

From: Gary Thompson <gthompson@lafco.org>

Sent: Wednesday, May 27, 2020 9:13 AM

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

Subject: RE: San Diego LAFCO | Monday, June 1, 2020 Meeting Agenda and Item 7a

Thanks!

Keene,

I think it is critical that EMWD be represented on the committee being proposed as they are essentially by default a participant in the proceedings. And they can add value to the discussion as the proposed future wholesale service provider.

Sincerely,

Gary Thompson

Executive Officer

Riverside LAFCO

951-369-0631



May 26, 2020

Keene Simonds
Executive Officer
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Subject: Composition of LAFCO Committee to Review Reorganization Applications

Dear Keene:

I have reviewed your staff report for Item 7a on the June LAFCO agenda. Rainbow MWD has provided comments about the composition of the committee through a joint letter with Fallbrook PUD. As that letter indicates, while Rainbow MWD feels that too large a committee can present challenges to getting to concurrence, we are ready to work with the Committee in whatever format the Commission deems appropriate. If there is a lack of consensus as to the composition of the committee, it is not coming from Rainbow MWD.

I look forward to working with the Committee and SDLAFCO staff to process this application.

Sincerely,

RAINBOW MUNICIPAL WATER DISTRICT

A handwritten signature in black ink, appearing to read "Tom Kennedy", is written over a circular stamp. The signature is fluid and cursive.

Tom Kennedy
General Manager

cc: Alfred Smith, RMWD General Counsel



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Fallbrook, California
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Board of Directors

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Division 1

Ken Endter
Division 2

Jennifer DeMeo
Division 3

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Division 4

Charley Wolk
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General Manager

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*Assistant General Manager/
Chief Financial Officer*

Lauren Eckert
*Executive Assistant/
Board Secretary*

General Counsel

Paula de Sousa
Best Best & Krieger

May 28, 2020

Keene Simonds
Executive Officer
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Subject: LAFCO Action on Fallbrook Public Utility District
Reorganization Application

Dear Keene:

Fallbrook PUD provided comments about the composition of the committee in conjunction with Rainbow MWD in a joint letter dated May 18, 2020. In the joint letter we expressed our support of the original proposed alternatives developed by the Executive Officer. Even though we think having too many members will make the committee function cumbersome, we have no significant objection to the additional alternative (which alternative proposes a 12 member committee) as presented in the Agenda Report for the Commission's upcoming meeting on June 1, 2020. We are happy to participate in any committee convened to review and evaluate the concerns of each party for the purpose of reaching consensus on this important item to Fallbrook PUD.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jack Bebee', is written over a light blue horizontal line.

Jack Bebee
General Manager
Fallbrook Public Utility District

cc: Paula De Sousa, FPUD General Counsel



May 20, 2020

Attention: Board of Directors

Resolution Regarding Potential Detachment (Action)

Staff Recommendation

Adopt Resolution No. 2020-___ regarding potential detachment by the Fallbrook Public Utilities District (“**Fallbrook**”) and the Rainbow Municipal Water District (“**Rainbow**”).

Alternative

Do not adopt Resolution No. 2020-___.

Fiscal Impact

The Resolution itself (Attachment 1) is a position statement on detachment, and thus on its own does not create a fiscal impact. However, there are fiscal impacts to detachment.

Executive Summary:

That the Water Authority Board resolve as follows:

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

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

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

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

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

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

Overview

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

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

Fallbrook and Rainbow have filed applications with the San Diego County Local Agency Formation Commission (“**San Diego LAFCO**”) for change in organization seeking detachment from the Water Authority and annexation into Riverside County’s Eastern Municipal Water District (“**Eastern**”). This type of LAFCO detachment is unprecedented in San Diego County. The full anticipated process will require significant analysis, a vote of the LAFCO Commission, and potentially a popular vote. Attachment 2 provides an overview of the LAFCO process.

Fallbrook and Rainbow have publicly promised to their own ratepayers that a detachment would provide their customers with better service, including lower rates and equivalent reliability. However, the proposed detachments could have significant impacts on the reliability and cost of water for users in Fallbrook and Rainbow and throughout the County of San Diego. Detachment may also have other adverse effects including environmental impacts and regional governance issues. In order to protect Rainbow and Fallbrook’s ratepayers and property owners, and other water users throughout San Diego County, a comprehensive evaluation should be performed by San Diego LAFCO to fairly assess and disclose to the public and decision makers the potential impacts of any detachments. Some of the critical issues in evaluating the detachment proposals are described below.

1. Achieving a Reliable and Affordable Water Supply for San Diego County

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.

In 1990 the Water Authority imported more than 95% of San Diego County’s water supply from the Metropolitan Water District of Southern California (“**MWD**”). In 1991, MWD cut water deliveries to the Water Authority by about 31% overall (it later ordered a 50% cutback in March 1991, including a 90% cutback to agricultural water deliveries which was only avoided as a result of the “March Miracle” rainfall). MWD cutbacks had major financial impacts on San Diego County’s then-2.5 million residents (now 3.3 million) and regional economy, including its agricultural sector, which avoided devastation in 1991 only by the vote of the Water Authority’s Board to share the available water supply within San Diego County between urban and agricultural uses.

To prevent the recurrence of economic harm caused by an unreliable water supply, the Water Authority has made 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, and has solidified San Diego County's water supply reliability.

A wide range of San Diego authorities have repeatedly recognized the importance of a diversified and reliable water supply to our County's residents and economy. SANDAG's 2008 [Regional Economic Prosperity Strategy](#) identified as one of its 10 strategic goals "Provide an adequate supply of water from a diverse portfolio and ensure it is delivered in a timely, reliable and competitively priced manner." The San Diego County Grand Jury's May 15, 2013 report [Reduce Dependence on Imported Water](#) recommended that the Water Authority "Continue 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."

The San Diego Regional Economic Development Corporation in its publication [The Importance of Water Reliability to San Diego's Economy](#) recognized the Water Authority's successful efforts toward water independence for the County, concluding that the Water Authority's "[d]iversification efforts over the past two decades have helped the San Diego region significantly reduce its reliance on Metropolitan Water District from 95% in 1991 to 40% [in 2018], and a projected 11% in 2020 and 2% by 2035."

2. Reducing Bay-Delta Impacts

The State of California has declared in its California Water Plan that a long-term reliable supply of water is essential to protect and enhance California's natural resources and economy. Longstanding conflicts surrounding the availability and delivery of water from Northern California's environmentally sensitive Bay-Delta to Central and Southern California are yet to be resolved. Governor Newsom recently took issue with the "twin tunnels" long advocated by MWD in his Executive Order calling for a single tunnel and "water resiliency." [Executive Order N-10-19](#) (April 29, 2019).

By its Delta Reform Act of 2009, including the portion codified at Water Code [§ 85021](#), the State of California established that it is state policy to reduce reliance on the Delta and the State requires that each region that depends on Delta water "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."

For nearly three decades, the Water Authority and its 24 member agencies have worked to successfully increase San Diego County's regional self-reliance and reduce its dependence on the Bay-Delta. It has done so by making a series of investments in water use efficiency on farms in the Imperial Valley, by conserving water through the lining of the All-American and Coachella water canals, and by developing a seawater desalination facility in Carlsbad. All member agencies benefit from these investments.

3. Investments and Indebtedness Incurred to Provide a Reliable Water Supply

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 water demands of all 24 of its member agencies. Those investments were made to reliably meet all of San Diego County's baseline water supply needs, with the active engagement by all member agencies (including Rainbow and Fallbrook) for their long-term benefit. Financial impacts resulting from the potential detachments may be significant and must be fully evaluated to ensure that the interests of Fallbrook and Rainbow customers and property owners, and the rest of San Diego County's water users and property owners, are protected.

4. Voting Rights at MWD

The Water Authority has significant voting rights as a member of MWD, allowing it to represent the interests of San Diego County on the MWD board with a strong and unified voice.

The detachment of Rainbow and Fallbrook from the Water Authority and concurrent annexation into Eastern would reduce the Water Authority's voting rights at MWD, and increase Eastern's voting rights at MWD, thus allowing Riverside County to have a disproportionate vote on MWD's water rates, property taxes and other policies affecting all San Diego County residents and property owners.

5. Rainbow/Fallbrook Detachment Proposal

Currently as member agencies, Fallbrook and Rainbow receive full water service from the Water Authority, including the benefits of the Water Authority's highly reliable water portfolio and storage facilities.

Fallbrook and Rainbow propose annexing into Eastern in a highly unusual and limited manner, whereby they would not have any access to Eastern's storage, water rights, or infrastructure system, but instead would use Eastern merely as a pass-through entity, paying \$11 an acre-foot surcharge in addition to the MWD wholesale rates for the right to water from MWD. This approach will result in Rainbow and Fallbrook's customers being completely dependent on MWD's imported water.

By detaching from the Water Authority, Rainbow and Fallbrook ultimately risk paying more for a less reliable water supply, and risk violating state law, because MWD water provided by Eastern is more dependent on Bay-Delta water supply, and state water law requires reducing dependence on the Bay-Delta as a water supply source.

The Water Authority's member agencies pay the costs of its highly reliable water supplies, including all of the Water Authority's bonded and other indebtedness, through the various rates, fees, and charges, both fixed and variable, as determined from time to time by the Water Authority's Board of Directors. Fallbrook and Rainbow propose detaching from the Water Authority and annexing into Eastern without the benefit of any of the water supply acquired to meet their customers' needs, or payment to the Water Authority for the costs incurred to provide it.

Board of Directors

May 20, 2020

Page 5 of 5

Recommendation

Because of the significant and unprecedented impacts that the detachment of Rainbow and Fallbrook may have on water users and property owners throughout San Diego County, the General Manager and General Counsel recommend that the Water Authority Board approve the Attachment 1 Resolution, which resolves as stated in the above Executive Summary.

Prepared by: Water Authority Staff

Approved by: Mark J. Hattam, General Counsel
Sandra L. Kerl, General Manager

Attachments:

1. Proposed Resolution No. 2020-__
2. Overview of LAFCO Process

RESOLUTION NO. 2020-_____

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

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

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

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

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

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

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

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

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

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

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

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

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

Unless noted below all Directors voted aye.

Jim Madaffer, Chair

ATTEST:

Christy Guerin, Secretary

I, Melinda Nelson, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2020- _____ was duly adopted at the meeting of the Board of Directors on the date stated above.

Melinda Nelson, Clerk of the Board

Attachment 2 - Overview of LAFCO Process

There are various procedural and legal issues regarding detachment as to which the Board and public should be made aware. This Memorandum provides an overview of some of these issues that can be discussed in public, and are without waiver of closed session and/or attorney-client privileged and work product communications. However, some of these issues are fairly complex, and it is expected they will be addressed in further detail in the San Diego Local Agency Formation Commission ("San Diego LAFCO") review process.

A. General Background

The Water Authority is a county water authority and a local agency established in 1944 and providing water to member agencies throughout San Diego County since World War II. Fallbrook Public Utilities District ("Fallbrook") was a founding member of the Water Authority, and has been a member since 1944. Rainbow Municipal Water District ("Rainbow") joined the Water Authority in 1954.

The Water Authority has member agencies which choose representatives to sit on the Water Authority's Board and govern the actions of the Water Authority, resulting in coordinated water policy and benefits for the San Diego County region. Over many decades the Water Authority, by collective decisions of its appointed Board of Directors (which Board includes Fallbrook and Rainbow representatives), has constructed and maintained extensive pipelines, dams, treatment facilities, and other significant infrastructure to serve the critical water needs of San Diego County's 3.3 million population and its \$245-billion regional economy, and has also obligated itself on long-term water supply contracts. To perform these tasks the Water Authority has incurred and has outstanding, bonded and other indebtedness ("Water Authority Bonded and Other Indebtedness").

Beginning in at least Fall of 2018, Rainbow and Fallbrook started to plan to detach from the Water Authority and annex into Riverside County's Eastern Municipal Water District ("Eastern"). Together the detachment and annexation proposals of both Rainbow and Fallbrook are referred to as the "Reorganization" proposal. By January of 2019, Rainbow and Fallbrook initiated discussions with the San Diego LAFCO and the Riverside County Local Agency Formation Commission ("Riverside LAFCO") regarding the Reorganization proposal. During this period the Water Authority was not informed of what was occurring.

In May 2019, the General Manager of Rainbow informed the then-Acting General Manager of the Water Authority that Rainbow and Fallbrook were seeking to detach from the Water Authority, and intended to conduct parallel processes with San Diego LAFCO (for the detachments from the Water Authority) and Riverside LAFCO (for the annexations to Eastern). After receiving this information, the Water Authority staff advised the Board and then made Public Records Act requests to each of the affected agencies to obtain relevant materials. Those materials were produced in late June 2019 and showed the lengthy planning of Eastern, Fallbrook, and Rainbow.

In August of 2019, the Water Authority requested that all LAFCO action be consolidated at the San Diego LAFCO in order to improve coordination, efficiency, and to maintain local control of decisions in San Diego County. The San Diego LAFCO and Riverside LAFCO agreed to a

Memorandum of Understanding vesting exclusive jurisdiction to control the reorganization in the San Diego LAFCO in October of 2019. At that time, Eastern, Rainbow, and Fallbrook entered into their own Memorandum of Understanding to formalize the planning process and general terms for consideration regarding the annexation of Rainbow and Fallbrook into Eastern. In November of 2019, the Water Authority adopted Resolution 2019-19 authorizing staff to apply to San Diego LAFCO to seek exemption from certain LAFCO protest processes, and to request a county-wide election condition in the event the Reorganization were to be approved by San Diego LAFCO.

In December of 2019, Rainbow and Fallbrook authorized their respective General Managers to apply for detachment from the Water Authority and annexation into Eastern, and approved Notices of Exemption from the California Environmental Quality Act ("CEQA") for those applications. In January of 2020, Otay Water District commenced litigation against Rainbow and Fallbrook alleging CEQA violations for failing to undertake an analysis of the potential environmental impacts of the detachments. These lawsuits were settled in March 2020 by consensual stipulation and with a (pending) court order that other agencies such as San Diego LAFCO could not rely on the Notices of Exemption filed by Fallbrook and Rainbow.

Rainbow and Fallbrook each submitted their LAFCO applications in late March 2020. The Water Authority received notice of these applications on March 25, 2020, and submitted the letter applications authorized by Resolution 2019-19 on April 2, 2020. San Diego LAFCO held an initial hearing on May 4, 2020, and approved the Water Authority's application to be exempt from certain LAFCO protest processes.

B. The LAFCO Process

The State of California established LAFCOs in each county to regulate local government boundaries within their county. The San Diego LAFCO has exclusive jurisdiction to handle Rainbow and Fallbrook's detachment application, and by agreement with the Riverside LAFCO will also process the application for annexation into Eastern and the related amendments to each agency's sphere of influence. The process for detachment and annexation, referred to collectively as a "Reorganization," is governed primarily by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the "LAFCO Act") and by the County Water Authority Act ("CWA Act"), as addressed below.

The LAFCO Act requires two sets of proceedings to effectuate a Reorganization: Commission Proceedings (undertaken by the LAFCO) and Authority Proceedings (a local area vote undertaken by the potentially reorganizing entity). Commission Proceedings are always undertaken pursuant to the LAFCO Act. For most public agencies, Authority Proceedings are also undertaken under the LAFCO Act. However, certain entities – including the Water Authority – may apply to have the Authority Proceedings conducted pursuant to the entity's principal act. In November of 2019, the Water Authority's Board of Directors adopted Resolution 2019-19 authorizing the application to San Diego LAFCO to have the Authority Proceedings conducted pursuant to the CWA Act.

Commission Proceedings

The Commission Proceedings are the heart of the LAFCO's evaluation of the Reorganization proposal. To begin the Commission Proceedings, the entity seeking detachment adopts a resolution of application setting forth the proposal. Rainbow and Fallbrook each adopted a resolution of application in December 2019. Following adoption of the resolution, applicants submit the application to the San Diego LAFCO, and pay the associated fees. Rainbow and Fallbrook submitted their applications in March 2020.

Upon receipt of an application, the Executive Officer of the LAFCO must determine whether the application is complete and acceptable for filing. Once the application is deemed complete, a certificate of filing is issued, which triggers a requirement that a LAFCO hearing be held.

LAFCO will independently review the proposal. LAFCO staff will prepare a report and recommendation, and hold a public hearing before voting on the application. LAFCO can disapprove the proposal, or approve the application with or without amendment, wholly, partially, or conditionally, in a manner consistent with its written policies, procedures, and guidelines. (Cal. Gov. Code § 56375(a)(1).) A LAFCO retains considerable discretion in imposing conditions on the approval of detachment.

Because of the complexity and lack of precedent for a detachment of two agencies and a move into an entirely different county with a corresponding change of wholesale water suppliers, the San Diego LAFCO should seek the advice of qualified neutral expert consultants in areas such as water reliability, water rates, water infrastructure engineering, Bay-Delta and Colorado River water issues, and other appropriate fields to fully examine the merit, or lack of merit, of the sought detachment. Such costs are normally paid by the applicants, and that should be the case here.

It is important that the Water Authority and other affected public agencies, cities, and districts weigh in at San Diego LAFCO during the Commission Proceedings as to their positions on detachment. This is because the LAFCO statutes specify the importance of such positions (emphases added):

“Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following: . . . (b) the present cost and adequacy of governmental services and controls in the area; (c) the effect of the proposed action . . . on the local governmental structure of the county . . . ; (j) the comments of any affected local agency or other public agency . . .” Government Code section 56668.

“If the proposed change of organization or reorganization includes a city detachment or district annexation [here there is a district annexation] . . . , factors to be considered by the commission shall include all of the following: . . . (4) any resolution raising objections to the action that is filed by a city or a district. . . . (5)(b) The commission shall give great weight to any resolution raising objections to the action that is filed by a city or a district. The commission’s consideration shall be based only on financial or service-related concerns expressed in the protest.” Government Code section 56668.3.

If San Diego LAFCO approves the Reorganization, affected parties can seek reconsideration of the LAFCO decision by filing a written request within 30 days. LAFCO can either modify its resolution or take no action. Following the finalization of the Commission Proceedings, the Reorganization is then put either to an affirmative vote, or a protest vote of the affected electors.

One question that arises, if a detachment were to be approved, is whether affected electors should be only the electors within Rainbow and Fallbrook's jurisdictions, or whether all electors within the Water Authority's jurisdiction should have a say in this matter, since they will all be affected. The Water Authority Board has requested the latter. San Diego LAFCO will make that determination, as well as whether detachment should occur at all and potentially other conditions for detachment, during the Commission Proceedings.

Authority Proceedings

Within 10 days after notification and the initial application were complete, the Water Authority was allowed to apply to San Diego LAFCO to have Authority Proceedings conducted pursuant to the CWA Act. The Water Authority submitted its application on April 2, 2020. The LAFCO Commission approved that application on May 4, 2020.

Under the CWA Act's Authority Proceedings, and depending on approval and subject to conditions imposed by San Diego LAFCO during the Commission proceedings, a member agency seeking detachment (called "exclusion" in the CWA Act) submits the question of detachment to its electors in an election. (Cal. Water Code App. § 45-11(a)(2).) If the proposition is approved by a majority of votes cast by the electors, then the agency's board certifies the vote to the board of the Water Authority. (*Ibid.*) The secretary of the board for the Water Authority files a certificate of the proceeding with the Secretary of State. Once the certificate is filed, and assuming all conditions imposed by San Diego LAFCO during Commission proceedings were satisfied, the detaching agency would no longer be part of the Water Authority.

Future Timeline

Based on rough estimates received from San Diego LAFCO's Executive Officer, the following would be the general anticipated timeline for the LAFCO proceeding absent COVID-19 delays:

May 2020 through April 2021 - LAFCO Administrative Reviews of the applications, including financial and service implications. Outside consultants will likely be used to provide analysis.

May 2021 - Certificate of Filings issued to Rainbow and Fallbrook once the administrative review is complete. These documents attest the applications are complete and the Commission must hold hearings within 90 days under statute.

June 2021 - LAFCO Hearings on Proposals. LAFCO Staff intends to hold concurrent, dual hearings on both proposals. If Proposals are denied, matters concluded. If they are approved with conditions, those conditions must be satisfied.

November 2021 (or later) – If there were an approval, within 88 days of any Commission approvals, LAFCO would need to work with the County of San Diego ROV to schedule one or more elections involving the affected territory as defined by the Commission.

C. Legal Issues Regarding Detachment

There are various legal issues that may be implicated by this detachment proceeding, since it is without precedent. It is expected that there will be detailed legal briefings at LAFCO on all such issues. We just provide a short general summary of a few of these items here.

One issue that may arise is the interplay between the CWA Act and the LAFCO Act. In e-mails produced by Rainbow pursuant to Public Records Act requests, it is clear that Rainbow initially took the position that San Diego LAFCO had no role in the detachment process at all.¹ However, San Diego LAFCO stated that it did have a decisional role under the LAFCO Act, and it appears that Rainbow and Fallbrook have now acquiesced to that position, because they both filed detachment applications at San Diego LAFCO.

It is unclear where the precise overlaps will and will not occur between the LAFCO Act and the CWA Act. Fundamentally, the Legislature has given LAFCO's wide discretion to approve or disapprove reorganizations, and to impose numerous conditions on a reorganization.² How the San Diego LAFCO chooses to exercise its authority will be determined in the LAFCO proceedings.

If detachment were to be approved, the precise scope and apportionment of financial obligations is uncertain. San Diego LAFCO itself has broad authority to impose various financial conditions (*supra*). However, the meaning of certain language in the CWA Act may be disputed. The CWA Act specifies that once an agency is excluded from the Water Authority, "the taxable property within the excluded area shall continue to be taxable by the [Water Authority] for the purpose of paying the bonded or other indebtedness of the [Water Authority] outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied." (*Ibid.*) Fallbrook and Rainbow have asserted in various materials that this text is very narrow and would exclude revenue bonds and many other obligations. The Water Authority believes the text is much broader than that, and is more similar to Government Code section 57354.³ It does not believe the Legislature intended in the CWA Act to strand debt at a county water authority, as Fallbrook and Rainbow now suggest. The LAFCO legislation grants a LAFCO the ability to impose financial conditions, and that is in addition to the CWA Act.

Further, the remedy provided in the CWA Act was created in an era when local agencies could simply impose a tax on land if necessary, by decisions of their governing bodies. That is no

¹ May 23, 2019, e-mail from Rainbow General Manager Tom Kennedy to Keene Simonds ("[I]t appears that to undertake a change of organization only the County Water Authority Act would apply.")

² See, for example, Government Code sections 56880, 56885.5, 56886, and 57354.

³ "Any territory detached from a city or district shall 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. . . ."

longer the case, with various constitutional provisions now requiring voters to approve such taxes. Therefore, given changes in law, to actually effectuate the remedy in the CWA Act it appears that the San Diego LAFCO -- if it were even going to approve detachment -- would need to impose a voting requirement in the detaching service areas such that the voters approve that their lands are subject to pay the pro rata share of the Water Authority's Bonded and Other Indebtedness. Otherwise, if detachment were to occur without the departing agencies being required to pay their agencies' respective share of the Water Authority's Bonded and Other Indebtedness incurred to meet planned and projected baseline water demands and other necessary expenditures, the remaining member agencies would have to pay the costs incurred for customers of the two detaching agencies, which is not the intent of the CWA Act.

In addition to financial legal issues, California state law also mandates in the Delta Reform Act of 2009, as codified at Water Code section 85021, 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." The Water Authority has done as mandated by the Legislature by reducing its Bay-Delta water use and increasing San Diego County's regional self-reliance, but now the applications of Fallbrook and Rainbow propose to do just the opposite by detaching from the Water Authority and moving back onto MWD.

Additionally, there may be issues as to where voting is to take place on detachment. The San Diego LAFCO has discretion in its authorizing legislation to impose conditions, one of which could include a Water Authority service-area vote so that all affected ratepayers have a say in detachment. The CWA Act also includes provisions relating to voting and the right of all member agencies to be protected from the imposition of costs incurred to meet the demands of other agencies.

All the above issues, and others related to how to handle the effects of detachment, will be addressed in the San Diego LAFCO process. There will no doubt be extensive briefing and argument over the interpretation and application of all the applicable laws.

D. Conclusion

The detachment process will be long, complex, and costly for all agencies. San Diego LAFCO cannot be expected to make such important decisions without extensive study, and detailed legal briefing – all of which will take time and money. How the entire matter will conclude is uncertain at this time.