assumptions on local and imported supplies are fulfilled, they have experienced two rounds of cutbacks within the last 10 years."

⁸³*Id.*, pp. 97-98.

⁸⁴ See: Fallbrook application pages 57 *et seq.*; and Rainbow Supplemental Information for Application, page 17.

substantially lower than the MWD regional cutback level. Although MWD maximum cutback levels during both those droughts was 15%, SDCWA because of its more reliable supplies, provided greater reliability to its member agencies M&I customers during both shortages.⁸⁵

Detachment by Rainbow and Fallbrook from the Water Authority and annexing to Eastern will place ratepayers in those two districts in a more vulnerable water supply reliability position on two fronts: 1) buying less reliable imported water supplies from MWD, thus being potentially exposed to more severe cutbacks during droughts and other extreme events such as earthquakes; and 2) opting customers out of the more reliable regional delivery system that the Water Authority’s Emergency and Carryover Storage Project (“ESP”) provides.

The reliability of the Water Authority’s supplies is greater than MWD’s supplies due to the Water Authority’s development of, and investments in, drought-proof seawater desalination and through acquisition of its higher-priority right Colorado River water through the Imperial Irrigation District (“IID”) transfer and the canal lining project water via the Quantification Settlement Agreement (“QSA”).

Detachment from the Water Authority would expose Rainbow and Fallbrook customers to greater mandatory cutbacks during times of supply shortage from MWD. Currently, only those agricultural customers in Rainbow and Fallbrook enrolled in the Water Authority’s Transitional Special Agricultural Water Rate program (“TSAWR”)⁸⁶ would be subject to a full MWD supply cutback, should MWD go into supply shortage allocation. By investing in its own more reliable regional supplies, the Water Authority has placed a “reliability buffer” between the cutbacks it receives from MWD during its supply allocations and the shortages, if any, Water Authority customers incur.

Detachment from the Water Authority would expose Rainbow and Fallbrook customers to greater mandatory cutbacks during times of supply shortage from MWD.

MWD generally gets about 60% of its water from the State Water Project and about 40% from the Colorado River.⁸⁷ The former is tied directly into the Bay-Delta waterway system in Northern California. This is an environmentally sensitive water system that is subject to extensive state laws as to limiting usage discussed further below.⁸⁸ Largely due to vast storage capacity differences, MWD’s imported supply from the State Water Project is at

⁸⁵ Appendix, Exhibit “9,” page 3. (Emphases added.)

⁸⁶ A program being made permanent this year by the Water Authority Board.

⁸⁷ Appendix, Exhibit “37,” is a spreadsheet based on MWD data cited on the spreadsheet showing MWD water supplies from 2000-2019.

⁸⁸ See, for example, Water Code section 85021, and published appellate case law such as the *Delta Stewardship Council Cases*, 48 Cal.App.5th 1014 (2020).

great risk to shortages due to hydrologic droughts from climate change, groundwater subsidence, delivery constraints due to environmental restrictions, along with the potential catastrophic failure of the aging Bay-Delta system on which it relies.

The applications and Eastern also fail to disclose to LAFCO that MWD's other supply source, imported Colorado River water, is also less reliable than that of the Water Authority because a large portion of it has a lower-priority right than that of the Water Authority's IID transfer water. The Colorado River is apportioned on a priority system, and Priority 3(a) (held by IID and the Coachella Valley Water District) was agreed in the Federal QSA Agreement to include the Water Authority's QSA water.⁸⁹ Though MWD also has a much smaller portion of Priority 3(a) entitlement under the Federal QSA via an older conservation agreement with IID⁹⁰, the majority of MWD's Colorado River water is imported under MWD's Priority 4 (or lower) water rights – which therefore is of lower priority than that of IID, and thus of the Water Authority. Because of this, MWD's imported Priority 4 (and below) water from the Colorado River would be subject to supply cutbacks during a drought well before the Water Authority's more reliable IID transfer water supply, which is Priority 3(a) water.⁹¹

This is a critical element completely ignored by the applications: MWD relies on uncertain State Water Project supplies, and lower priority Colorado River water, while the Water Authority relies on higher priority Colorado River water. The Water Authority's member agencies are far better insulated from shortages than any entities which rely solely on MWD for their water supply.

Additionally, the Water Authority's service area has available up to 56,000 acre-fee per year of desalinated water from the Pacific Ocean via the Carlsbad Desalination Plant. This water is not dependent on rainfall or snowpack and is thus not subject to drought risks. MWD has no similar desalinated seawater available to it.

LAFCO should not just listen to the parties' rhetoric on this issue. Instead, it can simply look at actual history, which clearly shows that MWD has been subject to major water supply shortages because of both its reliance on the uncertain Bay-Delta and lower priority Colorado River water, and this is without any major long-term shutdowns of the Bay-Delta system.

For example, in the 1990s MWD issued water cutbacks to the Water Authority of over 30 percent for municipal and industrial water users and 90 percent cutbacks for agricultural

⁸⁹ See Appendix, Exhibit "8," Federal QSA page 13 (Exhibit B table) which shows the IID transfer and canal lining water both included in priority 3(a) water.

⁹⁰ *Id.*

⁹¹ Attached to the Appendix as Exhibit "8" are certain key QSA agreements such as the IID/Water Authority transfer agreement, the federal QSA agreement, the non-federal QSA agreement, and the Exchange Agreement. There are over 30 contracts that make up the entirety of QSA-related agreements, and though they are not all provided in the Appendix further contracts can of course be provided if necessary.

water users.⁹² Even in recent years MWD has been subject to significant water shortages on the State Water Project, affecting service to its member agencies. Table 6.1 below shows the mandatory supply cutbacks implemented by MWD during the two drought periods since 2007 and the resulting lesser Water Authority shortages in deliveries to its customers. Through the successful implementation of the Water Authority’s supply diversification strategy, the Water Authority has drastically improved its supply reliability since the 1990s when its sole source of supply was through imported water purchased from MWD. Prior to the diversification plan, whatever shortage cutbacks MWD imposed, the Water Authority sustained the same shortage. *Fallbrook and Rainbow now propose regressing to exactly the same position the Water Authority held in the 1990s: complete reliance on the MWD supply for their imported water.* While the MWD cutbacks have been smaller as a percentage since the 1990s, they have also become far more difficult for water agencies to achieve due to the fact the region has been so successful in its conservation planning and implementation (“demand hardening”).

Table 6.1: MWD Drought Allocation Summary for the 2000s

Drought Period	MWD Allocation/Cutback of M&I Deliveries to SDCWA	SDCWA M&I Supply Shortage
2009-2011	13%	8%
2015-2016	15%	<1%

If Rainbow and Fallbrook had detached earlier, customers within their service areas would have faced the full mandatory MWD supply cutbacks as shown in the MWD column in Table 6.1 above. Customers within the Water Authority’s service area, however, continued to see greatly reduced or nearly no cutbacks due to the investments the San Diego region’s ratepayers made in supply reliability projects and programs. As shown in Table 6.1, for the last drought ending in 2016, the Water Authority had enough water to meet more than 99% of the water supply demands of Rainbow, Fallbrook, and its other 22 member agencies.

It should be noted that in earlier years MWD cutbacks were even higher; indeed, in 1990-91, *MWD cutbacks to agricultural customers were as high as 90%*. Appendix Exhibit “38” provides a detailed summary of the historical MWD supply cutbacks from the 1990s through the most recent drought of 2015-2016. If there are major curtailments of the State Water Project or shortages on the Colorado River, drastic cutbacks may again be imposed by MWD. If such occurs, Fallbrook and Rainbow customers would have no access to MWD supplies, and no access to Eastern’s supplies without massive costs far in excess of Water Authority rates. Eastern has no way to get its own water to Rainbow and Fallbrook without transporting its own water through its water infrastructure and then through MWD’s pipes. This would require Fallbrook and Rainbow customers to pay the \$700+ per acre-foot Eastern transportation rate, the MWD wheeling charges of about \$500 per acre-foot, plus

⁹²If not for the “March Miracle” rains it received, MWD would have implemented a higher cutback level – a 90% reduction for agricultural deliveries. See Section 2 for further detail.

whatever Eastern might charge for its supply. Rainbow and Fallbrook get none of this for their \$11 per acre-foot administrative fee to Eastern.

This critical reality needs to be fully understood by LAFCO, and the public: Rainbow and Fallbrook are seeking to controvert all water planning in this region for the past 30 years and move back onto 100% reliance on MWD. This is contrary to the sound water policies called for by SANDAG, the County Grand Jury, San Diego County, and all local governmental agencies and leaders for three decades.

Additionally, Fallbrook and Rainbow’s ability to reduce demands in the future may be limited due to the “demand hardening” that has occurred as a result of the state’s 2016 drought emergency, coupled with the upcoming implementation of the state’s water conservation legislation SB 606 and AB 1668. As water use efficiency improves, calling for customers to voluntarily conserve water use during a drought ahead of a potential supply shortage will become increasingly more difficult, and will likely result in cutbacks from less reliable MWD supplies.

This critical reality needs to be fully understood by LAFCO, and the public: Rainbow and Fallbrook are seeking to controvert all water planning in this region for the past 30 years and move back onto 100% reliance on MWD. This is contrary to the sound water policies called for by SANDAG, the County Grand Jury, San Diego County, and all local governmental agencies and leaders for three decades.

A few other matters should be pointed out as to reliability. First, one successful outcome of the Water

Authority’s litigation with MWD is the correction of MWD’s preferential rights calculation to the higher method claimed by the Water Authority, which was upheld by the California Court of Appeal.⁹³ The Water Authority’s preferential right to MWD water increased by more than five percent to 25.32 percent as of June 2019.

MWD’s preferential rights are important, because a member agency, subject to certain water emergency situations, can always assert their preferential rights. They are provided for in the MWD Act, Section 135, and entitle the Water Authority to receive 25.32% of MWD’s available water.⁹⁴ In contrast, Eastern’s most recent preferential right was determined to be only 3.71%.⁹⁵ Further, MWD has made clear that it does not believe that preferential rights are transferrable to Fallbrook and Rainbow.⁹⁶

With no preferential rights to MWD water, Fallbrook and Rainbow would be at the complete mercy of Eastern to redistribute its preferential rights, which its historic

⁹³See *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* 12 Cal.App.5th 1124 1155-1156 (2017).

⁹⁴ The numbers change annually, as MWD calculates certain payment data.

⁹⁵ Preferential rights do not move if detachment occurs, as they are based on certain historic payments.

⁹⁶ Appendix, Exhibit “39.”

customers have paid for, to Fallbrook and Eastern. This is noted below in Section 8 as an important question LAFCO should ask about. LAFCO needs to know whether Eastern's MWD preferential rights will be shared with Fallbrook and Rainbow, or whether Fallbrook and Rainbow will have no preferential right to MWD water at Eastern. This is something all ratepayers in all service areas should be informed about so there is no confusion later when the next drought comes along.

Eastern's technical memorandum submitted with the applications goes to great lengths to walk through MWD's Water Supply Allocation Plan ("WSAP"), MWD's reliability, and Eastern's own developed supplies. However, it fails to disclose any of the following important facts to LAFCO and the public:

- Eastern's own modeling shows that MWD's imported water supply will not be fully reliable until 2036. Attached to the Appendix as Exhibit "56" is a 2018 presentation from Eastern's staff to its Board about water supply uncertainties. In this presentation, at page 13, staff states that from 2020-2040 between one and eight years is a "dry" year that will cause a supply disruption of "Loss of 10 – 20% of imported water supplies from MWD." (Emphasis added.) It then states that MWD supplies will not be fully reliable until 2036 when (it was assumed) the former California Water Fix Project would be complete: "MWD fully reliable after 2036 (estimated completion of CA Water Fix)." Emphasis added. The Eastern staff analysis is proven correct by the above-cited actual facts about MWD cutbacks in past years. The simple truth, as admitted by Eastern here, is that MWD imported supplies are not fully reliable – yet that is contrary to the claim now made by Rainbow, Fallbrook, and Eastern to LAFCO – despite history, and Eastern's own 2018 analysis.
- MWD itself has told its Board and the public that its supplies are not fully reliable without a major fix to the Bay-Delta problem. MWD told its Board, when asking for a Bay-Delta spending vote in 2018: "The lack of progress on California WaterFix leaves Metropolitan's service area at severe risk from decreasing reliability and increasing disruptions in the delivery of vital SWP supplies, including from additional regulatory restrictions on operations of the existing SWP facilities in the south Delta."⁹⁷ MWD cannot have it both ways: telling LAFCO and others how reliable its water supply is when that's the story it wants to tell, and then turning around and admitting to state regulators and funding entities that its reliability is seriously degraded until a State Water Project fix is complete.
- Eastern completely ignores statutory MWD preferential rights in its memorandum. Indeed, these important water rights are not even mentioned by Eastern. Yet, they are statutory vested water rights. MWD Act, Section

⁹⁷ Appendix, Exhibit "51," page 7 of 10. (Emphasis added.)

135. As stated by the Court of Appeal in *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* 12 Cal.App.5th 1124, at page 1155: “The statute grants member agencies ‘a preferential right’ to Metropolitan-supplied water proportionate to the member’s past payments toward Metropolitan’s capital and operating costs, excluding payments for the ‘purchase of water.’ [Citations.]” Though Eastern chose not to address preferential rights in its memorandum to LAFCO, Eastern cared enough about the issue to ask MWD whether preferential rights would move from the Water Authority to Eastern along with the Fallbrook/Rainbow transfer, and MWD replied that they would not. The MWD General Manager’s words are important for LAFCO to consider here:

“Point seven in your letter asked about transferring to Eastern a portion of SDCWA’s preferential rights. Preferential rights are not transferable. Preferential rights are rights of Metropolitan member agencies to purchase available water. Under MWD Act § 135, each member agency’s preferential rights are calculated based on the member agency’s relevant payments to Metropolitan and amounts paid by the member agency to Metropolitan on tax assessments. Preferential rights are not based on transactions between a member agency and its customers. Metropolitan would continue to follow the statutory preferential rights calculation going forward and the proposed reorganization would not affect the methodology.”⁹⁸

- Eastern explains its own non-MWD supplies in its Technical Memorandum. However, one has to carefully read the application documents to see that there is no current -- nor planned for \$11 per acre-foot – access to any such supplies for Fallbrook and Rainbow. Eastern’s independent supplies are irrelevant for purposes of this LAFCO review, except to note that Eastern, like the Water Authority, has felt it prudent to diversify its water supply portfolio, and its genuine customers receive the benefits from those investments.
- The Eastern Technical Memorandum implies that if MWD were to impose the MWD WSAP plan, Fallbrook and Rainbow would not sustain MWD supply cutbacks because Eastern would have excess MWD supplies to share (Tables 2-7). But this is a false narrative, as Eastern’s analysis relies on actual demands experienced by Eastern after a statewide call to reduce demand. In other words, the only reason the analysis showed Eastern might have excess MWD supplies to share with Fallbrook and Rainbow is because Eastern’s current ratepayers cut back their water use in response to the statewide call to reduce demand. There is no assurance that the same reductions may be achieved in the future, nor have Eastern’s existing ratepayers agreed to forego their access to MWD supplies in order to keep Fallbrook and Rainbow whole. It is important that Eastern inform its own ratepayers and LAFCO

⁹⁸Appendix Exhibit “39,” correspondence between Eastern and MWD General Manager Jeff Kightlinger.

whether Fallbrook and Rainbow will have access to Eastern’s MWD supplies via preferential rights paid for by Eastern ratepayers.

In conclusion, it is clear that the Water Authority’s diversified water supply portfolio is superior in reliability to that of MWD. This has been proven true in the last two droughts, and it is also proven by admissions made by Rainbow and Fallbrook’s own expert, by Eastern, and by MWD. By choosing to move onto sole reliance on MWD for their imported water, Fallbrook and Rainbow would be losing access to a higher reliability water supply, the benefit of the Water Authority’s carryover storage and a host of other benefits LAFCO has recognized that the Water Authority provides as a regional agency. Further, as addressed next, certain specific emergency water supply issues are glossed over by the applications.

By choosing to move onto sole reliance on MWD for their imported water, Fallbrook and Rainbow would be losing access to a higher reliability water supply, the benefit of the Water Authority’s carryover storage and a host of other benefits LAFCO has recognized that the Water Authority provides as a regional agency

2. *Supply: Emergency Water*

Following a catastrophic earthquake on the Elsinore Fault, Fallbrook and Rainbow may be without critical MWD imported water for an extended period. Such an earthquake could sever the pipelines delivering water to those agencies. This important issue is not accurately addressed in the application documents.

All five MWD pipelines, serving either untreated or treated water from Skinner Lake and the Skinner Water Treatment Plant respectively, cross the Elsinore Fault that lies within Eastern’s service area to the north of the San Diego County boundary and the Water Authority’s service area. The Elsinore Fault is an active fault zone with the potential to cause significant damage to the conveyance pipelines and cause extended outages of imported deliveries to the San Diego region, including to Fallbrook and Rainbow. Similarly, extended periods of extreme drought can significantly impact the ability to deliver imported water supplied by MWD based on allocations and priority rights.

The Fallbrook and Rainbow detachment applications both reference an unproduced MWD emergency planning document (“Emergency Response Plan”) describing MWD’s intent to complete repairs on facilities that cross the Elsinore Fault within 14 days of a seismic event and restore service to at least the 75% level. So far, the Water Authority has been unable to obtain or review this referenced document, as it was not included in the Fallbrook and Rainbow plan of service submittals. Even if MWD did publish such a claim, the Water Authority is very concerned that a 14-day repair time significantly understates the time and resources that would be required to repair the large-diameter pipelines damaged by an earthquake on the Elsinore Fault at a time when many other pipe breaks could also occur in the region competing for the same resources for repair.

The Water Authority’s conservative repair time estimate is two months, minimum. This duration accounts for the time to stabilize the system, evaluate the damage, identify a repair plan, procure materials and equipment, construct the work, reenergize the line and flush the system for water quality. The Water Authority’s estimate is conservative. It would far exceed the 14-day outage assumption included in the plan of service provided by the two agencies in their applications. In addition, the Water Authority’s repair estimate of two months does not return all five pipelines back into service. It is just the amount of time needed to begin restoring service. Depending on which pipeline is repaired first, there could be additional time before the treated water pipelines are restored and service could be resumed to Fallbrook and Rainbow.

The Water Authority believes that the MWD-cited 14-day recovery plan may be only to restore service *north* of the Elsinore Fault by isolating that system using temporary bulkheads and operating at a reduced capacity to serve Eastern and other service connections north of the fault. As Rainbow and Fallbrook do not have access to these deliveries based on the plan of service presented in their applications, the 14-day recovery plan may be misapplied to deliveries occurring south of the Elsinore Fault. LAFCO should require the applicants and MWD to produce this claimed MWD documentation of 14 days to repair the pipeline crossing the Elsinore Fault as well as the plan(s) to repair other pipe breaks in the region during the same time after a catastrophic earthquake. LAFCO cannot accurately consider water service in an emergency without full access to all MWD planning documents related to repairs after a major earthquake on the Elsinore Fault.

Eastern’s local supplies are not being made available to Rainbow or Fallbrook in the reorganization proposals and would not be made available unless Rainbow and Fallbrook bought into/invested in Eastern’s system, which is not being contemplated as part of the proposed plans of service.

Eastern’s own service connections for imported water deliveries from MWD are all located north of the Elsinore Fault. While damage to MWD’s pipelines crossing the fault may temporarily impact Eastern’s ability to receive imported water, an earthquake on the Elsinore Fault could completely sever Rainbow and Fallbrook’s access to MWD supply deliveries. Significant additional facilities would need to be developed to deliver Eastern’s own local water supplies south to Rainbow and Fallbrook customers, and no such plans are specified in the reorganization applications, nor is their cost included. Eastern’s local supplies are not being made available to Rainbow or Fallbrook in the reorganization proposals and would not be made available unless Rainbow and Fallbrook bought into/invested in Eastern’s system, which is not being contemplated as part of the proposed plans of service.

In contrast, the Water Authority’s Emergency Storage Project (ESP) and Carryover Storage Project (CSP) were developed to address both a catastrophic event and extreme drought risk factors. These projects consist of a system of interconnected reservoirs, pipelines and pumping stations designed to make water available throughout the San Diego region if

imported water deliveries are interrupted. Project description documents are Exhibits “40” and “41” in the Appendix.

For an emergency event following a catastrophic earthquake, the ESP considers both a two-month complete outage of imported water following an earthquake on the Elsinore Fault, and a six-month period of limited imported water deliveries resulting from earthquakes on the San Andreas or San Jacinto faults farther north. In both events, the ESP provides at least a 75% level of service to its member agencies. This could be increased to a 100% level of service should there be enough water in storage at the time the event occurred and is authorized by the Water Authority’s Board of Directors.

The Fallbrook and Rainbow detachment applications both make incorrect statements concerning the Water Authority’s current ability to provide emergency service to their customers following a catastrophic earthquake. For example, here is the same untrue statement made in both application packets at page 19 (Fallbrook application) and at page 23 (Rainbow Plan for Service):

Although [Rainbow/Fallbrook] has been paying for the ESP through its water rates for 20 years, it is not able to receive ESP service due to a yet to be constructed pump station and appurtenant facilities by SDCWA.

However, 60% of Rainbow’s annual demands and 15% of Fallbrook’s annual demands can currently be served in an ESP event with existing Water Authority infrastructure. ESP deliveries would be sourced from treated water tanks at the Water Authority’s Twin Oaks Valley Water Treatment Plant (TOVWTP) providing a blend of ESP water treated at TOVWTP and product water from the Carlsbad Desalination Plant. From the TOVWTP tanks, water can be delivered north and east to existing Rainbow and Fallbrook service connections off the Water Authority’s aqueduct system. This is even without the completion of the planned ESP pumping system. Therefore, the claim that Fallbrook and Rainbow have been paying for a system that provides them no current benefit is not correct.

From the TOVWTP tanks, water can be delivered north and east to existing Rainbow and Fallbrook service connections off the Water Authority’s aqueduct system.

Further, the full build-out of the Water Authority’s ESP includes new facilities to serve areas within both the Fallbrook and Rainbow service areas that cannot currently be met by deliveries from the tanks at TOVWTP. The North County ESP Pump Station Project -- which would serve the entirety of both Fallbrook and Rainbow service areas in an ESP event -- was approved by the Water Authority Board and is included in the current Capital Improvement Program and budget. Principles of Understanding for the design and construction of the facilities required to complete the project were executed with Fallbrook and Rainbow in May 2017 and August 2017, respectively. Funding agreements to initiate formal design were also drafted for both agencies but have been placed on hold solely as a

result of Rainbow and Fallbrook filing applications to detach. Had the detachment action not been initiated, these facilities were on track to be completed and put in service by 2023.

Rainbow makes further speculative statements concerning the condition and operation of Water Authority pipelines crossing Moosa Creek in its submittal to LAFCO:

It should be noted however, that the pipeline that connects RMWD to SDCWA's emergency storage in the south have failed repeatedly over the last 10 years where they cross Moosa Creek and are currently being operated under special operating conditions due to the condition of those pipelines. Any significant seismic event that would rupture pipelines to the north would nearly certainly damage SDCWA's pipelines at Moosa Creek.

Though this particular localized area has been problematic and will likely require further improvements (Rainbow itself has also had to perform significant construction on its own system in the area), the Water Authority's system is proactively maintained and monitored as part of its Asset Management Program. This program includes a real-time condition monitoring system, a rigorous inspection program, and a proactive maintenance plan that exceeds industry best-practices. While the pipeline that would supply Rainbow during an ESP event (Pipeline 4) has been proactively shutdown, inspected, and repaired periodically over the last 10 years to preserve pipeline integrity, it is speculative at best to state that it would "nearly certainly damage" in a seismic event, particularly from a fault rupture zone that is approximately 15 miles away. Rainbow provides no information or backup data to support this statement. The pipeline is currently operating at full service, without restriction.

Rainbow makes an additional claim that it "...maintains robust storage in our system to handle loss of water from imported sources." Rainbow Plan for Service, p. 23. Rainbow references its Morro Reservoir with a total capacity of 450 acre-feet (AF) and that it could provide "weeks" of service in an emergency condition to its entire service area if imported deliveries were to cease.⁹⁹ *Id.* Based on historical data, this has two obvious flaws. First, Rainbow's recent summer demands are about 460 acre-feet/week. Second, Morro Reservoir is typically operated at around half capacity and only on a few occasions historically been above 80% full.¹⁰⁰ These facts result in only days-worth of storage for Rainbow's service area, not weeks as stated in its application. If Rainbow were to operate the Morro Reservoir at higher volumes in case of an emergency, they would potentially experience water quality degradation, particularly during the high demand summer months and with higher blends of Bay-Delta water, which could require additional treatment and costs to maintain.

⁹⁹It is unclear in Rainbow's application what is meant by "emergency condition" service – would Rainbow provide "weeks" of emergency service to meet its customers' indoor use only? What about outdoor agricultural use? Rainbow needs to clarify these assumptions in their plan of service, as a large share of Rainbow's water use is for outdoor/agricultural purposes.

¹⁰⁰See Appendix Exhibit "42," 2020-08-03_RMWD Reservoir Storage History.

Also, even if Morro Reservoir has a full capacity at the time a catastrophic earthquake strikes, the safety of the dam and likely damages to the appurtenant facilities will make the stored water partially available or not available at all for an extended period of time after the earthquake. Rainbow provides no analysis on the readiness of their reservoir system for such emergency use. Unlike Morro Reservoir, the Water Authority's ESP & CSP dams, pump stations and associated facilities are designed, built, and periodically tested to stand ready for delivering emergency water to its member agencies after a strong earthquake.

Finally, Rainbow references an MOU that Fallbrook is entering into with Rainbow. Rainbow suggests that Fallbrook would provide Rainbow a portion of Fallbrook's local water from its Santa Margarita River Conjunctive Use Project (SMRCUP) during an emergency. No quantities or terms of use are provided in the application, so the benefit cannot be fully analyzed. In fact, the Plan for Service in Fallbrook's application states at page 20:

... the SMRCUP is planned to produce approximately 9 acre-feet per day on average and can meet all the daily indoor health and safety of FPUD residents for the 14 day expected repair period.

There certainly does not seem to be much room for Rainbow customers in this statement. Should an outage last longer than 14 days, as anticipated by the Water Authority estimates, the reliability of these local supply sources to meet Rainbow's service area needs is questionable at best.

To summarize, to safeguard against an extended water delivery outage, the Water Authority has invested \$1.5 billion in its Emergency and Carryover Storage Project, giving it the ability to deliver stored and local supplies, both untreated and treated, throughout its service area via a series of reservoirs, pipelines and pump stations for an outage duration of at least two months. By detaching from the Water Authority, should a catastrophic event occur on the Elsinore Fault that severs or impairs MWD's pipelines, all customers within the Rainbow and Fallbrook service areas would be cut off from receiving any MWD supplies, potentially for months while repairs are made.

Rainbow and Fallbrook customers post-detachment would be reliant on questionable and highly uncertain emergency services and outage duration assumptions, coupled with reduced or perhaps no service to their agriculture customers during the emergency.

Though the Rainbow and Fallbrook areas can currently receive water from the Water Authority in portions of their service areas even if MWD's pipes were severed, the completion of construction of the Water Authority's North County ESP pump station -- halted only because of the detachment requests -- would permit the Water Authority to maintain robust emergency services to Fallbrook and Rainbow customers that would provide at least a 75% level of service to residential and industrial customers, and a 50% level of service to agricultural customers with a very high degree of certainty, for a minimum of two months -- with no water from the MWD pipes at all. In contrast, Rainbow

and Fallbrook customers post-detachment would be reliant on questionable and highly uncertain emergency services and outage duration assumptions, coupled with reduced or perhaps no service to their agriculture customers during the emergency.

3. *Services Fallbrook and Rainbow Receive from the Water Authority*

Fallbrook and Rainbow have been liberally sprinkling their advertising and media quotes with claims that their agencies get no benefits from the Water Authority or its diversified water supply portfolio and infrastructure system. Consider the following exemplar quotes (all emphases added):

The District [Fallbrook] is in a unique location in the county and *it actually doesn't use SDCWA infrastructure . . .*¹⁰¹

We would get the *same water* from Metropolitan through the same pipes and facilities . . .¹⁰²

Fallbrook, Rainbow and Bonsall residents have been paying for decades to *fund services and infrastructure to support other agencies further south in San Diego*.¹⁰³

"Fallbrook does not use the CWA's facilities or pipelines," said Ken Endter, President of the Fallbrook Board of Directors.¹⁰⁴

The fact is, *the water we receive from MWD is as reliable or more reliable than the water CWA provides*¹⁰⁵

The above assertions are not true. First, as to reliability, as detailed above moving from the Water Authority's diversified water portfolio to MWD's lower priority Colorado River water and State Water Project water would be moving from more reliable water to less reliable water. Also, the current Water Authority ESP system can serve 60% of Rainbow's annual demands and 15% of Fallbrook's annual demands, and the carryover system mitigates any MWD supply cutbacks to them during an extended drought as discussed above.

Second, it is not correct that Fallbrook and Rainbow do not use Water Authority infrastructure. Here is a table showing the facilities through which Rainbow and Fallbrook receive water service, and it shows that the Water Authority owns extensive infrastructure is used to service both member agencies.

¹⁰¹Fallbrook FAQ called "Here's why we want to leave the Water Authority" found at Appendix Exhibit "43."

¹⁰²*Id.*

¹⁰³Rainbow web page entitled, "Taking Bold Action To Keep Rates From Climbing" at Appendix Exhibit "44."

¹⁰⁴Fallbrook and Rainbow joint press release of March 19, 2020. Appendix, Exhibit "35."

¹⁰⁵*Id.*, quote by RMWD board member Hayden Hamilton from joint press release.

Table 6.2: Facilities Currently Servicing Fallbrook and Rainbow

Item No.	FCF ID	Description	Aqueduct Pipeline(s) Connected to	Location Relative to Delivery Point(s)	Pipeline TOS Owner	FCF Owner	Flow Meter Capacity (cfs)	Water Delivery	Current Status
Fallbrook Public Utility District									
1	DLZ1	DeLuz 1 FCF	PPL4	North	MWD	MWD***	20	Treated	Active
2	FB3	Fallbrook 3 FCF	PPL 1 (via OC 16" Pipe) & PPL2	North	MWD	SDCWA	30	Treated	Active
3	FB4	Fallbrook 4 FCF	PPL 3* & 4	South	SDCWA	SDCWA	22	Treated	Active
4	FB5	Fallbrook 5 FCF	PPL 3*	North	MWD	SDCWA	28	Untreated	NIS
5	FB6	Fallbrook 6 FCF	PPL 4	North	MWD	MWD***	30	Treated	Active
Rainbow Municipal Water District									
6	RB1	Rainbow 1 FCF	PPL 1 & 2	North	MWD	SDCWA	22	Treated	Active
7	RB3	Rainbow 3 FCF	PPL 3* & 4	South	SDCWA	SDCWA	22	Treated	Active
8	RB4	Rainbow 4 FCF	PPL 3*	North	MWD	SDCWA	22	Untreated	NIS
9	RB5	Rainbow 5 FCF	PPL 3*	South	SDCWA	SDCWA	22	Untreated	NIS
10	RB6	Rainbow 6 FCF	PPL 3* & 4	South	SDCWA	SDCWA	22	Treated	Active
11	RB7	Rainbow 7 FCF	PPL 4	South	SDCWA	SDCWA	40	Treated	Active
12	RB8	Rainbow 8 FCF	PPL 4	North	MWD	MWD**	25	Treated	Active
13	RB9	Rainbow 9 FCF	PPL 4	North	MWD	MWD**	20	Treated	Active
14	RB10	Rainbow 10 FCF	PPL 1 & 2	North	MWD	SDCWA	22	Treated	Active
15	RB11	Rainbow 11 FCF	PPL 4	South	SDCWA	SDCWA	30	Treated	Active
16	RB12	Rainbow 12 FCF	NCDP*	South	SDCWA	SDCWA	20	Treated	NIS

Legend:

FCF = Flow Control Facility

TOS = Turnout Structure (Isolation Valve/Vault Structure)
 CFS = Flow Rate in Cubic Feet per Second
 NIS = Not In Service (Inactive or Sealed with Blind Flanges)
 MWD = Metropolitan Water District of South California
 SDCWA = San Diego County Water Authority
 PPL = Pipeline
 NCDP = North County Distribution Pipeline

NOTE: * Turnout piping to the FCF is currently sealed with a blind flange.
 ** SCWA control flow and owns a separate control valve vault downstream of MWD’s flow meter structure.
 *** Fallbrook controls flow downstream of MWD’s flow meter structure.

Additionally, Water Authority service records show that it has been providing water through the Water Authority infrastructure that is listed above in all recent years. Table 6.3 shows such deliveries:

Table 6.3: Annual Treated Water Delivery to Fallbrook and Rainbow (2015-2019) In Acre-Feet (SDCWA Facilities Only)

FCF ID	2015	2016	2017	2018	2019	2015-2019 Total	2015-2019 Average
FB3	2,759	2,410	1,631	1,344	2,297	10,774	2,155
FB4	890	1,181	1,405	1,416	746	5,653	1,131
RB1	2,715	2,435	2,454	3,305	2,578	13,419	2,684
RB3	3,686	4,080	3,443	4,487	2,456	18,098	3,620
RB6	2,301	2,530	2,646	1,991	1,978	11,436	2,287
RB7	1,721	2,686	2,995	3,744	1,428	12,383	2,477
RB10	981	1,089	979	914	318	4,254	851
RB11	1,332	1,177	1,099	718	635	4,919	984

Indeed, Rainbow noted in its LAFCO application papers that it will immediately have to spend about \$15 million to build infrastructure so it can provide water service to the southern area of its district that is currently served from Water Authority facilities (emphases added):

The remaining challenge is serving a few higher elevation areas in RMWD’s southern service area during brief peak summertime demand periods. RMWD has done extensive studies to identify the best methods to serve these areas. The results of these studies determined that improvement projects that are included in previous Water Master Plans and other Capital Improvement Project forecasts would need to be moved up in time should the detachment be approved. . . . *The cost estimates for these projects range from \$10-\$15 Million.* While all of these

projects were in the planning stages and slated for construction over the next ten years, *detachment would necessitate them to move forward more quickly*.¹⁰⁶

Even Rainbow’s own expert Ken Weinberg stated that Rainbow will need to find some way to provide 60% of its water service without the County Water Authority infrastructure:

It is uncertain how RMWD envisions taking delivery of the roughly 60% of its water currently delivered through the SDCWA owned pipeline. Potential physical improvements and modifications to RMWD distribution system may be under consideration which would add cost to the detachment and annexation to EMWD. If physical improvements are too costly a wheeling arrangement could be explored with SDCWA as part of the terms and conditions of detachment and annexation.¹⁰⁷

Third, both Fallbrook and Rainbow benefit from the expenditures that member agencies have supported for increasing emergency and carryover storage facilities, and development of a diversified water portfolio with QSA and desalinated seawater. The attempt by Fallbrook and Rainbow management to now try and create a picture that somehow their residents have been paying for such items for many years with no benefits to their local service areas is not only directly misleading, but also inconsistent with planning reports both agencies have filed with the California Department of Water Resources in order to comply with state law and establish eligibility for state bond funding and other benefits.

Fallbrook and Rainbow have also claimed in some materials that they do not get benefits from QSA water. This is also not true. For example, Fallbrook and Rainbow are currently being delivered QSA water. Here is a table showing recent QSA deliveries to them:

Table 6.4: 2020 QSA Deliveries Fallbrook/Rainbow

Month	Total SDCWA Purchase of MWD Treated Water at Skinner (AF)	Total SDCWA QSA Treated Water at Skinner (AF)	Total Fallbrook/Rainbow SDCWA Deliveries Treated Water (AF)	Maximum Possible MWD Treated Water delivered by SDCWA to Rainbow and Fallbrook (AF)	Minimum Possible QSA Treated Water delivered by SDCWA to Rainbow and Fallbrook (AF)
January 2020	150	3,593	956	150	806
Feb. 2020	526	3,532	1,274	526	748
March 2020	244	2,624	784	244	540
April 2020	731	4,341	1,208	731	477
May 2020	1,360	6,491	2,066	1,360	706

¹⁰⁶Rainbow Supplemental Information submitted with LAFCO application, pp.5-6.

¹⁰⁷ Appendix, Exhibit "9," page 10.

June 2020	214	4,241	2,275	214	2,061
July 2020	322	7,739	3,341	322	3,019

Finally, in terms of non-water delivery services, Fallbrook and Rainbow have benefited from Water Authority services that will not be provided by Eastern for \$11 an acre-foot. Services that the Water Authority provides to its member agencies include access to the Water Authority’s direct services contracts with regulatory agencies, such as the San Diego Regional Board and U.S. Army Corps of Engineers, which allows member agencies to expedite environmental permits to move forward on schedule with important construction, operation and maintenance projects. The Water Authority also provides member agency staff members with environmental training on topics that include CEQA/NEPA, wildlife agency permitting, and field training.

In the area of water use efficiency and conservation, the Water Authority develops and administers regional conservation programs on behalf of, and for the benefit of, the member agencies. These programs include a regional large landscape incentive program for contractors, landscape classes and design assistance for residential customers, and a water-energy program that installs water saving devices in partnership with San Diego Gas & Electric. The regional approach to conservation provides water efficiency options to member agencies that do not have the staff or financial resources to administer individual programs. The Water Authority continues to evaluate potential resources needed to support to the member agencies as the targets required by the new conservation legislation (Senate Bill 606 and Assembly Bill 1668) are developed and implemented.

In addition, the Water Authority tracks regulatory issues across the different state agencies and works closely with its member agencies to respond as appropriate. Support includes: sending member agency general managers and key staff regular monthly communication on new, developing, or potential state/federal regulations; coordinate with member agencies to advocate and prepare comments to the state on new conservation legislation, water quality, environmental, and other regulations; and, when appropriate, the Water Authority collects signatures from the member agencies for a regional response to proposed regulations that will impact retail agencies.

Fallbrook and Rainbow ratepayers have had the advantage of these Water Authority services for decades, services that will not be provided by Eastern. For example, here is a table of a few programs they used in recent years:

Table 6.5

Fallbrook Public Utility District				
Conservation Program Benefits 2010-2020				
SDCWA Programs Only				
	AWMP	WS Checkups	Turf Rebates	Total
# customers	129	271	18	147
# acres	989.85	128.14	0.81	1118.79
\$ in services	\$110,000	\$48,092	\$55,908	\$214,000

Rainbow Municipal Water District				
Conservation Program Benefits 2010-2020				
SDCWA Programs Only				
	AWMP	WS Checkups	Turf Rebates	Total
# customers	217	304	19	236
# acres	2454.33	222.27	0.65	2677.25
\$ in services	\$174,000	\$59,582	\$50,755	\$284,338

The governmental support services Fallbrook and Rainbow ratepayers receive will be materially changing not just from a water supplier perspective, but also from the vantage point of other services provided by the Water Authority as the regional planning and wholesale water agency.

4. *Detachment/Annexation Moves to Greater Reliance on Bay-Delta, and Creates a New Water Supply Demand*

Before getting into the particulars of the differences between MWD and the Water Authority on their Bay-Delta water use, it is important for LAFCO to consider the opening words of the Third Appellate District in the very recent *Delta Stewardship Council Cases*, 48 Cal.App.5th 1014, 1027 (2020), because they provide a useful Bay-Delta factual context:

This case concerns the management of the Sacramento-San Joaquin Delta (Delta), a critically important natural resource for California and the nation (Wat. Code, § 85002). It is the most valuable estuary and wetland ecosystem on the west coast of North and South America, and is the hub of California’s water delivery system. (§ 85002.) It is endowed with many invaluable and unique resources of major statewide significance, including highly productive agriculture, recreational assets, fisheries, and wildlife environment. (§ 12981, subs. (a), (b).) In addition, the economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of California residents and more than two million acres of highly productive farmland receive water exported from the Delta watershed. (§ 85004, subd. (a).) Water diverted from the Delta watershed has made the Central Valley the fruit basket and salad bowl of the nation. Unfortunately, the Delta is not doing so well. After years of slow decline, the Delta’s watery ecosystem has gone critical.

In California, the conflicts over water are legendary. At the heart of California’s water troubles are scarcity of supply and competing demands—in particular, conflict with the water needs of the ecosystem. This dynamic of conflict characterizes the essential debate over management of the Delta. Due to ecosystem decline and increasing demand for limited water resources, management of the Delta has been the subject of considerable, and

oftentimes intense, review, planning, and litigation. In 2009, after decades of conflict and unsuccessful efforts to comprehensively address the many problems and challenges facing the Delta, the Legislature found and declared that the “Delta watershed and California’s water infrastructure are in crisis and existing Delta policies are not sustainable,” and that “[r]esolving the crisis requires fundamental reorganization of the state’s management of Delta watershed resources.” (§ 85001, subd. (a).)¹⁰⁸

To try and avoid the Bay-Delta issue, Eastern and the applicants claim that the “same water” would be delivered no matter the wholesaler, and that there could thus be no effect at all on the Bay-Delta by the reorganizations. An example of such a misstatement is this comment made by Eastern in the Technical Memorandum it drafted to assist Fallbrook and Rainbow in moving to Riverside County: “The de-annexation of Fallbrook and RMWD from the SDCWA would not result in Metropolitan, as a State Water Contractor, increasing its reliance on the Sacramento-San Joaquin Delta (Delta) since Fallbrook and RMWD would continue to be supplied from Metropolitan’s Robert A. Skinner Water Treatment Plant.”¹⁰⁹

Such statements are not correct. First, this statement about the Skinner plant is inapt, because that plant treats water from both the State Water Project (i.e., the Bay-Delta) and the Colorado River, including some Water Authority QSA supplies.¹¹⁰ More fundamentally, it ignores the bigger picture, *which is the overall increased demand on MWD as a supplier.*

What needs to be understood is that Fallbrook and Rainbow in this proceeding are considering changing water suppliers, and thus the critical question that needs to be asked is, “Are there any differences between these suppliers that may increase water supply demand on MWD and affect the Bay-Delta?” The answer to that question is “Yes,” because: (a) MWD has a higher reliance on the Bay-Delta than the Water Authority, and thus moving to sole reliance on MWD creates a corresponding increase of demand on the Bay-Delta; and (b) the Water Authority has a set contract amount of water it must take from the QSA, detachments or not. It is using some of that water to service Fallbrook and Rainbow even now in some months, and it projects using even less MWD water in the future. If there were detachments, in every month that the Water Authority would have been using QSA water for Fallbrook/Rainbow that demand would shift to MWD. This would create a water demand that would otherwise not occur, and thus add pressure to the Bay-Delta.

Eastern’s Technical Memorandum asserts there will be no increased reliance on the Bay-Delta, but this is not true. Dr. Rodney Smith of Stratecon, a noted California water expert, reviewed Eastern’s positions and states:

¹⁰⁸Attached to the Appendix as Exhibits “45” through “48” are some key State planning documents related to the Bay-Delta, the Delta Plan, and the State Water Project.

¹⁰⁹Eastern Technical Memorandum, p.1.

¹¹⁰Skinner supplies treated water to the Western Municipal Water District, Eastern, and the Water Authority.

[I]n my professional opinion, I conclude that Eastern’s Technical Memorandum is incorrect. By detaching from the Water Authority, Fallbrook and Rainbow would walk away from the Water Authority’s water portfolio that is significantly less reliant on the Bay Delta than the water portfolio of the Metropolitan Water District of Southern California (“Metropolitan”). The detachment will increase Southern California’s reliance on Northern California and the environmentally sensitive Bay Delta for water supplies, particularly in the years to come when the Water Authority’s purchases from Metropolitan are scheduled to be significantly reduced.

Dr. Smith’s complete report on the increased demand on Bay-Delta water use that would be caused by the proposed reorganizations is found at Appendix, Exhibit “49.”

The Water Authority presently has a supply portfolio breakdown of about 35% of its water sales coming from water it buys from MWD, and 65% of its water sales not from MWD (and thus not from the Bay-Delta). In contrast, MWD has a current breakdown of about 40% water from the Colorado River and 60% from the State Water Project.¹¹¹ This means that for every 1,000 acre-feet MWD sells, about 600 acre-feet comes from the Bay-Delta¹¹², while about 400 acre-feet comes from the Colorado River. In contrast, for every 1,000 acre-feet the Water Authority sells, about 210 acre-feet currently comes from the Bay-Delta.¹¹³ Because the Water Authority expects by 2035 to be at about 2% MWD water,¹¹⁴ *this would drop the Water Authority’s Bay-Delta water use to close to zero.*

By looking at overall system demand, one can clearly see the increased reliance on the Bay-Delta that detachment, and annexation into Eastern, will promote. The Water Authority generally sells around 30,000 acre-feet per year to Rainbow and Fallbrook. When the Water Authority is at near zero demand on MWD, as expected in coming years (and in some months already), it will also be at near zero use of MWD’s Bay-Delta water supply. Thus, if Fallbrook and Rainbow were still Water Authority member agencies, they too would be receiving near zero Bay-Delta water. However, if that 30,000 acre-feet of demand from Fallbrook/Rainbow is shifted to MWD via detachment/annexation as proposed, MWD must now service that increased demand – and MWD’s water comes in significant part from the Bay-Delta. Even if MWD were to take 30,000 acre-feet of its limited Colorado River supply and provide it to Rainbow and Fallbrook (via Eastern), that is 30,000 acre-feet of MWD’s Colorado River water that is now not available to another MWD customer, which would be supplied by Bay-Delta water, thus still increasing demand on the Bay-Delta.

¹¹¹Based on MWD’s Urban Water Management Plan and Integrated Resources Plan data. See Appendix Exhibit “37,” which is a spreadsheet showing the pertinent data.

¹¹²At roughly 60/40% Bay-Delta/Colorado River supply reliance.

¹¹³At 35% reliance on MWD supply, which itself is 60% Bay-Delta water, thus making Water Authority sales roughly 21% Bay-Delta water as a general matter, or 210 AF per 1,000 AF. It should be noted that MWD changes mixtures delivered to the Water Authority, so these are rough averages only.

¹¹⁴ Appendix, Exhibit “17,” page 4.

MWD and Eastern may try to negate these facts by saying that because the Water Authority receives its QSA water from an Exchange Agreement with MWD, the Water Authority may always physically get Bay-Delta water, because MWD has the right to blend the water as it sees fit to the Water Authority. However, that ignores the fundamental fact, which is this: MWD will always be delivering the QSA amount to the Water Authority, with or without detachments (because there are contract obligations on the QSA); but when the Water Authority moves to de minimis MWD purchases, as projected, or does not order much MWD water in given months due to demand and hydrology (as happens now), it will (absent detachment) be servicing Fallbrook and Rainbow from those non-MWD purchases, with zero extra demand on MWD. In contrast, if the proposed reorganizations were to occur, the Water Authority will still be getting that same QSA amount, but now Fallbrook and Rainbow must be serviced by MWD, thus requiring extra demand on MWD. That extra demand on MWD equates to new water supply demand and extra exports from the Bay-Delta.

The “no effect on the Bay-Delta” argument ignores the fact that even presently there are months in which the Water Authority buys very limited MWD water and provides Fallbrook and Rainbow with QSA water, and those months would be very different in a detachment world

where the demand in those months would instead fall on MWD to provide all the water from its own supplies, and not from QSA water (which volume does not reduce). In other words, one cannot just look at annual amounts, but must also review monthly needs and deliveries. See Table 6.4 above.¹¹⁵

The adjacent chart shows the most

	2015 UWMP	Interim Reset
Demand Forecast	694,431	632,418
Water Authority Supplies		
IID Water Transfer	200,000	200,000
AAC and CC Lining Projects	80,200	80,200
Seawater Desalination	50,000	50,000
Water Authority Total	330,200	330,200
Member Agency Supplies¹		
Surface Water	51,180	51,180
Water Recycling	57,044	57,044
Seawater Desalination	22,100	22,100
Potable Reuse	109,399	109,399
Brackish Groundwater	12,500	12,500
Groundwater	23,770	23,770
San Luis Rey (SLR) Supplemental Supply ²	16,000	16,000
Member Agency Total	291,993	291,993
MWD Supplies	72,238	10,225

¹ Includes 2015 UWMP member agency Verifiable + Additional Planned local supplies.

² New member agency supply type: San Luis Rey - Indian Water Authority 2003 Quantification Settlement Agreement “supplemental” water wheeled to the City of Escondido and Vista Irrigation District.

¹¹⁵ To show how annual volumes can be deceptive, assume that Fallbrook/Rainbow need 30,000 acre-feet in a year, and the Water Authority buys 40,000 acre-feet of MWD (i.e., non-QSA) water that same year. Clearly, Fallbrook/Rainbow used no QSA water, right? Wrong. What if the 40,000 acre-feet the Water Authority bought from MWD all occurred in the hot summer months of June-September, and it bought zero MWD water in January-May and October-December? That means in those months whatever demands there were from Fallbrook/Rainbow were being met by the Water Authority’s QSA water. The annual volumes simply do not

recent estimates for the Water Authority's needs in 2035, as presented in the 2018 Demand Reset.¹¹⁶ One can see that in 2035 the Water Authority projects buying only about 10,000 acre-feet from MWD.

Fallbrook and Rainbow's Urban Water Management Plans project their needs at about 30,000 acre-feet per year in 2035.¹¹⁷ Thus, if they were detached, that extra 20,000 acre-feet would have to come from MWD, thus creating additional demand on MWD and therefore the Bay-Delta.

The overarching question is not to follow molecules of water, but to look at *what happens when overall demand is increased on MWD*, which could happen in any given month if the reorganizations occurred, and will increase in the future. It is true that water for Fallbrook and Rainbow would normally still be coming down through MWD pipes whether they stay at the Water Authority or not. Yet, that is also true for most of the Water Authority's water, which also comes through MWD's pipes. However, a majority of the Water Authority water in those pipes comes via the QSA, which is Colorado River water and which is wheeled through MWD facilities by an Exchange Agreement.¹¹⁸ QSA water currently serves Fallbrook and Rainbow even now, before the Water Authority's reliance on MWD supplies drops further, as noted above. As the Water Authority moves off MWD supplies going forward, Fallbrook and Rainbow's service of QSA water from the Water Authority would increase over time, with a corresponding decrease on demand for MWD's Bay-Delta water – if they did not pursue detachment.

Why does this matter? Because the Legislature has declared it the policy of this State to move off reliance on the Bay-Delta, not onto it, in Water Code Section 85021:

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.

Therefore, the proposed reorganizations sought by Fallbrook and Rainbow directly contravene California's Bay-Delta policy because they increase risk of demand on the Bay-Delta. This is not just a CEQA issue (though it certainly affects CEQA review), but is a *water*

tell the whole story. Additionally, estimates for a wet year are about 5-8% different than for a normal year, so actual hydrology -- in given months or given years -- can result in numbers different than those estimated.

¹¹⁶ Appendix, Exhibit "17."

¹¹⁷ Appendix, Exhibit 2 "26" and "27," pages 17 (13,047 acre-feet for Fallbrook) and page 14 (20,900 for Rainbow), respectively.

¹¹⁸ MWD receives the QSA water from the Water Authority at the Colorado River and then delivers a like amount of water to the Water Authority, i.e., an "exchange."

supply mandate from the State Legislature – one that the Water Authority has followed. LAFCO cannot just ignore this issue, nor can it just place it into a CEQA category and try to assert an exemption.

The simple and fundamental facts are these: the reorganizations propose moving from a wholesaler which soon will be using almost zero water from the Bay-Delta and would service Fallbrook and Rainbow with high-priority Colorado River water, to a wholesaler that relies on the Bay-Delta for about 60% of its water and which would have to service the extra demand from Fallbrook and Rainbow. Eastern, Fallbrook, and Rainbow cannot continue to hide or obfuscate these important facts from LAFCO and the public.

C. Rate Comparisons

The biggest purported selling point for the applicants moving out of San Diego County, featured in their public advertising, is a claimed substantial decrease in water rates. The proposals are, however, are substantially flawed and incomplete in regard to these issues. A complete review needs to be done at LAFCO, because it is likely that detached Fallbrook and Rainbow ratepayers will actually pay higher water rates than customers of the Water Authority.

A complete review needs to be done at LAFCO, because it is likely that detached Fallbrook and Rainbow ratepayers will actually pay higher water rates than customers of the Water Authority.

First, as noted above, the correct comparison is Water Authority rates compared to MWD rates, because the MWD rates are what Fallbrook and Rainbow will be paying (plus the \$11 per acre-foot processing fee from Eastern). But Fallbrook and Rainbow have provided no substantive information about projected rate increases at MWD over time or reasonable planning horizon, which the Water Authority believes is at least the 20-year timeline required for urban water management planning.

A review of MWD’s current biennial budget will show that it has not included in its 10-year rate forecast (MWD does not have a long range finance plan) the cost of the very water supply projects it will rely upon for supply reliability, namely, the Bay Delta tunnel (now estimated at \$15.9 billion) and regional recycled water project (estimated \$8 billion). These are not small projects or immaterial numbers. The costs of these projects must be recovered in MWD’s future water rates, which Fallbrook and Rainbow will pay, but which may not be similarly paid by Water Authority ratepayers if MWD supply purchases have declined as projected and the Water Authority customers are receiving QSA water.¹¹⁹

¹¹⁹ If the Water Authority continues to pay MWD for use of the Colorado River Aqueduct via the Exchange Agreement and does not build its own conveyance for Colorado River water, MWD may try to charge some portion of these costs as transportation charges. However, most or all should be charged to supply, and any attempt to stack them onto transportation charges would be subject to challenge. For example, the recycled water project should be completely a supply charge that would be paid for by Fallbrook/Rainbow ratepayers after detachment, but not be charged to the Water Authority’s Exchange Agreement customers, because as

These kinds of major rate implications are, without any justification, completely ignored in the applications.

In regards to recent history, here are some tables that show the general percentage of various rate increases for both MWD and the Water Authority for 2015 through 2020:

Table 6.6: Melded Supply Rates

Year Range	Average MWD Melded Tier 1 Supply	Water Authority Melded M&I Supply
2015-20 Average Annual Increase	5.65%	3.9%

Table 2: Transportation Rates

Year Range	MWD Wheeling Rate	Water Authority Transportation Rate
2015-20 Average Annual Increase	5.23%	5.5%

Table 3: Treatment Rates

Year Range	MWD Treatment Surcharge	Water Authority Melded M&I Treatment Rate
2015-20 Average Increase	-1.08%	0.14%

One can see from the above tables that the average annual rate increases during this time period are fairly close. However, this is expected to change going forward because while the Water Authority has already included in its rate projections the cost of the investments necessary to ensure a reliable water supply, MWD has not. This is a critical rate factor ignored in the applications.

LAFCO’s expert consultants, in conjunction with all parties, must provide full and accurate MWD rate projections to support the claimed rate savings over time, including the cost of the water supplies MWD will be relying on to provide service. It will be very important for LAFCO consultants to carefully review all of the water resource and financial assumptions upon which MWD’s projections are based, as well as the Water Authority’s.

the Court of Appeal stated: “Metropolitan’s payments to member agencies to fund water conservation programs is not a cost of using the conveyance system to wheel water.” *San Diego County Water Authority v. Metropolitan Water Dist. Of Southern California* 12 Cal.App.5th 1124, 1150 (2017).

Even Fallbrook and Rainbow expert Ken Weinberg stated that both Fallbrook and Rainbow expect MWD and Eastern rates to increase at a faster clip than rates at the Water Authority:

FPUD and RMWD . . . included a projection of Full Service M&I rates where SDCWA escalates at 3% annually, MWD at 4% and EMWD at 3.5%.¹²⁰

However, as noted above, rate projections at MWD currently do not include the cost of protecting the water supplies it relies upon. Fallbrook and Rainbow are comparing the delta between current Water Authority and MWD wholesale rates. Currently, there is a gap, because the Water Authority has already secured its reliable investments for the future, as detailed above, but MWD has yet to make those investments or include those costs in its rate projections.

Fallbrook and Rainbow also have not been accurate in describing even the current rate differential. They compare the MWD rate (+\$11 per acre-foot for Eastern's book entry) against the full published Water Authority rate. *But they don't pay the full Water Authority rate.* Rather, they pay a melded rate due to the participation of some of their customers in the Water Authority TSAWR agricultural rate discount program.¹²¹ In 2018, for example, the Water Authority's full treated water rate was \$1,309 per acre-foot, but Rainbow only paid an average of \$1,171 per acre-foot for treated water, while Fallbrook paid an average of \$1,158 per acre-foot for treated water. Purchases of MWD treated water in 2018 plus the \$11 per acre-foot Eastern fee would have been \$1,026 per acre-foot. The special agricultural rate of the Water Authority that year was \$1,110 per acre-foot, thus an \$84 per acre-foot differential.

Therefore, though it is true that there is currently a cost delta between the comparable MWD charges (for a less reliable supply) and what the proposed detaching agencies pay the Water Authority (for a highly reliable supply), it is not as large as claimed by Fallbrook and Rainbow in their promotional materials—they inaccurately and unfairly compare what they *would* pay today at Eastern for MWD water (+\$11 per acre-foot), with what they *do not pay* (full rates on all water) at the Water Authority. Further, MWD's rates will have to increase dramatically with planned major programs, a fact omitted from the applications.

Finally, as noted earlier, comparing Water Authority rates to those of Eastern are not a fair comparison, because the Water Authority provides more services than Eastern does to wholesale customers, and more reliability than MWD.

¹²⁰ Appendix, Exhibit "9," page 14.

¹²¹This program is not a subsidy, but a lower rate for certain agricultural users who opt in to pay less for a reduction in water reliability during an extended drought or after a catastrophic earthquake.

Section 7

Infrastructure Impacts of Detachment/Annexation

There are two categories of infrastructure issues which must be considered in the proposed detachment/annexation: infrastructure issues at the Water Authority, and infrastructure issues in Fallbrook and Rainbow.

In regards to Fallbrook and Rainbow, the Water Authority in Section 8 comments on the infrastructure gaps in the applications which LAFCO should require be explained fully by Fallbrook and Rainbow. Once those areas are explained, both LAFCO, the parties, and the public will be in a position to address overall infrastructure issues in the detaching agencies.

As to the engineering infrastructure issues at the Water Authority, they are covered in detail in this Section. The preliminary estimated costs of detachment related to engineering and construction are at least \$2 million.

This section is supported by detailed appendices that are referenced below. Those Appendices are located at Exhibit "50" in the Response Appendix. This section is a preliminary report from the engineering and operations staff of the Water Authority. Further refinement will be necessary once all facts regarding the potential detachments are known.

Executive Summary

Purpose Fallbrook and Rainbow are seeking detachment from the Water Authority. Water Authority staff was asked to analyze and report on what the impact would be to the Water Authority's infrastructure system if (a) the Water Authority is not serving Fallbrook; (b) the Water Authority is not serving Rainbow; and/or (c) the Water Authority is not serving either. Staff have prepared this report as a section of the Response to answer these questions.

Facilities A total of sixteen flow control facilities are identified, with five serving Fallbrook and eleven serving Rainbow. Among them, twelve facilities are in operation (active) while another four are not in service at this time. All facilities are located in the northern part of San Diego County in an area between the county line and City of Escondido. All sixteen facilities were built between the 1950's and 1990's and connected to Pipelines 1 through 4. The diameter of the connection pipes inside these facilities range from 12 to 30 inches.

Water Delivery All active facilities deliver treated water with a total rated meter capacity of 130 and 267 cubic feet per second (cfs) for Fallbrook and Rainbow, respectively. Over the past five years (2015 –2019), Fallbrook and Rainbow received approximately 46,900 and 85,200 acre-feet of treated water, respectively, through the active facilities. The annual average delivery over the same period was approximately 9,400 and 17,000 acre-feet for Fallbrook and Rainbow, respectively. Fallbrook and Rainbow currently do not purchase any untreated water from the Water Authority.

Ownership and Operation The Water Authority owns twelve of these facilities and the Metropolitan Water District of Southern California (MWD) owns four of them. In general, the Water Authority operates and maintains its facilities and MWD operates and maintains theirs. The Water Authority, MWD, Fallbrook and Rainbow, however, share the O&M responsibilities for some of the facilities. Most of them are within the Water Authority’s and MWD’s easement or fee properties; however, some of them are situated on the land owned by MWD or member agencies or private parties. Due to time constraints, the land ownership information is not included in this report but may be provided if needed.

Environmental and Permitting All facilities are located either on vacant land or inside fenced areas. Meaningful changes to the existing environments at these Water Authority facilities are not expected regardless of mitigation measures proposed in this report. Temporary impacts, however, may exist to the environment during the proposed construction (demolition) for the Water Authority-owned facilities. The temporary impacts, if they exist, are expected to be insignificant or mitigatable if proper measures are implemented as required. The demolition work proposed in this report is expected to require a categorical exemption permit which the Water Authority typically obtains for maintenance of the existing facilities. This report does not address what changes or impacts Fallbrook and/or Rainbow work may require.

Detachment Impact and Mitigation The potential detachment will have impacts on the Water Authority’s facility operations and maintenance. If the Water Authority won’t serve Fallbrook and/or Rainbow in the future, the Water Authority-owned facilities currently serving Fallbrook and Rainbow are expected to be permanently decommissioned (disconnected and demolished) from the Water Authority aqueduct pipelines to ensure a safe and reliable water delivery to the remaining member agencies of the Water Authority. Alternatives of temporary isolation from Water Authority pipelines and “do-nothing” (maintaining the status quo) are also provided in the report for comparison only; they are not acceptable to Water Authority due to continuing deterioration of equipment, materials and operational hazards posed to the Water Authority pipelines and remaining member agencies in the long run.

For the MWD-owned facilities, no physical impact to the Water Authority pipelines are expected at this time and therefore, no modifications are proposed for those facilities.

Construction Cost of Mitigation Staff performed a Class 4 or 5 level construction cost estimate for permanently decommissioning (demolishing) twelve Water Authority-owned

facilities currently serving Fallbrook and/or Rainbow to ensure a safe and reliable operation of the Water Authority's remaining aqueduct system. Specifically,

(a) if the Water Authority is not serving Fallbrook, permanent decommission of three facilities will be required. The estimated construction cost for the demolition would be \$416,000.

(b) If the Water Authority is not serving Rainbow, permanent decommission of seven facilities and four turnout vault structures will be required. The estimated construction cost for the demolition would be \$1,552,000.

(c) If the Water Authority is not serving either Fallbrook or Rainbow, all ten facilities plus four turnout structures would be required for demolition and the estimated construction cost would be \$1,968,000.

The cost estimates are expressed in August 2020 dollars. Escalations are applied when appropriate. A 30% contingency is applied to the Class 4/5 level estimate. Also included in the cost estimates are costs for engineering design, contract administration, construction management, capitalized overhead cost allocation, and pipeline shutdowns.

Not included in the above cost estimates are the costs associated with right-of-way and environmental that are expected to be minimal based on the information currently available.

Other Considerations For the MWD-owned facilities, there won't be any construction cost as no physical modifications proposed for those facilities. Staff, however, proposed to transfer the Water Authority related O&M responsibilities to Fallbrook and Rainbow or their future parent agency. The cost associated with the transferring is expected to be relatively minor when compared to the construction costs. The transferring costs are not quantified at this time due to lack of data, but they may be studied in the future if detachment progresses.

The detachment would have other impacts on the Water Authority's operations including water delivery during and after a strong earthquake, maintaining treated water quality in aqueduct pipelines, changes to the supervisory control and data acquisition (SCADA) system, geographical information system (GIS) databases, record drawing databases, etc. These impacts are briefly discussed but no cost estimates provided in this report; they may need additional studies.

1. Introduction

1.1. Purpose of the Study

The purpose of this study is to review the effects of detachment on the Water Authority infrastructure system and provide general discussions and recommendations if applicable.

1.2. Scope of the Study

The scope of the study is to identify the water delivery facilities that are owned and operated by the Water Authority for Fallbrook and Rainbow, and to define the physical and technical modifications to the Water Authority's system that will be required to operate the future system (after the detachment) in the simplest and most cost-effective way while maintaining the reliability for the remaining Water Authority's system. Specifically, the study will assess each and every identified facility and its operation pertaining to the potential detachment, propose physical and operational modifications (impact mitigation measures), and perform cost estimates for making the proposed changes.

The study, however, does not include any discussion of potential impacts of the detachment other than the facility operations and modifications. Additionally, this study does not address the cost savings that would be associated with any possible permanent decision not to build planned emergency water facilities to serve Rainbow and/or Fallbrook. Nor does this study deal with what might be the reimbursement costs that might be required of Rainbow and/or Fallbrook if there were a turnover of certain Water Authority facilities to them.

2. Data Collection

Staff has gathered the relevant facilities and operations information from Water Authority current databases. Staff also visited all facilities discussed in this report. Corrections to record drawings were made, if necessary, to reflect the current condition based on the field visits.

2.1. Facilities and Ownership

A total of sixteen flow control facilities (FCFs), also known as service connections, have been identified that currently serve Fallbrook and Rainbow. Twelve of them are in operation while the other four are not in service at this time. All facilities are located in north San Diego County in an area between the county line and City of Escondido, specifically north of the Water Authority's Twin Oaks Valley Water Treatment Plant (Figure 1).

The facility identification (ID), name, pipeline connection, ownership, rated capacity, and current operating status are summarized in Table 7.1. Refer to Response Appendix Exhibit "50," Appendix A for additional information on each facility.



Figure 7.1 – Facility Location Map

Table 7.1: Facilities Currently Servicing Fallbrook and Rainbow

Item No.	FCF ID	Description	Aqueduct Pipeline(s) Connected To	Location Relative to Delivery Point(s)	Pipeline TOS Owner	FCF Owner	Flow Meter Capacity (cfs)	Water Delivery	Current Status
Fallbrook Public Utility District									
1	DLZ1	DeLuz 1 FCF	PPL 4	North	MWD	MWD***	20	Treated	Active
2	FB3	Fallbrook 3 FCF	PPL 1 (via OC 16" Pipe) & PPL2	North	MWD	SDCWA	30	Treated	Active
3	FB4	Fallbrook 4 FCF	PPL 3* & 4	South	SDCWA	SDCWA	22	Treated	Active
4	FB5	Fallbrook 5 FCF	PPL 3*	North	MWD	SDCWA	28	Untreated	NIS
5	FB6	Fallbrook 6 FCF	PPL 4	North	MWD	MWD***	30	Treated	Active
Rainbow Municipal Water District									
6	RB1	Rainbow 1 FCF	PPL 1 & 2	North	MWD	SDCWA	22	Treated	Active
7	RB3	Rainbow 3 FCF	PPL 3* & 4	South	SDCWA	SDCWA	22	Treated	Active
8	RB4	Rainbow 4 FCF	PPL 3*	North	MWD	SDCWA	22	Untreated	NIS
9	RB5	Rainbow 5 FCF	PPL 3*	South	SDCWA	SDCWA	22	Untreated	NIS
10	RB6	Rainbow 6 FCF	PPL 3* & 4	South	SDCWA	SDCWA	22	Treated	Active
11	RB7	Rainbow 7 FCF	PPL 4	South	SDCWA	SDCWA	40	Treated	Active
12	RB8	Rainbow 8 FCF	PPL 4	North	MWD	MWD**	25	Treated	Active
13	RB9	Rainbow 9 FCF	PPL 4	North	MWD	MWD**	20	Treated	Active
14	RB10	Rainbow 10 FCF	PPL 1 & 2	North	MWD	SDCWA	22	Treated	Active
15	RB11	Rainbow 11 FCF	PPL 4	South	SDCWA	SDCWA	30	Treated	Active
16	RB12	Rainbow 12 FCF	NCDP*	South	SDCWA	SDCWA	20	Treated	NIS

Legend:

FCF = Flow Control Facility (aka. Service Connection) TOS = Turnout Structure (Isolation Valve Vault/Structure)
 CFS = Flow Rate in Cubic Feet per Second NIS = Not In Service (i.e. Inactive or Sealed with Blind Flanges) MWD = Metropolitan Water District of South California SDCWA = San Diego County Water Authority
 PPL = Pipeline NCDP = North County Distribution Pipeline

NOTES: * Turnout piping to the FCF is currently sealed with a blind flange.

** SDCWA controls flow and owns a separate control valve vault downstream of MWD's flow meter structure.

*** Fallbrook controls flow downstream of MWD's flow meter structure.

All sixteen FCFs were built between the 1950's and 1990's, connecting to Pipelines 1 through 4. Fallbrook and Rainbow do not have any connections from Pipeline 5.

Four facilities (DLZ1, FB6, RB8, and RB9) are located north of the Delivery Point(s) and are owned by MWD. At RB8 and RB9, the Water Authority owns separate control valve structures downstream from MWD's facilities.

Five facilities (FB3, FB5, RB1, RB4, and RB10) are located north of the Delivery Point(s) and co-owned by the Water Authority and MWD. MWD owns the turnout structures (TOS) and the aqueduct pipeline(s), while the Water Authority owns additional isolation valve vaults, the FCF buildings, valves, piping and ancillary components within the vaults and buildings. The remaining seven facilities (FB4, RB3, RB5, RB6, RB7, RB11 and RB12) are located south side of the Delivery Point(s) and are completely owned by the Water Authority.¹²²

For the purpose of this study, four facilities (DLZ1, FB6, RB8, and RB9) are referred to as the "MWD- owned facilities" and the other twelve facilities (FB3, FB4, FB5, RB1, RB3, RB4, RB5, RB6, RB7, RB10, RB11 and RB12) are referred to as the "Water Authority-owned facilities" or "WA-owned facilities" that are used interchangeably in this report.

Physical modifications will be required at the Water Authority-owned facilities to ensure safe and reliable operations of the remaining portion of the Water Authority's aqueduct system. Details of these modifications are presented in Section 4 of this report.

2.1.1. Typical Facility and Layout

A typical FCF contains the following civil, mechanical, structural, electrical and instrumentation components:

- Above-ground building
- Underground concrete vault(s)
- Pipe outlets (turnouts) from the aqueduct pipeline(s)
- Isolation valves, control valve, air vacuum/release valves
- Venturi flow meter
- Piping and couplings
- Water quality sampling device (manual or automated)
- Electrical service, control, communication, and card access panels
- Other equipment (e.g. cellular antenna, security camera, fencing and gates, etc.)

¹²²Fallbrook has issued public relations material claiming that it does not use any Water Authority infrastructure. This is incorrect, as it uses Water Authority's FB4 FCF and other flow control valve structures.

A typical turnout contains a concrete vault, piping, and isolation valve(s) or blind flanges if the connection is currently not in service.

Figures 7.2 and 7.3 show typical large and small-medium sized FCFs. Figures 7.4 and 7.5 show typical piping, valves, and other equipment inside the facilities. Figure 7.6 shows a turnout that is not in service and is isolated with a blind flange (sometimes on the top of a plug valve). Record drawings available for these facilities are included in Response Appendix Exhibit “50,” Appendix B.



Figure 7.2 – Typical Flow Control Facility Building (Large Size)



Figure 7.3 – Typical Flow Control Facility Building (Small-Medium Size)



Figure 7.4 – Typical Piping, Valves and Equipment inside FCF (Large Size)



Figure 7.5 – Typical Piping, Valves and Equipment inside FCF (Small-Medium Size)



Figure 7.6 – Typical Service Connection/Outlet Nozzle (Blind Flanged as Shown)

2.2. Agency Agreement

Staff has researched the document database and found no agency agreements that exist between the Water Authority and Fallbrook for their FCF connections except for an agreement between the Water Authority and MWD for FB6. For Rainbow, only agreements for RB11 and RB12 were found since they were constructed in the mid-1990's. For most FCFs built prior to 1985, the Water Authority did not typically have member agency agreements prepared for the construction of the new facility, as this was not a Water Authority's practice at that time.

A few historic Board letters were found in the document database referring to the sizes of some of the Fallbrook and Rainbow facilities; however, the letters do not contain the comprehensive terms and conditions found in the agency agreements the Water Authority prepares today.

2.3. Water Delivery and Operation

Currently, Fallbrook and Rainbow purchase only treated water from the Water Authority. Fallbrook receives all of its water from the MWD's Skinner Water Treatment Plant (WTP), which can -- and does -- process both MWD supply purchases and QSA water. Rainbow receives approximately two-thirds of its water from the Skinner WTP and the remaining one-third from a blend of the Twin Oaks Valley WTP and Claude "Bud" Lewis Carlsbad Desalination Plant.

Fallbrook and Rainbow do not own or operate any large-scale water treatment plant; nor do they purchase any untreated water from the Water Authority at this time. Fallbrook owns and operates a small-scale UV system for re-treating water out of their Red Mountain Reservoir before use.

Annual water deliveries to Fallbrook and Rainbow through twelve active FCFs have been relatively stable at approximately 9,400 and 17,000 acre-feet over the last five years as shown in Table 2. At some of the FCFs, however, the deliveries have fluctuated significantly from year to year. For example, the changes at FB3, RB7, RB8, RB10 and RB11 have ranged from 100% to 350% on an annual basis.

Table 7.2: Annual Treated Water Delivery to Fallbrook and Rainbow
(2015-2019) In Acre-Feet

Item No.	FCF ID*	2015	2016	2017	2018	2019	2015-2019 Total	2015-2019 Average
1	DLZ1	2,492	2,257	2,107	2,122	1,258	10,236	2,047
2	FB3	2,759	2,743	1,631	1,344	2,297	10,774	2,155
3	FB4	890	1,196	1,405	1,416	746	5,653	1,131
4	FB6	3,765	4,156	4,232	4,612	3,457	20,223	4,045
Fallbrook Total (Acre-Feet)		7,414	8,095	7,268	7,372	7,758	46,886	9,377
5	RB1	2,715	2,368	2,454	3,305	2,578	13,419	2,684
6	RB3	3,686	4,026	3,443	4,487	2,456	18,098	3,620
7	RB6	2,301	2,519	2,646	1,991	1,978	11,436	2,287
8	RB7	1,721	2,496	2,995	3,744	1,428	12,383	2,477
9	RB8	3,499	2,502	2,875	1,011	2,963	12,851	2,570
10	RB9	1,582	1,639	1,593	1,732	1,292	7,838	1,568
11	RB10	981	1,062	979	914	318	4,254	851
12	RB11	1,332	1,136	1,099	718	635	4,919	984
Rainbow Total (Acre-Feet)		17,817	17,748	18,084	17,902	13,647	85,197	17,039

NOTE: * Four facilities, FB5, RB4, RB5, and RB12 are currently not in service; they are not listed here.

Normal operations of a Water Authority-owned FCF, within a given time frame, includes the following activities (or a combination of them):

- Review (or edit) Online Water Ordering System inputs from member agencies
- Coordinate with the member agency who requested the order
- Coordinate with MWD to resolve issue(s) that may arise
- Input flows into SCADA system
- Monitor the status of flow, pressures, control valve position, security, and other conditions via SCADA
- Take water samples and send to a lab for testing weekly
- Shut down and drain pipeline(s) and facilities as scheduled or during an emergency

Emergency operation of an FCF will typically involve sending operator(s) to the site to physically open/close valves if the electrical power is unavailable at the time, monitoring system status at the site, recording and logging the operating data, and providing support to other maintenance staff who perform repairs when required.

2.4. Facility Maintenance Requirements

For the MWD-owned facilities (DLZ1, FB6, RB8 and RB9), the Water Authority places orders for water delivery from MWD as well as performs limited maintenance and field patrol; but MWD staff physically operates their facility valves and meters, and performs required facility maintenance. For RB8 and RB9, the Water Authority has separate control valve structures downstream from MWD's facilities in which the Water Authority owns, operates, and maintains. For the Water Authority-owned facilities (FB3, FB4, FB5, RB1, RB3, RB4, RB5, RB6, RB7, RB10, RB11 and RB12), the Water Authority staff physically operates all equipment, patrols the sites, and performs all required maintenance.

Typical maintenance for an FCF includes the following activities or a combination of them at any given time:

- Patrol and observe anomalies in and around the facility
- Make minor repairs to damage within the facility
- Maintain valves, meters, and mechanical equipment
- Plan, procure and replace valve(s), flow meter, piping and other mechanical equipment
- Maintain, repair, and/or replace damaged or outdated electrical and instrumentation
- Maintain and grade facility yards and access roads to each facility as required
- Cut and dispose of vegetation around the facility and along the access roads
- Drain and pump water out of pipelines to support aqueduct shutdowns

During an emergency, maintenance crews provide support to assist in pipeline and facility shutdowns and perform repairs and installations of new equipment.

2.5. Right-of-Way Access and Environmental Considerations

Access to each facility already exists and no modification is expected for the purpose of this study. Most of the facilities are within the Water Authority's easement or fee properties, however some of them are situated on the land owned by member agencies, MWD, or private parties. For example, FB5/RB4 is within MWD's easement and the land is owned by Rainbow. RB10 is also within MWD's easement but the land may be owned by a private party. RB5 is within the Water Authority's easement but the land is owned by Rainbow.¹²³ Due to time constraints, the land ownership information for the identified facilities is not included in this report. That information may be compiled in the future.

Permanent changes to the existing environment at these facilities are not expected at this time as all of them are located either inside fenced areas or on vacant land. Temporary impacts, however, may exist during the proposed demolition for the Water Authority-

¹²³The Water Authority has planned to decommission (demolish) FB5/RB4 and RB5 FCFs. Rainbow, however, has requested to hold the planned demolition work.

owned facilities. The temporary impacts, if any exist, are expected to be insignificant or mitigatable if proper measures are implemented as required. The demolition work proposed in this report is expected to require a categorical exemption permit which the Water Authority typically obtains for maintenance of the existing pipelines and facilities.

3. Impact of Detachment on Water Authority’s Facility Operations and Maintenance

The potential detachment will have impacts on the Water Authority’s facility operations and maintenance. If the Water Authority won’t serve Fallbrook and/or Rainbow in the future, the Water Authority-owned facilities currently serving Fallbrook and Rainbow are expected to be decommissioned and permanently demolished or disconnected from the Water Authority aqueduct pipelines to ensure a safe and reliable water delivery to the remaining member agencies.

For the MWD-owned facilities, no physical impact to or modifications by the Water Authority are expected at this time.

3.1. Impact on Operations & Maintenance

If the Water Authority doesn’t serve Fallbrook and/or Rainbow in the future, the Water Authority should terminate and permanently decommission the physical connections to the Water Authority’s aqueduct pipelines and cease all typical operations and maintenance activities as described in Sections 2.3 and 2.4 of this report.

If Fallbrook and/or Rainbow detached from the Water Authority, they would be treated as other water agencies outside of San Diego County. That being said, the Water Authority would still monitor their requests for water, just like the Water Authority currently does for MWD’s member agencies, to properly manage aqueduct operations for meeting minimum flows, water quality and overall safe operation. The Water Authority would also coordinate on shutdowns via MWD, which in turns coordinates with their member agencies.

The potential detachment will impact the Water Authority’s treated water system operation, specifically on the water quality in Water Authority

pipelines that are required to operate with a minimum flow rate to maintain the quality of water as it flows through the system. If the Water Authority doesn’t serve Fallbrook and/or Rainbow, it would become more difficult for the Water Authority to meet the treated water quality requirement due to likely insufficient flows through the remaining

The potential detachment will impact the Water Authority’s treated water system operation, specifically on the water quality in Water Authority pipelines that are required to operate with a minimum flow rate to maintain the quality of water as it flows through the system.

parts of the Water Authority's system.¹²⁴ Additional aqueduct operation management and control measures would be expected to be implemented merely for the purpose of maintaining the water quality. The water quality impact is a complex issue and its mitigation options are not developed in this report; the impact, however, would require a separate study.

3.2. Impact on Right-of-Way

No right-of-way change is expected at the MWD-owned facilities. For the Water Authority-owned facilities, changes in right-of-way are expected to be minimal as all the facility sites are currently within the Water Authority's existing easements that the Water Authority, for the purpose of this study, does not plan to reduce any footprint of the sites after the FCF is demolished due to the need for continued operations and maintenance of the pipelines.

3.3. Other Impacts

There are other impacts of the potential detachment on the Water Authority's operations, for example, water delivery during and after a large earthquake and changes to the Water Authority's SCADA, GIS, and Record Drawings databases.

3.3.1. Impact on Emergency Water Delivery

During and after a regional emergency, e.g. a strong earthquake, the aqueduct pipelines across the Elsinore fault zone are expected to suffer damage and the water delivery from the north (i.e. Skinner WTP and reservoir) would not be available for 2 to 6 months. The Water Authority has implemented the Emergency Storage Project (ESP) to store water within San Diego County and make it available to Water Authority's member agencies during such event ("ESP event").

The Elsinore fault is located north of the San Diego/Riverside county line. With almost all of the existing (and maybe future) FCFs serving Fallbrook and Rainbow located south of the fault zone, both agencies would be outside of the Water Authority service area and thus not allowed to be served, and they would likely be incapable of receiving water directly from the Water Authority during the ESP event if the existing Water Authority-owned facilities were demolished and the future north county pump station(s) currently in the Water Authority's CIP planned for Fallbrook and Rainbow were not to be constructed.¹²⁵ The Water Authority would want to ensure that Fallbrook and Rainbow customers and the

¹²⁴A reduction in water flow due to the detachment will in general result in decreased flow velocity in a pipeline, which increases the time duration of residence (for the water to remain inside the pipeline) and the deterioration of water quality. This could result in the need for the Water Authority to purchase more treated water from MWD to maintain water quality within the aqueduct system and could potentially strand the Water Authority's investment in the MWD Low-Flow meter at the Skinner WTP. That investment made in 2017 was approximately \$2.6 million dollars.

¹²⁵The pump stations planned for Fallbrook and Rainbow were put on hold by Board at the August 2019 meeting.

public are fully apprised of these emergency service limitations if detachment were to be approved.

3.3.2. Impact on Records and Databases

The potential detachments will require the Water Authority to modify many records and databases in the Water Authority's system, for example, modifying SCADA facility control system, water use counting and billing, GIS database, engineering records, etc. Some record drawings may need to be reproduced and transferred to Fallbrook and Rainbow as appropriate.

4. Options for Impact Mitigation

Impact mitigations are proposed and grouped for the MWD- and Water Authority-owned facilities. A "Do Nothing" alternative is included for discussion only; this alternative is not acceptable to the Water Authority.

4.1. Mitigation for MWD-Owned Facilities

For the MWD-owned facilities (DLZ1, FB6, RB8 and RB9), no physical impact or pipe modifications by Water Authority are expected, except for the Water Authority-owned control valve structures located downstream of RB8 and RB9. The valve vaults are assumed to be removed for the purpose of this study.¹²⁶

The Water Authority will transfer all O&M activities and responsibilities for the facilities to either Fallbrook/Rainbow or their future parent agency. The Water Authority should also make changes in its system to reflect the detachment as described in Section 3.3.2.

4.2. Mitigation for Water Authority-Owned Facilities

For the Water Authority-owned facilities (FB3, FB4, FB5, RB1, RB3, RB4, RB5, RB6, RB7, RB10, RB11 and RB12), two options are considered: (a) temporary isolation, and (b) permanent decommissioning (demolition). The permanent decommissioning is required to maintain the safe and reliable water delivery for the remaining member agencies of the Water Authority, while the temporary isolation is provided here for the purpose of comparison only.

Note that two Water Authority-owned facilities, FB3 and RB1, located north of the Delivery Point contain the turnout structures owned by MWD. It is assumed for the purpose of this study that FB3 and RB1, except the MWD-owned structures, are to be removed.

¹²⁶The vaults for RB8 and RB9 are located north of the Delivery Point and may potentially be sold to Rainbow. Similar consensual paid transactions may be possible for both Rainbow and Fallbrook, but such business transactions are beyond the scope of this study.

Alternatively, they could be transferred to Fallbrook/ Rainbow, which is not studied in this report.

4.2.1. Temporary Isolation at Service Outlet

Temporary isolation of a Water Authority-owned facility would involve removing a piece of spool pipe and/or valve(s) at the service outlet next to the Water Authority's aqueduct pipelines and installing a blind flange at the end of outlet nozzle, as shown in Figure 6. This type of modification isolates the rest of an FCF from the Water Authority's aqueduct pipeline operation, so that the FCF (WA-owned) and the connection piping to Fallbrook or Rainbow's distribution system may be left in place without further changes. The Water Authority has performed this type of isolation at several facilities that were no longer needed for servicing member agencies.

The isolation, however, is deemed temporary due to continuing deterioration of the outlet nozzle and need for maintenance for the remaining life of the aqueduct pipeline(s) to which a facility is connected. Without proper maintenance for the outlet nozzle, it would become a weak spot and reduce the integrity of the aqueduct pipeline system. This would create hazard conditions (e.g. leaking, bursting, pressure surge, etc.) for the operations of the entire system, which often results in pipe breaks and requires emergency shutdown and repair. In addition, the FCF building, piping and equipment left in place are often neglected or poorly maintained and could become stranded assessments in some cases. The temporary isolation is not acceptable to the Water Authority in the long run but provided only for the purpose of alternative discussion and comparison. Refer to Response Appendix Exhibit "50," Appendix C for the proposed temporary isolations at the Water Authority-owned facilities.

4.2.2. Permanent Decommission (Demolition) of Entire Facility

Permanent decommissioning of an entire facility involves removing all piping and equipment, including the service outlet, and demolishing all concrete vaults and FCF building. In particular, the outlet nozzle on the Water Authority's aqueduct pipeline will be sealed with a steel cap welded onto the steel cylinder of the aqueduct pipe and properly lined and encased in concrete for longevity, consistent with the fabrication method of the original aqueduct pipelines and meeting the intent of their operations throughout service life. This proposed modification is essentially to eliminate the outlet nozzle completely and permanently, which is different than the temporary isolation where the outlet nozzle is left untouched.

The Water Authority's ownership of FCF piping is typically terminated at 3 to 5 feet downstream (outside) of the FCF building, where Fallbrook or Rainbow's distribution piping starts. The Water Authority will also install a blind flange at an existing flange or a bulkhead at the downstream end of FCF. For vaults and buildings, the above-ground portion will be totally removed and disposed of. The below-grade portion may be removed

or left in place. All equipment, conduits and wires will be removed. The vault spaces will be backfilled with properly compacted earth or slurry concrete depending on the existing condition of the facility. At the end, the yard fence (if exists) will be removed (if required) and the site will be re-graded. If necessary, install Class II aggregate base materials to restore local drainage and match with the surroundings.

Refer to Response Appendix Exhibit “50,” Appendix D for the proposed demolition plans of the Water Authority-owned facilities.

4.3. “Do Nothing” Alternative

“Do nothing” is not an option for the Water Authority. At a minimum, the Water Authority needs to transfer all O&M, ROW, and environmental responsibilities to either Fallbrook/Rainbow or their future parent agency. For the Water Authority-owned facilities, physical modifications need to be implemented to ensure safe and reliable water delivery to other member agencies.

5. Cost for Impact Mitigation

This section provides the impact mitigation cost and the basis of the cost estimate performed for this study. The estimate is focused on the construction (including engineering, administrative, and shutdown) cost for temporary isolation and permanent demolition of the Water Authority-owned facilities.

For the MWD-owned facilities, there won’t be any construction cost as no physical modifications are proposed for these facilities. The costs associated with transferring O&M responsibilities to Fallbrook and Rainbow or their future parent agency are expected to be relatively minor when compared to the construction cost. The transferring costs are not quantified at this time due to lack of data, but may be completed in a separate study if needed. Other costs of the impacts associated with the right-of-way, environmental, financial services, records, database modifications, etc. are not included in this report but may be in a separate study.

5.1. Basis of Construction Cost Estimate

Staff performed a Class 4 or 5 level of construction cost estimate for decommissioning the Water Authority- owned facilities. The estimate was based on the size of facility, scope of work at each facility site, and proposed conceptual demolition plans shown in Appendices C and D. The construction cost typically includes labor, materials, equipment, tools, bonds, insurances, permits, overhead costs and profits if the demolition work is performed by a hired contractor. The estimates were done using the Water Authority’s preferred estimating software HeavyBid that is commonly used by heavy civil construction contractors for preparing their bid prices.

In the past, however, the Water Authority (mainly O&M crews and Engineering staff) planned and performed the demolition at a dozen facility sites. For example, since 2014

the Water Authority has completely demolished and decommissioned the Padre Dam 3 FCF (small size), Otay 3 FCF (medium size), Valley Center 4 FCF (medium to large size), and Otay 9 FCF (extra-large size). The most recent ones include the Poway 2 FCF (small size) and Padre Dam 4 TOS where Water Authority crews completely decommissioned the facilities during and after the aqueduct shutdowns in December 2019 and April 2020. Based on the cost information available from the Maximo database, the cost estimate was also provided if the Water Authority crews and staff to perform the demolition work for the Water Authority-owned facilities.

All cost estimates are expressed in August 2020 dollars. Escalation factors based on the Water Authority's construction cost index model are applied as appropriate. A 30% contingency are justified and applied to the Class 4/5 cost estimate according to the Engineering's practice ESD 260, *Construction Cost Estimate Manual*. Also included in the cost estimate are the costs for engineering design, contract administration, Water Authority's capitalized overhead cost allocation, and pipeline shutdown(s).

Not included in the cost estimates at this time are the costs associated with right-of-way and environmental. Those costs may be possible but are expected to be minimal based on the information currently available.

5.2. Construction Cost for Temporary Isolation

The estimated construction costs for temporary isolation of the Water Authority-owned facilities are \$89,000 and \$421,000 for Fallbrook and Rainbow, respectively. The estimates assumed the Water Authority crews would perform the work as this type of work falls within typical operations and maintenance activities routinely carried out by O&M crews.

5.3. Construction Cost for Permanent Decommission

The estimated construction costs for permanent decommission (demolition) of the Water Authority-owned facilities are \$359,000 and \$1,319,000 for Fallbrook and Rainbow, respectively, if the demolition work to be performed the Water Authority's crews. If the work is to be performed by a contractor hired by the Water Authority, the estimated construction costs would be \$416,000 and \$1,552,000 for Fallbrook and Rainbow, respectively.

The cost by an outside contractor could be slightly higher than that by Water Authority crews. The difference is mainly attributed to the bonds, insurances and profits that won't be required for use of Water Authority crews but typically included by the contractor in its bid price. The difference in efficiency of performing this type (relatively simple) work by either the contractor or Water Authority crews is expected to be insignificant. The difference could become less if overtime or double time costs incurred by Water Authority crews were factored in. Note that Water Authority crews may not be available to perform the work depending on their normal duties performing system operations, maintenance, shutdowns, and support for other capital improvement projects and emergency responses. Therefore, the cost by using an outside contractor is cited for discussions in this report.

The costs for individual facilities are shown in Table 7.3, and additional details included in Response Appendix Exhibit “50,” Appendix E.

Table 7.3: Construction Cost for the Water Authority-Owned Facilities Currently Servicing Fallbrook and Rainbow (August 2020 Dollars)

Item No.	Facility ID	No. of Outlet Nozzles to be Removed	FCF Building Footprint (Sq. Ft.)	FCF Building Relative Size	Cost for Temporary Isolation (by O&M)	Cost for Permanent Removal (by O&M)	Cost for Permanent Removal (by Contractor)
1	FB3*	0	165	Small	\$6,000	\$46,000	\$59,000
2	FB4	2	300	Medium	\$76,000	\$272,000	\$304,000
3	FB5**	0	300	Medium	\$7,000	\$41,000	\$53,000
Fallbrook Totals		2	765	--	\$89,000	\$359,000	\$416,000
4	RB1*	0	165	Small	\$6,000	\$46,000	\$59,000
5	RB3	2	260	Medium	\$76,000	\$272,000	\$304,000
6	RB4**	0	300	Medium	\$7,000	\$41,000	\$53,000
7	RB5	1	280	Medium	\$0	\$188,000	\$216,000
8	RB6	2	182	Small	\$76,000	\$141,000	\$165,000
9	RB7	1	444	Large	\$76,000	\$189,000	\$221,000
10	RB8	1	n/a ***	Small	\$14,000	\$62,000	\$77,000
11	RB9	1	n/a ***	Small	\$14,000	\$62,000	\$77,000
12	RB10	0	196	Small	\$138,000	\$182,000	\$201,000
13	RB11	1	n/a ***	Extra Large	\$14,000	\$57,000	\$77,000
14	RB12	1	n/a ***	Extra Large	\$0	\$79,000	\$102,000
Rainbow Total		10	1,827	--	\$421,000	\$1,319,000	\$1,552,000

NOTES: * FB3 and RB1 share the same FCF building, and the cost is evenly split between the two.
 ** FB5 and RB4 share the same site/FCF building, and the cost is evenly split between the two.
 *** Only demolition of flow control valves or turnout structures. No demolition work on the FCF buildings.

Shutdown: The shutdown cost is included in the cost for each individual facility. Three separate shutdowns assumed, with one for each PPL 1&2, PPL 3, and PPL 4. Each shutdown is assumed to cost \$250,000 based on past cost data. Sharing among the facilities is applied as appropriate based on the number of facilities on a pipeline.

6. Conclusions and Recommendations

6.1. Conclusions

Potential detachment by Fallbrook or Rainbow or both will impact the operations and maintenance of the Water Authority's remaining pipeline system. The Water Authority-owned facilities currently serving Fallbrook and/or Rainbow should be permanently decommissioned to ensure a safe and reliable water delivery to the Water Authority's remaining member agencies. Specifically,

- (a) If the Water Authority is not serving Fallbrook, permanent decommission (demolition) of three facilities (FB3, FB4 and FB5) will be required. The estimated construction cost for the demolition would be \$416,000.
- (b) If the Water Authority is not serving Rainbow, permanent decommission of seven facilities (RB1, RB3, RB4, RB5, RB6, RB7 and RB10) and four turnout vault structures at RB8, RB9, RB11 and RB12 will be required. The estimated construction cost for the demolition would be \$1,552,000.
- (c) If the Water Authority is not serving either Fallbrook or Rainbow, all the 10 facilities plus four turnout structures would be required for demolition and the estimated construction cost would be \$1,968,000.

In addition to the construction costs, there would be other costs associated with transferring O&M responsibilities. There could also be costs associated with the \$2.6 million MWD Low-Flow meter at the Skinner WTP noted earlier, none of which is included in this study.

6.2. Recommendations

Staff recommends the construction cost estimates be updated when the final demolition plans become available if the detachment is finalized. Staff also recommends separate studies be conducted to quantify costs associated with other impacts including the treated water system operations and other agency-wide changes in Water Authority's SCADA, GIS, documents, records, financial services, transferring O&M responsibilities, etc.

If Fallbrook and/or Rainbow are allowed to purchase these facilities without any physical modifications proposed in this report, a separate study should be conducted to quantify what costs may be implicated for such a sale.

Section 8

Detailed Review of the Reorganization Applications

LAFCO and its staff must carefully review the applications to determine if the facts are accurate and complete. Though the applicants present their proposed reorganizations as simple matters, they are actually quite complex. In this section, the Water Authority goes through each application and highlights certain mistaken and missing information. Though each application is treated separately in the below analyses, many of the issues identified may of course have overlap with the other.

The Water Authority also compiles at the end of this section a list of questions raised from the applications that LAFCO should ask Fallbrook, Rainbow, and Eastern so that LAFCO can fully understand the applications and the issues that will need to be addressed to consider them.

A. Rainbow Application

The following chart specifies particular statements made in the Rainbow application that the Water Authority calls to LAFCO's attention. The chart makes reference, where applicable, to other sections in the Report. All references to Exhibits are to those in the Appendix.

**Rainbow Municipal Water District
Plan for Providing Service - Application for Proposed Reorganization"**
(Note: Rainbow's 'Plan for Providing Service,' Exhibit E to its application, does not have page numbers;
For references below, Page 1 starts after Cover Page)

Item #	Page	Reference	Comment	Response
1R	2	SDCWA provides all of RMWD's potable water with nearly all water coming from MWD owned and operated Skinner WTP.	Somewhat misleading.	Water is delivered via Skinner WTP, but the source of the water at any given time is a mix of Water Authority water sources including its QSA water and MWD water purchases. <i>See</i> Section 6. RMWD has eight active service connections that deliver treated water into its distribution system; four connected upstream of MWD's

Item #	Page	Reference	Comment	Response
				<p>delivery point to SDCWA that receive all its supply from MWD's Skinner WTP (RB-8, RB-9, RB-1 and RB-10) and four connected to SDCWA's aqueduct system (RB-3, RB-6, RB-7 and RB-11). Historically, RMWD has received up to 80% (peak month) or 70% (peak year) of its delivery through the service connections off SDCWA's aqueduct system, which can be served from SDCWA's Twin Oaks Valley WTP (this includes deliveries from SDCWA's Carlsbad Desal Plant). <i>See</i> Exhibit "52" for the detailed analysis.</p>
2R	2	<p>RMWD cannot physically receive deliveries from SDCWA to most of its service area in a catastrophic emergency or in the event of an extended SDCWA shutdown for repair.</p>	<p>Somewhat misleading.</p>	<p>This does not tell the whole story. RMWD currently receives a meaningful level of service in a catastrophic emergency, but if the ESP pump station is constructed full ESP deliveries are possible. Currently RMWD is able to receive emergency deliveries from the SDCWA's Twin Oaks Valley WTP through one connection (RB-8) upstream of MWD's delivery point and from four connections to SDCWA's aqueduct system (RB-3, RB-6, RB-7 and RB-11). <i>See</i> response to Item # 1R illustrating a large portion of RMWD's service area currently has access to deliveries from SDCWA, including in a catastrophic emergency.</p> <p>Also, SDCWA and RMWD signed a Principles of Understanding in August 2017 covering development of the infrastructure required to serve 100% of RMWD's service area in alignment with SDCWA's</p>

Item #	Page	Reference	Comment	Response
				<p>Emergency Storage Project. Due to RMWD's efforts to detach from the Water Authority and the project being put on hold, a Facilities Funding Agreement has not yet been executed to design and construct these facilities.</p> <p>NOTE – The timing of this project was impacted by development of the Twin Oaks Valley WTP, which changed how the ESP would work for north county San Diego. Official planning did not begin until 2008 and was halted again during development of the 2013 Water Facilities Master Plan, when potential projects were identified that would impact the original plan. <i>See</i> Section 4 of Exhibit "40" for further background information.</p>
3R	5	SDCWA purchases treated water from MWD that is treated at the Skinner WTP and delivered to RMWD's eight connections.	Somewhat misleading.	<p>It is important to distinguish between imported supply from MWD and QSA supply from SDCWA, as explained in Response Section 6. While QSA supplies are typically untreated, and RMWD only receives treated water, it can be treated at SDCWA's option, and there is already a component of QSA supply that is treated at MWD's Skinner WTP. As early as November 2018, deliveries of treated water to RMWD have included QSA water. Most of RMWD's current 2020 water is currently made up of SDCWA's QSA supply.</p> <p>Some treated water delivered from MWD will likely continue to be SDCWA QSA supply now that scheduled QSA deliveries are fully</p>

Item #	Page	Reference	Comment	Response
				<p>on line. However, RMWD’s participation in SDCWA’s TSAWR program is tied to MWD supply costs. RMWD’s TSAWR percent has been about 39% recently. See Exhibit “53” for the detailed analysis.</p> <p>RMWD’s statement that the amount of MWD imported supply is the same regardless of their wholesale agency is incorrect. Annexation to EMWD would increase reliance on imported MWD supply from the Bay Delta and Colorado River, as explained in Section 6.</p>
4R	5	It is not possible to deliver water from SDCWA owned WTPs to the “fourth” RMWD connection or any of the four connections on MWD owned pipelines.	Not accurate.	This is an incorrect statement. SDCWA can deliver water from its Twin Oaks Valley WTP clearwells to all four RMWD connections off SDCWA’s aqueduct system. In fact, SDCWA can hydraulically serve one of RMWD’s connections upstream of MWD’s delivery point (RB-8) from its Twin Oaks Valley WTP as well, and in the case of a supply interruption from MWD’s Skinner WTP, would do so. See Exhibit “54” for details.
5R	6	RMWD’s four northerly connections have sufficient capacity to meet RMWD’s demands.	Somewhat misleading.	<p>Rainbow itself states that it needs new infrastructure to serve its southern area. (Rainbow Supplemental Information submitted with LAFCO application, pp.5-6.)</p> <p>The four service connections upstream of MWD’s delivery point to SDCWA have a total capacity of 89 cfs (RB-8 @ 25 cfs, RB-9 @ 20 cfs, RB-1 @ 22 cfs and RB-10 @ 22</p>

Item #	Page	Reference	Comment	Response
				<p>cfs). That equates to a maximum monthly delivery of 5,373 AF/month. RMWD’s highest delivery month was 4,285 in August 2004 and are currently much lower. It appears they do have the necessary meter capacity in these four service connections to meet all demands in their service area.</p> <p>However, this does not consider the necessary infrastructure within RMWD’s system to serve that water to their entire service area. Based on RMWD’s application, additional improvements would be required. What changes to RMWD’s infrastructure are needed to account for loss of use of four SDCWA owned connections? What precisely must be done to serve the southern area? Has that cost been accounted for in rate impacts to RWMD customers?</p>
6R	10	Figure 4 map includes a “Jurisdiction Line” that bisects the aqueducts and labels area north of line “MWD” and area south of line “SDCWA.”	Map is incomplete.	Figure 4 accurately demonstrates the jurisdictional boundary between MWD and SDCWA. However, the two RMWD service connections upstream of the boundary on the First Aqueduct (SDPL 1 & 2) should be included as well as the four RMWD service connections south of the boundary on the Second Aqueduct (SDPL 4). The figure is incomplete. A more detailed reference is provided in Exhibit “55.”
7R	12	EMWD Information.	Somewhat misleading.	Rainbow apparently will not have access to Eastern’s own supplies for its \$11 acre-foot payment to Eastern. Facilities described on

Item #	Page	Reference	Comment	Response
				page 14 describe EMWD's investments in retail water supplies. According to table ES-3 in the EMWD 2015 UWMP, wholesale supplies are imported water with a small amount of recycled water (3-10% from 2015 to 2040). Native and desalinated groundwater supplies are used to meet retail demands only, not wholesale customers
7Ra	12	Figure 6 - Line graph compares water rates and water demands.	Not accurate.	Claim is not supported by graph. Graph shows increase in water rates beginning around 2004. However, agricultural water use both increased and decreased between 2004 and 2019, with several years of increased agricultural water use despite increased water rates.
8R	15, 16	Same level of service will be provided to customers if served by EMWD.	Not accurate.	<p>The level of reliability will decline with the shift to EMWD. As explained in Section 6, SDCWA offers a portfolio of supplies to all of its member agencies in addition to MWD water including QSA supplies and desalinated water. EMWD would supply just MWD water to RMWD. There is nothing in the service plan to indicate EMWD will serve recycled water to RMWD.</p> <p>In addition, on page 16 there is a claim that water conservation programs would be similarly available to RMWD from EMWD. That may be true as to MWD programs. However, in contrast to SDCWA, EMWD does not administer or fund conservation programs for wholesale agencies.</p>

Item #	Page	Reference	Comment	Response
				SDCWA administers education and outreach programs to the benefit of all its member agencies. SDCWA also applies for grants to fund additional incentives and programs for its member agencies as well as provide other services on behalf of the region. <i>See</i> Section 6.
9R	16	RMWD routinely operates without the use of its southerly connections.	Unverified, and not supported by SDCWA data.	To the Water Authority's knowledge this has never been demonstrated. Over the last 10 years, the lowest month for deliveries off SDCWA's aqueduct system was 11% of the total RMWD delivery. The next three lowest were 27%, 37% and 39%. The average over that period is about 56%. <i>See</i> Exhibit "52" for the detailed analysis.
10R	17	Post detachment, RWMD will need wheeling agreement to move raw water from EMWD through SDCWA's system to Weese WTP.	May be generally correct, but ramifications not addressed. Misleading as to "from EMWD," as what appears to be really meant is "from MWD."	In 2019, WR staff was asked to meet with RMWD and Oceanside to discuss a potential exchange agreement between the two member agencies, but no agreement was reached. The quantity of water was around 3,000 AF/YR. If RMWD were to detach, the supply of untreated water would have to come via sale through EMWD as the wholesale supplier, yet use SDCWA infrastructure. This may take place under the terms of Water Code Section 1810. However, Rainbow's rate impact projections for detachment do not include this cost to its ratepayers, and there are many unaddressed uncertainties about it.

Item #	Page	Reference	Comment	Response
12R	18	“RMWD conducted a number of studies to ensure that its customers water supply reliability needs would be met if EMWD became the District’s wholesaler.”	Multiple RMWD studies not cited or produced.	Bottom of page 18 references January 2020 EMWD document, which is not an RMWD study. No other studies cited. As shown in Section 6 MWD water is not as reliable as SDCWA water, as Rainbow expert Ken Weinberg has admitted. Exhibit “9,” pages 2-3.
13R	18	EMWD study “...demonstrated that RMWD demands would be met under all potential future drought scenarios.”	Not sufficient supporting documentation to evaluate conclusions of EMWD study.	The EMWD technical memo addresses a narrow range of drought scenarios. On September 14, 2018, EMWD staff presented <i>Scenario Planning for Uncertainties Results</i> to the EMWD board. Scenarios included increased probability of dry years, loss of local and imported supplies, higher demands. Under certain scenarios there was 48% frequency of a supply shortage in 2035 (page 14). The least reliable option for addressing the drought scenario presented was meeting all demand from future growth solely with MWD water. It should be noted wholesale demands were not even considered in EMWD’s comprehensive scenario planning. See Exhibit “56.”
14R	19	The potential de-annexation of FPUD and RMWD from SDCWA is not anticipated to have any significant impacts to regional and local water supply and no new supplies would	Misleading.	Detachment of FPUD and RMWD could have a significant impact on the availability of water supplies to existing retail water suppliers in EMWD’s service area if existing retail suppliers do not conserve to the levels required to ensure that “RMWD demands would be met

Item #	Page	Reference	Comment	Response
		need to be developed or imported.		<p>under all potential future drought scenarios.”</p> <p>Also, as explained in Section 6, detachment will increase supply demands on MWD and the Bay-Delta as Rainbow moves off QSA water.</p> <p>Page 18, Second paragraph states that “no new supplies would need to be developed or imported” for water supply reliability. This contradicts the EMWD Reliability Memorandum, Table 9 that uses a new “Extraordinary Supply” to meet demands under an MWD allocation. There is no explanation on how EMWD will develop this extraordinary supply and how FPUD and RMWD will pay for the benefits.</p> <p>There is also no indication of how QSA water is accounted for in the reliability analysis. What is the source of water that will replace QSA deliveries? There is also no analysis available beyond 2035. What would the long-term impacts be on imported water supplies?</p> <p><i>See</i> Response Section 6 for water reliability and supply issues.</p>
15R	19	Detachment of FPUD and RMWD would not result in an increase in MWD’s reliance on the Delta since MWD supplies would continue to	Not correct.	<i>See</i> Response Section 6.

Item #	Page	Reference	Comment	Response
		come from Skinner WTP.		
16R	19	Detachment would allow SDCWA to reduce the amount of imported water it purchases from MWD and EMWD would increase its imported water purchases from MWD in an amount equivalent to SDCWA's reduction.	Not correct.	<i>See</i> Response Section 6.
17R	19	Whether FPUD or RMWD are part of SDCWA or EMWD would not change SDCWA and EMWD's combined demand for imported water from MWD.	Not correct.	<i>See</i> Response Section 6.
18R	19	FPUD and RMWD would remain dependent on the reliability and availability of MWD supplies.	Not correct.	FPUD and RMWD would go from having the benefits of SDCWA's highly reliable supplies to being fully dependent on less reliable MWD supplies. <i>See</i> Response Section 6.
19R	19	Under the WSAP, MWD incentivizes demand management through rate surcharges that apply to purchases above an agency's	Somewhat misleading.	MWD uses rate surcharges to penalize agencies that exceed their allocations. To consider it an "incentive" is misleading—if MWD had the water to sell, they would sell it. This also ignores preferential rights, which are statutory. <i>See</i> Response Section 6.

Item #	Page	Reference	Comment	Response
		calculated allocation.		
20R	21	Sufficient water to meet demands would be fully available for FPUD and RMWD if their service is provided by EMWD.	Not Correct.	<p><i>See</i> Response Section 6. Also, Tables 8-10 (pgs. 22-24) of EMWD’s Technical Memorandum show that in 2035, EMWD would not be able to meet RMWD’s demands if MWD were to activate its WSAP. For a level 1 shortage, RMWD would be 5% short of supplies, for Level 3 it would be 5.6% short of supplies, and for Level 5 it would be 11.8% short of supplies. It should be noted that this assumes RMWD has no local supplies and customers in RMWD’s service area reduce demand by 5%, 10%, and 15%, respectively, in response to drought conditions; and even under these reduced demand assumptions, RMWD would still be short of supplies as described above. However, RMWD’s ability to reduce demands in the future may be limited due to demand hardening that has occurred as a result of the state’s drought emergency and continued implementation of water use efficiency measures in San Diego County. Table ES-1 shows EMWD is able to meet regional demands under different MWD allocation scenarios. However, EMWD’s Technical Memorandum (Exhibit C to RMWD’s application) which serves as the source of the data in Table ES-1, shows multiple instances where FPUD and RMWD will have an MWD allocation that is less than their total potable demand. Limited data available to</p>

Item #	Page	Reference	Comment	Response
				review EMWD’s calculations and no analysis is provided of the statewide challenges to SWP supplies or drought conditions on the Colorado River and impacts that may have on MWD’s lower priority water.
21R	22	RMWD is not able to receive ESP water service due to a yet to be constructed pump station and appurtenant facilities by the Water Authority. If built, M&I customers would receive ESP water at 75% level of service and TSAWR customers at 50% level of service.	Not correct, and misleading.	<p>Some of RMWD can receive ESP water even now. Statement that RMWD is unable to receive ESP water should note that the lack of ESP service is the result of this detachment request, which resulted in SDCWA Board deferring work until it knows detachment result.</p> <p><i>See</i> response to Item #'s 1R and 2R illustrating a large portion or RMWD’s service area currently has access to deliveries from SDCWA in a catastrophic emergency.</p> <p>RMWD receives benefits of the ESP since SDCWA manages all supplies regionally. For example, if an emergency event reduced the availability of water (either MWD or QSA) from the north, SDCWA is able to supplement water stored locally to ensure all member agencies receive at least 75% level of service.</p>
22R	22	States that any significant seismic event would rupture pipelines to the north and would “nearly certainly” damage	Unsupported.	<u>No supporting documentation to arrive at conclusion.</u> Not sure what level of probability “nearly certainly” represents other than a gut feel. It should be noted that the pipelines to the north directly cross the Elsinore fault, whereas the

Item #	Page	Reference	Comment	Response
		SDCWA's pipelines at Moosa Creek.		pipelines in Moosa Creek are approximately 15 miles away.
23R	22	Morro Reservoir holds 450 AF which is enough to serve the entire service area for weeks in an emergency.	Misleading.	<p>Unlike planned shutdowns that are scheduled during low demand periods, seismic events can occur at any time. RMWD's recent summer demands are about 460 AF/week. Based on FY 19 RWMD use of 14,831 AF, the amount of time that 450 AF would supply the entire region would vary depending on the reservoir storage level at the time of the emergency.</p> <p>Also, since 2016, Morro Reservoir has averaged only 210 AF (or 45% of capacity). See Exhibit "42" for more detail. Therefore, Morro Reservoir does <u>not</u> provide the emergency supply stated by RMWD in their application.</p> <p>It should be noted that if RMWD were to operate the Morro Reservoir at higher volumes in case of an emergency, it would potentially experience water quality degradation, particularly during the high demand summer months and with higher blends of Bay-Delta water, which could require additional treatment and costs to maintain.</p>

“Supplemental Information Package for Reorganization Application”

(Located at the end/back of Application packet)

Item #	Page	Reference	Comment	Response
30R	4	RMWD and EMWD analysis shows EMWD water has higher reliability than SDCWA.	Not correct.	<i>See</i> Response Section 6.
31R	4	If detached, RMWD customers would see zero changes to the sources and reliability of the water service received.	Not correct.	<i>See</i> Response Section 6.
34R	6	Estimated costs for RMWD projects to address infrastructure issues sooner than anticipated due to detachment is \$10-\$15 million. That is not entire cost.	Uncertain data.	Projects were already scheduled over next 10 years. Need to accelerate due to detachment. What is rate impact to RMWD customers? If RMWD did not detach, would these improvements even be necessary?
38R	16	Water Supply Reliability Analysis	Not accurate	<i>See</i> Response Section 6.

B. Fallbrook Application

The following chart specifies particular statements made in the Fallbrook application that the Water Authority calls to LAFCO’s attention. The chart makes reference, where applicable, to other sections in the Report. All references to Exhibits are to the Appendix.

Fallbrook PUD LAFCO Submittal

“Plan for Providing Service - Application for Proposed Reorganization”

Item #	Page	Reference	Comment	Response
1F	2	FPUD... “cannot physically receive deliveries from SDCWA to serve the vast majority of its service area in a catastrophic emergency or in the event of an extended SDCWA shutdown for repair.”	Somewhat misleading.	Does not tell the whole story. FPUD currently receives some level of service in a catastrophic emergency, but if the ESP pump station is constructed

Item #	Page	Reference	Comment	Response
				<p>full ESP deliveries are possible.</p> <p>FPUD has four active service connections that deliver treated water into its distribution system (DLZ-1, FB-6, FB-3 and FB-4). All except FB-4 are located upstream of MWD’s delivery point to SDCWA and are limited to deliveries from MWD’s Skinner WTP. Historically, FPUD has received up to 28% (peak month) or 21% (peak year) of its delivery through FB-4, which can be served from SDCWA’s Twin Oaks Valley WTP (this includes deliveries from SDCWA’s Carlsbad Desal Plant). <i>See Exhibit “57” for the detailed analysis.</i></p> <p>In terms of a catastrophic event, SDCWA and FPUD signed a Principles of Understanding in May 2017 covering development of the infrastructure required to serve 100% of FPUD’s service area in alignment with SDCWA’s Emergency Storage Project. Due to FPUD’s efforts to detach from the Water Authority, a Facilities Funding Agreement was never executed to design and construct these facilities.</p>

Item #	Page	Reference	Comment	Response
				<p>NOTE –The timing of this project was impacted by development of the Twin Oaks Valley WTP, which changed how the ESP would work for north county San Diego. Official planning did not begin until 2008 and was halted again during development of the 2013 Water Facilities Master Plan, when potential projects were identified that would impact the original plan. <i>See</i> further background information in Section 1.4 of Exhibit “40.”</p>
2F	8	EMWD Information	Somewhat misleading.	<p>Facilities described on page 10 describe EMWD’s investments in retail water supplies. According to table ES-3 in the EMWD 2015 UWMP, wholesale supplies are imported water with a small amount of recycled water (3-10% from 2015 to 2040). However, there is no existing infrastructure to send any EMWD recycled water to Fallbrook other than MWD piping (at best), which would require a wheeling charge. Also, native and desalinated groundwater supplies are used to meet retail demands only.</p>
3F	11	FPUD has the ability to take deliveries through one Water Authority owned connection, but “...FPUD has recently	Unclear as to all facts.	Beginning December 1, 2019, FPUD has taken all its deliveries through the three connections upstream of

Item #	Page	Reference	Comment	Response
		<p>determined that continued deliveries through this connection are not necessary and FPUD will stop taking deliveries on this connection.” The following sentence continues that under reorganization no facilities will need to be built by EMWD or FPUD to begin service at the same level of service as today.</p>		<p>MWD’s delivery point to SDCWA (i.e., deliveries through FB-4 have totaled zero since that time). Staff is unaware of any modifications to FPUD’s distribution system that were required to accommodate this change in delivery.</p> <p>However, this may be possible only due to the reduced/lower demands linked to the Governor’s water conservation orders and continued suppressed demands and may not be the case when demands are higher. Fallbrook should clarify.</p>
4F	12	<p>Figure 4 map includes a “Jurisdiction Line” that bisects the aqueducts and labels area north of line “MWD” and area south of line “SDCWA.”</p>	Somewhat misleading.	<p>The two empty FPUD connections should be completed with the following: FB-4: 22 cfs, Sta 2101+60 (on the left) and FB-3: 30 cfs, Sta 1689+96 (on the right). A more detailed reference is provided in Exhibit “55.”</p>
5F	14	<p>SMRCUP “is expected to provide 30%-40% of FPUD’s total water needs, reducing reliance on imported water.”</p>	Somewhat misleading.	<p>Doesn’t identify the year or years when that percentage of FPUD’s demands will be met by SMRCUP. FPUD’s total demands are expected to increase over time, therefore the percentage of FPUD’s total water demands met by SMRCUP will decrease and reliance on imported water will</p>

Item #	Page	Reference	Comment	Response
				<p>increase in the future. Based on the total water demand projections in FPUD's 2015 UMWP (Table 4-3), SMRCUP supply (assumed to be 3,100 AFY based on LRP agreement) will make up roughly 23% of FPUD's total supply in 2025, and 22% in 2030 and 2035. These percentages also assume normal year demands and do not account for dry year demands which would reduce the percentage of water supplied to FPUD by SMRCUP. FPUD has the potential to access additional SMRCUP water <u>if</u> Pendleton makes it available, but the volume would vary year to year since it is not included in the contract amount. <i>See</i> Exhibit "58."</p>
6F	14	<p>"Similar to SDCWA, EMWD provides supplement to MWD funding for water conservation programs to its member agencies."</p>	Somewhat misleading.	<p>In contrast to the SDCWA, EMWD does not administer or fund conservation programs for wholesale agencies. The SDCWA administers education and outreach programs to the benefit of all its member agencies. The SDCWA also applies for grants to fund additional incentives and programs for its member agencies. Only MWD funding would be available to FPUD.</p>
8F	15	<p>"FPUD conducted a number of studies to ensure that its</p>	List of studies not provided, and	Page 17 Reliability Analysis Summary indicates FPUD is

Item #	Page	Reference	Comment	Response
		customers reliable needs would be met if EMWD because the District’s wholesaler.”	somewhat misleading.	willing to accept a lower level of reliability moving to EMWD, but this is inconsistent with FPUD’s public information campaign that reliability will be equal to or greater than staying with Water Authority. Additional information needs to be provided about assumption used for the reliability analysis and reliability under various scenarios.
9F	15	Initial FPUD studies assumed EMWD would not provide local supplies to FPUD.	Studies not provided.	Require additional information to evaluate accuracy of statement. Additionally, for \$11 acre-foot EMWD has stated in its technical memorandum that Fallbrook would only receive MWD water.
10F	15	EMWD study “...demonstrated that FPUD demands would be met under all potential future drought scenarios.”	Not sufficient supporting documentation to evaluate conclusions of EMWD study, and somewhat misleading.	The EMWD technical memo addresses a narrow range of drought scenarios. On September 14, 2018, EMWD staff presented <i>Scenario Planning for Uncertainties Results</i> to the EMWD board. Scenarios included increased probability of dry years, loss of local and imported supplies, higher demands. Under certain scenarios there was 48% frequency of a supply shortage in 2035. The least reliable option for addressing the drought scenario presented was meeting all demand from

Item #	Page	Reference	Comment	Response
				future growth solely with MWD water. It should be noted wholesale demands were not considered in EMWD’s comprehensive scenario planning. See Exhibit “56.”
11F	16	The potential de-annexation of FPUD and RMWD from SDCWA is not anticipated to have any significant impacts to regional and local water supply and no new supplies would need to be developed or imported.	Not correct.	<p>This contradicts the EMWD Technical Memorandum, Table 9 and 10 that uses a new “Extraordinary Supply” and a 10-15% reduction in demand by EMWD’s retail customers to meet demands under an MWD allocation.</p> <p>Additionally, new water supply demands are created on MWD and the Bay-Delta. See Section 6.</p> <p>Detachment of FPUD and RMWD could have a significant impact on the availability of water supplies to existing retail water suppliers in EMWD’s service area if existing retail suppliers do not conserve to the levels required to ensure that “FPUD demands would be met under all potential future drought scenarios.” Also, there is no discussion of MWD preferential rights.</p>
13F	16	Detachment would allow SDCWA to reduce the amount of imported water it purchases from MWD and EMWD would increase its imported water purchases from MWD in an	Not correct.	As explained in Section 6, Fallbrook and Rainbow in some months already are receiving QSA water and this will increase over time. The QSA amounts are set by

Item #	Page	Reference	Comment	Response
		amount equivalent to SDCWA's reduction.		<p>contract and will not decrease even with detachment. In contrast, additional supply will be required on MWD and the Bay-Delta.</p> <p>It is important to distinguish between imported supply from MWD and QSA supply from SDCWA. While QSA supplies are typically untreated, and FPUD only receives treated water, there is a component of QSA supply that is treated at MWD's Skinner WTP. As early as November 2018, deliveries of treated water to FPUD have included QSA water. The percent treated water provided by MWD's Skinner WTP that is QSA supply has averaged 82% in CY 2020 meaning most of FPUD's water is currently made up of SDCWA's QSA supply regardless of where it is delivered.</p> <p>Treated water delivered from MWD will continue to be SDCWA QSA supply now that scheduled QSA deliveries have peaked. FPUD's participation in SDCWA's TSAWR program is based on MWD supply costs and requires TSAWR deliveries to be from MWD. FPUD's TSAWR percent has been about 22% recently.</p>

Item #	Page	Reference	Comment	Response
				<p>See Exhibit “53” for the detailed analysis.</p> <p>Also, transitioning to EMWD would increase reliance on imported MWD supply from the Bay Delta and Colorado River. See Response Section 6.</p>
14F	16	Whether FPUD or RMWD are part of SDCWA or EMWD would not change SDCWA and EMWD’s combined demand for imported water from MWD.	Not correct.	See response to Item #13F.
15F	16	FPUD and RMWD would remain dependent on the reliability and availability of MWD supplies.	Not correct.	<p>FPUD and RMWD would go from being dependent on SDCWA supplies to being fully dependent on MWD supplies after losing access to the more reliable QSA supplies and desalination water.</p> <p>FPUD would increase its dependence on MWD supplies since it would not receive QSA supplies. Consequently, FPUD would increase its reliance on Delta supplies since it would become 100% dependent on MWD supplies. See Response Section 6.</p>
16F	17	Under the WSAP, MWD incentivizes demand management through rate surcharges that apply to purchases above an agency’s calculated allocation.	Somewhat misleading.	WSAP doesn’t incentivize demand management, it penalizes agencies via a rate surcharge if their MWD allocation is exceeded. To consider it an “incentive” is misleading.

Item #	Page	Reference	Comment	Response
17F	18	Sufficient water to meet demands would be fully available for FPUD and RMWD if their service is provided by EMWD.	Not correct.	<p>Tables 8-10 (pgs. 22-24) of EMWD’s Technical Memorandum show that in 2035, EMWD would not be able to meet FPUD’s demands if MWD were to activate its WSAP. For a level 1 shortage, FPUD would be 5% short of supplies, for Level 3 they would be 5.6% short of supplies, and for Level 5 they would be 11.8% short of supplies. It should be noted that EMWD’s analysis assumes FPUD has no local supplies (which isn’t correct) and customers in FPUD’s service area reduce demand by 5%, 10%, and 15%, respectively, in response to drought conditions. However, FPUD’s ability to reduce demands in the future may be limited due to demand hardening that has occurred as a result of the state’s drought emergency.</p> <p>Also, Attachment A, the source of the data in Table ES-1, shows multiple instances where FPUD and RMWD will have an MWD allocation that is less than their total potable demand.</p>
18F	19	FPUD is not able to receive ESP water service due to a yet to be constructed pump station and appurtenant facilities by the Water Authority. If built, M&I	Somewhat misleading.	See response to Item #1F (second paragraph).

Item #	Page	Reference	Comment	Response
		customers would receive ESP water at 75% level of service and TSAWR customers at 50% level of service.		
21F	19	FPUD considering agreement to send a portion of SMRCUP water to RMWD if earthquake on Elsinore Fault.	No discussion on reduced reliability to FPUD and impact to customers. Volume of water under consideration for RMWD's use not listed.	Building from the Response to Item #19F, commitments to provide an unknown amount of local water to RMWD further decreases the reliability of FPUD's limited water supply during a catastrophic event on the Elsinore Fault. Also, there is no discussion on a plan or analysis to provide water if the service outage lasts beyond the 14 days assumed by FPUD. Also, there is no discussion on the daily production ability for SMRCUP and how it compares to daily demands for FPUD and RMWD.

Questions for the Applicants and Eastern

A full reading of the applications raises a number of issues that need to be answered. Here are questions that the Water Authority believes are important for LAFCO to ask the applicants and Eastern:

C. Questions for Rainbow

1. What Williamson Act lands are there in Rainbow's service area? (Note: LAFCO Statutes require certain special processes for such lands. *See*, for example, Government Code Section 56426.6 and, 56856.5. The applications skipped over the required identification.)
2. What exact infrastructure changes will Rainbow need to implement to fully serve its ratepayers if detachment/annexation request is approved?

3. What environmental review (if any) has been done for changes listed in response to question 2?
4. What are the cost estimates to date (if any) for changes listed in response to question 2?
5. For the \$11 per acre-foot charge, does Rainbow expect Eastern to provide Rainbow with any access to Eastern's non-MWD water, Eastern's water storage, or Eastern-owned water infrastructure? If Rainbow is going to receive any water from Eastern other than MWD water, or use Eastern storage, or receive access to Eastern-owned infrastructure, what are the specific details as to such items?
6. Does Rainbow have any plans for acquiring any access to Eastern's non-MWD water, Eastern's storage, or Eastern-owned infrastructure in the future? If so, what information does it have on any additional costs over \$11 acre-foot charge, and timing, of such access?
7. What specific Water Authority infrastructure would Rainbow need access to after annexation into Eastern?
8. For each item of infrastructure identified in answer to question 7, what are the specific water volumes and timing needed for use of such infrastructure?
9. Has Rainbow assessed the readiness of its facilities to serve its ratepayers after a catastrophic earthquake, if detached? If yes, provide the analysis, document, and projected rate impacts. If not, will Rainbow plan to perform the assessment and improve infrastructures as required?
10. Does Rainbow have access to the MWD 14-day plan it cited in in its application papers for repair of MWD pipelines after an earthquake on the Elsinore Fault? If so, can it be provided to LAFCO and the parties?
11. Have any other Water Authority member agencies discussed with Rainbow potential detachment of their agencies?
12. Have any other Water Authority member agencies discussed with Rainbow whether they could link their infrastructure to Rainbow's once Rainbow is part of Eastern? Conversely, has Rainbow discussed with other Water Authority member agencies any plans to interconnect its system to theirs in order to provide redundancy (such as in an emergency or drought) to serve Rainbow once it has detached?

13. What persons, if any, have discussed annexation into Rainbow in the past two years? What lands were discussed?
14. What specific ad valorem taxes does Rainbow believe the Water Authority should receive after detachment?
15. Please provide all communications Rainbow has had with MWD related to the proposed detachment.
16. What is the exact status of Rainbow's water infrastructure? What needs replacement, and why has this not been done?

D. Questions for Fallbrook

1. What Williamson Act lands are there in Fallbrook's service area? (Note: LAFCO Statutes require certain special processes for such lands. *See*, for example, Government Code Section 56426.6 and, 56856.5. The applications skipped over the required identification.)
2. What exact infrastructure changes will Fallbrook need to implement to fully serve its ratepayers if detachment/annexation request is approved?
3. What environmental review (if any) has been done for changes listed in response to question 2?
4. What are the cost estimates to date (if any) for changes listed in response to question 2?
5. For the \$11 acre-foot charge, does Fallbrook expect Eastern to provide Fallbrook with any access to Eastern's non-MWD water, Eastern's water storage, or Eastern-owned water infrastructure? If Fallbrook is going to receive any water from Eastern other than MWD water, or use Eastern storage, or receive access to Eastern-owned infrastructure, what are the specific details as to such items?
6. Does Fallbrook have any plans for acquiring any access to Eastern's non-MWD water, Eastern's storage, or Eastern-owned infrastructure in the future? If so, what information does it have on any additional costs over \$11 acre-foot charge, and timing, of such access?
7. What specific Water Authority infrastructure would Fallbrook need access to after annexation into Eastern?
8. For each item of infrastructure identified in answer to question 7, what are the specific water volumes and timing needed for use of such infrastructure?

9. Has Fallbrook assessed the readiness of its facilities to serve its ratepayers after a catastrophic earthquake, if detached? If yes, provide the analysis, document, and projected rate impact. If not, will Fallbrook plan to perform the assessment and improve infrastructures as required?
10. Does Fallbrook have access to the MWD 14-day plan it cited in in its application papers for repair of MWD pipelines after an earthquake on the Elsinore Fault? If so, can it be provided to LAFCO and the parties?
11. What is the projected daily production of SMRCUP accessible to Fallbrook and how does it compare to the daily demand of both Fallbrook and Rainbow?
12. Have any other Water Authority member agencies discussed with Fallbrook potential detachment of their agencies?
13. Have any other Water Authority member agencies discussed with Fallbrook whether they could link their infrastructure to Fallbrook's once Fallbrook is part of Eastern? Conversely, has Fallbrook discussed with other Water Authority member agencies any plan to interconnect its system to theirs in order to provide redundancy (such as in an emergency or drought) to serve Fallbrook once it has detached?
14. What persons or entities, if any, have discussed annexation into Fallbrook in the past two years? What lands were discussed?
15. What specific ad valorem taxes does Fallbrook believe the Water Authority should receive after detachment?
16. Please provide all communications Fallbrook has had with MWD related to the proposed detachment.
17. What is the exact status of Fallbrook's water infrastructure? What needs replacement, and why has this not been done?

E. Questions for Eastern

1. How will Fallbrook and Rainbow be represented at Eastern? Will they each have seats on the Eastern Board as they do at the Water Authority? Will a new Eastern district be created for them? If not, what district will they go into?

2. Other than via MWD pipes, does Eastern have any water infrastructure connections to either Rainbow or Fallbrook's water delivery systems? Are there any plans for such connections?
3. If Eastern were to try and move its own non-MWD water through MWD pipes to Rainbow or Fallbrook, would Eastern have to pay an MWD wheeling charge?
4. If Eastern were to try and move its own non-MWD water through MWD pipes to Rainbow or Fallbrook, would Rainbow/Fallbrook have to pay an Eastern transportation charge, and if so what would it be?
5. Other than MWD water, what services do Fallbrook and Rainbow receive from Eastern for the \$11 per acre-foot charge?
6. What additional services could Eastern potentially provide to Fallbrook and Rainbow, other than the proposed MWD service for the \$11 per acre-foot charge? What would the charges be for those additional services?
7. Please provide all communications Eastern has had with MWD related to the proposed detachments and annexations.
8. Since MWD preferential rights do not travel with Rainbow and Fallbrook to Eastern, should Eastern need to use its preferential rights at MWD would they be used for Rainbow and/or Fallbrook, or just for Eastern's retail customers?
9. What specific ad valorem taxes does Eastern believe the Water Authority should receive after the detachments and annexations?

Section 9

Main Legal Issues

Among the main legal issues that LAFCO must consider in this proceeding are:

- What laws govern LAFCO's authority as to the reorganization proposals, and does it have the legal ability to deny the applications?
- If LAFCO approves the reorganization proposals, what conditions should be imposed? For example:
 - Should voting occur only in Fallbrook and Rainbow's jurisdictions, or within the whole of the San Diego County Water Authority?
 - Should the voters within Rainbow and Fallbrook be required to assess a parcel tax or other form of assessment on themselves in connection with the reorganization in order to pay their fair share of the bonded and other indebtedness incurred while those parcels were a part of the Water Authority?
- What legal effect does the Bay-Delta legislation have on this proceeding?
- What CEQA compliance is required?

These legal issues provide a critical framework for evaluating the applications.

A. Issue 1: What laws govern LAFCO'S authority as to the reorganization proposals, and can it deny the applications?

1. *Interplay between County Water Authority Act and the LAFCO Statutes*

The fundamental issue that must be addressed first is the scope of LAFCO's authority as to the pending applications. Is LAFCO just administering the County Water Authority Act ("CWA Act") and the other subject agencies' principal acts, or can LAFCO exercise additional powers under the LAFCO Statutes to implement its decisions, including potential denial of the applications?

Rainbow and Fallbrook's applications assume that the CWA Act is controlling, and that it provides the only requirements for these applications. This is not correct. For example, Rainbow's application states: "RMWD is proposing that the detachment be consistent with the County Water Authority Act (Water Code Appendix Section 45-1 et seq.), the law under

which SDCWA exists and is organized.”¹²⁷ Rainbow also opposes rate neutrality for the Water Authority’s other member agencies and any kind of “exit fee” upon detachment on the grounds that: “The County Water Authority Act has no provisions for either concept Had the State Legislature wanted to have ‘revenue neutrality’ or an ‘exit fee’ be part of the detachment process, it would have included these in the CWA Act. However, those terms are nowhere to be found.”¹²⁸

Fallbrook’s application echoes a similar theme, stating at page 3 that “The CWA Act establishes the legal requirements for a member agency seeking to detach” Fallbrook then goes on to try and cast the principle into the context of some sort of contract: “[CWA Act] requirements that each member agency that has become a member of SDCWA over the years has agreed to be bound.”

However, as explained in detail in this section and based on statutes and case law, the correct formulation of the applicable law is actually this: *The LAFCO Statutes, the County Water Authority Act, and other principal acts are relevant in determining the requirements of the proposed detachments and annexations, and all must be respected and applied.*

Notably, LAFCO is not being asked to just allow detachments, but also annexations and amendments to spheres of influence at the same time.¹²⁹ Therefore, LAFCO must look at the whole of the reorganizations sought here, not just pieces of the reorganization requests. In doing so, various laws must be construed, and applied.

2. *The LAFCO Statutes*

The LAFCO Statutes were designed by the Legislature to control the reorganizations of local agencies and districts, and consist of five “Parts” which are generally as follows:

- Part 1 – General provisions, introduction, definitions;
- Part 2 – Local Agency Formation Commission formation and powers;
- Part 3 – Commission Proceedings for Changes of Organization & Reorganizations;
- Part 4 – Conducting Authority Proceedings, and
- Part 5 – Terms and Conditions and Effect of a Change of Organization/Reorganization.

Government Code Section 56100(a) provides:

Except as otherwise provided in Section 56036.5 and subdivision (b) of Section 56036.6, this division [the LAFCO Statutes] provides the sole and

¹²⁷Rainbow Supplemental MWD Information Package, page 8.

¹²⁸*Id.*, page 14.

¹²⁹*See* Fallbrook application letter page 1: “[P]lease find Fallbrook Public Utility District’s (FPUD) application documents (Application) for the Detachment/Exclusion of FPUD . . . and Annexation into the Eastern Municipal Water District”; and Rainbow’s Supplemental Information at page 1: “Specifically, the District seeks actions from SDLAFCO to detach from the San Diego County Water Authority (SDCWA) and annex the District into Eastern Municipal Water District (EMWD).”

exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. All changes of organization and reorganizations shall be initiated, conducted, and completed in accordance with, and as provided in, this division.

Therefore, the LAFCO Statutes are “the sole and exclusive authority and procedure” for a reorganization, except where Government Code Sections 56036.5 and 56036.6 apply. Section 56036.6 allows the Commission to determine that the Water Authority’s principal act (the County Water Authority Act) controls as to Parts 4 and/or 5 of the LAFCO Statutes. San Diego LAFCO has determined that the Water Authority is exempt from Part 4 (Conducting Authority proceedings). Per Government Code Sections 56100(a) and 56036.6, and the LAFCO determination, all of the applicable Parts in the LAFCO Statutes are germane to this proceeding, except Part 4.

The goal of the Legislature in enacting the LAFCO Statutes was to create an orderly decision-making process for changes in local governments. For example, in *Protect Agricultural Land v. Stanislaus County Local Agency Formation Com.* 223 Cal.App.4th 550 (2014), the Court states at 557:

The Reorganization Act was enacted to encourage planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open space and prime agricultural lands within those patterns and to discourage urban sprawl. (§ 56001; [Citation.]) The Reorganization Act includes a legislative finding that “the logical formation and determination of local agency boundaries is an important factor . . .” in achieving these goals. (§ 56001.) The Legislature declared that the policy underlying the act “should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.” (§ 56001.)

To effectuate those goals, LAFCO’s are allowed by law to approve or disapprove change applications brought to them:

[A] LAFCO’s statutory authority includes the power to approve or disapprove (1) petitions for annexation, (2) proposals for changes of organization or reorganization, and (3) requests by cities for amendments to their spheres of influence. (§§ 56375, 56428, subd. (e).)

Protect Agricultural Land at 558.

The LAFCO Statutes clearly state, for example in Government Code Section 56375, LAFCO’s broad authority to deny, approve, or approve with conditions reorganization requests:

The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) (1) To review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

3. *The LAFCO Statutes and Interaction with a Principal Act*

So, if the LAFCO Statutes clearly govern reorganizations such as proposed here, what role does an agency's principal act play? The Legislature has expressly provided in the LAFCO Statutes for a principal act to have an important role in certain areas. For example, Government Code Section 56886(q) allows the principal act to have a role in setting conditions.¹³⁰

But how does this work in practice? The case law on the issue has made clear that if the principal act is very specific as to something, then the more general LAFCO Statutes cannot contradict express terms in the principal act. However, if there is not contrary specificity in a principal act, then LAFCO can exercise its full discretion. These principles can be seen most clearly by reviewing two appellate cases: *Antelope Valley-East Kern Water Agency v. Local Agency Formation Com*, 204 Cal.App.3d 990 (1988) ("*Antelope Valley*"), and *Las Tunas Beach Geologic Hazard Abatement Dist. v. Superior Court*, 38 Cal.App.4th 1002 (1995) ("*Las Tunas Beach*").

In *Antelope Valley*, some local homeowners applied to their LAFCO for permission to detach from the Antelope Valley-East Kern Water Agency (AVEK). *Id.* at 992. The LAFCO approved the request, but set out a condition that AVEK taxes and assessments would not be collectible after July 1 of the next fiscal year. *Id.* But AVEK's principal act had language that stated that the detaching lands would remain liable for the agency's obligations. *Id.*¹³¹ Thus, the LAFCO condition appeared to contradict the clear terms of the principal act.

The *Antelope Valley* court addressed the conflict by determining that LAFCO could not use its general powers provided in the LAFCO Statutes to contradict the clear terms of the principal act:

We affirm on the ground that the condition in the LAFCO resolution relieving the property of taxes is directly contrary to section 84 of AVEK's principal act, which we find to be specific and controlling. There is no merit to appellant's contention that in enacting the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, § 56000) the Legislature intended to authorize LAFCO to override the

¹³⁰Also, *see* for example Government Code Section 56119 as to the principal act governing as to certain boundary issues.

¹³¹The AVEK operative language is almost identical to that found in the Water Authority Act, an issue that will be addressed further in the below subsection on LAFCO conditions.

Legislature’s specific provision that territory excluded from AVEK shall remain taxable for the purpose of paying bonded indebtedness.

[T]he trial court properly granted the writ of mandate because the LAFCO resolution is directly contrary to section 84 of AVEK’s principal act, which we find to be specific and controlling. Appellant has not persuaded us that LAFCO is authorized to disregard this specific provision.

Id. at 992 and 996.

There was a similar result in *Las Tunas Beach*, though that case also provides the answers to both scenarios: when a principal act provides specific instruction, and when it does not. In *Las Tunas Beach* the City of Malibu wanted to preserve the right to dissolve a geologic hazard abatement district (“GHAD”). The appellate court decided that though LAFCO has broad statutory discretion, it could not contravene specific terms of a principal act:

Although the Legislature has occupied the field with respect to changes of organization of districts, thereby preempting local law, Cortese-Knox is not the sole statutory scheme pertaining to district formation. It shares the field with other such statutory schemes applicable to particular types of districts.

[T]he general provisions of Cortese-Knox pertaining to district formation do not apply to the formation of a GHAD because the law dealing with GHADs contains its own more specific formation procedures: a routine formation procedure, pursuant to chapter 2 (Pub. Resources Code, § 26525 et seq.) and an emergency formation procedure pursuant to chapter 2.5 (Pub. Resources Code, § 26568 et seq.). Given these provisions in the law relating to GHADs with respect to the formation of a GHAD, pursuant to settled rules of statutory construction, said special provisions control over the more general provisions of Cortese-Knox relating to district formation.

Id. at 1009-1010.

Though the principal act contained clear provisions as to district formation, it did not address dissolution processes. Because of that, the Court found that the LAFCO Statutes governed the dissolution process:

On the other hand, the GHAD scheme found in the Public Resources Code does not contain any dissolution provision. Therefore, the dissolution procedures of Cortese-Knox, which pertain to districts generally, control the dissolution of a GHAD.

We conclude the Public Resources Code’s silence with respect to GHAD dissolution requires resort to Cortese-Knox, not to common law theories.

Id. at 1012.

The above case law and statutes provide LAFCO a roadmap for analyzing the instant applications: the LAFCO Statutes apply and control the process, unless there is a clear instruction in the applicable principal act, and then that governs.

4. *The County Water Authority and Other Principal Acts Apply Together with the LAFCO Statutes, and Vest the Decision Regarding Reorganization in LAFCO*

There are various principal acts potentially at issue here. The County Water Authority Act is the principal act for the Water Authority. However, there are other principal acts to consider as well, specifically: the Public Utility District Act (commencing at Section 15501 of the Public Utilities Code) for Fallbrook; the Municipal Water District Act of 1935 found in Chapter 41 of the Water Code Appendix for Rainbow; and the Municipal Water District Law of 1911, at Water Code sections 71000 *et seq.* for Eastern.

If LAFCO reviews all the principal acts, the Water Authority believes what it will find is: (a) none of the principal acts except the CWA Act provide any details for processes of detachment from the Water Authority; and (b) none of the principal acts address the annexation process governing annexing into Eastern.¹³²

What does this mean for LAFCO as to the instant applications? It means that the LAFCO Statutes provide *all* the parameters for *annexation* issues, while the LAFCO Statutes also apply to *detachment* issues unless they contradict the County Water Authority Act. (*Antelope Valley* at 996.) This is the legal template used in the next subsections on LAFCO potential actions on the applications.

Even if one took the most restrictive view possible of the County Water Authority Act, as Fallbrook and Rainbow propose,¹³³ that view cannot cover the entirety of the applications

¹³²Though Water Code sections 72300-72303 provide a few general provisions on overall annexation, they do not instruct the process, and the majority of the Municipal Water District Act of 1911’s provisions on annexation were repealed. The statutory notes, such as found at former Water Code Section 72630, note that the LAFCO Statutes take their place: “The repealed sections related to the effect of informality in proceeding or election on annexation, exclusion, or dissolution, and limitation on action to contest validity of annexation, exclusion, or dissolution. The subject matter of the repealed sections is generally covered by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; see Gov C §§ 56000 *et seq.*” When Eastern wants to annex territory it applies to LAFCO under the LAFCO Statutes, as Eastern notes in its 2016 Board item on annexation, which can be found at Appendix Exhibit “60.”

¹³³An issue that will be addressed further below as to financial conditions.

here, because those applications seek both detachment *and* moving Rainbow and Fallbrook into Riverside County via annexation to Eastern, as well as sphere of influence changes. There is simply no basis to contend that the County Water Authority Act covers the overall scope of the application requests to LAFCO by Fallbrook and Rainbow. Government Code Section 56073 provides the definition of “reorganization” as “two or more changes of organization contained within a single proposal.” This is precisely what is going on here, as Rainbow and Fallbrook seek both detachments and annexations. That is an overall reorganization, the scope of which is within the purview of the LAFCO Statutes.

Therefore, and contrary to the apparent contentions of Rainbow and Fallbrook that this is a ministerial matter, LAFCO has a right to deny the applications, or impose extensive conditions, even if the County Water Authority Act were otherwise satisfied as to detachment, because the *entirety* of the sought reorganizations are not covered by the County Water Authority Act, or any other principal acts.

B. Issue 2: If LAFCO Were To Approve the Proposed Detachments and Annexations, Can LAFCO Impose Conditions, and if so, What Kinds of Conditions?

Now we come to a very important, and contentious, issue, which is the nature of conditions that LAFCO could possibly impose on any approval of the applications. It is controversial because financial and voting conditions are key areas of disagreement among the parties.

In this section, the Water Authority covers LAFCO’s general rights to impose conditions, and the ones likely to be at issue here.

1. *Overview of Conditions*

The LAFCO Statutes provide a LAFCO with a wide-ranging set of potential conditions that can be imposed on an approved application.

Government Code Section 56886 addresses some of the conditions LAFCO may impose on the Fallbrook/Rainbow reorganizations if LAFCO were to approve them. It begins by stating: “Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions.” The statute then goes on to note an extensive list of conditions that can be imposed. Here are the ones in the statute that the Water Authority believes to be most likely to be potentially applicable here:

- Payment for the “acquisition, transfer, use, or right of use of all or any part of the existing property, real or personal, of any city, county, or district.” Government Code section 56886(a). This will likely be an issue because there are various Water Authority owned pieces of infrastructure which serve Rainbow and Fallbrook that may need to be transferred, which infrastructure is described in Section 7.

- The "levying or fixing and the collection of any of the following, for the purpose of providing for any payment required pursuant to subdivision (a): (1) Special, extraordinary, or additional taxes or assessments; (2) Special, extraordinary, or additional service charges, rentals, or rates; (3) Both taxes or assessments and service charges, rentals, or rates." Government Code section 56886(b).
- Payment for outstanding "bonds, including revenue bonds, or other contracts or obligations" and taxes by "imposition, exemption, transfer, division, or apportionment." Government Code section 56886(c). This is the right of LAFCO to impose some form of pro rata payment for existing Water Authority obligations.
- Terms listed in a principal act. Government Code section 56886(q). This, as noted above, allows LAFCO to include conditions listed in a principal act.
- A catch-all provision allowing "Any other matters necessary or incidental to any of the terms and conditions specified in this section." Government Code section 56886(v). This statute allows broad discretion for LAFCO to craft additional conditions.

To the extent a given LAFCO reorganization decision does not cover a specific area of conditions, then it is required to apply certain general conditions that are set out in Part 5, beginning at Government Code section 57302. Those provisions include a detailed financial condition for detachment that would be required if LAFCO does not otherwise address financial conditions: Government Code section 57354. That statute requires that the detaching areas:

continue to be liable for the payment of principal, interest, and any other amounts which become due on account of any bonds, including revenue bonds, or other contracts or obligations of the district and any improvement district within which the detached territory has been situated, as are outstanding on the effective date of detachment. It shall be subject to the levying or fixing and collection of any of the following which may be necessary to provide for that payment: (a) taxes or assessments; (b) service charges, rentals, or rates; (c) Both taxes or assessments and service charges, rentals, or rates.

2. *Financial Conditions*

The potential condition that has caused the most discussion is whether or not Fallbrook and Rainbow can leave the Water Authority and join Eastern without payment to the Water Authority for any of the \$21+ billion in Indebtedness set out in Section 4 above. The "saving ratepayers money" public relations campaign by the applicants is predicated on the unstated assumption that Fallbrook and Rainbow ratepayers will only bear the cost of

MWD wholesale water plus an administrative fee of \$11 per acre-foot for Eastern, and not pay their pro rata share of the Water Authority's incurred obligations.

The position of the applicants is, as stated in their applications and in correspondence with LAFCO, some combination of the following: (a) the LAFCO Statutes are "silent as to any provisions for any other payment to be made to SDCWA in the event of a detachment"¹³⁴; (b) the County Water Act sets the only financial terms and LAFCO can do nothing else (*supra*); and (c) the meaning of the County Water Authority Act is that only ad valorem taxes that are currently being charged to lands in the affected service areas may continue, and nothing else.¹³⁵ Fallbrook and Rainbow expert Ken Weinberg admitted that the applicants interpret the County Water Authority Act to mean that the Water Authority basically receives nothing upon detachment: "FPUD and RMWD have interpreted the 'taxable property shall continue to be taxable for the purpose of . . . bonded indebtedness' does not apply since SDCWA has no debt secured by property taxes."¹³⁶

In contrast, the position of the Water Authority is the following:

(a) the LAFCO Statutes are not "silent" regarding financial conditions for these requested reorganizations. In fact, they grant LAFCO the express rights to impose financial conditions;

(b) the CWA Act does set the minimum financial terms that LAFCO is required to apply for detachments, but that does not mean they are the only financial conditions that apply; and

(c) the interpretation of the County Water Act proposed by the applicants is contrary to the CWA Act's express terms and case law. The correct interpretation of the CWA Act is that the Water Authority must have the right to collect, by "taxation" on each of the parcels within a detaching member agency's boundaries, a pro rata share of all the

¹³⁴Page 2 Nossaman letter of July 31, 2020, to Keene Simonds. Appendix, Exhibit "61."

¹³⁵Their contentions on the taxation issue are confusing, as it is not always clear whose taxes they are referencing (all emphases added below). Rainbow claims in the July 31 Nossaman letter to LAFCO (Appendix, Exhibit "61") both that under the CWA Act the *departing agency* must "forfeit to the SDCWA *its* property taxes [while debt exists]," and "the *detaching district's property taxes* continue to be paid to the SDCWA." These statements appear to be talking about Rainbow's tax revenues. However, Rainbow's Supplemental Information submittal to LAFCO states on page 8 states that the amount is "limited to *SDCWA share* of ad-valorem taxes." Fallbrook states in the cover letter to its application, page 3 that: "the amount currently collected annually from taxable properties *within FPUD's boundaries* is roughly \$150,000. These payments would continue after detachment . . ." This is perplexing, given that the San Diego County Auditor's office wrote to Fallbrook on June 29, 2020, and stated that Fallbrook's share of property taxes in 2019-20 was over a million dollars. Appendix, Exhibit "62." In Section 8 of this Response the Water Authority spells out questions that LAFCO should require that the applicants and/or Eastern answer, including what specific ad valorem taxes Rainbow and Fallbrook are talking about.

¹³⁶ Appendix, Exhibit "9," page 6.

Water Authority's outstanding "bonded and other indebtedness" that exist at the time of detachment.

The bases for the Water Authority's above position are detailed in the rest of this subsection.

a. The LAFCO Statutes Are Not "Silent" As To Financial Conditions, And They Apply Here

The applicants' contention about the "silence" of the LAFCO Statutes regarding reorganizations and financial conditions is incorrect and seeks to avoid a duty, supported by public policy, to pay a fair share of costs. In fact, the LAFCO Statutes expressly give LAFCO the power to impose appropriate financial conditions. All one need do is read Government Code Sections 56886(b) and 57302 to see that this claim is in error.

Further, as noted above, LAFCO has *not* been presented merely with detachment requests. Rather, it has been presented with *reorganization* requests that *include* detachments. Even if LAFCO were to approve the applications, LAFCO would have a right to impose the financial conditions stated in the LAFCO Statutes. Therefore, not only are the LAFCO Statutes not "silent" on the subject of financial conditions for these applications, they actually govern the overall requests.

b. The County Water Authority Act – Its Application, Limits, And Financial Conditions

The County Water Authority Act does address financial issues regarding detachment, and it must be honored – though as noted above it is not the sole source of potential financial conditions for the overall reorganization requests.

How to apply Section 45-11(a)(2) of the County Water Authority Act is an important reorganization financial issue between the applicants and the Water Authority. The key text from that subsection, relating to the detachment ("exclusion") of an entire public agency from the Water Authority is as follows (emphases added):

[T]he corporate area of the public agency shall be excluded from the county water authority and shall no longer be a part thereof; provided, that the taxable property within the excluded area shall *continue to be taxable* by the county water authority *for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion* and until the bonded or other indebtedness has been satisfied ...

The applicants construe this provision as meaning that all the Water Authority can do is keep any taxes that are already being imposed that are securing bonds, and since there are none, that is basically zero (some ad valorem taxes perhaps being added). *However, that is not what the statute says.* There is nothing in the above text that limits the detaching agency's obligation to tax assessments being currently assessed at the time of detachment

that expressly secure bonds, or are 1% ad valorem taxes. The statute states that the departing land will continue to be “*taxable*”, that is, subject to taxation by the Water Authority to pay for whatever “bonded or other indebtedness” might exist at the time of detachment. The “at the time of the exclusion” and “bonded or other indebtedness” texts define the obligations that must be paid, not the nature of taxation.

The County Water Authority Act gives the Water Authority the power to tax. For example, CWA Act section 45-5(8) states the Water Authority can impose taxes to cover any of its obligations (emphasis added):

Impose and collect taxes for the purpose of *carrying on the operations and paying the obligations of the authority*; provided, however, that the taxes imposed pursuant to this section exclusive of any tax imposed to meet the bonded indebtedness of the authority and the interest thereon and exclusive of any tax imposed to meet any obligation to the United States of America or to any board, department, or agency thereof, shall not exceed five cents (\$0.05) on each one hundred dollars (\$100) of assessed valuation.

Additionally, CWA Act Section 45-7(j) allows taxation for bonds, Section 45-9(b) allows tax levies, tax liens are created via Section 45-9(g), etc.

Thus, if read in totality, the CWA Act allows for taxation to pay obligations. Section 45-11(a)(2) permits the agency to impose taxes (not just collect prior taxes) against detaching land to collect the appropriate share of bonded and other indebtedness then in existence at detachment. This is the correct overall reading of the law, as supported by case law.

The key case that should be reviewed carefully by LAFCO is *Antelope Valley*, 204 Cal.App.3d 990 (1988), discussed in detail above. In that case the Court had to deal with operative statutory text that was very similar to that in the CWA Act. Here is a comparison table:

Text of CWA Act Provision	Text of AVEK Provision ¹³⁷
<p>“...the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied”</p>	<p>“... the taxable property within such excluded area shall continue taxable by the Antelope Valley-East Kern Water Agency for the purpose of paying the bonded or other indebtedness of the Antelope Valley-East Kern Water Agency outstanding or contracted for at the time of such exclusion</p>

¹³⁷ *Antelope Valley* at 992.

	and until such bonded or other indebtedness shall have been satisfied”
--	--

In addition to the above cited statute, the AVEK legislation -- like the CWA Act -- granted broad powers to tax when deemed necessary by the public agency:

In sections 61(9) and 78 of AVEK’s principal act the Legislature gave AVEK both the power and the duty to levy taxes to pay the obligations of AVEK. AVEK’s contract with the department contains the standard article 34(a) [Citation] that “[if] in any year the Agency fails or is unable to raise sufficient funds by other means, the governing body of the Agency shall levy upon all property in the Agency not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.¹³⁸

Because the AVEK legislation allowed AVEK to tax if it needed for the State Water Project, and the legislation also stated that detached land remained taxable, the LAFCO could not take away the power to potentially tax the land if needed to pay for the State Water Project:

A specific statute, section 84 of AVEK’s principal act, declares in no uncertain terms the tax consequences of detachment of territory from AVEK: the taxable property shall continue taxable by AVEK for the purpose of paying the bonded indebtedness to the same extent it would have been taxable if exclusion had not occurred.

AVEK was created by the Legislature as part of a state water project financed by the state. Section 84 of AVEK’s principal act is one of several provisions of state law intended to protect the financial interests of the state and its bond holders. Payment of obligations is required even if contracting agencies have not yet received any water.¹³⁹

Therefore, AVEK had the power to levy taxes whenever the agency needed to do so, precisely as with the CWA Act. The “taxable” provision in the exclusion portion of the legislation allowed AVEK to levy such taxes to pay for existing obligations, and the State Water Project was an existing obligation. To stop the right to levy taxes for the existing obligations, as a LAFCO had done, violated the express terms of the principal act, which allowed AVEK to levy taxes when needed.

¹³⁸ *Antelope Valley* at 993.

¹³⁹ *Antelope Valley* at 995.

The above CWA Act and AVEK texts are common throughout the Water Code and its agency-specific uncodified acts. Similar language can be found in such statutes as: Water Code Section 60417 (Water Replenishment Districts); Water Uncodified Act 210, section 34 (Crestline-Lake Arrowhead Water Agency); Water Uncodified Act 1100 Section 39 (San Gorgonio Pass Water Agency); Water Uncodified Act 570 Section 452 (metropolitan water districts); and Water Uncodified Act 240 Section 38 (Desert Water Agency).

The applicants claim that the above text means only current taxes being paid that secure bonds may continue to be collectible -- but nothing else. This contradicts the actual terms and intent of the statutes: that agencies be able to recover a fair share of outstanding obligations from the departing lands by way of imposing taxation. If the above laws meant what the applicants claim, then, for example, an obligation that exists at time of detachment, but for which an agency has not started taxing yet, would escape coverage. Similarly, an agency that had not exercised its right to impose taxes could never recover on existing obligations from departing lands.

The Legislature clearly wanted, *when these laws were enacted before the Proposition 13/26/218 era*, to ensure that departing lands would pay their fair share of outstanding “bonds and other indebtedness,” i.e. all obligations of the agency, and not escape the obligations incurred during the time the lands were part of the applicable public agency.

Before the Propositions 13, 218, and 26 era, public agencies could generally, as allowed by their enacting legislation, tax when they felt necessary. As stated by the Legislative Analyst’s Office in its August 1996 publication “Property Taxes: Why Some Local Governments Get More Than Others”¹⁴⁰:

Prior to the 1978 passage of Proposition 13, each local jurisdiction authorized to levy a property tax set its own tax rate (within certain statutory restrictions). The rate set by each local government was independent of the rates set by other jurisdictions. A property owner’s total property tax bill reflected the sum of the individual rates set by each taxing entity. A given piece of property might, for example, be subject to a separate tax rate for the city, county, and local school district as well as any special districts that provided services to the property. Under this system, each local jurisdiction made a determination every year as to the amount of revenue necessary to finance the desired level of services. Based on this determination, each local entity set its property tax rate so as to collect the necessary revenue.

Therefore, when the CWA Act language in Section 11 was created in the 1940’s¹⁴¹ there was no issue as to whether an agency could tax land that was being excluded. All the

¹⁴⁰Appendix, Exhibit “63.”

¹⁴¹The language at issue was part of the initial county water authority legislation in 1943 via Senate bill 1079 (Fletcher – 1943) chapter 545, statutes of 1943, a copy of which is provided in the Appendix at Exhibit “64.” See Section 11 in that legislation at page 22, where this text is included as to detachment: “[T]he property

agency needed to do was impose taxes under its normal statutory regime. It did not need a vote of the people as it does now.

Remarkably, the applicants ask LAFCO to construe this *1940's legislation* to functionally mean this: *lands that are excluded remain taxable but only for the amounts already being collected for bonds and under the 1% ad valorem taxes that are assessed by a county assessor and distributed to local public agencies.* However, the legislation says nothing of the sort, nor could it when it was enacted. The 1% tax cap came from the limitation in 1978's Proposition 13, Section 1, which stated: "(a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties." Under Proposition 13, local assessors would impose this 1% tax and hand it out to local agencies, which -- as LAFCO is no doubt well aware -- is what occurs today.

Therefore, if one wants to fairly look at and construe the meaning of the CWA Act, its straightforward and commonsense text must be applied: that an agency can impose payment requirements on detaching lands to pay for their share of all the existing obligations. That's what the statute provides. The question here is, how can LAFCO effectuate the statute?

c. The One Mandatory Financial Condition

Proposition 13's 1% tax limitation is not relevant in trying to construe the *meaning* of the CWA Act, but the *fact* of that limitation in today's California is very important in one potential scenario: if LAFCO were to approve the requests, it may have multiple financial conditions it can impose (*see* next subsection), but one financial condition is *mandatory* because it is required in the CWA Act: the County Water Authority must be able to impose sufficient taxes to pay for the pro rata share of all "bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion." CWA Act Section 45-11. That is a straightforward requirement of the CWA Act, and there is only one way that LAFCO can effectuate the law if it were to approve these detachments: LAFCO must make it a condition that when voters in Fallbrook and Rainbow vote on detachment (discussed in next subsection), the vote for detachment must include their approval of the imposition of a parcel tax or assessment to pay for the departing agencies' pro rata share of bonded or other indebtedness. In other words, if they want to detach and annex, Fallbrook and Rainbow voters must agree by vote to be fully taxed by the Water Authority to pay the bill.

Historically, agencies were able to ensure they could collect sufficient

If they want to detach and annex, Fallbrook and Rainbow voters must agree by vote to be fully taxed by the Water Authority to pay the bill.

within the said public agency as it shall exist at the time of such exclusion shall continue taxable for the purpose of paying said bonded and other indebtedness outstanding or contracted for, at the time of such exclusion and until such bonded or other indebtedness shall have been satisfied."

funds on the tax roll to service debts. *Supra*. However, Proposition 13 and its progeny (Propositions 218 and 26) have now limited agencies' abilities to tax without voter approval and other restrictions, and the Constitution no longer allows agencies to tax without voter approval as they were allowed to do when the CWA Act was enacted. To harmonize the LAFCO Statutes and existing constitutional law, as well as fulfill the intention of the principal acts, LAFCO must require voter approval of such taxes as a condition of approving the reorganization (Government Code section 56886(b)). LAFCO also has broad authority to craft other remedies as necessary to achieve equity. (Gov. Code Section 56886(v)). Taxes constitute one of "a virtually limitless array of factors" upon which a LAFCO may condition its approval of a change or organization.¹⁴²

Is LAFCO adding a condition that the voters agree to tax themselves some sort of novel concept? No. In an article discussing City disincorporation, one of the principal authors of the LAFCO Statutes, John Knox, writes:

Proposition 218 would require voters in the former city approve a new special tax by a two-thirds majority or a new general tax by a simple majority, while Proposition 13 would absolutely prohibit any additional property taxes within the former city's territory, even with voter approval. However, while the California Constitution does not allow a county to impose taxes directly under the Act, a LAFCO can require voter approval of such taxes as a condition of approving the disincorporation proposal in the first place.

John H. Knox & Chris Hutchinson, "Municipal Disincorporation in California," *Public Law Journal*, Vol. 32.4, California Bar Association (Fall 2009). Appendix, Exhibit "72." (Emphasis added).

Similarly, the Attorney General has also noted that a LAFCO can condition an approval on a tax condition. In a 2006 Opinion, the Attorney General stated that the LAFCO Statute "complements... rather than conflicts with" Propositions 218 and 26. (citing a previous Attorney General opinion, 82 Ops. Cal. Atty. Gen. 180 (1999)). The opinion then states, "[a]ccordingly, when a LAFCO conditions approval of the incorporation of a city upon voters within the proposed city approving a general tax . . ." (89 Ops. Cal. Att'y Gen 173 at p. 4).

Here, LAFCO cannot agree to separation terms that allow departing districts to leave without paying their fair share of the existing obligations when the principal act so requires (*Antelope Valley*, 204 Cal.App.3d at 994) (finding that the principal act required that after a

¹⁴²*Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 912 ("The commission may make its approval conditional on a virtually limitless array of factors" discussing Gov. Code Section 56844, predecessor of Section 56866). The Supreme Court noted that the imposing of conditions is a "process containing elaborate safeguards designed to protect the political and economic interests of affected local governments, residents, and landowners." *Id.* That is precisely the issue here, the protection of the interests of others.

detachment “the taxable property shall continue taxable by AVEK for the purpose of paying the bonded indebtedness to the same extent it would have been taxable if exclusion had not occurred.”). The CWA Act establishes that detaching entities shall “remain taxable” for “bonded and other indebtedness.” Thus, given the modern requirements for voting to effectuate that mandated statutory result, the necessary minimum condition to actually apply the CWA Act is a parcel tax or assessment imposed on land within the detaching districts, to be approved by the voters as required by the Constitution, in connection with any vote of the electorate for reorganization.

If it were going to approve detachment, to comply with the CWA Act and as authorized by the LAFCO Statutes, LAFCO must impose a requirement that the voters in Fallbrook and Rainbow approve a parcel tax or assessment that is sufficient to cover Fallbrook and Rainbow’s pro rata share of the bonded and other indebtedness outstanding or contracted for at the time of the reorganization. Such a requirement may be adopted by majority vote of LAFCO Commissioners.¹⁴³ The amount of the “bonded and other indebtedness” under the CWA Act to be assessed on the departing parcels can be determined by LAFCO.¹⁴⁴

Approval of the detachment without requiring Rainbow and Fallbrook to pay their fair share of contractual and other debts would unfairly penalize the Water Authority and its member agencies: it would impair the Water Authority’s ability to pay those debts,

Approval of the detachment without requiring Rainbow and Fallbrook to pay their fair share of contractual and other debts would unfairly penalize the Water Authority and its member agencies: it would impair the Water Authority’s ability to pay those debts, may reduce its credit rating, and will thus increase borrowing rates in the future.

¹⁴³89 Ops. Cal. Att’y Gen 173 (2006).

¹⁴⁴The phrase “bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion” in the CWA Act is not defined, but it may have the same meaning – because the intent is the same – as the more detailed version now found in the Government Code at Section 57354 regarding detachments, which states: “the payment of principal, interest, and any other amounts which become due on account of any bonds, including revenue bonds, or other contracts or obligations of the district and any improvement district within which the detached territory has been situated, as are outstanding on the effective date of detachment.” Interestingly, when Coronado detached from the Water Authority in 1946, almost immediately after the Water Authority’s creation, the issue of the meaning of the text was addressed by the Water Authority’s then General Manager and General Counsel. They interpreted the statute’s language as including even certain minor service and employment agreements and costs, but no bonds had yet been issued. They also decided that as a practical matter existing surplus that year could pay those minimal expenses. A copy of that correspondence is attached in the Appendix as Exhibit “65.” Though Coronado and the Ramona Irrigation District detached in 1946, at that time there were no meaningful Water Authority obligations or debt, nor had the Legislature created the LAFCO Statutes. Even if one construed “other indebtedness” as excluding the Water Authority’s water supply contracts and only including the actual almost \$2 billion in debt owed by the Water Authority, this would still only be a CWA Act issue, and would not affect LAFCO’s ability to impose further financial conditions on the proposed reorganizations to make the Water Authority and its remaining member agencies whole. See next subsection.

may reduce its credit rating, and will thus increase borrowing rates in the future. It would also violate the terms of the CWA Act, because without such a voting condition from LAFCO the Water Authority would not be able to actually effectuate the taxation terms of the CWA Act, which clearly intends full recovery.

d. Financial Conditions Not Limited to Just Taxation for “Bonded and other Indebtedness”

However, the above mandatory taxation condition for the voters to pay “bonded and other indebtedness” in the CWA Act is not the sole allowable financial condition. Because the applications seek both detachment and annexation, and thus give LAFCO the authority to impose any and all conditions under the LAFCO Statutes and not just what is listed in the principal acts, LAFCO can impose all appropriate financial and other conditions. LAFCO should use this authority to require full financial coverage for the remaining member agencies.

Without adequate compensation from Rainbow and Fallbrook, other members are left with the responsibility to pay for the departing agencies’ “stranded costs.”¹⁴⁵ The issue of “stranded assets” or “stranded costs” arose most notably in the electricity context during the late 1990s. The California Legislature, the California Public Utilities Commission, and the Federal government created a series of complex rules and regulations regarding the ability of retail and wholesale energy providers to recover costs associated with stranded assets as deregulation occurred and as power production methods and sources changed over time. The “justification for allowing the recovery of stranded costs” is explained as follows:

If customers leave their utilities’ generation systems without paying a share of these costs, the costs will become stranded unless they can be recovered from other customers. The [California Public Utilities] Commission ensures recovery of the costs of the transition to a competitive industry by allowing utilities to recover their legitimate, prudent and verifiable stranded costs.

The method requires assigning the costs to the departing wholesale generation customer through either an exit fee or a surcharge. The departing generation customers, and not the remaining generation or transmission customers (or shareholders), must bear their share of the legitimate and prudent obligations that the utility undertook on their behalf. Direct assignment of stranded costs is desirable because it is consistent with the well-established principle of cost

¹⁴⁵ See definition provided in *Stranded Assets as a Key Concept to Guide Investment Strategies for Sustainable Development Goal 6*, <https://www.mdpi.com/2073-4441/11/4/702/htm>

causation, namely, that the party who has caused a cost to be incurred should pay it.¹⁴⁶

In the energy context, in addition to the costs of infrastructure, “Power purchase contracts are one of the largest components of stranded costs.” *Id.* The principles applied to power infrastructure and power purchase agreements are directly analogous to the debt and other obligations the Water Authority has incurred for water infrastructure and under water purchase agreements. Here, the Water Authority’s water purchase contracts were entered into on behalf of all 24 member agencies, with an expectation that all members would continue to pay their fair share of the costs. Detaching members should bear their fair share of the obligations that the Water Authority entered into. In the area of energy supply transitions, California regulators have identified that equitable principles must be applied to ensure that parties pay their share of stranded assets or stranded costs and that such financial burdens are thoughtfully allocated among affected parties. In this case, LAFCO is the regulatory body that is best able to address these principles.

Even if for some reason LAFCO were to accept a narrow interpretation of “bonded and other indebtedness” in the CWA Act as excluding the water supply contracts, that does not foreclose LAFCO from adding financial conditions on the overall reorganization to make all the remaining member agencies whole, such as stated in Government Code Section 57354. As explained above, the applications are not just for detachments, but for reorganizations that would include annexations. Therefore, LAFCO has at its disposal its full arsenal of potential conditions, including all the extensive financial conditions detailed in the Government Code.

e. Additional Voting Condition

If for any reason LAFCO were to approve the reorganizations, the CWA Act would require a majority vote in Rainbow and Fallbrook to obtain the consent of the electorate, *but LAFCO should also require voting in the entire service area of the Water Authority as the LAFCO Statutes allow.*

As explained in Section 5, the proposed reorganizations would mean voting rights at MWD moving from San Diego County control via the Water Authority, to Riverside County control via Eastern. This means that all persons in the Water Authority service area should have a say on whether they want local voting interests at MWD moving out of San Diego County. LAFCO is required to consider “[t]he effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and

The loss of San Diego County voting rights at MWD will affect all local ratepayers and is a statutory effect of the reorganizations that LAFCO cannot eliminate.

¹⁴⁶Restructuring in California, Costs of Transition and Stranded Assets, <http://www.energyonline.com/Reports/Files/Stranded%20Assets.pdf> page 19

economic interests, and on the local governmental structure of the county.” (Gov Code § 56668(c).)

Equity demands, and LAFCO has the authority under Government Code Sections 56876 and 56886(v) to require, that all affected voters throughout the Water Authority’s jurisdiction be able to vote on the reorganization, because the departure of Rainbow and Fallbrook will have consequences to the remaining members of the Water Authority and their ratepayers - even if the mandatory financial conditions referenced in the prior subsection were imposed as a condition of reorganization. The loss of San Diego County voting rights at MWD will affect all local ratepayers and is a statutory effect of the reorganizations that LAFCO cannot eliminate.

Government Code section 56876, which notably is in Part 3, not Part 4, of the LAFCO Statutes (and therefore a part of the “sole and exclusive authority and procedure” of the LAFCO Statutes) states:

In any order approving a proposal for an annexation to, or detachment from, a district, the commission may determine that any election called upon the question of confirming an order for the annexation or detachment shall be called, held, and conducted upon that question under either of the following conditions:

- (a) Only within the territory ordered to be annexed or detached.
- (b) Both within the territory ordered to be annexed or detached and within all or any part of the district which is outside of the territory.

Because the CWA Act mandates that an election will be called, the statute clearly gives LAFCO the right to expand voting to a larger region, one that would here include all those ratepayers affected. Additionally, Government Code section 56886(v) states that LAFCO can impose “Any other matters necessary or incidental to any of the terms and conditions specified in this section.” LAFCO, therefore, can impose a condition that enfranchises all affected ratepayers to have a say in the proposed reorganizations.

C. Issue 3: What Role Does the Bay-Delta Legislation Have in this Proceeding?

Basic factual issues pertaining to the Bay-Delta and potential water increases by moving onto more MWD water are addressed in Sections 2 and 6 of this Response. In this section various legal issues pertaining to the Bay-Delta are addressed.

To date LAFCO has seen the Bay-Delta issue appear in CEQA correspondence, and because the Bay-Delta is an environmental issue it certainly has CEQA ramifications. However, the import of the Sacramento-San Joaquin Delta Reform Act (Water Code Section 85000, *et seq.*) (the "Delta Reform Act") cannot be ignored by LAFCO. In its findings, the Legislature declares, "The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the

crisis requires fundamental reorganization of the state's management of Delta watershed resources."¹⁴⁷

The Delta Reform Act further states:

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. (Emphasis added)¹⁴⁸

This is not a CEQA statute, but an important pronouncement from the State Legislature as to what it wants done at the local level, which is precisely the issue here. Further, the above statute is tied to extensive Bay-Delta protection and guidelines established by the State of California, as can be seen by review of the extensive State of California Delta-related documents submitted as Appendix Exhibits "45" to "48" and Exhibit "68."

As stated by Dr. Rodney Smith of Stratecon, who was engaged by the Water Authority to review the Bay-Delta claims of Eastern, the proposed reorganizations will place increased reliance on the Bay-Delta:

The detachment will increase Southern California's reliance on Northern California for water supplies. Eastern's Technical Memorandum asserts the contrary by assumption. It fails to mention, let alone analyze, the role of the Water Authority's historic agreements with IID and the Coachella Valley Water District in the Water Authority's water sources and how the Water Authority uses QSA water. Eastern further relies only on information available from 2015 Urban Water Management Plans, despite the availability of a 2018 update from the Water Authority that suggests that the Water Authority's future may be one of minor, if any, reliance on Metropolitan water with no detachment.

Our state has struggled with the south's reliance on the north for decades. Southern California's water demands stress the local economies and ecosystems in the north. The Fallbrook and Rainbow detachment proposal would intensify the conflict by moving from reliance on the Water

¹⁴⁷ Water Code Section 85001(a).

¹⁴⁸ Water Code Section 85021.

Authority's Colorado River water from the QSA onto reliance on MWD, which in turn relies heavily on Bay-Delta water.¹⁴⁹

There are some straightforward and non-disputable facts set out in this Response that LAFCO must consider in these reorganization requests:

- The Bay-Delta is of critical environmental concern to the State.
- The State Water Project is MWD's main water supply, and provides its water from the Bay-Delta.
- Water supplies from the State Water Project are at serious risk. To use MWD's own words, "The lack of progress on California WaterFix leaves Metropolitan's service area at severe risk from decreasing reliability and increasing disruptions in the delivery of vital SWP supplies, including from additional regulatory restrictions on operations of the existing SWP facilities in the south Delta." (Emphasis added.) Appendix, Exhibit "51," page 7 of 10.
- The Water Authority is projected to drop to almost zero purchased MWD Bay-Delta water with Rainbow and Fallbrook as members. This means those agencies' current QSA (Colorado River) water usage will increase as Water Authority members, but decrease if detached.
- In contrast, by moving onto Eastern, 100% of Rainbow and Fallbrook's imported water supply will be from MWD, and thus a majority will be an additional supply needed from the Bay-Delta.

Bay-Delta Background and History¹⁵⁰

The Sacramento-San Joaquin Bay-Delta is an important estuary that supports many fish, wildlife and plant species. It is also an important water source for Californians. The decline of the Delta ecosystem and resultant court interventions and regulatory actions have significantly impacted Delta water exports. State and federal agencies began jointly working on a potential Delta solution called the Bay Delta Conservation Plan ("BDCP") in 2006. In December 2013, the BDCP and associated environmental documents were circulated for comment. As envisioned, the BDCP was a federal Habitat Conservation Plan ("HCP") and State Natural Community Conservation Plan ("NCCP") designed to obtain 50-year permits from regulatory agencies that would allow water export facilities to be operated in a more stable and reliable manner.

The original BDCP included a massive set of Twin Tunnels under the Delta and an ambitious habitat conservation plan. After realizing it would not be possible to secure

¹⁴⁹ Appendix, Exhibit "49."

¹⁵⁰ See Appendix, Exhibits "45" to "48" for a much more complete picture of the many important activities and issues related to the Bay-Delta.

long-term operations assurances, in July 2015, the lead state and federal agencies abandoned the HCP/NCCP permitting approach. The BDCP was then bifurcated into “California WaterFix” (the Twin Tunnels) and California EcoRestore (habitat restoration). The permitting for WaterFix was altered to a Section 7 Federal Endangered Species Act permit, a species by species and far less durable approach than the 50-year operating permit the agencies had desired. The final environmental impact report for WaterFix was certified in July 2017. Later in October, the MWD Board voted to support the \$16.7 billion (in 2017 dollars) project and agreed to pay up to 25.9 percent of the costs. The Water Authority’s MWD board representatives opposed the MWD board action on WaterFix and did not believe that MWD ratepayers should pay for the CVP farmers’ share of the project.

In his first State of the State address, Governor Newsom officially ended the Twin Tunnels and California WaterFix. Instead, Governor Newsom supports a water resilience portfolio approach to water resource management that includes a single tunnel Delta project. Recently, the Newsom Administration released an updated preliminary cost estimate of \$15.9 billion for the single tunnel project.

Landmark legislation regarding the Bay-Delta was passed in November 2010 (Delta Reform Act), one of several special-session bills enacted that year, related to water supply reliability, ecosystem health, and the Sacramento-San Joaquin River Delta. Among other things, the Act created the Delta Stewardship Council, effective on February 3, 2010. The Council is made up of seven members who provide a broad, statewide perspective and diverse expertise spanning agriculture, science, the environment, public service, and beyond.

LAFCO Role on the Bay-Delta Issue

LAFCO is required to take into account policy requirements on matters such as the Bay-Delta when making reorganization decisions. Per Legislative Policy L-108, San Diego LAFCO “shall encourage that long range planning for availability of water supply and reliability should be integrated within the local water agencies, cities, special districts, County of San Diego, SANDAG, and San Diego LAFCO.”

In May 2008, the California Association of Local Agency Formation Commissions presented *Delta Decisions & Drought: The Future of Water Supply in California*, a “workshop for LAFCo Staff, Consultants and Commissioners.”¹⁵¹ Through classes such as “LAFCo’s Role in Assessing Water Capacity & Sustainability,” participants learned about the complex landscape of water use and delivery in California. Presentation slides discussed the 2007 State Water Project Delivery Reliability Report, which demonstrated uncertainty in SWP deliveries due to “decline of fish population, climate change and seal level rise, and fragile delta levees and water conveyance”¹⁵² and discussed short- and long-term impacts of the uncertainty on water delivery conditions. LAFCO has rightly had its attention on these

¹⁵¹ [https://calafco.org/sites/default/files/resources/Delta Decisions Course Materials 0.pdf](https://calafco.org/sites/default/files/resources/Delta%20Decisions%20Course%20Materials%200.pdf)

¹⁵² *Id.*, program materials p. 148

issues for many years, as they are matters of statewide concern and affect regions as far from the Bay-Delta as San Diego County.

Based on the mandates of LAFCO's own policies, and the requirements of the Delta Reform Act, LAFCO must consider the impacts of the Bay-Delta in considering local water use and delivery policy. Because of the dependent and interconnected nature of our State's water systems, one cannot be done without the other. As declared in Water Code Section 85020, the state has "coequal goals" for managing the Delta, which includes protection and restoration of the Delta ecosystem, as well as "promot[ing] statewide water conservation, water use efficiency, and sustainable water use." As quoted above, **"each region that depends on water from the Delta" must do its part to "improve its regional self-reliance for water"** through regional water projects and planning. It is only by looking at the big picture that local LAFCOs can ensure they are complying with the mandates of Water Code section 85021 and ensuring the safety and reliability of water supply in the long term.

As set out in Section 6, it is clear that allowing Fallbrook and Rainbow to detach and move onto reliance on MWD water will increase reliance on the Bay-Delta. LAFCO should not countenance, absent exceptional justifications that have not been demonstrated in these applications, the unnecessary moving of water demand onto the Bay-Delta.

D. Issue 4: What CEQA Compliance Is Required?

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.¹⁵³

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

¹⁵³ It should be noted that both Fallbrook and Rainbow stipulated, and the Superior Court ordered, that the Fallbrook and Rainbow Notices of Exemption could not be relied upon by other agencies such as LAFCO. Copies of the Orders are attached to the Appendix as Exhibits "66" and "67." Though the Water Authority is aware that LAFCO was not a party to those cases, and thus LAFCO was not subject to the Court's personal jurisdiction, that misses the point that the Notices of Exemption were before the Court with the applicable parties, and the Court therefore had jurisdiction to address the efficacy and nature of the NOE's. The Court expressly limited the NOEs as only having effect on the decisions of the agencies to make applications to LAFCO, and the applicants themselves stipulated -- and the Court ordered -- that they could not be used for other environmental review. The NOEs therefore cannot be used to claim that all environmental review has been performed when a Court has already adjudicated they cannot be used for that purpose. Fallbrook and Rainbow are barred by Court order from submitting the NOEs for LAFCO's use in this manner.

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].)

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.

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]; ¹⁵⁴see 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

¹⁵⁴ Appendix, Exhibit "68."

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.¹⁵⁵

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

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.

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

¹⁵⁵ Found at <https://www.sdirwmp.org/2019-irwm-plan-update#codeword3>

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

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.

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.

Neither Rainbow nor Fallbrook has apparently undertaken or presented any environmental analysis of the potential cumulative impacts of their simultaneous detachments and annexations.

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.

Section 10

Conclusion

The applications are, unfortunately, an attempt to disrupt many decades of critical water planning for San Diego County by promising supposedly lower rates and the same level of service to a group of ratepayers to encourage separation from San Diego County. Neither promise is correct. Rates would only possibly be lower initially if LAFCO permitted Rainbow and Fallbrook to walk away from paying their fair share of the financial obligations to the Water Authority. Water supply reliability would be decreased by sole reliance on MWD for imported water, and pressure on the Bay-Delta would be increased by the reorganization.

LAFCO has a duty to look at all the effects of detachment and annexation, not just the aspects promoted by the applicants.

The basic facts cannot be legitimately refuted: (a) any lands which leave San Diego County and go to Riverside County for water supply purposes automatically decrease San Diego County's voice at MWD, the water agency whose rates directly impact San Diego County ratepayers. Losing voting rights at MWD hurts San Diego

County ratepayers; (b) absent appropriate financial conditions, the proposed reorganizations will cost the other Water Authority member agencies hundreds of millions of dollars, as they pay the share of financial obligations left unpaid by the departing agencies; and (c) Fallbrook and Rainbow ratepayers would be moving onto less reliable water, and doing so in contravention of state law to protect the Bay-Delta.

The Water Authority has met and discussed possible resolution with Fallbrook and Rainbow. The Water Authority would like to retain Fallbrook and Rainbow as member agencies. However, to date Fallbrook and Rainbow have taken the position that they want only what is stated in their pending applications. The Water Authority is willing to meet with them and with LAFCO to try and effectuate some form of mutually satisfactory resolution whereby Rainbow and Fallbrook remain member agencies.

The extensive back and forth to date between the Water Authority, Rainbow, and Fallbrook has not been productive. Rather than detail all these matters here, and start such arguments again, the Water Authority suggests that the parties and LAFCO discuss a process whereby meaningful discussions can occur.

The applications are, unfortunately, an attempt to disrupt many decades of critical water planning for San Diego County by promising supposedly lower rates and the same level of service to a group of ratepayers to encourage separation from San Diego County. Neither promise is correct.

This Response is made in good faith by the Water Authority to try and alert LAFCO, the parties, and the public as to important issues which must be considered carefully regarding the proposed detachments/annexations. The Water Authority believes that the airing of all the pertinent facts will educate and inform, and ultimately assist LAFCO in its prudent making of critical decisions. The Water Authority looks forward to all comments and discussion regarding this Response.

PETITION and COMPLAINT

EXHIBIT I

May 22, 2023

RECEIVED

MAY 22 2023

SAN DIEGO LAFCO

VIA EMAIL AND PERSONAL DELIVERY

San Diego LAFCO Commissioners
Keene Simonds, Executive Officer
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Re: Reorganization Applications by Fallbrook and Rainbow (“Applications”)

Dear San Diego LAFCO:

The Commission has set June 5, 2023, for a hearing on the reorganization Applications by Fallbrook Public Utility District (“Fallbrook”) and Rainbow Municipal Water District (“Rainbow”), seeking detachment from the Water Authority and annexation to Eastern Municipal Water District (“Eastern”). LAFCO Staff has issued an Agenda Staff Report (the “Report”) which recommends that the Commission approve detachment with a very limited “exit fee.”¹ The Water Authority, which provides wholesale water service to almost the entire population of San Diego County and whose membership includes all major water provider cities and districts in its service area, opposes the Applications and objects to their approval. The Water Authority recommends that the Commission adopt Option 5 from the Report, which is to disapprove the reorganization proposals.²

At the outset, the Water Authority notes to the Commission two important facts not highlighted in the Report: that the *City of San Diego -- representing more than 1.3 million residents -- opposes detachment* (letter of 11/30/2022 to LAFCO from Mayor Todd Gloria), and LAFCO’s own Cities Special Advisory Committee voted *10-1* to also oppose detachment (March 17, 2023, meeting; two abstentions). The Water Authority encourages the Commission to listen to the voices of our County’s many cities and water agencies, whose millions of residents are being asked by Fallbrook

¹ Staff also issued an abbreviated “Prospectus” that merely summarizes the more detailed Agenda Report.

² The Water Authority Board resolved to oppose the Applications unless four key conditions were satisfied: (a) Rainbow and Fallbrook guarantee that all obligations promised to their own ratepayers are met; (b) detachment will not adversely affect other Water Authority member agencies and San Diego County as a region financially or environmentally; (c) detachment and then annexation into Eastern will not increase reliance on the Bay-Delta; and (d) detachment will not result in a diminution of the Water Authority’s voting power at MWD, all as detailed in our previous submittals. The conditions have not been satisfied, and thus this letter follows our Board’s direction as an objection by the Water Authority to the Applications.

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 • Yulma Municipal Water District

and Rainbow to subsidize their exits from a water system established by the Legislature to serve our region. The Commission should also not ignore the judgment of the Water Authority's Board of Directors, which has both the expertise and statutory responsibility for long-term water planning in San Diego County for more than 75 years.

In this letter we first provide an Executive Summary of the Water Authority's central objections to the Applications, and some key facts. The rest of the letter then addresses each of these areas in greater detail. Citations are generally in endnotes rather than footnotes for ease of reading.

A. EXECUTIVE SUMMARY

There are a number of independent reasons the Applications should be denied by the Commission:

1. Allowing Fallbrook and Rainbow to move their imported water service from San Diego County to Riverside County has long-term and far-reaching negative impacts across San Diego County. These include:
 - a. Loss of San Diego County voting rights at Metropolitan Water District of Southern California ("MWD"), directly diluting the San Diego region's influence at MWD and harming all San Diego County water ratepayers.
 - b. Loss of revenue to the Water Authority, which will cause water rate hikes across San Diego County, as other member agency ratepayers must cover the revenue losses caused by a Fallbrook and Rainbow exit.
 - c. Dangerous precedent, and adverse financial ratings impacts at the Water Authority and MWD, raising borrowing costs and therefore causing water rates to even further increase across San Diego County and Southern California.
 - d. Loss of water supply reliability by Fallbrook and Rainbow residents by becoming totally dependent on MWD, without benefit of the MWD preferential water rights they have already paid for at the Water Authority.
 - e. Loss of water supply reliability for Fallbrook and Rainbow residents in an emergency by reliance on water only from the north, without adequate analysis of how a serious earthquake would threaten farms and residents.
 - f. Risk of significant water rate increases in Fallbrook and Rainbow, because MWD – on which those two agencies will solely rely for imported water – is heading into a major capital investment cycle that will raise its rates significantly. Dr. Hanemann, LAFCO's expert, called detachment a financial "gamble" by Fallbrook and Rainbow.
2. The Applications, if granted, will increase reliance on the fragile Bay-Delta water system, contravening State law and policy.

3. There has been no CEQA review of the effect of granting the Applications, including their combined effect and Bay-Delta impacts. This is a serious matter, and the Commission should not proceed until all CEQA review has been properly performed.
4. The Applications, if granted, will damage coordinated regional planning efforts in San Diego County for water supply reliability and other critical issues.
5. There is extensive data missing from the Applications, making them defective until remedied.

By asking and answering the following questions, we cover some basic facts underlying why the Applications should be denied, all as addressed in detail after this Executive Summary.

What do the Applications Seek? They ask LAFCO to approve reorganizations for Fallbrook and Rainbow which would detach them from the Water Authority in San Diego County and annex them into Eastern in Riverside County, and MWD via Eastern.¹

Would the Applications change the service areas of the Water Authority and Eastern? Yes. The Water Authority's service area would be reduced in San Diego County, and Eastern's service area would be expanded to include portions of San Diego County for the first time.² In addition, new MWD terms and conditions to annexation may apply under the applicable provisions of the MWD Act and Administrative Code.

Would Fallbrook and Rainbow receive the same water? No. Currently, they receive water from the Water Authority, and our agency's water portfolio includes contractual water from desalination and from the Quantification Settlement Agreement's ("QSA") high priority water transfer and canal lining in the Imperial Valley, along with water purchases from MWD³ that are fully backed by our agency's preferential rights to MWD water. If the reorganizations are approved, Fallbrook and Rainbow would only receive imported water from MWD, whose supply is dependent on the Bay-Delta⁴ and lower priority Colorado River water. Demand on MWD and the Bay-Delta would increase.⁵ MWD staff has informed LAFCO that preferential rights are not transferrable from the Water Authority to Eastern or to the Applicants directly, and there is nothing in the record indicating that Eastern ratepayers would share Eastern's preferential rights at MWD with Rainbow and Fallbrook.

Would Fallbrook and Rainbow receive water from Eastern's local supplies? No. They would be paying Eastern a nominal administrative fee to access MWD water only.⁶ Eastern's infrastructure does not reach Fallbrook and Rainbow.⁷

Would Fallbrook and Rainbow have the same access to all the water storage they do now? No. Right now they can be supplied from MWD's storage system via membership in the Water Authority, and from the Water Authority's separate storage system. If reorganization is allowed, they would lose access to the Water Authority's storage (which provides not only dry year supplies but also emergency supplies), and retain access only to MWD storage. The Applicants would not have access to Eastern's storage. Fallbrook and Rainbow thus seek Commission approval to trade Water Authority + MWD storage for just MWD storage.

Would Fallbrook and Rainbow continue to be able to be served from north and south in case of earthquake or other infrastructure loss? No. As Eastern members they would only be able to be served from the north. However, as Water Authority members they are able to be served from the north and from the south, providing significant redundancy that could prevent extreme hardship for farms and residents following a major earthquake.

Is MWD water as reliable as that of the Water Authority? No. The Water Authority, as a member of MWD, has access to MWD water, as does Eastern. But the Water Authority *also* has large volumes of water from conservation in the Imperial Valley (QSA water) that is of higher legal priority than MWD's more junior Colorado River supplies.⁸ The Water Authority also has drought-proof desalinated seawater. These additional water sources, over and above just MWD water alone, make the Water Authority's water supply more reliable.⁹ This extra reliability is critical, because MWD in 2022 experienced water supply shortages and is now beginning an investment cycle, planning many billions of dollars of investments to avoid future shortages.

Would Fallbrook and Rainbow continue to have the same form of representation at Eastern as they do at the Water Authority? No. At the Water Authority they have direct representation with their own Board members who can vote their agency's interests. At Eastern they apparently will be merged into some larger Riverside County voting district and will not have their own Board representatives, thus diluting their vote.¹⁰ As a matter of transparency, the Commission should require Eastern and the Applicants to detail for LAFCO and the public precisely how Fallbrook and Rainbow ratepayers will, or will not, have a vote on decisions at Eastern.

Will pressure on MWD's water supplies increase with the reorganizations? Yes. Whatever amounts of water Fallbrook and Rainbow currently order from the Water Authority will be ordered from Eastern. Because Eastern will only have the ability to serve Fallbrook and Rainbow with MWD water, Eastern's orders from MWD will increase accordingly. The QSA and desalination water that was previously being provided to Fallbrook and Rainbow by the Water Authority will now be replaced by MWD water, increasing demand on MWD's already constrained water supply, and on the Bay-Delta.

Will the Water Authority lose revenues with the reorganizations? Yes. Fallbrook and Rainbow make up almost 7% of the Water Authority's revenues. The Water Authority estimates annual base year losses to be about \$16 million per year.¹¹ Dr. Hanemann estimates them at about \$12 million per year.¹² All such losses would have to be made up from the remaining member agencies, i.e., water ratepayers across the rest of the County.¹³

Will San Diego County lose voting rights at MWD? Yes. San Diego County will lose voting rights at MWD, while Eastern will gain voting rights at MWD.¹⁴ This is very important, because decisions at MWD affect what is paid for water and property taxes in San Diego County, and Eastern has opposed MWD water refunds for San Diego County ratepayers.

B. REASONS THE APPLICATIONS SHOULD BE DENIED

The Water Authority believes the Commission should deny the Applications for all the reasons

stated in this section. We walk through each category, and then address what the LAFCO Staff Report states as to each topic.

REASON #1 – San Diego County Will Lose Voting Rights at MWD:

What happens at MWD has a major impact on San Diego County and its water ratepayers. Our region purchases MWD water supplies, and also pays MWD to deliver the majority of our region's water that has been conserved in the Imperial Valley (QSA water).

Therefore, actions at MWD can have significant effects on our County. When MWD spends money, there is pressure to pass costs on to our water ratepayers and taxpayers. When MWD makes major infrastructure investments, those costs can be in the billions of dollars, and again, some portion will get paid by our water ratepayers and taxpayers. When MWD makes decisions on who constitutes its management, those choices materially affect our region.

The Water Authority, representing San Diego County interests, is a member agency at MWD and has a weighted vote there *based on assessed land values in our service area*. The more land is located in the Water Authority, the larger San Diego County's share of the MWD vote. The less land, the lower San Diego County's vote at MWD.

By moving the Fallbrook and Rainbow service areas into Eastern, San Diego County's current vote at the Water Authority tied to those lands *permanently moves to that Riverside County district*. This is a legislative requirement under the MWD Act,¹⁵ and cannot be changed by LAFCO, or by any agreement among the agencies. San Diego County, through the Water Authority, will lose about 2% of its current voting rights at MWD, while Eastern will gain about 10% of its current voting rights.¹⁶ Further, the effect of this voting shift will continue to increase over time, because land values in the Fallbrook and Rainbow service areas are rising faster than the more urbanized areas of the County, and that will likely continue with population growth. For example, the total assessed land values in those regions went from 1.677% to 1.684% as a percentage at the Water Authority just from 2021 to 2022.

A reduced MWD voting right is a critical loss for San Diego County, because recent key votes at MWD have been decided by razor-thin margins.¹⁷ Additionally, as explained in detail in the Water Authority's September 2020 Response to LAFCO, it would hand our County's vote to Eastern, an agency which has regularly sought to prevent San Diego water ratepayers from the benefit of refunds of illegal rates by MWD, litigating actively to prevent such return of funds to our County. The Applications, if granted, would boost Eastern's power at MWD, and reduce San Diego County's voice there.¹⁸ Thus, the vote shift not only reduces our County's voting strength at MWD, it increases the voting strength of an agency which has long opposed MWD rate refunds to our County.

For the Commission to allow a transfer of any of our County's voting rights at MWD to an agency adverse to the interests of San Diego County would be a dereliction of the Commission's duty to the water ratepayers and taxpayers of San Diego County.

The LAFCO Staff Report: As to Reason #1, the Report notes that MWD voting rights are important, but downplays the issue by stating that in the last ten years there were only three votes

that were extremely close, and two of them -- per LAFCO Staff -- were not “significant in terms of generating long-term impacts on MET’s member agencies.”¹⁹ Staff have no sound basis for making such an assertion.

In the first place, what was happening at MWD (and statewide and in the Southwest) 10 years ago is very different than what is happening at MWD today. In earlier times, MWD was a water delivery agency, exporting then low-cost water from Northern California and the Colorado River. Today, these MWD supplies are more and more constrained. To its credit, MWD’s new management (appointed via a close and controversial vote) acknowledges the need for investment in a reliable water supply, and to change its business model and past financial practices. Not only were the close votes at MWD very important (which is why the MWD Board was split almost 50-50), but they were all made in the past two years. In other words, voting at MWD during these changing times can be very close and divided on key policy matters, and LAFCO Staff’s attempt to downplay the issue is not informed or appropriate.²⁰

REASON #2 – San Diego County Water Ratepayers Will Pay Higher Rates:

There has been extensive evidence submitted to the Commission during the processing of the Applications showing that should the Commission approve the reorganizations without full compensation to the Water Authority for losses, the rest of San Diego County’s ratepayers will be paying the bill.

What is the amount of that bill? Annual losses of, on average, between \$12.2 and \$16.4 million per year. LAFCO expert Dr. Hanemann estimates the former,²¹ while the Water Authority estimates the latter.²² Because the Water Authority must pay for all the water supplies and infrastructure it acquired for the region (including for Fallbrook and Rainbow), it must recover such costs from its member agencies, i.e., the rest of San Diego County.

Though Dr. Hanemann suggests that up to 10 years might be an appropriate time span for an “exit fee”²³, and the Report suggests only five years, neither eliminates significant water rate impacts for the rest of our member agencies’ ratepayers. The Hanemann Report’s suggested exit fee also ignores the millions of dollars in engineering costs the Water Authority must pay if there are detachments, costs spelled out in our Response,²⁴ and which are higher today due to construction and labor cost increases. There is thus inherent unfairness at the baseline because not all water supply investments and costs are covered.

The LAFCO Staff Report: As to Reason #2, the Report downplays the impacts suffered by water ratepayers in the County, and it uses artificially low calculations in doing so.

First, the Report only suggests a five-year exit fee, though even Dr. Hanemann had suggested up to 10 years.²⁵ *Second*, Dr. Hanemann’s exit fee analysis addressed only the QSA obligations, not all the other obligations the Water Authority has incurred to serve member agencies such as Fallbrook and Rainbow. All such costs would have to be borne by the rest of the County. *Third*, the ratepayer impacts suggested by the Report are in error. They assume Dr. Hanemann’s figures, and ignore possible changes that can meaningfully escalate such costs. For example, the Water Authority noted in its Response that though a base year loss of detachment was estimated at \$16 million, this could escalate to over \$40 million annually in some years.²⁶ This would create far

larger ratepayer impacts than the Report claims. *Fourth*, the Report suggests an offset to even its own limited exit fee by deducting money that “would otherwise be expended on proceeding with the previously planned construction of the ESP North County Pump Station.” However, this pump station would be funded over a long period of time. Staff is proposing five years of exit fees, but arbitrarily crediting Fallbrook and Rainbow for 30 years of costs. In other words, for an “exit fee,” only five years of Water Authority losses are counted, but when it comes to an offset 30 years of spread-out costs are all included. The methodology is seriously flawed and the Commission should not accept it.

The Report tries to marginalize the issue by claiming that the average County-wide water rate increases of 3.6% are less than inflation, and thus “less than significant.”²⁷ The Report thus recommends that the Commission vote to impose 3.6% annual water rate hikes for the rest of our County so Fallbrook and Rainbow can buy MWD water from Riverside County. Staff suggest such rates hikes are immaterial. They are not. *They come on top of inflation*, and at a time when water agencies across the state and the nation are struggling to contain pass-through costs. Adding to water rates is never insignificant.

Also, where is the environmental justice and economic impact review of this question for the poorer areas of the County which are being asked to pay the bill for Fallbrook and Rainbow? *It is non-existent*. The Report has a short section on page 52, but this only covers purported effects *in the Rainbow and Fallbrook areas*, not the rest of the County. Yet, LAFCO’s own environmental justice brochure states: “State law directs San Diego LAFCO to address several factors anytime the Commission considers jurisdictional changes. The current listing of factors is codified in Government Code Section 56668 and includes considering whether proposed jurisdictional changes will promote environmental justice.”²⁸ Under the statute this means the “*fair* treatment and meaningful involvement of people of *all* races, cultures, *incomes*, and national origins, with respect to the location of public facilities and the *provision of public services*.” (Emphases added.) Contrary to this requirement, the Report ignores the issue of impacts of unnecessary higher water rates outside Fallbrook and Rainbow by arbitrarily concluding it is less than inflation so it is not significant. This is not a proper consideration or determination of environmental justice.

Finally, the Report notes that the Applicants have argued that detachment is the same as “rolloff.”²⁹ They are unrelated. The Water Authority’s member agencies order water when they need it, and not when the need is lacking. This occurs for a host of reasons, including having their own supplies, rainfall, and other factors. The Water Authority’s Board of Directors makes all appropriate decisions with respect to near-term and long-term water resource planning and how to fairly allocate and charge member agencies for our recovery of costs. Once an agency detaches it is no longer a member and is not subject to such decisions. Thus, detachment is not the same as rolloff. We also note that the Report states that, “The Ad Hoc Committee tasked a working group to independently address the topic [of rolloff/detachment].”³⁰ This is not accurate. LAFCO Staff generated that assignment, and chose the participants, which did not include the Water Authority.

REASON #3 – The Applications Would Increase Reliance on the Bay-Delta:

The Water Authority has repeatedly informed LAFCO that the environmentally fragile Bay-Delta will be harmed by the reorganizations. The reason why was explained by Bay-Delta Watermaster

Michael George: “[T]he two agencies would be increasing reliance on the Delta because they would abandon a less Delta-dependent supply mix (available through their SDCWA membership) in favor of a more Delta-reliant supply mix [with Eastern].”³¹

This is true because there are many months where the Water Authority currently buys little or no MWD water (the Water Authority’s sole source of Bay-Delta water is via MWD), and it serves Fallbrook and Rainbow with QSA water from the Colorado River, all as explained in detail in prior submittals to LAFCO. Should the reorganizations occur, Fallbrook and Rainbow will have to rely continuously and exclusively on MWD for imported water, which has a much higher dependence on Bay-Delta water than the Water Authority.

The State of California has instructed agencies in the State to reduce – not increase – their reliance on the environmentally sensitive Bay-Delta, as stated in Water Code section 85021 (emphases added):

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*.

The Commission should not approve reorganizations that increase water usage from the Bay-Delta, contrary to the Legislature’s statutory directive. Indeed, the Commission is instructed by the above statute *not* to obstruct the “improved regional coordination of local and regional water supply efforts” that has been accomplished by the Water Authority Board in moving off the Bay-Delta via QSA water and desalinated water. As detailed in the next section on CEQA, this is also an environmental issue that has not been reviewed under CEQA by LAFCO or by either of the Applicants.

The LAFCO Staff Report: As to Reason #3, the Report notes on page 36 that Dr. Hanemann “advised there are potential risks to applicants and their ratepayers with respect to increased reliance on the Sacramento Bay-Delta.” The Report also points out that Dr. Hanemann stated that, “If FPUD and RMWD switch from SDCWA to EMWD, they will switch from relying on SWP water for 24% of their supply to relying on SWP water for 63% of their supply.” Report, p.37. Staff acknowledges that detachment would cause increased reliance on the Bay-Delta, and would impact the State Water Project’s “baseline” delivery amounts by between 0.84% and 1.65%. Report, p.37.

However, the Report does not inform the Commission that the Legislature has expressly instructed that such increases are against State policy, including Water Code section 85021. The statute is not even cited in the Report. Instead, the Report yet again minimizes an impact by creating and using a standard not found in State water law or policy, trying to make the harm look immaterial. The Report compares the *entire State’s* SWP water deliveries against the annual Delta flow

increases that would be needed for just Fallbrook and Rainbow so as to try and marginalize the latter. This is not a fair analysis, nor does it follow legislated State policy.

REASON #4 – No Proper CEQA Review Has Been Performed:

There are two main areas where the reorganizations may have various environmental impacts: (a) increased Bay-Delta reliance, as noted above; and (b) necessary construction that has been undisclosed in Rainbow. Neither has been reviewed, and it is a clear violation of CEQA for the Commission to proceed without such required review.

We note the following CEQA-related matters, all of which have been previously presented to LAFCO by the Water Authority:

- Increased reliance on the Bay-Delta raises many environmental concerns, such as: (a) Using more imported water from the State Water Project could potentially exacerbate impacts to certain fish species that will occur from hydrological changes; (b) Increased reliance on water from Northern California delivered via the State Water Project may 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); and (c) LAFCO must determine whether increased reliance on imported water from the State Water Project could have hydrological and water quality impacts. *None of these issues have been reviewed under CEQA.*
- Rainbow must perform major construction to be able to serve its southern service area if its application is granted. There are CEQA issues that have not analyzed. For example, air quality may be affected, and there may be impacts on protected species. Rainbow's Supplemental Information Package for its application (at pp. 5-6) reveals that if the reorganization is approved by MWD and LAFCO, 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. This new infrastructure includes new pipelines, pumping facilities, and water mains, among other new facilities, all of which may affect air quality. No facts regarding such changes have been submitted, and no environmental review of such changes have been conducted or presented.
- Analysis must be done to determine 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. Here, the proposed reorganizations potentially conflict with a range of plans, policies, and regulations, yet no review has been performed. Annexation to Eastern will also require annexation approval by MWD under Part 7 of the MWD Act, including but not limited to environmental review.
- There are applicable Orders from Judges Frazier and Medel of the San Diego Superior Court that the Rainbow and Fallbrook CEQA findings and the Notices of Exemption "may not be utilized or relied upon by the San Diego LAFCO or any other agency for the purpose of that agency's CEQA compliance in connection with any potential detachment by

Respondent from the San Diego County Water Authority, or for any potential annexation by Respondent into Eastern Municipal Water District.”³²

- Even if LAFCO were able to use the woefully deficient and inapplicable Fallbrook/Rainbow CEQA actions, which it cannot do per judicial Orders, neither Fallbrook or Rainbow took any action that reviewed the combined effects of their joint actions. Yet CEQA requires such environmental review.³³ Further, if one reads the actual actions taken by Rainbow and Fallbrook, one will see that their purported CEQA review was only for submitting reorganization applications to LAFCO, not for all the actual effects of any granted approvals.³⁴
- There is no CEQA exemption applicable here, as detailed in the Response.³⁵

In summary, CEQA is clearly being violated if this Commission approves these Applications without full and proper environmental compliance.

The LAFCO Staff Report: As to Reason #4, the Report asserts LAFCO can ignore Superior Court judgments because it was not a party to the cases. However, the Court Orders expressly cover the decisions by the applicant agencies, and those agencies were parties to the cases and are not allowed to use their actions with LAFCO in violation of the Orders. Nor should the Commission sanction ignoring two on-point Judgments on the very issue before it without a formal public legal determination as to the effects of the Judgments and how they relate to LAFCO, including by way of LAFCO’s contractual arrangements with the Applicants.

The Report states that there are two CEQA exemptions that allow reorganization without further CEQA review: CEQA Guideline sections 15061(b)(3) and 15320.³⁶ As to the latter, the Water Authority explained in great detail in its Response that the cited exemption is completely inapplicable here and cannot be relied upon by LAFCO.³⁷ This was the exemption cited by LAFCO staff to the Water Authority earlier. Now, LAFCO Staff also cites section 15061(b)(3) as to sphere of influence decisions. However, such section requires that (emphases added):

(3) The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

It is clear here that there will in fact be an adverse effect on the environment, from the extra demand on Bay-Delta water if nothing else. To avoid CEQA compliance, the Report says that a sphere of influence change by itself does not affect the environment, then it says that Rainbow and Fallbrook used a section 15320 exemption on their end so everything under CEQA has been covered. This ignores the following “inconvenient truths”: (a) The Report admits on page 45 that the “conforming sphere of influence actions” are “accommodating the reorganizations.” (Emphasis added.) Thus, the actions at LAFCO are not independent, and are part of the overall reorganizations which have environmental impacts, and thus cannot fit within section 15061(b)(3). CEQA does not allow such a piecemeal approach. Section 15378 of the CEQA Guidelines defines a project as the “whole of an action,” and LAFCO Counsel is no doubt aware of the extensive case

law that bars trying to satisfy CEQA by breaking an overall action such as we have here into smaller bits and pieces to avoid CEQA compliance; and (b) The Report ignores all the problems cited by the Water Authority as to the inapplicability of section 15320 and the Applicants' non-existent CEQA review. The environmental effects of these actions have not been reviewed by any agency, let alone their combined effects.

The Report does not justify the Commission ignoring its duties under CEQA.

REASON #5 – Fallbrook and Rainbow Water Users Lose Water Reliability, and May Not Even Save Money:

Fallbrook and Rainbow have been repeatedly telling LAFCO and their customers that the water they will be relying on from MWD is just as reliable as Water Authority supplies. This is not true, as LAFCO expert Dr. Hanemann noted in his Report:

The “superior reliability of SDCWA has benefited FPUD and RMWD in the past” – Hanemann Report, p.14.

“Q. Has the distinctive reliability of SDCWA’s supply portfolio actually made any Difference? A. Yes. It would have made a difference if SDCWA had QSA water in the 1991 drought, it did make a difference that SDCWA had QSA water in the 2007-2009 drought, and it made a difference that SDCWA had desal water in the 2015-2016 drought.” – Hanemann Report, p.84.

“It is not clear that MWD yet has the practical capacity to sustain more severe and prolonged drought, especially on the Colorado River” – Hanemann Report, p.16.

“RMWD could be especially vulnerable in a shortage of MWD water” – Hanemann Report, p.97.

“[W]hile I believe that FPUD and RMWD are taking something of a gamble on supply reliability if they switch from SDCWA to EMWD, the gamble ultimately is not one of running out of water but, rather, paying a higher price than they had anticipated to get by in a drought.” – Hanemann Report, p.16.

Now, there is a simple reason Dr. Hanemann could make these statements, and it does not take a water expert to see the basic facts here: both Eastern and the Water Authority are MWD member agencies with access to MWD water. *However*, the Water Authority *also* has its QSA supplies, which are higher priority Colorado River water than MWD’s Priority 4 water, *and* it has drought-proof desalinated water. If Fallbrook and Rainbow go to Eastern they will receive only MWD water (and without any assurance of MWD preferential rights if they annex to Eastern). At the Water Authority, in contrast, they receive MWD water (backed up by our agency’s preferential rights), plus access to the Water Authority’s other supplies, which are both more reliable than MWD supplies alone.

Fallbrook and Rainbow are seeking to trade away better water reliability for uncertain cost savings. But any cost savings may be ephemeral. As also noted by Dr. Hanemann:

“The recent trend has been for the average cost of M[WD]-water to SDCWA to grow faster than that of QSA water. That would tend to narrow the differential between SDCWA’s all-in rate and MWD’s all-in rate.” – Hanemann Report, p.61.

“Q. Will the Delta Conveyance Project raise the cost of [MWD] SWP water? A. For sure.” – Hanemann Report, p.89.

“SDCWA and MWD [are] at different phases of their investment cycles.” – Hanemann Report, p.51.

One of the key justifications for the reorganizations cited by the Applicants and LAFCO staff is that the reorganizations will supposedly produce cost-savings for the Applicants and their ratepayers. However, this ignores that the agencies will be paying a potentially greater amount by having to pay a greater share of the costs to develop water supplies for the entire MWD service area, spanning five other counties, should they annex to Eastern.

These points cannot be overstated. As explained in prior correspondence with LAFCO, MWD has already experienced water shortages and is facing serious challenges to its water supply reliability going forward. As noted by Dr. Hanemann, and as readily apparent to anyone who follows MWD Board proceedings, MWD is now heading into a construction cycle that will cost many billions of dollars, with associated impacts on its rates and charges.³⁸ In contrast, the Water Authority already made significant supply investments, and is thus in a lower expenditure cycle going forward. This can narrow the gap in rates, as described by Dr. Hanemann.

The Applicants and the Report also fail to account for the fact that unlike the Water Authority, MWD no longer has an agricultural water discount program³⁹, which was discontinued by MWD after 2012. Far from treating agriculture as a “unique and/or protected group,” which the Report identifies as a major policy consideration of its recommendation (Report p. 43), MWD -- unlike the Water Authority -- ended its agricultural discount program.⁴⁰ Even before the MWD Board eliminated its last “interim plan” to sell discounted water to agriculture, MWD barred new lands being annexed that would receive the discounted plan water: “No District water shall be sold or delivered to any member public agency for use, directly or indirectly, for agricultural purpose as defined in Section 4106 within the annexing area.”⁴¹ Thus, MWD is on record with a policy disfavoring discounted agricultural water, and MWD’s coming cost increases are unlikely to provide any rate relief for agriculture.

Further, in an era of drought, water reliability is critical. Fallbrook and Rainbow have sold their customers on the idea that they will have the same reliability with MWD as they do with the Water Authority, but this demonstrably is not so. Fallbrook’s own expert report submitted to the Fallbrook Board in December 2019 stated:

“[T]he above reliability analysis supports that the overall range in reliability is better under SDCWA”⁴²

That report also aptly summarized the result of the Water Authority's supply diversification as creating a more dependable water supply than relying solely on MWD supplies:

“SDCWA's dependence on imported water from MWD has been reduced and the reliability of its service area has substantially improved in the last two droughts as compared to the maximum of 32% combined agricultural and non-agricultural shortages SDCWA experienced in 1991-1992 prior to the region's diversification program. The more reliable local supplies available to MWD member agencies, the less reliant they are on MWD imported water supplies in a drought induced shortage, and the higher the agencies level of reliability.”

The Report states that Rainbow and Fallbrook are “attesting neither the CWA or MET have taken actions to curtail the availability of supplies to its member agencies in any time during the last five-years.” This is certainly incorrect as to MWD, as MWD has in fact just in 2022 curtailed water deliveries to some of its member agencies. From June 1, 2022, through March 14, 2023, MWD implemented its “Emergency Water Conservation Program” in its State Water Project Dependent Area—the northern portion of its service area that serves about 7 million Southern Californians. This program sought to reduce State Water Project (imported) water use on average by 35% and up to 73%.⁴³ As noted on December 21, 2022, by *The Los Angeles Times*, this MWD water allocation was likely to spread across the entire MWD service area,⁴⁴ until it was later avoided only by fortuitous heavy rains this year.

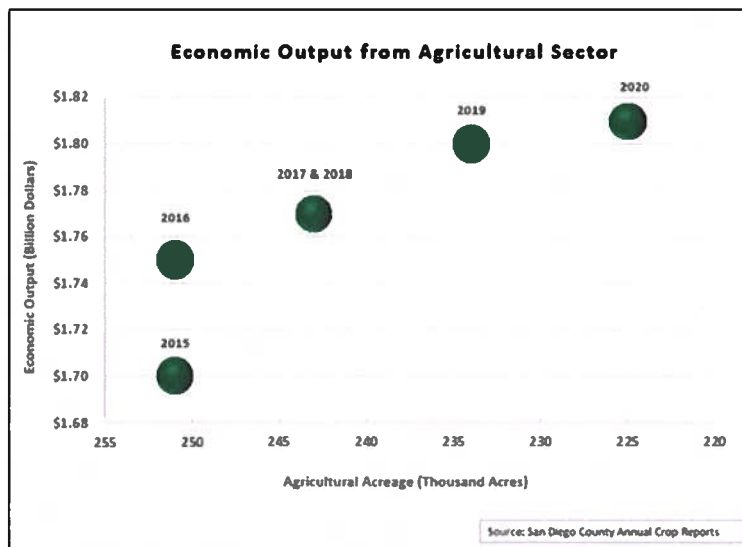
Additionally, the Bureau of Reclamation has issued a draft Supplemental Environmental Impact Statement (“SEIS”) for possible serious action as to Lower Basin Colorado River water deliveries.⁴⁵ Given the Water Authority's higher priority 3 water on the Colorado River (via Imperial Irrigation District's priority rights), any cutbacks it may face from Bureau action would likely be far less serious than those imposed on MWD's lower priority 4 supplies. The importance of our agency's higher priority Colorado River water than that of MWD was called out multiple times in the Hanemann Report.⁴⁶ *[Note: As of the date of this letter, the federal government has announced a new deal on the Colorado River which may moot the SEIS referenced above. Once the details are released, they can be reviewed by all parties.]*

LAFCO Staff also should be required to confirm the MWD Board's position on annexation, given that the MWD Board (not the General Manager or MWD's staff) has sole authority to approve a service change under the annexation provisions of the MWD Act (Part 7 Changes in Organization). It cannot merely be assumed that the terms and conditions established by MWD for annexation of Eastern and the Water Authority many decades ago would necessarily apply to a requested annexation in 2023. Today, MWD annexation requires detailed factual review of water usage, compliance with water use efficiency guidelines, CEQA compliance and many other factors in connection with the MWD Board's adoption of a resolution fixing terms and conditions for annexation—which vary according to the timing, facts, and circumstances. The MWD Board has never been asked to approve the annexations that would be necessary if these reorganizations were to be allowed, and is scheduled to consider its annexation policies generally for situations like this involving changes in service within its current boundaries (June 13, 2023 Finance, Audit, Insurance, and Real Property Committee Item 7-b).

In summary, management at Fallbrook and Rainbow imprudently seek to move to reliance on MWD, an agency which just recently faced serious water allocation, and is confronting severe challenges going forward with both its State Water Project and Colorado River supplies. These are risks Dr. Hanemann identified might happen, but now have happened. The applicant agencies seek to trade away the water reliability our region fought so hard for, and has invested in, after past MWD drought water shortages. It is a short-sighted strategy, and the Commission should not favor this “gamble,” as it is aptly characterized by Dr Hanemann.⁴⁷

The LAFCO Staff Report: As to Reason #5, the Report claims that Dr. Hanemann’s Report asserted that the Water Authority’s water is more reliable than that of MWD (via Eastern), but that, “Dr. Hanemann does not define the reliability differences between the two as substantive relative to industry standards.” This is not correct. There is not a single reference in the Hanemann Report to any “industry standard” on the issue of water reliability. In fact, Dr. Hanemann’s Report repeatedly notes the clear differences in water reliability between the Water Authority (which has its own supplies plus MWD water) versus MWD water alone, as quoted above.

Additionally, the Report focuses on avocado farming, creating the impression that this should be the main concern of LAFCO (for example, *see* pages 12 and 16). However, the Report ignores these key facts: (a) the number of residential and municipal/industrial water customers, and farmers of other crops, in Rainbow and Fallbrook outnumber avocado farmers by an order of magnitude; (b) many agricultural customers in Rainbow and Fallbrook, particularly those growing higher value nursery crops, *have not subscribed to the lower PSAWR ag rate available to them currently at the Water Authority*. This shows their preference for higher water reliability over less reliable water at a price discount; and (c) the annual San Diego County crop reports show the value of the San Diego region’s agricultural products increased significantly in the years before the pandemic:



The Water Authority strongly supports avocado farming in our region. Indeed, it is one of the primary objectives of the lower PSAWR ag rate. But avocados are just a piece of the region’s

farm economy and are not the sole predicate for LAFCO water decisions that will affect almost all San Diego County water ratepayers.

REASON #6 – There Has Been No Proper Review of Earthquake Risks:

Because Fallbrook and Rainbow want to move to full MWD reliance, they would also be moving from the ability to get water from both north and south at the Water Authority, to the ability to get water solely from the north via Eastern. This makes it imperative that all earthquake risks, including on the Elsinore Fault, be reviewed carefully.

MWD supplies depend on the lengthy Colorado River and California Aqueducts, which cross many major earthquake zones, including the San Andreas Fault. All MWD pipelines, serving either untreated or treated water from Skinner Lake and the Skinner Water Treatment Plant respectively, also cross the Elsinore Fault that lies within Eastern’s service area to the north of the San Diego County boundary and the Water Authority’s service area. These numerous fault regions have the potential to cause significant damage to the conveyance pipelines and extended outages of imported deliveries to the San Diego region, including to Fallbrook and Rainbow.⁴⁸

The Fallbrook and Rainbow detachment applications both reference an unproduced MWD emergency planning document describing MWD’s supposed ability to complete repairs on major aqueduct facilities within 14 days of a seismic event and restore service to at least the 75% level. The Water Authority told LAFCO that it had never seen this purported plan, and that a 14-day repair on a large aqueduct after a major earthquake seemed unrealistic.⁴⁹ The Water Authority informed LAFCO that this 14-day repair report should be requested by LAFCO so it could be publicly reviewed.⁵⁰ To our knowledge no such request has been made by LAFCO, and there has been no analysis by LAFCO of the earthquake risks on water deliveries to Fallbrook and Rainbow. This analysis was not included in Dr. Hanemann’s scope of work.

For context, the Water Authority’s Emergency Storage Project is sized for a two-month complete outage (or six-month partial outage) of imported water from Lake Skinner and the Skinner Water Treatment Plant resulting from damage to pipelines caused by an earthquake event on the Elsinore Fault or San Andreas Fault.

MWD’s published Emergency Storage Objective belies a 14-day estimate, projecting lengthy potential service outage durations resulting from an earthquake, as represented in Table 1 below from that report:⁵¹

Table 1
Estimated Outage Duration for Imported Supply Aqueducts (M 7.8 earthquake)

Aqueduct	Estimated Outage Duration
Colorado River Aqueduct	2 to 6 months (recovery of 80% CRA capacity) 3 to 5 years (recovery of 100% CRA capacity)
California Aqueduct: East Branch	12 to 24 months
California Aqueduct: West Branch	6 to 12 months
Los Angeles Aqueduct	18 months

The LAFCO Staff Report: As to Reason #6, the Report simply asserts on page 19: “Should service be completely cutoff, Metropolitan maintains that repairs would be completed within 14 days.” The basis for the claim that a major earthquake that severs a major aqueduct can be brought back into service within 14 days is unproduced and unexamined.

*REASON #7 – There Will Be a Loss of Regional Water Planning
for San Diego County:*

The regional planning between the Water Authority and SANDAG required by law (Water Code section 10915) is contravened by detachment.

In 1988, voters in San Diego County approved a measure to strategically address core issues related to regional planning and growth management. Proposition C, the “Regional Planning and Growth Management Review Measure”, was passed and sought to develop a strategic plan to resolve regional problems associated with development and planning of transportation, water supply, wastewater treatment, water quality, housing and economic prosperity, among many other issues for the San Diego region.

To formalize the water supply planning element of SANDAG’s Regional Growth Management Strategy, and to indicate its intent to participate in the implementation of the Strategy’s Water Supply chapter, in 1992 the Water Authority entered into a Memorandum of Agreement (MOA) with SANDAG.⁵² The intent of the MOA was to “assure consistency between the plans, policies and ordinances of the cities and County, and the plans and programs of the Authority.”

As part of the 1992 MOA, the Water Authority agreed to utilize SANDAG’s most recent regional growth forecasts as part of development of its long-range water demand forecast for the region, which is provided in the Water Authority’s Regional Urban Water Management Plan (UWMP). In turn, SANDAG utilizes the Water Authority’s long-range water demand forecast in the water supply chapter of its Regional Growth Management Strategy

This collaborative approach, linking regional land use planning and regional water supply planning, has worked well for SANDAG and the Water Authority and was years ahead of SB 610 and SB 221. Those two bills, effective in January 2002, improved the link between water supply availability and certain land use planning decisions made by cities and counties. Both statutes require detailed information regarding water availability to be provided to city or county decision-makers prior to the approval of large development projects. This is performed using water supply assessments (WSA) requested by the developer/local government agency of the water agency to affirm via written verification of sufficient water supply. WSAs are then provided to local governments for including in the environmental documentation for any large development project. The foundational document of compliance with SB 610 and 221 is the UWMP. As mentioned above, the 1992 MOA has linked the Water Authority’s UWMP to SANDAG by utilizing SANDAG’s most recent regional growth forecast, the base of which is the cities and county’s General Plans.

Should Rainbow and Fallbrook detach and join a Riverside County water agency, it would undermine and unravel the longstanding close regional collaborative planning efforts between land use and water supply in San Diego County. SANDAG would continue to include in its regional growth forecast the projections for land use, population, and growth in Fallbrook and Rainbow's service areas. However, the Water Authority would no longer include Fallbrook and Rainbow's water demands in its UWMP. As a result, water supply planning and any WSA decisions to serve future development would be ceded to decision-makers in Riverside County. With such a split between counties on land use planning and decisions and water supply planning, it is unclear how the process on WSAs will be carried out.

The LAFCO Staff Report: As to Reason #7, the Report says SANDAG has not taken any position.⁵³ But SANDAG has already taken a position on regional planning, as the above-cited facts and our agreement with SANDAG clearly demonstrate. Rather than assuming SANDAG has no position, LAFCO should assume compliance with the regional planning processes that are well-established and in force.

REASON #8 – There Is Risk of Negative Precedent:

LAFCO should deny the Applications because of the meaningful risk of precedent, a risk that has already been noted by the debt rating agencies, and which could cost the remaining Water Authority member agencies higher interest rates, and thus higher water rates. A letter sent to LAFCO by MWD's current Board Chair Ortega also identified precedent as a risk for MWD: "as communities chase after the lesser rates among adjacent Metropolitan Member Agencies in a potential race to the bottom *compromising past investments*." (emphasis added).⁵⁴ As noted by MWD Chair Ortega, the increasing cost of water is better addressed in long-term planning processes such as the Water Authority has established and MWD is now undertaking.

The Water Authority explained the risk of negative precedent in detail in its Response to LAFCO.⁵⁵ As noted there, S&P Global has stated, "[W]e do believe an approved detachment could set a poor precedent if members can easily detach from the authority, especially if they are not required to pay for their portion of the associated debt and infrastructure costs that the authority has undertaken to provide reliable water sources."

Though Fallbrook and Rainbow may be the only two agencies with current direct connections to MWD pipelines, this does not mean that other agencies could not potentially construct pipes to also connect their own systems to MWD. The Water Authority, in its Response, provided LAFCO with a map showing that there are six other member agencies less than ten miles away from those MWD pipes, and twelve agencies less than 20 miles away.⁵⁶ Additionally, this does not even begin to address the chaos that could ensue at both MWD and the Water Authority if agencies are able to detach and have an automatic right to be served by any other agency in the MWD service area.

The LAFCO Staff Report: As to Reason #8, the Report concedes that the detachments could adversely affect the Water Authority's credit rating (also a concern expressed by MWD's Chair), but then – as it does in many other areas – downplays the issue based on unsupported assumptions and presumptions: "Given Standard and Poor's own observations on the topic, it is reasonable to

assume detachments would impact the County Water Authority's credit rating. It is also reasonable to presume the impact would be less than significant given two factors."⁵⁷ The stated purported factors are that for a previous downgrade by Standard and Poor's "detachments were not a primary reason," and that an exit fee and proximity to MWD pipes by only Rainbow and Fallbrook covers any loss or precedent issues.⁵⁸ The Report simply has no grounds to state that fears of precedent-setting are immaterial. Cites to an earlier Standard and Poor downgrade when there was no actual detachment, and the possible existence of a *de minimis* exit fee or pipe location, as the foundations for the Report's opinion are without basis and inappropriate.

REASON #9 –Material Information Is Still Missing:

There is significant information missing from the Applications. The Commission must not ignore these items – all of which have been noted earlier to LAFCO Staff – as the Commission needs them to proceed:

- The missing CEQA review noted above.
- The missing earthquake items noted above.
- The missing data from Rainbow as to their needed major infrastructure improvements noted above.
- What Williamson Act and California Land Conservation Act lands are there in Fallbrook and Rainbow's service areas (if any). LAFCO Statutes require certain special processes for such lands before this process can proceed. *See*, for example, Government Code Section 56426.6 and, 56856.5.
- What specific Water Authority infrastructure would Fallbrook and Rainbow need access to after annexation into Eastern, and what water volumes and timing would be required?
- How exactly will Fallbrook and Rainbow be represented at Eastern? It appears they may be merged into an existing voting district which will be predominantly residents of Riverside County. Neither Eastern nor the Applicants have told LAFCO exactly what will happen, but only referenced things that might happen.

The LAFCO Staff Report: As to the above items, the Report is mostly silent except for the issues covered earlier, such as CEQA.

C. DELAY OPTIONS

The Report has suggested in both its Options 3 and 4 that the Commission delay a decision on these reorganizations so that a Municipal Service Review of the Water Authority and potentially MWD (mentioned by staff earlier) could take place. Any such review is unrelated to these Applications, which have now been at LAFCO for four years. The Applications should simply be denied.

D. CONDITIONS

The Water Authority strongly believes the Commission should deny the Applications for all the reasons stated above. If for any reason an approval were to be granted over our objections, and the objections by the City of San Diego and LAFCO's own Cities Special Advisory Committee, the Commission should only do so under the most careful conditions. The Water Authority here sets out the minimal conditions needed:

Condition #1: An affirmative majority vote in the entire Water Authority service area, as well as one in the Fallbrook and Rainbow service areas, as LAFCO acknowledges was requested by the Water Authority.⁵⁹ The voting issues are addressed in detail in the Response.⁶⁰ The Report states that LAFCO cannot legally do this, but we believe LAFCO counsel is in error. LAFCO should engage a completely independent counsel to review the issue after taking input from all parties.

[Note: As this letter is being filed, the City of San Diego has just supported a new piece of legislation -- AB 530 -- that would require voting in the entire Water Authority service area on detachment. The Water Authority's Board recommended such a vote to LAFCO years ago.]

Condition #2: An increased "exit fee" for a longer period of time to allow the Water Authority to manage the countywide ratepayer impacts caused by detachment, and with a much reduced offset to match the years included in an exit fee.

Condition #3: A requirement that any "exit fee" be agreed to via a formal majority vote in Fallbrook and Rainbow's service areas such that if the agencies do not timely pay for any given year(s), the taxpayers agree via their vote that the unpaid amounts may be levied on their properties by the Water Authority. As explained in the Response, this tax approval by the voters in the Fallbrook and Rainbow service areas is the only way, under today's voter approval laws and the State Constitution, that the Commission can effectuate the intent and requirements of the County Water Authority Act.

Condition #4: That all Water Authority costs of the engineering and infrastructure changes that need to be made to accommodate the reorganizations be paid for by Fallbrook and Rainbow. The Water Authority provided rough estimates in its Response,⁶¹ but that was done before high inflation hit, and the costs would be meaningfully higher now.

Condition #5: Require the Applicants to formally apply for annexation to MWD to establish, rather than assume, MWD terms and conditions, or confirm that MWD Board policy is that no annexation is required under the MWD Act so long as the detaching and annexing areas are within the MWD service territory.

Condition #6: Require the Applicants to secure a formal resolution of the Eastern Board of Directors identifying exactly how Fallbrook and Rainbow customers will be represented

should annexation be granted, and demonstrating compliance with all local, regional and statewide legal requirements.

E. CONCLUSION

The Commission should not approve the Applications, because they harm the Fallbrook and Rainbow communities, as well as the rest of San Diego County. The Water Authority respectfully requests that the Applications be denied.

In closing, we recall for the Commission a bit of history, as the past can be instructive.

The Water Authority was annexed to MWD as a member agency in 1946. A condition for this annexation was a transfer to MWD of San Diego's water rights to Colorado River water, and such transfer of water rights occurred.

In the Spring of 1953, the Water Authority's Board approved a resolution informing MWD that the Board would favorably consider an application for Rainbow and other County areas to be annexed into the Water Authority.⁶² During this time, the San Diego Chamber of Commerce became aware of efforts by entities within Rainbow and other North County areas to be annexed directly into MWD and to receive Colorado River water from MWD rather than through the Water Authority. On May 11, 1953, the Chamber wrote to MWD stating the Chamber's opposition to these efforts and advocating instead for annexation of these areas into the Water Authority.⁶³

Two weeks after the Chamber's letter, the Water Authority wrote to MWD and stated that it had not yet received any application for the northern areas to be annexed into the Water Authority but that these areas had sought "informal consent" from MWD to be directly annexed into MWD and that this request was pending.⁶⁴ The Water Authority Board opined that MWD should reject the request for direct annexation and recommend to the applicants that their annexation should occur through the Water Authority. Indeed, the Water Authority Board cited its Resolution 261 (attached Exhibit A), which stated that any water coming into the County should do so via the Water Authority:

“[A]ny area in San Diego County which is to participate in the delivery of water imported into the County from the Colorado River, or any other source outside of the County, should so participate as a part of the San Diego County Water Authority.”⁶⁵

MWD rejected the Rainbow-Bonsall area's "informal application" for direct annexation.⁶⁶ Then, in July of 1953, MWD informally approved Rainbow as an acceptable entity for concurrent annexation into the Water Authority.⁶⁷ The next year a deal was struck by which the Water Authority's rights to the San Diego Aqueduct and second barrel were transferred to MWD, subject to it not being used in any manner "inconsistent" with the rights of the Water Authority to receive water from MWD through that system.⁶⁸

Many decades have now passed, but the current Applications are simply a renewal of the attempt to move to MWD, this time using Eastern as a proxy. The San Diego region has spent billions of

dollars developing Colorado River rights for our County, rights that had been lost to MWD in the WWII era, so that our County could have a reliable water supply that was not dependent on the decisions of others. MWD is now facing major water challenges, and it does not support agricultural water use in the same way San Diego County and the Water Authority have done.

Finally, we ask that this letter, and all prior submittals by the Water Authority and others related to the Applications, be made part of the official administrative record for the Applications. We expect that record to be a complete compilation of everything related to these Applications, including the Hanemann Report and all of Dr. Hanemann's presentations, all proceedings of the Ad Hoc Committee, all correspondence, and every other matter related to, and occurring during, the long history of the Applications.

Thank you. We look forward to addressing these issues with you on June 5.

Sincerely,



Mark J. Hattam
Water Authority Special Counsel

cc via email on May 22:

All LAFCO Commissioners
Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator
Sandra L. Kerl, General Manager, San Diego County Water Authority
David Edwards, General Counsel, San Diego County Water Authority
Claire Collins, 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
Fallbrook Public Utility District Board of Directors
Rainbow Municipal Water District Board of Directors
Eastern Municipal Water District Board of Directors
Adán Ortega, Chair, Metropolitan Water District of Southern California
Dr. Michael Hanemann

¹ See Fallbrook and Rainbow applications.

² San Diego County Water Authority September 18, 2020, Response (the "Response"), p. 1.

³ Response, p. 79.

⁴ Response, pp. 81 and 97.

⁵ Response, pp. 97-99.

⁶ Response, p.5.

⁷ Response, pp.76-77.

⁸ Response, p.33.

⁹ *Id.*

¹⁰ Response, p.74.

¹¹ Response, p.57.

¹² Hanemann Report, p.68.

¹³ Response, pp.48 *et seq.*

¹⁴ Response, pp. 68 *et seq.*

¹⁵ MWD Act, Section 65.

¹⁶ Response, p.68.

¹⁷ *See*, for example: 1) Election of a nonofficer member of MWD's Executive Committee (Director Camacho was elected with 50.28% support, [Minute 52298](#)); 2) Hiring Mr. Adel Hagekhalil as General Manager (approved with 50.42% support, [Minute 52420](#)); and 3) not conduct a performance review of MWD's General Counsel given the results of the State's audit of MWD (approved with 50.60% support, [Minute 52839](#)).

¹⁸ Response. pp. 68 *et seq.*

¹⁹ Report, p.38.

²⁰ Indeed, if one reads the full Report one cannot help but come away with the impression that no matter the problem area, the Report's response is almost always the same: there is a harm, but it is not material. Yet, LAFCO Staff does not have a basis to make such judgments. The Report reaches conclusions in key water policy areas that are inconsistent with the expertise and Water Authority Staff and Board judgment over the past 20+ years, as the California and Southwest water world have been evolving to an entirely new era with different facts and circumstances. Additionally, from the very beginning of this now years-long process the Water Authority has repeatedly called out to the Commission our concern that LAFCO Staff has regularly shown a predisposition to favor detachment. Also, we pointed out to LAFCO in our counsel's May 13, 2021, letter to LAFCO: "When the Water Authority had its very first meeting with LAFCO Executive Officer Keene Simonds and LAFCO counsel Holly Whatley on August 20, 2019, they informed LAFCO of a significant issue: that in May of 2019, when Rainbow MWD General Manager Tom Kennedy first told Water Authority General Manager Sandy Kerl that Rainbow and Fallbrook were intending to initiate detachment proceedings, Mr. Kennedy stated that there would be no point in the Water Authority even opposing detachment because it had already been pre-arranged at LAFCO."

²¹ Hanemann Report, p.68.

²² Response, pp.59-60.

²³ Hanemann Report, p.82.

²⁴ Response, pp.104-105.

²⁵ Hanemann Report, p.82.

²⁶ Response, p.55.

²⁷ Report, p.31.

²⁸ See <https://www.sdlafco.org/home/showpublisheddocument/6174/637817360700300000>

²⁹ Report, pp. 23 *et seq.*

³⁰ Report, p.23.

³¹ November 29, 2022, letter from SDCWA to LAFCO, Exhibit 4.

³² Exhibits 66 and 67 to the Response.

³³ Response, pp. 174 *et seq.*

³⁴ See, for example, Fallbrook’s Resolution No. 4985 submitted with its LAFCO application. This Resolution says on p.6 that “Reorganization” is exempt or not a project under CEQA. However, the Resolution expressly defines the term “Reorganization” *not* as an actual detachment from the Water Authority and annexation to Eastern, but solely “to initiate proceedings” at LAFCO. Thus, the purported CEQA compliance is *only for Fallbrook’s applying to LAFCO*, not for all the actual effects of any possible LAFCO action. Similarly, Rainbow Resolution 19-15 was just its Board’s approval to submit an application to LAFCO, on which decision a Notice of Exemption was then filed. These Fallbrook and Rainbow approvals therefore simply covered LAFCO application submittals and are not a substitute for actual CEQA review of the effects of the reorganizations if such were to be granted. The Report provides no basis for LAFCO to avoid its CEQA responsibilities.

³⁵ Response, pp. 174 *et seq.*

³⁶ Report, p.45.

³⁷ Response, p.182.

³⁸ See Attachment 1, Page 4 of 55 of MWD’s [Adopt the 2020 Integrated Water Resources Plan Needs Assessment](#) Board Letter dated April 12, 2022, describing MWD’s “potential annual net shortage” being as high as 1.2 million acre-feet.

³⁹ MWD Administrative Code § 4106 (Interim Agricultural Water Program Purposes).

⁴⁰ *Id.*

⁴¹ MWD Administrative Code § 3104.

⁴² Response, p.78.

⁴³ <https://mwdh2o.legistar.com/View.ashx?M=F&ID=10838150&GUID=3EAF5D95-F527-4B68-9168-D5E14E5C6A0D> and <https://mwdh2o.legistar.com/View.ashx?M=F&ID=11694055&GUID=CC9BF29A-99FC-4913-8BC3-769B010CDA80>

⁴⁴ [California to see more brown lawns and water restrictions - Los Angeles Times \(latimes.com\)](#) (“State water-dependent areas have already been under one- or two-day-a-week outdoor watering restrictions for months, but the MWD may soon expand those rules across their entire service area.”)

⁴⁵ See <https://www.usbr.gov/ColoradoRiverBasin/SEIS.html>

⁴⁶ Hanemann Report at pp.14, 84, and 98.

⁴⁷ Hanemann Report, p.98.

⁴⁸ Response, pp.85 *et seq.*

⁴⁹ *Id.*

⁵⁰ Response, pages 148 and 150, question 10 on each. Also, the Water Authority repeatedly raised this issue in subsequent submittals, all to no avail.

⁵¹ See Attachment 1, Page 4 of 17 of MWD's [Update of Metropolitan's Emergency Storage Objective](#) Board Letter dated May 14, 2019.

⁵² Response, Exhibit 13.

⁵³ Report, p.23.

⁵⁴ <https://mwdprograms.sdcwa.org/wp-content/uploads/2023-03-22-MWD-Chair-Ortega-to-SDLAFCO-EO-Simonds-re-Rain-Fall-Detach.pdf>

⁵⁵ See pages 62 *et seq.*

⁵⁶ Response, p.64.

⁵⁷ Report, p.27.

⁵⁸ *Id.*

⁵⁹ November 29, 2022, letter from SDCWA to LAFCO, Exhibit 1, p.6.

⁶⁰ Response, pp. 169 *et seq.*

⁶¹ Response, pp. 103 *et seq.*

⁶² See attached Exhibit A.

⁶³ See attached Exhibit B.

⁶⁴ See attached Exhibit C.

⁶⁵ *Id.* and Resolution 261 at attached Exhibit A.

⁶⁶ See attached Exhibit D.

⁶⁷ See attached Exhibit E.

⁶⁸ See attached Exhibit F

EXHIBIT A

RESOLUTION NO. 261

A RESOLUTION AMENDING RESOLUTION NO. 260 OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY ENTITLED "A RESOLUTION ADVISING THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA OF THE INTENTIONS OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY RELATIVE TO THE ANNEXATION OF THE ENLARGED RAINBOW PUBLIC UTILITY DISTRICT AREA".

WHEREAS, the Board of Directors of the San Diego County Water Authority has long had before it the application of the Rainbow Public Utility District for the annexation of its corporate area, together with the area of neighboring lands aggregating approximately 30,000 acres, to the San Diego County Water Authority; and

WHEREAS, after detailed and careful study of the problems presented by such request, the Board of Directors of the San Diego County Water Authority concluded that the annexation of the proposed area on the prevailing terms and conditions of annexation to both the County Water Authority and the Metropolitan Water District was not warranted, in view of the lack of comparative developed primary water supply and comparative financial contribution of the area under consideration; and

WHEREAS, the Board of Directors of the San Diego County Water Authority is now informed that the annexation of the area under consideration would be acceptable to The Metropolitan Water District of Southern California under the prevailing terms and conditions of annexations, either through membership in the San Diego County Water Authority or directly as a separate unit member of the Metropolitan Water District; and

WHEREAS, the San Diego County Water Authority was organized for the sole purpose and charged with the obligation of importing and distributing in San Diego County the waters of the Colorado River to which the City and/or County of San Diego were or might become entitled to receive, and any other water supply the source of which lies outside the County of San Diego, and for that

reason it is the opinion and conclusion of the Board of Directors of the San Diego County Water Authority that any area in San Diego County which is to participate in the delivery of water imported into the County from the Colorado River, or any other source outside of the County, should so participate as a part of said San Diego County Water Authority;

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Directors of the San Diego County Water Authority that the Board of Directors of The Metropolitan Water District of Southern California be advised that the San Diego County Water Authority is prepared to approve the annexation of the approximate 30,000 acres of lands within the Rainbow Public Utility District, the San Luis Rey Heights Mutual Water Company and the Bonsall Heights area ^{subject to the usual and current terms and conditions} upon the incorporation of such area within a water district of an acceptable type and the receipt of a formal application from such water district.



Chairman of the Board of Directors
San Diego County Water Authority

ATTEST:



Secretary of the Board of Directors
San Diego County Water Authority

Roll Call _____

Resolution No. 261

Ordinance No. _____

Special MEETING OF BOARD OF DIRECTORS

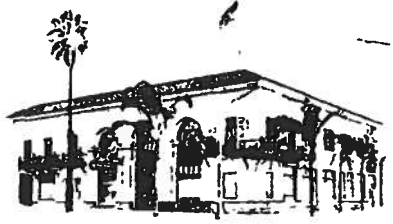
SAN DIEGO COUNTY WATER AUTHORITY

May 11, 1953

City of Escondido	1 Vote	<u>X</u>	Reed
Fallbrook Public Utility District	1 Vote	<u>✓</u>	Heald
Lakeside Irrigation District	1 Vote	<u>X</u>	McLean
La Mesa, Lemon Grove and Spring Valley			
Irrigation District	10 Votes	<u>✓</u>	Shelton
City of National City	3 Votes	<u>✓</u>	Dickson
City of Oceanside	3 Votes	<u>✓</u>	Weese Beak
The City of San Diego	26 Votes	<u>✓</u>	Beermann) Fisher) Heilbron) X Marston) Simpson) X Wansley) X Watt) X Wells)
San Dieguito Irrigation District	1 Vote	<u>✓</u>	Jacobson
Santa Fe Irrigation District	1 Vote	<u>X</u>	Bakewell
South Bay Irrigation District	5 Votes	<u>X</u>	Lynds

EXHIBIT B

14-3



BROADWAY
AT
COLUMBIA ST

SAN DIEGO CHAMBER OF COMMERCE

SAN DIEGO 1, CALIFORNIA

May 11, 1953

Mr. Joseph Jensen
Chairman of the Board of Directors
Metropolitan Water District of
Southern California
306 West Third Street
Los Angeles 13, California

Dear Mr. Jensen:

Many of the citizens of this community, who make every possible effort to keep in close touch with the work and activities being done by your Honorable Body and its counterpart and its affiliated agency in this county, have been disturbed over the efforts being made by an area in the northern part of this county for direct affiliation with the Metropolitan Water District.

Most of us in business and our public officials consider that the Colorado River water distribution should be confined to the San Diego County Water Authority.

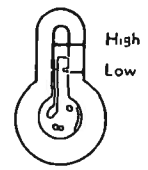
We, therefore, trust that your Board will take the necessary steps to suggest that the San Diego County Water Authority reopen the servicing of the Rainbow area, rather than having your agency extended within our county.

Yours very sincerely

Arnold Klaus
Assistant Manager

Referred to:
WPPR Committee
May 12, 1953

Yesterday's Temperature
in San Diego





15095

May 19, 1953

Mr. Arnold Klaus
Assistant Manager
San Diego Chamber of Commerce
Broadway at Columbia Street
San Diego 1, California

Dear Mr. Klaus:

Your letter, dated May 11, 1953, advocating the annexation of the Rainbow-Bonsall area to the San Diego County Water Authority, is hereby acknowledged.

It was read to the Board of Directors of the District on May 12 and was referred to the Standing Committee having this matter under consideration.

There are many factors to be considered and the situation has many ramifications. However, we are pleased to have your statement reflecting the attitude of the San Diego Chamber of Commerce.

Yours truly,

Joseph Jensen, Chairman

EXHIBIT C



SAN DIEGO COUNTY WATER AUTHORITY

314-321 Land Title Building
San Diego 1, California

~~CITY OF CHULA VISTA~~
CITY OF ESCONDIDO
CITY OF NATIONAL CITY
CITY OF OCEANSIDE
CITY OF SAN DIEGO
FALLBROOK PUBLIC UTILITY DISTRICT
LAKESIDE IRRIGATION DISTRICT
LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT
SAN DIEGUITO IRRIGATION DISTRICT
SANTA FE IRRIGATION DISTRICT
SOUTH BAY IRRIGATION DISTRICT

FRED A. NEILBRON
CHAIRMAN
ARTHUR L. LYNDS
VICE-CHAIRMAN
~~DEWAYNE S. SIMMONS~~
SECRETARY
E. J. SHELTON

May 25, 1953

Board of Directors
The Metropolitan Water District
of Southern California
306 West Third Street
Los Angeles 13, California

Attention: Water Problems and Public Relations Committee

Gentlemen:

By Resolution No. 261 your honorable body was advised by the Board of Directors of the San Diego County Water Authority that it would favorably consider the application of the Rainbow Public Utility District-Bonsall Heights-San Luis Rey Heights Mutual Water Company areas upon the formation of the proper public agency and the receipt of formal application for annexation by such organization. The reasons for the action of this Board were recited in detail in said resolution, and the Authority is prepared to proceed as therein outlined. In the meantime, however, no application of any kind from representatives of that area is pending before the Authority--and we understand that an application for informal consent for direct annexation to the Metropolitan Water District is still pending before its Board of Directors and Water Problems Committee.

In view of the action taken by this member agency of the Metropolitan Water District, it is the opinion of the members of this Board that Metropolitan should reject the request for direct annexation on the part of this area and recommend to the applicants that their annexation should best be accomplished through the San Diego County Water Authority, in accordance with the statement of this Authority's official position as set forth in said Resolution No. 261.

Very truly yours,

M. J. Shelton
Secretary of the Board of Directors
San Diego County Water Authority

cc: Mr. Warren W. Butler, Chairman
Water Problems and Public Relations Committee

1953

MEMORANDUM FOR THE DIRECTOR
SUBJECT: [Illegible]

[Extremely faint and illegible typed text, likely the body of a memorandum]



1953

1953

15082
T. H. W.

June 19, 1953

Board of Directors
San Diego County Water Authority
314-321 Land Title Building
San Diego 1, California

Gentlemen:

The Board of Directors of The Metropolitan Water District of Southern California on June 9, 1953, rejected the informal application made on behalf of the Rainbow-Bonsall area for consent to annex directly to this District.

At the time the action was taken the letter received from your Secretary, Mr. M. J. Shelton, under date of May 25, 1953, expressing the opinion that the application referred to should be rejected and recommending that the applicants be informed that the annexation of the area should best be accomplished through the San Diego County Water Authority, was read and considered.

Yours truly,

A. L. Gram
Executive Secretary

cc: Chairman Jensen
Messrs: Diemer
Howard
McKinlay

ACW

15282

June 19, 1953

Mr. W. N. Davis, Chairman
Rainbow Public Utility District
P. O. Box 195
Fallbrook, California

Mr. Thos. L. Hoemer
Donsall Heights Association
Fallbrook, California

Mr. W. B. Dennis, Attorney
for the Rainbow Public Utility District
and the Donsall Heights Land Owners Committee
Route 1
Fallbrook, California

Gentlemen:

You are hereby formally notified that the Board of Directors of The Metropolitan Water District of Southern California on June 9, 1953, rejected the proposal that consent be granted to annex the Rainbow-Donsall area directly to this District.

Yours truly,

cc: Chairman
Gen. Mgr. & Ch. Engr.
General Counsel
Controller

A. L. Oram
Executive Secretary

EXHIBIT D

THE METROPOLITAN WATER DISTRICT

OF SOUTHERN CALIFORNIA

306 WEST THIRD STREET

LOS ANGELES 13 CALIFORNIA

OFFICE OF
BOARD OF DIRECTORS

June 9, 1953

Board of Directors
The Metropolitan Water District
of Southern California
Los Angeles, California

Gentlemen:

The Water Problems and Public Relations Committee has considered the informal application for consent to annex the Rainbow-Bonsall area to this District, in which application the offer is made to agree to the subsequent annexation of any acceptable lands in that vicinity desiring to obtain Colorado River water and to agree that at such time as the San Diego feeder lines do not have sufficient capacity to supply the then current needs of the San Diego County Water Authority and the Rainbow-Bonsall area, to construct at its expense a feeder line from the Rainbow area to the San Jacinto regulating reservoir, and the Committee has also considered the several related communications, including Resolution 261 of the Board of Directors of the San Diego County Water Authority, expressing its willingness to approve the annexation of the approximately 30,000 acres of land within the Rainbow Public Utility District, the San Luis Rey Heights Mutual Water Company, and the Bonsall Heights area, subject to the current terms and conditions of annexation, upon their incorporation into a water district of an acceptable type, and the written opinion from the General Counsel, previously requested, concluding that in consenting to the annexation of any area the Board of Directors of this District may determine that present circumstances require that additional facilities necessary for delivering water to such area be furnished without expense to this District and submitting language for incorporating such provisions in the terms and conditions of annexation of a unit to the Authority and this District, and has also considered a form of resolution submitted by Chairman Jensen which would have the effect of tentatively approving the annexation to this District of the Rainbow-Bonsall area, if constituted as a municipal water district, or the annexation of the area to the Authority upon the conditions that the Authority file with this

- 2 -

District on or before June 9, 1953, its consent to the annexation of the Rainbow-Bonsall area upon the usual terms and conditions and agree, in addition, that the Authority will consent from time to time to the annexation of additional lands in Northern San Diego County acceptable to the Rainbow-Bonsall area and to this District and will agree with this District to construct, when required, a third barrel of the San Diego Aqueduct from the Riverside County line to the west portal of the San Jacinto Tunnel sufficient to meet the needs of the Authority.

It is the recommendation of the Committee, pursuant to a consideration of the foregoing, that the application of the Rainbow-Bonsall area for consent to annex directly to this District be denied without prejudice, with the understanding that the application would be subject to renewal in the event consent to the annexation of the Rainbow-Bonsall area is not granted by the Board of Directors of the San Diego County Water Authority; and that the language suggested by the Legal Division in its opinion previously referred to be incorporated in the resolutions used in fixing the terms and conditions for the annexation of an area to the Authority and to this District; and with the further understanding that the area would be required to incorporate as a municipal water district; and that a declaration be made that it is not the intention at this time of the Board of Directors of this District to assume the obligation of building facilities for the delivery of water to any area.

Yours truly,

WATER PROBLEMS AND
PUBLIC RELATIONS COMMITTEE

Warren W. Butler

Warren W. Butler, Chairman

EXHIBIT E

Resol 4339
THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 306 WEST THIRD STREET
 LOS ANGELES 13 CALIFORNIA

APPROVED
 by the Board of Directors of
 The Metropolitan Water District
 of Southern California
 at its meeting held *Jan 12 1954*

A. L. Gram
 Executive Secretary

OFFICE OF
 GENERAL COUNSEL

January 12, 1954

Board of Directors
 The Metropolitan Water District
 of Southern California
 Building

Gentlemen:

A communication has been received from the San Diego County Water Authority transmitting certified copy of Resolution No. 279, adopted by the Board of Directors of the Authority on January 7, 1954, relative to the application of the Board of Directors of Rainbow Municipal Water District for consent to annex the corporate area of that District. The Authority's Resolution No. 279 requests the consent of your Board for the concurrent annexation of this area to the Metropolitan Water District, and, subject to such consent being obtained, approves the request for annexation, subject to such terms and conditions as shall hereafter be determined.

The Controller has prepared a report showing the amount of the annexation charges, determined from the data certified by Realty Tax & Service Company and the computations explained in the Controller's report.

There is transmitted herewith form of resolution granting the requested consent to this annexation upon the terms and conditions therein expressed. The resolution is in standard form and sets forth the aggregate amount to be raised by special taxes as reported by the Controller. All facilities required for the delivery of water to the annexing area from works owned by the Metropolitan Water District are to be provided without cost to this District.

Rainbow Municipal Water District was incorporated December 30, 1953, and was formed for the purpose of annexing its corporate area to the Authority and to the Metropolitan Water District. The incorporation proceedings were conducted after review of the principal forms and procedures by the General Counsel of the Authority and by my office. The annexation proceedings likewise will receive close scrutiny by the attorneys for the Authority and this District, as well as by the attorney for the Rainbow District, who will be charged with primary responsibility for the procedural details. It is expected that a pattern can be set which will serve as a convenient model for the annexation of other areas now in the process of completing the formation of their respective municipal water districts.

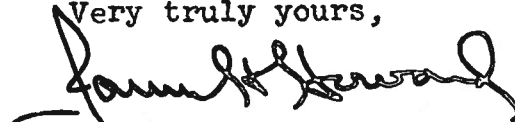
Board of Directors

- 2 -

1-12-54

It is recommended that the enclosed resolution be adopted.

Very truly yours,



James H. Howard
General Counsel



RESOLUTION 4339

APPROVED

by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held JAN. 12, 1954

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN
CALIFORNIA CONSENTING TO THE ANNEXATION TO
SAID DISTRICT OF THE CORPORATE AREA OF RAINBOW
MUNICIPAL WATER DISTRICT UPON THE CONCURRENT
ANNEXATION OF SUCH CORPORATE AREA TO SAN DIEGO
COUNTY WATER AUTHORITY AND FIXING THE TERMS AND
CONDITIONS OF SUCH ANNEXATION TO THE METROPOLITAN
WATER DISTRICT OF SOUTHERN CALIFORNIA

J. P. Gamm
Executive Secretary

A. WHEREAS, the governing body, to wit, the Board of Directors, of San Diego County Water Authority, a county water authority situated in the County of San Diego, State of California (hereinafter referred to as "San Diego Authority"), pursuant to its Resolution No. 279, adopted January 7, 1954, and in accordance with the provisions of the Metropolitan Water District Act of the State of California, has applied to the Board of Directors of The Metropolitan Water District of Southern California (hereinafter referred to as "Metropolitan") for consent to annex to Metropolitan the corporate area of Rainbow Municipal Water District, a municipal water district situated in said County of San Diego (hereinafter referred to as "Rainbow"), concurrently with the annexation of said corporate area of Rainbow to San Diego Authority, such annexation to Metropolitan to be upon such terms and conditions as may be fixed by the Board of Directors of Metropolitan; and

B. WHEREAS, it appears to the Board of Directors of Metropolitan that said application of the Board of Directors of San Diego Authority for consent to annex to Metropolitan the corporate area of Rainbow should be granted, subject to the terms and conditions hereinafter set forth:

C. NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of The Metropolitan Water District of Southern California, subject to the following terms and conditions, does hereby grant the said application of the governing body of San Diego County Water Authority for consent to annex to The Metropolitan Water District of Southern California the corporate area of Rainbow Municipal Water District, and does hereby fix the terms and conditions upon which such annexation may occur, as follows:

Section 1. Such concurrent annexation of the corporate area of Rainbow to San Diego Authority and to Metropolitan shall be completed, and all necessary certificates, statements, maps, and other documents required to be filed by or on behalf of San Diego Authority or by or on behalf of Rainbow to effectuate such annexation shall be filed in the respective offices required by law, on or before December 1, 1954.

Section 2. In the event of such annexation:

a. There shall be levied by Metropolitan special taxes upon taxable property within said corporate area of Rainbow, in addition to the taxes elsewhere in the Metropolitan Water District Act (Stats. 1927, page 694, as amended) authorized to be levied by Metropolitan.

b. The aggregate amount to be raised by such special taxes shall be \$167,700.

c. The number of years prescribed for raising such aggregate sum shall be thirty years, commencing with the fiscal year 1955-56.

d. Substantially equal annual levies will be made for the purpose of raising said sum over the period so prescribed.

Section 3. In the event of such annexation, all feeder pipe lines, structures, connections, and other facilities required for the delivery of water to said corporate area of Rainbow, from works owned or operated by Metropolitan, shall be constructed, provided, and installed without cost or expense to Metropolitan, and Metropolitan shall be under no obligation to provide, construct, operate, or maintain such works.

D. BE IT FURTHER RESOLVED, that the Executive Secretary be, and he hereby is, directed to transmit forthwith to the governing body of San Diego County Water Authority a certified copy of this resolution.

I HEREBY CERTIFY, that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California at its meeting held January 12, 1954.

January 15, 1954

Board of Directors
San Diego County Water Authority
714-721 Land Title Building
San Diego 1, California

Gentlemen:

Enclosed is a certified copy of Resolution 4139 adopted by the Board of Directors of The Metropolitan Water District of Southern California on January 12, 1954, granting consent to and fixing the terms and conditions for the annexation of the Rainbow Municipal Water District concurrently to this District and to the San Diego County Water Authority.

Also at this meeting, informal consent was granted to the application of the San Diego County Water Authority for consent to annex to this District territory which had previously been included within the boundaries of the La Mesa, Lemon Grove and Spring Valley Irrigation District without becoming a part of the San Diego County Water Authority. In this connection, Mr. Robert T. Eisner, General Manager and Chief Engineer of this District, was authorized to select the specific years numbering not less than six, for which the assessed valuations of the area proposed for annexation will be required.

Yours truly,

A. J. Owen
Executive Secretary

ALG:z

Enclosure

Copy to: Director Holbrow and
Director Holmgren

Chairman
CMCE
General Counsel
Controller

EXHIBIT F

THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 306 WEST THIRD STREET
 LOS ANGELES 13, CALIFORNIA

OFFICE OF
 GENERAL COUNSEL

May 26, 1953

Board of Directors
 The Metropolitan Water District
 of Southern California
 Building

Gentlemen:

This office has been asked to advise whether, in the event that at some time in the future a third water line shall become necessary to serve the San Diego County Water Authority, this District will be under any obligation to construct such line so as to provide for delivery of additional water from the main Colorado River Aqueduct to the point near Rainbow Tunnel now fixed as the point of delivery of water transported by means of the first and second barrels of the San Diego Aqueduct System.

Resolution No. 3612 adopted by your Board on October 4, 1946, fixing the terms and conditions upon which the corporate area of the Authority was annexed to the District on December 17, 1946, provides that

"the point of delivery of water by the District to the Authority shall be at or in the immediate vicinity of North Station 1920/00 as shown on Y. & D. Drawing No. 386,014".

This resolution further provides that upon assumption by the Authority of the possession of the San Diego Aqueduct as lessee under the Lease-Contract

"the District shall have the right of use of the said northerly part of said aqueduct for the purpose of delivering water to the Authority, and during the period of such use and after title thereto shall have been conveyed to the District, the District, at its own cost, shall have the duty of operating, maintaining and, when necessary to satisfy the Authority's requirements for water, the obligation to enlarge or parallel that part of the said aqueduct lying northerly of said point of delivery."

The resolution referred to was accepted by a vote of the electors of the Authority as part of the annexation proceedings. The Authority assumed possession of the aqueduct as lessee on January 1, 1952.

May 26, 1953.

Under a contract between the United States and the Authority, dated April 1, 1952, and designated "Supplemental Agreement No. 4," the Government now is constructing a second barrel. The Supplemental Agreement specifically authorizes the Authority to arrange for the possession and use by the District of that part of the original aqueduct and the second barrel, lying northerly of the fixed point of delivery. Under the contract between the District and the Authority dated September 29, 1952, the District agreed to take over the use, operation and maintenance of the second barrel northerly of the point of delivery, and to pay to the Authority the true cost thereof. The last mentioned agreement contains the following clause (paragraph 11):

"It is further agreed that compliance with the terms and conditions of this Contract shall constitute full performance of any existing agreement by the District to enlarge or parallel any part of the Aqueduct."

The only contractual obligations to the Authority assumed by the District respecting construction of transmission facilities arise out of Resolution No. 3612 and the contract of September 29, 1952. The pertinent provisions of the two documents are set forth for convenience in the appendix to this opinion. From the portion quoted above, it is apparent that the contract of September 29, 1952, effectively eliminates any obligation of a contractual character respecting the enlargement or paralleling of the San Diego Aqueduct.

Under existing conditions, the Authority, in its relationship to the District, is on the same basis as are all other unit municipalities of the District. The District's distribution lines are not earmarked for the exclusive use of any municipality which may be served thereby. Any duty to provide line capacity for additional water for such units, in response to their respective needs, is not contractual in character. Determination of the means by which such needs are to be met and of the time and extent of any required additional construction, rests in the sound discretion of the Board of Directors of this District. This discretion will be exercised in the light of the then existing circumstances.

In consenting to the annexation of any particular area, your Board may determine that the present circumstances require that additional facilities necessary for delivering water to such area be furnished without expense to the District. Suitable provision also may be included, whereby any line capacity may be made temporarily available for such delivery until such capacity may be needed for other purposes. Continuing authority may be retained in your Board to determine when, and in what manner, future needs of areas and unit municipalities of the District shall be met. Submitted herewith for consideration is a draft of suggested provisions to accomplish this result with respect to areas which may be annexed to the Authority and to this District. If found acceptable, the text of such draft may be included in the terms and conditions of annexation fixed by your Board.

Very truly yours,



James H. Howard
General Counsel

APPENDIX

1. Resolution No. 3612 adopted by the Board of Directors of the District on October 4, 1946, fixing the terms and conditions upon which the corporate area of the Authority was annexed to the District on December 17, 1946, contains the following provisions (references are to sub-paragraphs of paragraph 9 of the resolution):

(a) "Point of Delivery of Water" (Subparagraph (3))

Upon completion of the annexation

"the point of delivery of water by the District to the Authority shall be at or in the immediate vicinity of North Station 1920/00 as shown on Y. & D. Drawing No. 386,014 entitled 'San Jacinto-San Vicente Aqueduct, North Station 1919/50 to 1968/00, North Station 2101/00 to 2109/00, Profiles and Alinements,' approved September 14, 1945 by A.K. Fogg, Public Works Officer, Eleventh Naval District, San Diego, California, being sheet 2 of 8 sheets accompanying Specifications No. 17383 issued under date of September 21, 1945 by A.K. Fogg, Captain (CEC) USN, Officer-in-Charge of Construction Contracts, Naval Operating Base, San Diego, California, which Station 1920/00 is hereinafter referred to as the point of delivery; provided, however, that if the United States shall resume possession of the San Diego Aqueduct to the exclusion of the District's use thereof, or if the District shall be excluded from, or be interrupted in its use of, that part of the San Diego Aqueduct lying northerly of said point of delivery as the result of any breach or failure of performance of said Lease-Contract on the part of the Authority or on the part of the City, the District, during the period of such exclusion or interruption, shall be under no obligation to deliver water at the said point of delivery, but shall deliver all water which the Authority may rightfully be entitled to receive from the District, at a point near the west portal of the District's San Jacinto tunnel and to such facilities as may be provided therefor by the Authority, subject to the approval of the District as to construction details."

(b) "Use of Works" (Subparagraph (5))

Upon assumption by the Authority of the possession of the San Diego Aqueduct as lessee under the Lease-Contract

"the District shall have the right of use of the said northerly part of said aqueduct for the purpose of delivering water to the Authority, and during the period of such use and after title thereto shall have

been conveyed to the District, the District, at its own cost, shall have the duty of operating, maintaining and, when necessary to satisfy the Authority's requirements for water, the obligation to enlarge or parallel that part of the said aqueduct lying northerly of the said point of delivery."

Possession of the Aqueduct was delivered by the Government to the Authority as lessee on January 1, 1952.

(c) "Title to Works" (Subparagraph (4))

The Authority shall acquire title to the Aqueduct

"and upon acquisition of title shall transfer to the District title to that part of the San Diego Aqueduct lying northerly of said point of delivery"

upon payment by the District to the Authority of the consideration therefor.

2. The United States is constructing the Second Barrel in accordance with the provisions of Supplemental Agreement No. 4 between the United States and the Authority, dated April 1, 1952, which expressly authorizes the Authority to arrange for the possession and use by the District of that part of the Aqueduct and Second Barrel northerly of Station 1920/00. Such arrangement was made by contract between the District and the Authority, dated September 29, 1952, which contains the following provisions (references are to numbered sections or paragraphs):

(a) Upon delivery by the Government to the Authority of the possession of the Second Barrel, pursuant to the provisions of said Supplemental Agreement No. 4,

"and until title thereto shall have been conveyed to the District as hereinafter provided, the District shall have the possession and use, and the duty of operation, maintenance and repair, of the said Aqueduct system, * * * ." (Section 2)

(b) Section 3 provides:

"3. During the period that the District shall have possession and use of the Aqueduct System hereunder, and thereafter when title thereto shall have been conveyed to the District as herein provided, said Aqueduct System shall be a part of the distributing system of the District, fully under the District's control and subject to use for any lawful District purpose; provided, that full recognition is hereby given to the right of the Authority to purchase water from the District as provided in the Metropolitan

May 26, 1953.

Water District Act, subject to such regulations as shall be prescribed by the District and which shall be generally applicable to sales and deliveries of water to its constituent municipalities by means of the District's distributing system, and the said Aqueduct System shall not be used in any manner inconsistent with or in derogation of such right of the Authority;
* * *

(c) Section 4 provides:

"4. After delivery to the District of possession of the Aqueduct System, water purchased by the Authority from the District shall be delivered at the delivery point specified in said Resolution No. 3612. In the event that the Government should resume possession of the Aqueduct System, or of any substantial part thereof, to the exclusion of the District's use thereof, or if the District shall be excluded from or interrupted in its use of the Aqueduct System as the result of any breach or failure of performance of Contract NOy-13300, as amended and supplemented, the District, during the period of such exclusion or interruption shall be under no obligation to deliver water at said point of delivery, but will deliver all water which the Authority may lawfully be entitled to receive from the District at or near the west portal of the District's San Jacinto Tunnel, and by means of such facilities as may be provided therefor by the Authority, subject to the approval of the General Manager and Chief Engineer of the District as to design and construction of any additional connection with the District's works."

(d) The Authority shall acquire title to the Aqueduct and Second Barrel, pursuant to Contract NOy-13300, as amended and supplemented,

"and when such title shall have been so acquired and the Authority shall have received payment from the District of the moneys herein and in said Resolution No. 3612 agreed to be paid by the District, the Authority, without further consideration, shall convey and transfer to the District, title to the Aqueduct System"

(i.e., the portions of the First and Second Barrels northerly of Station 1920/00). (Section 6)

(e) Prior to the delivery by the Government to the Authority of the possession of the Second Barrel, the rights and obligations of the District and of the Authority respecting the possession, use, operation, repair and maintenance of the Aqueduct northerly of Station 1920/00 shall be controlled by Resolution No. 3612. (Section 10 (a)) Thereafter, the rights

Board of Directors -6.

May 26, 1953.

and obligations relating to such possession, use, operation, repair and maintenance shall be controlled by the contract of September 29, 1952. (Section 10 (b)) In event of any conflict between the provisions of the resolution and the contract, the latter shall control. (Section 10 (e))

(f) Section 11 provides:

"11. It is further agreed that compliance with the terms and conditions of this Contract shall constitute full performance of any existing agreement by the District to enlarge or parallel any part of the Aqueduct."

15081

SUGGESTED PROVISIONS FOR INCLUSION IN METROPOLITAN'S
RESOLUTION FIXING TERMS AND CONDITIONS FOR ANNEXATION
OF AN AREA TO THE AUTHORITY AND TO METROPOLITAN

(By definitions in earlier portions of the resolution, "Metropolitan" means The Metropolitan Water District of Southern California, "San Diego Authority" means San Diego County Water Authority, and "_____ Area" means the annexing area designated by that title in the resolution)

Section . In the event of such annexation:

(a) Metropolitan, by reason of the annexation of the _____ Area to San Diego Authority and to Metropolitan, shall not be obligated to construct, provide, install, operate, maintain, or replace, at Metropolitan's expense, any feeder pipe lines, structures, connections, or other facilities for delivering or distributing water to or within the corporate area of San Diego Authority or to or within said _____ Area thereof.

(b) All feeder pipe lines, structures, connections, and other facilities required for the delivery or distribution of water to or within said _____ Area from works owned or operated by Metropolitan shall be constructed, provided, installed, operated, maintained, and replaced without cost or expense to Metropolitan, and Metropolitan shall be under no obligation to construct, provide, install, operate, maintain, or replace such works.

(c) Metropolitan may deliver water to San Diego Authority for use within said _____ Area thereof by means of the San Diego Aqueduct System (as defined in the contract between Metropolitan and San Diego Authority, dated September 29, 1952), during such times as the capacity of said Aqueduct System under the control of Metropolitan shall be adequate to permit such deliveries without impairing Metropolitan's use thereof for transporting and delivering water for use elsewhere than within said _____ Area of San Diego Authority; provided that whenever it shall be determined by the Board of Directors of Metropolitan that the capacity of said Aqueduct System under Metropolitan's control no longer is adequate for such purpose, the Board of Directors of Metropolitan may terminate such deliveries to San Diego Authority, by means of said Aqueduct System, of water for use within said _____ Area of San Diego Authority, and may provide that deliveries of such water thereafter shall be made at or near the west portal of Metropolitan's San Jacinto Tunnel by means of such facilities as may be provided therefor without cost or expense to Metropolitan.

PETITION and COMPLAINT

EXHIBIT J

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 Thorner, 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 trued 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
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

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

LAFCO

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	AF	FPUD Revenue	AF	RMWD Revenue	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 Revenue Impact	ESP Credit	Net Total	Net Annual	Cost to Remaining Ratepayers 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