

*Carlsbad MWD's Request for a  
Determination of Leucadia WWD's  
Need for a Latent Service  
Authorization*

October 11, 2019

# *Introductions*

- Scott Chadwick, Executive Manager
- Celia Brewer, General Counsel
- Cindie McMahon, Associate General Counsel
- Paz Gomez, Deputy City Manager, Public Works
- Vicki Quiram, General Manager
- Eric Sanders, Utilities Manager

# *Background*

- Carlsbad has developed an extensive recycled water system through
  - Implementation of a Recycled Water Master Plan
  - Adoption of a Mandatory Use Ordinance
  - Substantial Investments in Production and Distribution Facilities

# *Background*

- The Resort is one of Carlsbad's largest recycled water customers
- Carlsbad directly supplies the Resort's north course and, between 1991 and 2018, supplied the Resort's south course with recycled water purchased wholesale from Leucadia

# *Background*

- Carlsbad invested over \$1.2 million to construct a recycled water pipeline in front of the Resort
  - Completed in 2015
  - Enables Carlsbad to directly supply recycled water for the Resort's south course
  - The Mandatory Use Ordinance requires the Resort to connect to the pipeline

# *Background*

- In Aug. 2018, Carlsbad's last wholesale supply agreement with Leucadia expired
- Carlsbad intended to begin directly supplying recycled water to the Resort
- Leucadia offered to directly supply the Resort and has been doing so since Sept. 2018

# *Parties' Dispute*

- Carlsbad believes it is the only authorized retail recycled water supplier for the Resort's south course
- Leucadia believes it is also an authorized retail recycled water supplier for the Resort's south course

# *Why San Diego LAFCO Involvement*

- If Leucadia  $\neq$  an authorized retail provider, Leucadia needs San Diego LAFCO authorization
- If Leucadia = an authorized supplier, San Diego LAFCO must address the duplication of services
- Upcoming Coastal SOI/MSR opportune time



# *Carlsbad's Submittals*

- Dec. 24, 2018 letter (with exhibits) requesting determination
- Sept. 27, 2019 letter (with exhibits) addressing Leucadia's response to the Executive Officer's preliminary determination

# *Today's Focus*

- Whether Leucadia has grandfathered retail class rights
- If not, whether San Diego LAFCO's determination is controlled by the Rule 4.4 matrix or by the SOI/MSR and Rules 4.8 and 4.9

# *Leucadia Does Not Have Grandfathered Retail Class Rights*

- 1961 Agreement between Leucadia and the Resort was a real estate transaction, not a retail service agreement
- For 27 years between 1991 and 2018, Carlsbad was the Resort's recycled water retailer and Leucadia was Carlsbad's recycled water wholesaler

# *Leucadia Does Not Have Grandfathered Retail Class Rights*

- Interim 2013 agreement does not show intent to become a recycled water retailer
- Current, disputed agreement also does not show intent to become a recycled water retailer
  - Limited duration (month-to-month)
  - Limited scope (as needed)

# *Leucadia Does Not Have Grandfathered Retail Class Rights*

- Leucadia has not complied with its permit requirements for obtaining Regional Board approval to become a direct purveyor
- Leucadia does not hold itself out as a retail recycled water supplier
- Leucadia cannot always supply all of the Resort's recycled water needs

# *Leucadia Does Not Have Grandfathered Retail Class Rights*

- Absence of a classic, historical retail relationship +
- Absence of retailer identity +
- Absence of compliance with permit requirements for retailing =
- No factual support for a finding Leucadia has grandfathered retail class rights

# *SOI/MSR and Rules 4.8 and 4.9 Control*

- Rule 4.8 mirrors Gov. Code § 56424, which requires San Diego LAFCO to establish the nature, location and extent of a special district's functions and services when it updates the special district's SOI

# *SOI/MSR and Rules 4.8 and 4.9 Control*

- Gov. Code § 56424 contemplates a special district might exercise less than the full range of its authorized functions and services
- Requires SOI to determine precisely what functions and services a special district exercises



# *SOI/MSR and Rules 4.8 and 4.9 Control*

- SOI determination allows for identification of latent functions and services
- Gov. Code § 56050.5 – “latent service” = service authorized, but not being exercised, as determined by SOI

# *SOI/MSR and Rules 4.8 and 4.9 Control*

- SOI/MSR determined Leucadia provides wholesale recycled water service
- By definition, retail recycled water service = a latent service regardless of whether Leucadia has ever provided such service in the past

# *SOI/MSR and Rules 4.8 and 4.9 Control*

- Rule 4.9 works with Rule 4.8 to implement Gov. Code § 56824.10, the provision for obtaining authorization to provide a latent service
- Rule 4.9 requires San Diego LAFCO approval to provide a service new or different from services identified in the SOI/MSR

# *SOI/MSR and Rules 4.8 and 4.9 Control*

- Rule 4.9 implements Gov. Code § 56824.10 exactly as the Legislature intended
- Intent was to allow special districts “to apply to a LAFCO to provide new or different services than the special district currently provides.” (See Sen. Rules Com., 3d reading analysis of Assem. Bill No. 948.)

# *SOI/MSR and Rules 4.8 and 4.9 Control*

SOI/MSR and Rules 4.8 and 4.9 compel a conclusion Leucadia needs San Diego LAFCO authorization before providing retail recycled water service to the Resort

# *Conclusion*

- Carlsbad respectfully requests the Committee recommend the Executive Director find that Leucadia is not presently authorized to provide retail recycled water service to the Resort

*Thank you!*