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September 11, 2014

Michael D. Ott
Executive Officer
LAFCO
9335 Hazard Way, Suite 200
San Diego, CA 92123

Re: Fallbrook Public Utility District's Response Re: *Resolution of Objection of the Board of Directors of the Rainbow Municipal Water District to the Fallbrook Public Utility District's Resolution and Application for Reorganization to the San Diego County Local Agency Formation Commission*

Dear Mr. Ott:

This letter and attachment hereto, sets forth Fallbrook Public Utility District's ("FPUD") response to allegations raised in Rainbow Municipal Water District's ("Rainbow") *Resolution of Objection of the Board of Directors of the Rainbow Municipal Water District to the Fallbrook Public Utility District's Resolution and Application for Reorganization to the San Diego County Local Agency Formation Commission*, dated July 22, 2014 ("Resolution of Objection").

Based on the information put forward by FPUD in the attachment, FPUD respectfully requests that LAFCO determine that Rainbow's Resolution of Objection cannot be afforded "great weight" pursuant to the provisions of Government Code section 56668.3 (b), because Rainbow has failed to provide information giving rise to financial and/or service related concerns as those terms are defined in the Cortese Knox Hertzberg Local Government Reorganization Act of 2000, Government Code section 56000 et seq. FPUD respectfully further requests that LAFCO carefully consider FPUD's responses to the various allegations raised in Rainbow's Resolution of Objection, and determine that the Rainbow allegations included therein are without merit and should not be a factor considered by LAFCO, pursuant to Government Code section 56668.3 (a)(4).

We appreciate your attention to this matter.

Sincerely,

SACHSE, JAMES & LOPARDO



Robert H. James

**FALLBROOK PUBLIC UTILITY DISTRICT'S RESPONSE
TO THE SUBSTANTIVE ALLEGATIONS INCLUDED IN
RAINBOW MUNICIPAL WATER DISTRICT'S RESOLUTION OF OBJECTION "RESOLUTION NO. 14-13"**

RMWD OBJECTION	FPUD RESPONSE
<p>WHEREAS, on March 10, 2014, the Fallbrook Public Utility District ("FPUD") passed Resolution No. 4813, which purported to be a Resolution of Application by the Fallbrook Public Utility District Requesting the San Diego County Local Agency Formation Commission to Take Proceedings for a Reorganization with the Rainbow Municipal Water District and Making Certain Findings Under the California Environmental Quality Act, in violation of the notice and hearing requirements of law, and thereafter improperly submitted said resolution together with an Application for Reorganization to the San Diego Local Agency Formation Commission ("LAFCO") on March 11, 2014;</p> <p>WHEREAS, FPUD thereafter noticed a public hearing pursuant to Government Code § 56824.12, and on April 28, 2014, passed Resolution No. 4815, which amended Resolution No. 4813. Resolution No. 4815, Amended Resolution of Application by the Fallbrook Public Utility District Requesting the San Diego County Local Agency Formation Commission to Take Proceedings for a</p>	<p>By letter to the Rainbow Board of Directors dated April 23, 2014, the Fallbrook Public Utility District ("FPUD") formally responded to Rainbow's allegation that FPUD violated notice provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 Act ("CKH Act"). In the April 23, 2014 letter FPUD made clear its position that:</p> <p>1. The action FPUD's Board of Directors took at its March 10, 2014 Special Meeting, met all applicable legal requirements.</p> <p style="text-align: center;">AND</p> <p>2. However in an abundance of caution, FPUD determined that it would conduct a public hearing pursuant to the requirements of Government Code section 56824.12 prior to consideration of an amended Resolution of Application to LAFCO for reorganization ("FPUD Resolution of Application"),¹</p>

1 FPUD's Resolution of Application requests LAFCO approve the proposed reorganization, consisting of the following:

- a) dissolution of Rainbow Municipal Water District
- b) annexation to FPUD of the territory (formerly) in Rainbow Municipal Water District;
- c) expansion of FPUD's latent sewer powers covering the territory (formerly) in Rainbow Municipal Water District; and
- d) applicable sphere of influence modifications.

RMWD OBJECTION	FPUD RESPONSE
<p>Reorganization with the Rainbow Municipal Water District and Making Certain Findings Under the California Environmental Quality Act (the "FPUD Resolution"), was submitted to LAFCO together with an Application for Reorganization ("Application for Reorganization") on April 29, 2014;</p>	<p>as a means of "correcting" the alleged procedural defect.</p> <p>To that end FPUD's Board of Directors duly noticed and held a public hearing on its consideration of an amended FPUD Resolution of Application in April 28, 2014. A copy of the April 23, 2014 letter is attached hereto as Exhibit "A."</p>
<p>WHEREAS, this resolution is made pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000, with specific reference to Sections 56668.3(a)(4) and 56668.3(b) of the California Government Code, which sections permit the filing of a resolution raising objection by an affected agency, and by a district;</p>	<p>As further discussed below, Rainbow's Resolution of Objection fails to meet the criteria specified in Government Code section 56668.3 (b) which would require LAFCO to "give great weight to any resolution raising objections to the action that is filed by a city or district." (Gov. Code § 56668.3 (b).) Specifically, LAFCO is only required to give "great weight" to resolutions of objections that are "based on financial or service related concerns expressed in the protest." For purposes of Government Code section 56668.3 (b) the terms "financial concern" and "service concerns" are governed by the specific definitions set out in Government Code section 56857. Specifically:</p> <p>(d) For purposes of an annexation to a district pursuant to this section or Section 56668.3:</p> <p>(1) "Financial concerns" means that the proposed uses within the territory proposed to be annexed do not have the capacity to provide sufficient taxes, fees, and charges,</p>

RMWD OBJECTION	FPUD RESPONSE
	<p>including connection fees, if any, to pay for the full cost of providing services, including capital costs. Cost allocation shall be based on generally accepted accounting principles and shall be subject to all constitutional and statutory limitations on the amount of the tax, fee, or charge.</p> <p>(2) “Service concerns” means that a district will not have the ability to provide the services that are the subject of the application to the territory proposed to be annexed without imposing level of service reductions on existing and planned future uses in the district’s current service area. “Service concerns” does not include a situation when a district has the ability to provide the services or the services will be available prior to the time that services will be required.</p> <p>Rainbow’s entire Resolution of Objection is devoid of any information supporting allegations of financial or service related concerns as defined in Government Code section 56857 (d).</p>
<p>NOW, THEREFORE, Rainbow raises the following objections to the FPUD Application:</p>	

RMWD OBJECTION	FPUD RESPONSE
<p>1. RAINBOW OBJECTS to the FPUD Resolution and Application for Reorganization because the proposal requests the dissolution of Rainbow Municipal Water without the consent or approval of Rainbow and in the face of Rainbow's strong objection. Members of the Rainbow board of directors and staff appeared at FPUD's April 28, 2014 public hearing on the FPUD Resolution and spoke out strongly against the FPUD Resolution and Application for Reorganization. Rainbow does not want to be dissolved; Rainbow should be allowed to continue operating as a special California governmental agency. Hostile takeovers of neighboring districts are bad public policy, foster distrust, deflate public confidence and should not be encouraged.</p>	<p>FPUD's Resolution of Application is permitted under the CKH Act. Further, nothing in the CKH Act requires Rainbow's consent in order for the reorganization, which includes dissolution of Rainbow, to occur. Last, the reorganization of FPUD with Rainbow, in the manner set out in FPUD's Resolution of Application was in fact embraced by Rainbow until late February 2014.</p>
<p>2. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization for the following financial reasons:</p>	<p>FPUD's responses to each of Rainbow's supposed "financial concerns" delineated in Section 2 (a) through (f)(iv) of its Resolution of Objection, are set separately below, seriatim.</p> <p>However, as stated above, Rainbow's Resolution of Objection fails to meet the criteria specified in Government Code section 56668.3 (b) because it does not delineate or identify "financial concerns" as that term is defined in Government Code section 56857 (d)(1), which defined "financial concerns for purposes of Government Code section 56883.3 (b) as follows:</p>

RMWD OBJECTION	FPUD RESPONSE
	<p>(1) "Financial concerns" means that the proposed uses within the territory proposed to be annexed do not have the capacity to provide sufficient taxes, fees, and charges, including connection fees, if any, to pay for the full cost of providing services, including capital costs. Cost allocation shall be based on generally accepted accounting principles and shall be subject to all constitutional and statutory limitations on the amount of the tax, fee, or charge.</p> <p>Based on this, LAFCO has no obligation to give Rainbow's Resolution of Objection "great weight."</p>
<p>a. FPUD's application will not automatically lower or raise rates for either Rainbow or FPUD ratepayers. As expressly stated in the FPUD Resolution, "rates in each service area will not be affected by the Reorganization." To be clear, nothing in the proposal to dissolve Rainbow promises or suggests that it will lower rates for either Rainbow or FPUD ratepayers. Inasmuch as the proposed reorganization is expressly based upon keeping the finances of the two agencies separate into the future through divisional accounting, there is no obvious financial strength benefit to the proposed reorganization.</p>	<p>Section 2 (a) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p> <p>Further, the reference to FPUD's Resolution of Application (specifically "rates in each service area will not be affected by the Reorganization,") relates to the provisions of divisional accounting which provide protection against cross-subsidies between customer groups. The following full excerpt of the reference made by Rainbow to FPUD's</p>

RMWD OBJECTION	FPUD RESPONSE
	<p>Resolution of Application fully outlines the benefits of the Reorganization:</p> <p>WHEREAS, the reasons for the proposed Reorganization, and for the designation of the Fallbrook Public Utility District as the successor district after Reorganization, include:</p> <ol style="list-style-type: none"> 1. The Boards of Directors of the Fallbrook Public Utility District and Rainbow Municipal Water District conducted a joint district consolidation study, which found that combining the two districts' operations into one reorganized district would optimize service and minimize cost to the unified service area by: <ol style="list-style-type: none"> a. Capturing economies of scale and reducing administrative overhead; b. Sharing equipment and reducing vehicle fleet including heavy/specialty equipment; c. Improving emergency response; d. Enhancing coverage for service zones and pressure zones at district boundaries; e. Integrating and consolidating both districts' management and staff;

RMWD OBJECTION	FPUD RESPONSE
	<p data-bbox="1167 342 1814 448">f. Improving water resources management through use of recycled water within reorganization territory;</p> <p data-bbox="1167 488 1814 594">g. Improving the ability of the combined district to fully utilize local water supplies; and</p> <p data-bbox="1167 634 1671 667">h. Strengthening financial capacity.</p> <p data-bbox="1119 708 1814 813">2. The joint consolidation study concluded a reorganization will save up to \$2.5 million per year.”</p> <p data-bbox="1073 854 1734 886">(FPUD Resolution of Application, 12th Recital.)</p> <p data-bbox="1073 927 1913 1105">Last year, FPUD and Rainbow joined forces, bringing together the two to achieve the goal of creating a consolidated, more efficient governmental agency. Mutual operating agreements were signed, allowing the districts to share employees, equipment and other resources.</p> <p data-bbox="1073 1146 1913 1357">The 2013 integration results, operating under a JPA umbrella, far exceeded expectations. Savings of nearly \$1 million were achieved in just 11 months. Even more encouraging were the forecasts by both districts that a merged agency would reduce the annual costs to ratepayers by more than \$2.5 million per year.</p>

RMWD OBJECTION	FPUD RESPONSE
	<p>Saving ratepayers money lies at the heart of the proposed FPUD Reorganization. Cuts in annual operating costs of \$2.5 million are further augmented by an additional \$300,000 in non-labor operational economies. Together, they represent over \$170 per year in benefits for every Rainbow and FPUD customer, whether through reduced monthly bills or critical infrastructure improvements.</p> <p>And, the beneficial impacts can be dramatic. For example, 10 years of these savings could allow Rainbow to construct the new Beck Reservoir treatment facilities without the need for special monthly ratepayer assessments and long-term debt, as was required for the recent reservoir cover projects.</p> <p>FPUD customers reap similar benefits. Whether constructing the long-awaited Santa Margarita River Project for increased local water supply or upgrading the water distribution system, the cash flow created by reorganization cost savings lowers the need for additional customer assessments.</p>
<p>b. Rainbow rests on a 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</p>	<p>Section 2 (b) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p>

RMWD OBJECTION	FPUD RESPONSE
<p>in the next five years through planned and approved development projects. FPUD has no planned developments.</p>	<p>From a factual perspective, a recent review by FPUD's Engineering Department estimates that a build-out of the service territory will involve an additional 1,000 meter installations, without the need for property re-zoning.</p>
<p>c. On April 27, 1995, after more than fifteen percent (15%) of Rainbow's voters signed petitions to support an initiative entitled "Two-Thirds Vote Required for Public Debt Initiative", the Rainbow Board of Directors adopted Ordinance No. 95-1, An Ordinance of the Rainbow Municipal Water District Enacting the Initiative Entitled "Two-Thirds Vote Required for Public Debt Initiative" Pursuant to California Elections Code Section 9214. Ordinance No. 95-1 serves the important purpose of protecting Rainbow and its ratepayers against incurring excessive public debt by securing the right of ratepayers in Rainbow to vote upon proposed additional public debt in many instances. Pursuant to this ordinance, whenever Rainbow is carrying cumulative public debt in excess of one million dollars, it cannot incur additional public debt unless said additional public debt is first placed upon a ballot and approved by a two-thirds vote of the voters of Rainbow who cast ballots at that election. Ordinance No. 95-1 keeps Rainbow's debt low and manageable and allows the public to participate in the public indebtedness decision-making process.</p>	<p>Section 2 (c) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p> <p>Additionally, contrary to the allegation set out in Section 2 (c) of Rainbow's Resolution of Objection, FPUD's proposal to LAFCO does not request the elimination of RMWD's Ordinance 95-1.</p>

RMWD OBJECTION	FPUD RESPONSE
<p>Dissolution of Rainbow and annexation of Rainbow territory to FPUD would dissolve Ordinance No. 95-1, thereby depriving Rainbow ratepayers of their right to vote upon proposed additional public debt in the reorganized district that would serve them. Dissolution of Ordinance No. 95-1 would also subject the Rainbow ratepayers to increased public indebtedness and could increase rates for Rainbow ratepayers.</p>	
<p>d. Rainbow is a low-debt, budget-conscious district that has reduced costs and prevented rate hikes, while FPUD has shown a history of ineffective long-term financial planning. FPUD has amassed significant debt, and needs Rainbow's \$100 million in assets in order to leverage more borrowing for FPUD's future construction. Reorganization of the two agencies into one would permit the FPUD-majority successor board to create policies and make decisions which could negatively impact Rainbow's revenue and increase public indebtedness, to the detriment of ratepayers.</p>	<p>The objection raised in Section 2 (d) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p> <p>Further, there are no data to support Rainbow's assertions. To the contrary, Rainbow and FPUD have comparable financing structures. The approximate current outstanding long term debt for each district:</p> <ul style="list-style-type: none"> • Rainbow: \$18 million (effective interest rate is 2.09%) • FPUD: \$21 million (effective interest rate is 2.07%)

RMWD OBJECTION	FPUD RESPONSE
	<p>Breaking the debt down for each district, by population, yields:</p> <ul style="list-style-type: none"> • Rainbow debt per capita: \$1,000 • FPUD debt per capita: \$617 <p>Rainbow debt per capita is 62% higher than FPUD.</p> <p>Overall water bill comparisons by district at July 1, 2014, (based upon actual Rainbow/FPUD bill comparisons):</p> <ul style="list-style-type: none"> • Domestic customers: Rainbow 10% to 25% higher cost than FPUD • Agricultural customers: Rainbow 15% to 20% higher cost than FPUD <p>Neither Rainbow nor FPUD could or would use the other district's operating assets as collateral for loans, even following the proposed Reorganization. There are several practical reasons:</p> <ul style="list-style-type: none"> • Both districts borrow most or all of their construction funds from the state of California. The state requires a pledge of revenues, not assets, to secure loans. Assets have no value in the process. • From a financial planning perspective,

RMWD OBJECTION	FPUD RESPONSE
	<p>operating assets (pipes, pumps, reservoirs, trucks and buildings) are considered long-term liabilities because they depreciate, wear out or become obsolete...having to be replaced. Therefore, they represent significant future costs, not collateral.</p> <ul style="list-style-type: none"> California state law and governmental accounting rules prohibit the burdening of one group of ratepayers (e.g. Rainbow) with the obligations of another group of ratepayers (e.g. FPUD). Divisional accounting procedures requested in FPUD's LAFCO reorganization proposal prevent these types of cross-subsidies.
<p>e. Any cost savings previously enjoyed by way of the terminated Joint Powers and Employee Leasing Agreements are now irrelevant because the two agencies are now operating independently once again--the customer service and engineering departments are both back at Rainbow, and there are no facilities or employees currently being shared between the two agencies. To force the agencies to merge again would require another round of costs and inconveniences for both agencies.</p>	<p>The objection raised in Section 2 (e) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p> <p>From a factual perspective, Rainbow's 2014-15 budget, released in July 2014, reflects the negative impact of the Board's March 2014 decision. Administrative expenses will jump nearly three-quarters of a million dollars (over 70%) absent the benefits of shared management. Also, buried in</p>

RMWD OBJECTION	FPUD RESPONSE
	<p>that increase are the expenses for political lobbying, public relations, and legal services to obstruct the reorganization process (approximately \$60,000 per month as of August 2014).</p> <p>Still more alarming are the budget cuts approved by the Rainbow Board to offset these spending increases. Essential district operations being scaled back include:</p> <ul style="list-style-type: none"> • Customer on-site response and repair by 9% • Finance by 16% • Customer Service by 17% • Fleet vehicle maintenance by 18% • Safety and security by 64%
<p>f. FPUD overstates the savings identified in its application to LAFCO in the following ways:</p>	
<p>i. First, FPUD's study states that dissolution of Rainbow will result in savings of \$2.5 million, but does not reveal how that number was calculated. The consolidation study was performed without input from Rainbow senior staff or department heads. Therefore, the projections regarding</p>	<p>The objection raised in Section 2 (f)(i) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost</p>

RMWD OBJECTION	FPUD RESPONSE
<p>staffing, for example, and whether the projected staffing numbers are reasonable and/or sustainable, are speculative.</p>	<p>of providing services.” (Gov. Code § 56857 (d)(1).)</p> <p>Further, the consolidation study (October 2012) was co-authored by FPUD and Rainbow. Specifically, Rainbow’s General Manager, Dave Seymour, with the assistance of Rainbow Finance Manager, Gene Buckley, participated in preparing the consolidation study.</p> <p>The 2013 operating results of the two districts working under the umbrella of the North County Joint Powers Authority proved out nearly \$1 million in collaborative savings and verified the original assumptions contained in the consolidation study.</p>
<p>ii. Next, FPUD's application identifies \$300,000 of savings from sharing of heavy equipment, such as backhoes and sewer maintenance trucks; however, sharing this equipment is not a practical plan. The Rainbow backhoe would not be available for joint purchasing and sharing (due the fact that Rainbow uses this equipment every day of the work week), and a shared sewer maintenance truck would not sufficiently service a reorganized district (because it is a large and lumbering vehicle, and, if needed for an emergency sewer spill at a far end of the reorganized district, could take 45 minutes or more to respond to the emergency). Savings at the expense of customer service or community</p>	<p>The objection raised in Section 2 (f)(ii) of Rainbow’s Resolution of Objection does not meet the criteria for a “financial concern” because it does not indicate that “the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees” to “pay for the full cost of providing services.” (Gov. Code § 56857 (d)(1).)</p> <p>Additionally, this comment is a classic case of misdirection. There was never a proposal for the two districts to share a single sewer maintenance truck (Vactor) or a single backhoe. Between the two districts there are three Vactor trucks and a good number of backhoes. The proposal was to eliminate one of the three Vactor trucks (the oldest) and one of the backhoes (the oldest).</p>

RMWD OBJECTION	FPUD RESPONSE
<p>safety are not responsible savings, and ineffective and slow responses to spills could result in a hazard to public safety, and costly fines to the reorganized district.</p>	<p>The majority of the \$300,000 annual savings is in reduced administrative and general expenses such as duplicate insurance premiums, audit costs, training costs, association membership fees, and the like.</p>
<p>iii. Additionally, FPUD's representations regarding savings have not addressed the loss of efficiency or impact on service to ratepayers, contractors, or developers resulting from the reduction in district employees, and/or the relocation of employees to/from FPUD from Rainbow. The relocation of Rainbow engineering and customer service to Fallbrook had a negative impact; among other things, it required excessive staff time for driving back and forth and resulted in substantial delays in the ability of the public to speak with staff.</p>	<p>The objection raised in Section 2 (f)(iii) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p> <p>In response to the substance of this Rainbow objection, the nearly \$1 million in net collaborative savings in 2013 took into account any additional commuting time caused by the relocation of services to FPUD's offices for employees, vendors, and customers. The negative impacts were found to be de minimis.</p>
<p>iv. Additionally, most of the savings from staff reductions identified in FPUD's Application for Reorganization were achieved before Rainbow and FPUD created the Joint Powers Authority and independent of steps taken under the joint powers agreement. Rainbow has reduced its labor force by 15% over the past four years. The</p>	<p>The objection raised in Section 2 (f)(iv) of Rainbow's Resolution of Objection does not meet the criteria for a "financial concern" because it does not indicate that "the proposed uses within the territory proposed to be annexed to have the capacity to provide sufficient taxes, fees and charges, including connection fees" to "pay for the full cost of providing services." (Gov. Code § 56857 (d)(1).)</p>

RMWD OBJECTION	FPUD RESPONSE
<p>majority of vacant Rainbow positions will remain unfilled into the foreseeable future, thereby assuring the continued savings for ratepayers without the need for reorganization.</p>	<p>In response to the substance of Rainbow’s objection (2)(f)(iv), Rainbow, at present (September 2014) is clearly under-staffed in key areas. In particular, the Engineering Department staffing is down by 50% and consists of one engineer, one administrative assistant, and one inspector. This staffing level is inadequate to manage the forecasted three-year construction budget of over \$40 million.</p> <p>Significant increases in the use of consultants, temporary staffing, and overtime will be necessary provide district engineering services.</p> <p>Other areas of concern are Finance and Accounting (one individual with no backup) and Customer Service (long-term use of field personnel to compensate for inadequate customer representative staffing levels).</p>
<p>3. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization because Rainbow is a successful and long-standing public agency with a strong agricultural constituency. Dissolution of Rainbow and the annexation of Rainbow's territory, operations and services to FPUD would marginalize Rainbow's agricultural community and threaten the existence of these important local farms. If FPUD's application is approved, the successor board (which would be governed by an FPUD majority) would have the authority and the ability to set policies and</p>	<p>To the extent that the objection raised in Section 3 of Rainbow’s Resolution of Objection is aimed at identifying a service related concern, pursuant to Government Code section 56668.3 (b), it fails to do so. LAFCO is only required to give “great weight” to resolutions of objections that are “based on financial or service related concerns expressed in the protest.” For purposes of Government Code section 56668.3 (b) the term “service concerns” is governed by the specific definition set out in Government Code section 56857 (d)(2), as follows:</p>

RMWD OBJECTION	FPUD RESPONSE
<p>priorities regarding or affecting the agricultural community. This could negatively affect the Fallbrook agricultural sector; a decline in water sales would impact all ratepayers in the reorganized district. Furthermore, Rainbow disagrees with the FPUD Application's blanket determination that the proposed reorganization will be exempt from environmental review. Any negative effect on the agricultural community and/or local growers could also impact the environment. The FPUD Application for Reorganization should undergo a thorough and complete environmental review. Rainbow hereby demands that LAFCO evaluate and identify the potential environmental impacts that could result from the proposed reorganization, and take affirmative action to avoid or mitigate those impacts.</p>	<p>(2) "Service concerns" means that a district will not have the ability to provide the services that are the subject of the application to the territory proposed to be annexed without imposing level of service reductions on existing and planned future uses in the district's current service area. "Service concerns" does not include a situation when a district has the ability to provide the services or the services will be available prior to the time that services will be required.</p> <p>In response to the substantive aspects of the allegation, FPUD offers the following:</p> <p>Currently, over 50% of FPUD water sales are to groves and nurseries and FPUD farmers pay 15% to 20% less for water than Rainbow farmers. The reasons are clear cut:</p> <ul style="list-style-type: none"> • FPUD sells water to farmers at no markup. Rainbow does. • FPUD negotiated a lower wholesale water rate from the San Diego County Water Authority and passes that discount on to all customers. • FPUD actively and successfully lobbied the Water Authority to extend the "special agricultural water rate."

RMWD OBJECTION	FPUD RESPONSE
	<p>Applying FPUD's rate-setting policies to Rainbow agricultural rates results in benefits for Rainbow farmers. The net effect of the reorganization will be a positive one for the Rainbow agricultural community.</p> <p>Further, the Reorganization is exempt from CEQA review. The geographical area in which previously existing powers are exercised will remain the same. No physical changes to the environment, including agriculture resources, will result from the Reorganization. Any future decisions by the reorganized FPUD would be subject to CEQA review as applicable.</p>
<p>4. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization because the proposal calls for the successor board to be partially elected by an "at-large" method of elections. The "at-large" method allows bloc voting that effectively renders the votes of racial and ethnic minorities meaningless by diluting them. This election method subjects the reorganized district to risks of lawsuit under the California Voter's Rights Act (Elections Code §§ 14025 et seq.) "CVRA"). The CVRA states that at-large elections may not be imposed in a manner that impairs the ability of a protected class to elect candidates of its choice or influence the outcome of an election. Proof of intent to discriminate is not a required showing, and the CVRA grants a prevailing plaintiff the right to recover</p>	<p>The issues raised in Section 4 of Rainbow's Resolution of Objection have been addressed in previous correspondence, Robert James to Michael Ott, dated June 16, 2014, to LAFCO, attached hereto as Exhibit "B."</p> <p>In short, LAFCO has no authority to structure the election of directors of a reorganized FPUD, in a manner that is not permitted under the Public Utility District Act ("PUDA"). The PUDA does not permit a reorganized public utility district to have its entire board of directors elected by territory (i.e., division).</p> <p>Additionally, Rainbow's allegation completely ignores the fact that FPUD's Resolution of Application includes a term and condition requesting that the Board of Directors of the</p>

RMWD OBJECTION	FPUD RESPONSE
<p>reasonable attorney's fees and expert witness fees. In the past ten years, public agencies across the state have unsuccessfully attempted to defend at-large election systems in CVRA lawsuits brought by citizen plaintiffs, and have had to pay substantial attorneys' fees to the plaintiffs. The current trend across the state shows public agencies deciding to settle CVRA lawsuits and agreeing to move to elections by territorial unit (also known as "divisions", "sub-districts", or "by-trustee areas"). FPUD currently has a 43% Hispanic/Latino population, yet, to Rainbow's knowledge, there has been no person of Hispanic/Latino origin elected to serve on the FPUD Board of Directors, nor a Hispanic/Latino candidate for the FPUD Board of Directors, which suggests that FPUD's "at-large" method has a chilling effect on the willingness of Hispanic/Latino residents to run for the Board. If FPUD and Rainbow were reorganized into one district, 33% of the residents of the reorganized district would be Hispanic/Latino. Imposing an "at-large" election method on a reorganized district would impair the ability of this protected class to elect candidates of its choice or to influence the outcome of elections, in violation of California law.</p>	<p>reorganized FPUD be elected as expressly authorized and permitted by the PUDA, as follows:</p> <ul style="list-style-type: none"> • 4 of the 7 directors of a reorganized FPUD would be elected by "territory" (i.e., division). • 3 of the 7 directors of a reorganized FPUD would be elected by seat/at-large. <p>Last, contrary to Rainbow's allegation, there is no proof that any election of the three reorganized FPUD directors that will be elected "seat/at-large," will be imposed in a manner that impairs the ability of a protected class to elect candidates.</p>
<p>5. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization on the basis that it misrepresents Rainbow's position regarding operation of the former North County Joint Power Authority's ("NCJPA") proposed successor agency</p>	<p>The issues set out in Section 5 of Rainbow's Resolution of Objection, have been addressed in previous correspondence, Robert James to Michael Ott, dated June 16, 2014, to LAFCO, attached hereto as Exhibit "B."</p>

RMWD OBJECTION	FPUD RESPONSE
<p>under the Public Utility District Act ("PUDA"). First, Rainbow believes there is statutory authority to permit elections by divisions (or "territorial units") under the CVRA. Furthermore, FPUD never took the position that elections by divisions were not legally permitted under the PUDA during the NCJPA discussions; this position was asserted by FPUD for the first time in its March 10, 2014 application to LAFCO. Had the Rainbow Board of Directors known that LAFCO and FPUD would take the position that elections by division were "not legally permitted" under the PUDA, Rainbow would never have supported a Public Utility District structure, and would have instead supported operation under the Municipal Water District Law with Rainbow as the successor agency. Consolidation under the Municipal Water District Law with Rainbow as the successor agency would have supported elections by division, provided higher bidding limits, and would have permitted the two agencies to continue offering the same scope of services each currently offers to their respective constituency. Organization under the Municipal Water District Law requires a district to be divided "into five divisions in such manner as to equalize, as nearly as practicable, the population in the respective divisions." (Water Code § 71160.)</p>	<p>Furthermore, discussions of whether to be organized under the PUDA or the Municipal Water District Law ("MWDL") have been well-documented in the board meeting minutes of Rainbow, FPUD, and the NCJPA during the last half of 2013 and the first quarter of 2014. In fact, Rainbow's own attorneys, in their capacity as General Counsel to the NCJPA, have consistently recommended a Public Utility District structure and commented on the various divisional/at large election alternatives permitted under the PUDA.</p>
<p>6. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization on behalf of its staff, who object to the proposed reorganization</p>	

RMWD OBJECTION	FPUD RESPONSE
<p>and takeover by FPUD, and who would prefer to remain employees of Rainbow for the following reasons:</p>	
<p>a. The two agencies have incompatible employee benefit structures, which would disadvantage the Rainbow employees and cause additional expense. For example, the paid leave program at FPUD is based on traditional Vacation, Holiday, and Sick (VHS) plans, while the paid leave program at Rainbow is a Paid Time off (PTO) program which combines the vacation and sick leave hours. Further, FPUD has its medical retirement benefit intricately woven into the VHS plan; while Rainbow's medical retirement benefit stands apart from the PTO program.</p>	<p>From a factual basis, on balance, the two employee MOUs are remarkably similar, except for the few differences enumerated in paragraph (a.). The modifications necessary to develop a common MOU involve a routine meet-and-confer process. Informal meetings between shared FPUD/Rainbow management and the two district employee associations had already begun in late 2013, with promising results.</p>
<p>b. Combining the two employee groups under the same CalPERS retirement contract creates additional expenses for the Rainbow ratepayers. Rainbow's current employer contribution for its employees is 14.66% of payroll, while FPUD's employer contribution is 28.39%. A reorganization of the two agencies into one would force the Rainbow employees to operate under one contract, which would likely create a lower cost for FPUD ratepayers but a higher cost for Rainbow ratepayers. This would be an undue and unfair burden on Rainbow ratepayers.</p>	<p>The issue raised in Section 6 (b) of Rainbow's Resolution of Objection has no basis in that the actual employer contributions as of July 1, 2014 are:</p> <ul style="list-style-type: none"> • RMWD 15.7% • FPUD 16.6% <p>The nine-tenths of one percent (0.9%) difference in rates represents a survivor benefit provision in the FPUD contract that is absent in the Rainbow contract. Post reorganization, when combined as a single workforce, the</p>

RMWD OBJECTION	FPUD RESPONSE
	net impact of this enhanced retirement benefit would be in the range of \$30,000 per year.
<p>b. Over the timespan of the former NCJPA's existence, Rainbow employees voluntarily and anonymously submitted comments on the joint powers authority process. These employee comments express a clear and firm preference to remain Rainbow employees. A collection of these comments are attached hereto as Exhibit "A" to this resolution.</p>	<p>In response to the allegation raised in Section 6(c) of Rainbow's Resolution of Objection, FPUD responds that by their very nature, anonymously submitted comments represent no accountability for views, observations, and/or facts presented.</p>
<p>7. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization because FPUD failed to respect the contractual processes laid out in the joint powers agreement and has proven through its actions that the FPUD Board and General Manager cannot be trusted. Rainbow and FPUD created the North County Joint Powers Authority ("NCJPA") in April 2013 in order to explore potential cost-savings means of providing services to ratepayers through combined resources, staffing and infrastructure. The goal of the NCJPA was to explore and determine whether a combined agency would ultimately be a good idea. The joint powers agreement expressly contemplated termination and withdrawal, and clearly laid out a process by which one or both agencies could withdraw from the NCJPA in the event it decided it no longer wanted to participate in the joint powers authority.</p>	<p>In response to the issue raised in Section 7 of Rainbow's Resolution of Objection, FPUD offers the following:</p> <p>Rainbow's board withdrew from the mutual operating agreements with FPUD. The principal issue was the red tape of governance: whether board members would be elected "at large" or "by district" to the new merged agency.</p> <p>Contractually, Rainbow was within its rights to provide notice no longer being a party to the NCJPA.</p> <p>The FPUD board believed that the quandary of the election process was an issue that could be solved without stalling the significant projected savings. As with Rainbow, FPUD was entirely within its rights under California law to submit an application for reorganization with LAFCO so they voted to ask LAFCO to study and decide whether to reorganize the two districts, as delineated in the FPUD Resolution of</p>

RMWD OBJECTION	FPUD RESPONSE
<p>In March 2014, after a year of attempting to work with FPUD, Rainbow decided that it was not in the best interest of its ratepayers to consolidate with FPUD, and began the formal termination process pursuant to the terms of the joint powers agreement. Instead of respecting Rainbow's decision to withdraw from the joint powers authority, FPUD filed a hostile application to dissolve and take over Rainbow. FPUD's actions show a complete disregard for the consensus-building process previously agreed to by the agencies, and affirm that FPUD and its decision-makers cannot be trusted.</p>	<p>Application. Based on that request, LAFCO is currently reviewing the merits of combining FPUD and Rainbow into a single, more cost-effective retail water agency.</p> <p>Rainbow board members have characterized the LAFCO process as a "hostile takeover." On the contrary, LAFCO is an unbiased third-party reviewer, specifically charged by the California Legislature under the provisions of the CKH Act to evaluate proposals such as the one put forward by FPUD in its Resolution of Application. To that end, Government Code section 56301, in part, provides that included within the purposes of LAFCO are "discouraging urban sprawl, preserving open-space and prime agricultural lands, encouraging the orderly formation and development of local agencies based upon local conditions and circumstances." Up to the point where Rainbow withdrew from the NCJPA, both Rainbow and FPUD were working towards a reorganization that was in line with LAFCO's charge.</p> <p>The LAFCO process is a statutorily authorized process that is measured and fair, separating the wheat from the chaff, in what is best for all district ratepayers.</p>
<p>8. RAINBOW FURTHER OBJECTS to the FPUD Resolution and Application for Reorganization because FPUD decision-makers, including the FPUD Board of Directors and General Manager, have acted hastily and unlawfully in filing its applications with LAFCO in the following ways:</p>	

RMWD OBJECTION	FPUD RESPONSE
<p>a. First, FPUD failed to give proper notice of the March 10, 2014 hearing which authorized FPUD's initial resolution and application for reorganization, despite the mandates of Government Code § 56154 and accompanying statutes. FPUD's Resolution flatly admits that it unlawfully failed to notice the March 10 hearing, and admits that a public hearing with proper notice pursuant to Government Code § 56824.12 was required because the proposed reorganization includes a request to expand FPUD's latent sewer powers to include Rainbow territory. While FPUD has since remedied this error by holding a subsequent public meeting on an amended resolution, this failure to initially give proper notice shows a hurried disregard for proper procedure and lawful action. It also shows that FPUD wanted to surprise and ambush Rainbow by quickly passing and filing the first resolution and application.</p>	<p>As stated above, by letter to the Rainbow Board of Directors dated April 23, 2014, a copy of which is attached hereto as Exhibit "A") FPUD formally responded to Rainbow's allegation that FPUD violated notice provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 Act ("CKH Act"). In the April 23, 2014 letter FPUD made clear its position that:</p> <ol style="list-style-type: none"> 1. The action FPUD's Board of Directors took at its March 10, 2014 Special Meeting, met all applicable legal requirements. <p style="text-align: center;">AND</p> <ol style="list-style-type: none"> 2. However in an abundance of caution, FPUD determined that it would conduct a public hearing pursuant to the requirements of Government Code section 56824.12 prior to consideration of an amended Resolution of Application to LAFCO for reorganization ("FPUD Resolution of Application"), as a means of "correcting" the alleged procedural defect. <p>To that end FPUD's Board of Directors duly noticed and held a public hearing on its consideration of an amended FPUD Resolution of Application in April 28, 2014. A copy of the April 23, 2014 letter is attached</p>

RMWD OBJECTION	FPUD RESPONSE
	hereto as Exhibit "A."
<p>b. Second, Rainbow Municipal Water District believes that FPUD, in its hurry to adopt the initial FPUD Resolution, violated the Ralph M. Brown Act (Gov. Code §§ 54950 et seq.) ("Brown Act") by discussing, deliberating, or taking action related to the March 10 resolution and application for reorganization outside of a noticed public meeting, and by depriving the public of information and the opportunity to witness, discuss or question the Fallbrook Public Utility District's discussions, deliberations, or actions, in violation of the Brown Act.</p>	<p>By letter to the Rainbow Board of Directors dated April 23, 2014, a copy of which is attached hereto as Exhibit "A") FPUD formally responded to Rainbow's allegation that FPUD violated the requirements of the Brown Act, Government Code section 54950 et seq. In short FPUD specifically denied any violation of the Brown Act. FPUD's April 23, 2014 letter also identified several Brown Act violations made by Rainbow, including approval of its interim General Manager's contract at a Special Meeting, and perhaps even in closed session. Specifically, Government Code section 54956 prohibits "salaries, salary schedules, or compensation paid in the form of fringe benefits, or a local agency executive," which includes the general manager, from being considered at a special meeting. Whether the Rainbow Brown Act violations noted in the April 23 letter have been cured, is unknown.</p>
<p>c. Third, FPUD's General Manager, who also served as Rainbow's General Manager from April 2013 - March 2014, failed to properly report to the Rainbow Board of Directors and took action to plan the hostile takeover of Rainbow while he was still serving as the Rainbow General Manager. A February 19, 2014 email shows that FPUD's and Rainbow's General Manager was meeting with LAFCO representatives and discussing and planning an FPUD-initiated</p>	<p>FPUD specifically denies the allegation raised in Section 8 (c) of Rainbow's Resolution of Objection. Further, it is essentially one of the same claims set out in Rainbow's Government Claim to FPUD and has no bearing on FPUD's Resolution of Application.</p>

RMWD OBJECTION	FPUD RESPONSE
<p>reorganization despite his knowledge that the proposed reorganization was not consistent with Rainbow Board direction, and thereafter failed to report this meeting or the substance thereof to the Rainbow Board. In so doing, Rainbow's and FPUD's General Manager, presumably acting at the behest of the FPUD Board, violated his fiduciary duty to the Rainbow Board.</p>	
<p>If FPUD's application were to be approved, the reorganized district (which would be governed by an FPUD majority, and led by the FPUD General Manager) would inherit these poor decision-makers, to the detriment of the reorganized district's constituents and ratepayers.</p>	<p>For all of the reasons, both legal and factual, delineated above, FPUD respectfully disagrees with this statement.</p>
<p>NOW, THEREFORE, this Resolution of Objection is hereby approved and adopted by the Board of Directors of the Rainbow Municipal Water District. The San Diego County Local Agency Formation Commission is hereby requested to take notice of this Resolution of Objection and to give great weight to the objections raised in this Resolution, as mandated by the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000. (Government Code §§ 56668.3(a)(4) and (b).)</p>	<p>As stated above, Rainbow's Resolution of Objection fails to meet the criteria specified in Government Code section 56668.3 (b) which would require LAFCO to "give great weight to any resolution raising objections to the action that is filed by a city or district." (Gov. Code § 56668.3 (b).) Further, to the extent that LAFCO is required by Government Code section 56668.3 (a)(4), to consider "any resolution raising objections to the action that may be filed by an affected agency" such as Rainbow, FPUD, respectfully requests that LAFCO consider the factual information set out in FPUD's above responses to each of the substantive Rainbow allegations/objections, and find Rainbow's Resolution of Objection without merit.</p>

EXHIBIT A

SACHSE, JAMES & LOPARDO

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April 23, 2014

Honorable Members of the Board of Directors
Gene Buckley, General Manager of
Rainbow Municipal Water District
3707 Old Highway 395
Fallbrook, CA 92028

Re: Your Attorney's Letter of April 7, 2014

To the Rainbow Municipal Water District Board of Directors and Gene Buckley:

This is in response to your attorney's letter of April 7, 2014, regarding the Alleged Invalidity of Fallbrook's Reorganization Application for Failure to Provide Statutory Notice; Demand to Cure or Correct Violation the Brown Act; Public Records Request.

ALLEGED VIOLATION OF CORTESE-KNOX-HERTZBERG
LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

Regarding notice requirements under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, please be advised that email correspondence was transmitted the morning of April 7, 2014 by Brian Brady, General Manager of Fallbrook Public Utility District (FPUD) to Gene Buckley, then acting General Manager of Rainbow Municipal Water District (RMWD). The correspondence, which included notices of public hearing published in the Fallbrook Village News on April 3, 2014, and UT San Diego on April 6, 2014, notified RMWD that FPUD will be holding a public hearing on April 28, 2014 pursuant to the requirements of Government Code section 56824.12 to provide any affected local agency, affected county, or any interested person wishing to appear at the hearing an opportunity to provide oral or written testimony on FPUD's consideration of an amended Resolution of Application. Your own counsel (Adriana) had a copy of that email at least by 11:30 A.M. on April 7th.

While FPUD believes that the action taken at its March 10th Special Board meeting met all applicable legal requirements, it was determined that, in an abundance of caution, FPUD would conduct a public hearing pursuant to the requirements of Government Code section 56824.12 prior to consideration of an amended Resolution of Application to LAFCO for reorganization as a means of "correcting" the alleged procedural defect. It is interesting that knowledge of the upcoming FPUD hearing was ignored by both RMWD and its counsel.

Honorable Members of the Board of Directors
Gene Buckley, General Manager of
Rainbow Municipal Water District
April 23, 2014
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Alleged Brown Act Violation

FPUD takes exception to your allegations that a violation of the Ralph M. Brown Act (Brown Act) (Gov. Code section 54950 et seq.) occurred. Simply put, your letter is based on pure conjecture, and completely ignores the authority of the FPUD General Manager to bring forward any items related to the operation of the District, for consideration of the Board. Additionally your letter completely disregards the fact that the issue of a "merger" of FPUD and RMWD, by way of consolidation or reorganization, had been the topic of discussion by both boards for quite some time—in fact it has been the topic of discussion by both boards for well over a year. Without acting in violation of the Brown Act, the FPUD General Manager, acting on his own, with the knowledge of the Board Chair, prepared modifications to the already prepared draft consolidation application that had been reviewed by the North County JPA in open session on December 4, 2013. Based on the above, FPUD denies any violation of the Brown Act, and accordingly no curative or corrective action is required.

RMWD's Brown Act Violation

FPUD is very much aware of the purpose served by the various provisions of the Brown Act and appreciates RMWD's desire to confirm that its provisions are followed. In light of this, I want to alert you to a recent violation of the Brown Act by RMWD: At its special meeting held on April 7, 2014, RMWD's special meeting agenda included items not permitted to appear on the agenda of a special meeting. Specifically, the RMWD April 7th special meeting agenda included two items related to the General Manager's Contract:

- RMWD closed session agenda item 5(A): "General Manager Contract (Government Code Section 54957)." (FN 1 [see below])
- and
- RMWD open session agenda item 8: "Approval of General Manager Contract."

Pursuant to subdivision (b) of Government Code §54956, special meeting agendas may not include agenda items regarding the "salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Government Code §3511.1" (Gov. Code §3511.1(d) defines the term "local agency executive" as:

any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with §3500)), Chapter 5 (commencing with §45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with §88000) of Part 51 of Division 7 of Title 3 of the Government Code, and who meets any of the following requirements:

- (1) The person is the chief executive officer, a deputy chief executive officer, or an

Honorable Members of the Board of Directors
Gene Buckley, General Manager of
Rainbow Municipal Water District
April 23, 2014
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assistant chief executive officer of the local agency.

- (2) The person is the head of a department of a local agency.
- (3) The person's position within the local agency is held by an employment contract between the local agency and that person.

Based on this definition, the two actions related to the General Manager Contract were considered in violation of Government Code section 54956. Further, it appears that open session agenda item 9 may have also been improperly placed on the RMWD special meeting agenda, as it appears from the agenda description to involve salaries or salary schedules of RMWD employees that likely also fall within the definition of "local agency executive." I highly suggest, that for the integrity of its contract with its general manager, and in order to meet CALPERS regulations, that RMWD consider reconsidering its various actions taken at its April 7, 2014 Special Board meeting, at one of its upcoming regular board meetings.

We want to point out that we believe that the stated statutory authority justifying the closed session on the "General Manager Contract" is incorrect, as under Government Code Section 54957, legislative bodies, such as the RMWD Board are expressly precluded from discussing or taking action on proposed compensation for employees. Perhaps the appropriate statutory authority for that closed session is Government Code Section 54957.6 (Conference with labor negotiators for unrepresented employees).

Public Records Act Request

This matter has already been addressed by Fallbrook Public Utility District's staff.

SACHSE, JAMES & LOPARDO



Robert H. James
General Counsel for Fallbrook Public Utility District

RHJ/dmw

cc: Brian J. Brady
Fallbrook Public Utility District Board of Directors

EXHIBIT B

SACHSE, JAMES & LOPARDO

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June 16, 2014

Michael D. Ott
Executive Officer
LAFCO
9335 Hazard Way, Suite 200
San Diego, CA 92123

Re: Reorganization Issues/ Blended Elections and the California Voting Rights Act

Dear Mr. Ott:

The Fallbrook Public Utilities District ("Fallbrook") exists and operates pursuant to the Public Utility District Act, Public Utilities Code section 15501 *et seq.*, and is governed by a board of five directors, who are elected at-large by all registered voters within Fallbrook. Rainbow Municipal Water District ("Rainbow") exists and operates under the Municipal Water District Law, Water Code section 71000 *et seq.*, and is governed by a board of five directors, who are elected by division. Fallbrook PUD has submitted an application to the San Diego Local Agency Formation Commission ("LAFCO") for the reorganization of Fallbrook and Rainbow, pursuant to which Rainbow will be dissolved and its territory annexed to Fallbrook. The reorganized Fallbrook ("Reorganized Fallbrook") would exist and operate pursuant to the Public Utility District Act. Fallbrook's application to LAFCO further requests LAFCO to approve the reorganization subject to a condition where the Reorganized Fallbrook will initially be governed by a seven member board (four directors from Fallbrook's board and three directors from Rainbow's board). Subsequently, three directors of the Reorganized Fallbrook will be elected at-large, and four directors will be elected by division ("Blended Voting Structure").

We were asked to provide an analysis of whether the proposed Blended Voting Structure for the Reorganized Fallbrook board, as allowed under the Public Utilities District Act, could be subject to challenge under the California Voting Rights Act ("CVRA"). We were also asked to provide an analysis as to whether, in light of the CVRA, LAFCO has the authority, under the Cortese Knox Hertzberg Local Agency Reorganization Act of 2000 ("CKH"), Government Code section 65000 *et seq.*, to authorize a board composition for the Reorganized Fallbrook different than that authorized under the Public Utility District Act.

SUMMARY CONCLUSION

Concerns that the proposed Blended Voting Structure, which is statutorily authorized under the Public Utility District Act, may lead to successful challenges under the CVRA, are likely premature. Challenges under the CVRA require a showing of racially polarized voting. In this case, because the Reorganized Fallbrook lacks entirely, any voting history under the Blended Voting Structure, no claim of racially polarized voting could be proven without considering the prior voting histories of Fallbrook and Rainbow. While a hybrid election system, such as the Blended Voting Structure, can be the subject of a CVRA lawsuit, evidence that relies on the prior electoral history of a former composed agency

would be an issue of first impression for any court. To the extent, no claim of racially polarized voting could be proven under the old voting systems, there would be no viable claim under the CVRA at this time.

Additionally, while CKH provides LAFCOs with broad authority regarding terms and conditions imposed on changes of organization or reorganizations, its powers with regard to the composition of local agency boards, is limited to what is permitted under CKH and what is called for or permitted by the principal act of the special district involved.

DISCUSSION

I. PUBLIC UTILITIES DISTRICT ACT AND CKH

The proposed Reorganized Fallbrook will operate pursuant to the provisions of the Public Utility District Act ("PUD Act"). The PUD Act sets forth various provisions regarding the composition of a public utility district's board. A "blend" of directors whereby some are elected by "territorial unit," and some are elected at-large is expressly permitted. Specifically, Public Utilities Code section 15954 provides as follows:

Candidates for the office of director to be elected by a unit shall be nominated from each such territorial unit, and the remaining number of directors shall be nominated from the district at large. The PUD Act permits a board comprised solely of directors elected at large,¹ or a board comprised of both directors elected at-large and elected by territorial unit and does not permit a board to be comprised solely of directors elected by territorial unit.² Based on the provisions of the PUD Act, the board of directors of the North County JPA at its December 18, 2014 meeting³ by unanimous vote, determined that the appropriate number of directors for the Reorganized Fallbrook was seven. Based on this Fallbrook's reorganization application to LAFCO proposes that the board of the Reorganized Fallbrook consist of four members elected by territorial units and three members elected at-large.

¹ Public Utilities Code section 15951 provides as follows:

At an election held in the district on the next established election date not less than 74 days after its formation a board of directors shall be elected, to consist of as many members as there are territorial units in the district and as many additional members, not less than three nor more than four, as are required to constitute a board composed of an odd number of directors.

In 1946 Fallbrook's board was increased from 3 to five members.

² Note that throughout the years, pieces of special legislation have been adopted adding sections to the Public Utility District Act authorizing certain public utility districts and/or public utility districts in certain counties to have a different board composition and/or provide for different requirements for members of those specific boards of directors. No such provisions of the Public Utility District Act apply to the Fallbrook PUD or to public utility districts in San Diego County.

³ The North County JPA was created in April 2013 by Fallbrook and Rainbow, in part, for the purpose of providing for the administration of the two district's combined resources. The North County JPA was terminated by the withdrawal of Rainbow in March 2014.

A. Boundaries of Territorial Units

With regard to establishing the boundaries of territorial units, Public Utilities Code section 15963 provides as follows:

The board of directors shall determine the boundaries of each unit of unincorporated territory within the district pursuant to Chapter 8 (commencing with Section 22000) of Division 21 of the Elections Code.

Elections Code section 22000 requires all special districts to adjust division boundaries (for purposes of the PUD Act, territorial units) following each federal decennial census, and permits the boards of special districts to modify division boundaries "so that the divisions are, as far as practicable, equal in population and in compliance with Section 1973 of Title 42 of the United States Code. . . ." Additionally, "whenever the governing body of the district determines by a two-thirds vote of the governing body that a sufficient change in population has occurred that makes it desirable in the opinion of the governing body to adjust the boundaries of any divisions, or whenever any territory is added by or excluded from the district." (Elections Code §22000 (h).) Title 42 USC section 1973 is a part of the federal Voting Rights Act (42 USC §1973 *et seq.*), and provides as follows:

- (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2)[42 USCS §1973b(f)(2)], as provided in subsection (b).
- (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered:
Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Pursuant to Elections Code Section 22000, special districts are required to consider the following factors in adjusting division boundaries:

- (1) topography;
- (2) geography;
- (3) cohesiveness, contiguity, integrity, and compactness of territory; and
- (4) community of interests of the district.

(Elec. Code §22000 (a).)

With these factors in mind, the North County JPA retained the services of the firm Shepherd & Staats, Inc., to prepare proposed boundaries for territorial units for the proposed Reorganized Fallbrook. In preparing the proposed territorial unit boundaries Shepherd & Staats looked first at the compactness of territory, and used the Fallbrook Community Planning Area Map for guidance and also looked at "topography, geography, contiguity, integrity and communities of interest of the district." (See, June 2, 2014 Letter from Shepherd & Staats, attached hereto as Attachment "1.") This is consistent with the provisions of Elections Code section 22000.

B. Provisions on Board Composition Related to Consolidations and Reorganizations

The PUD Act includes express language regarding LAFCO's authority with regard to board composition in the event of a consolidation or reorganization. Specifically, Public Utilities Code section 15873.1 provides as follows:

- (a) Notwithstanding Sections 15951, 15972, and 15973, the local agency formation commission, in approving either a consolidation of districts or the reorganization of two or more districts into a single public utility district may, pursuant to subdivisions (k) and (n)⁴ of Section 56886 of the Government Code, increase the number of directors to serve on the board of directors of the consolidated or reorganized district to 7, 9, or 11, who shall be members of the board of directors of the districts to be consolidated or reorganized as of the effective date of the consolidation or reorganization.
- (b) Upon the expiration of the terms of the members of the board of directors of the consolidated district, or a district reorganized as described in subdivision (a), whose terms first expire following the effective date of the consolidation or reorganization, the total number of members on the board of directors shall be reduced until the number equals the number of members permitted by the principal act of the consolidated or reorganized district, or any larger number as

⁴ Government Code section 56886 (n), set out in full below, is inapplicable to the proposed reorganization because it is limited to consolidations or a reorganization providing for consolidation or formation of a new district. Here, the proposed reorganization involves dissolution of Rainbow and annexation of all of Rainbow's territory into the boundaries of the existing Fallbrook.

- (n) The designation of (1) the method for the selection of members of the legislative body or a district or (2) the number of those members, or (3) both, where the proceedings are for a consolidation, or a reorganization providing for a consolidation or formation of a new district and the principal act provides for the alternative methods of that selection or for varying numbers of those members, or both.

Nonetheless, even under Government Code section 56886 (n), LAFCO's authority is limited to what the applicable principal act provides.

may be specified by the local agency formation commission in approving the consolidation or reorganization.

- (c) For the purposes of this section the following terms have the following meanings:
- (1) "Consolidation" means consolidation, as defined in Section 56030 of the Government Code.
 - (2) "District" or "special district" means district or special district, as defined in Section 56036 of the Government Code.
 - (3) "Reorganization" means reorganization, as defined in Section 56073 of the Government Code.

The proposed reorganization falls within the purview of Public Utilities Code section 15873.1 because it is a "reorganization of two or more districts into a single public utility district" that falls within the definition of reorganization as set out in Government Code section 56073.

C. CKH

Government Code section 56886 (k), referenced in Public Utilities Code section 15873.1 above, permits LAFCOs to impose terms and conditions regarding the:

...transfer, combining, consolidation, or separation of any offices, departments, or boards, if, and to the extent that, any of those matters are authorized by the principal act.

LAFCOs further have the additional limited authority set out and established in Public Utilities Code section 15873.1. As stated above, Government Code section 56886 (n) is inapplicable to the proposed reorganization because it is limited to consolidations or a reorganization providing for consolidation or formation of a new district.

Rainbow has asserted that LAFCO can simply ignore certain statutory provisions in light of its perceived and conjectural concerns regarding the possibility of a challenge under the CVRA. However, while LAFCOs do have broad statutory authority, LAFCOs cannot ignore the express provisions of both CKH and the principal act of the local agency involved - here the PUD Act. As stated by the court:

A local agency formation commission, commonly referred to as LAFCO, is a creature of the legislature and has only those express (or necessarily implied) powers which are specifically granted to it by statute. In short, LAFCO is a public entity created by legislative fiat, and like similarly constituted public entities is a body of special and limited jurisdiction.

(Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County, 51 Cal.App. 3d 648, 688, 124 Cal.Rptr. 635 (1975).

II. CALIFORNIA VOTING RIGHTS ACT

A. Generally

Adopted in 2002, the California Voting Rights Act, Elections Code section 14025 *et seq.*, (“CVRA”) applies only to at-large election systems but defines at-large method of election to include “one which combines at-large elections with district-based elections.” (Elec. Code §14026(a)(3).) The CVRA applies broadly to prohibit elections that prevent members of a protected class from electing their chosen candidates. It also prohibits elections that impair the ability of voters from a protected class to influence elections.

Pursuant to California Election Code section 14032, any voter of a protected class who lives in the jurisdiction covered by the political subdivision may file an action against the political subdivision alleging a violation of the CVRA. A plaintiff can establish a violation by showing that racially polarized voting occurs in elections for members of the governing body. (Elec. Code §14026(e).) The following factors are probative, but not necessary, to establish a violation of the CVRA:

- (1) a history of discrimination;
- (2) the use of electoral devices or other practices or procedures that may enhance the dilutive effects of at-large elections;
- (3) denial of access to those processes determining which groups of candidates will receive financial or other support in a given election;
- (4) the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health; and
- (5) the use of overt or subtle racial appeals in political campaigns.

(Elec. Code §14028 (e).)

Unlike the federal Voting Rights Act, 42 USC §1973 *et seq.*, which requires a plaintiff to show that a protected class is concentrated in a geographically compact area, under the CVRA a plaintiff need not show that voters of a protected class live in a geographically compact area or even demonstrate an intent to discriminate on the part of voters or officials. Therefore, it is much easier to bring challenges under the CVRA than it is under the federal Voting Rights Act. The effect of this distinction is clear when one considers that challenges to at-large electoral systems under federal law have largely disappeared in this century.

B. CVRA Issues related to the proposed Reorganization of Fallbrook and Rainbow

1. *Rainbow Assertions*

Rainbow has asserted that the proposed Blended Voting Structure for the Reorganized Fallbrook could subject it to CVRA challenges. This claim is premature because a violation of the CVRA requires a demonstration that racially polarized voting has occurred in a district’s governing board elections.

Michael D. Ott
LAFCO
June 16, 2014
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Further, the few cases that have gone to trial on CVRA challenges have not challenged a blended voting structure such as the proposed Blended Voting Structure. Rather, they have involved solely at-large elections. For example, *Sanchez v. City of Modesto* (2006) 145 Cal.App. 4th 660, which was highlighted in a memorandum shared in open session with the Board of Directors of both the North County JPA and Rainbow on December 18, 2014 and December 30, 2014, respectively, involved a facial challenge to the CVRA and a solely at-large method of election. It does not stand for the proposition that blended voting violates the CVRA. Likewise, *Rey v. Madera Unified School District* (2012) 203 Cal.App. 4th 1223, also highlighted in the above referenced memorandum, does not state that the use of a hybrid election system in itself constitutes a violation of the CVRA, but only that prevailing plaintiffs in CVRA lawsuits may recover attorneys' fees and costs.

III. CONCLUSION

While LAFCOs have broad authority regarding the organization and reorganization of local public agencies, LAFCO's powers are not without limit. With regard to composition of local agency boards, LAFCO is expressly limited to that which is permitted under the PUD Act - specifically a board comprised solely of directors elected at large, or a board comprised of both directors elected at-large and elected by territorial unit. Further, concerns raised by Rainbow, that the proposed Blended Voting Structure may lead to challenges under the CVRA are likely premature. Challenges under the CVRA largely depend on a demonstration of racially polarized voting, and no plaintiff can likely prove this because the Reorganized Fallbrook lacks entirely a voting history under the Blended Voting Structure.

Sincerely,

SACHSE, JAMES & LOPARDO



Robert H. James

RHJ/dmw

SHEPHERD & STAATS

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June 2, 2014

Brian Brady, General Manager
FALLBROOK PUBLIC UTILITY DISTRICT
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FOUR-DIRECTOR DIVISION ANALYSIS FALLBROOK PUBLIC UTILITY DISTRICT & RAINBOW MUNICIPAL WATER DISTRICT

Earlier this year, Shepherd & Staats prepared various studies on the population within the combined boundaries of the Fallbrook Public Utility District and the Rainbow Municipal Water District. These studies were based on data collected under the 2010 Federal Census.

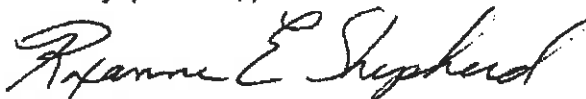
A total population of 52,079 was determined by summing the population within each Federal Census Block located, in whole or in part, the combined areas. Based on the number of proposed divisions, or "areas", boundaries were determined to balance, within a variance of 2.5%, the population among the divisions.

Attached is the Four-Director "Area" Study Map provided to the North County Joint Powers Authority. Consideration was first given to the compactness of territory. Using the Fallbrook Community Planning Area Map prepared by SANDAG for guidance, Area 1 consists of the high density Village Residential or the downtown area of Fallbrook.

Area 2 includes lands designated as semi-rural residential development; Area 3 includes the land in the south designated as rural development; and, Area 4 consists of the land in the north designated as rural development. Typically these division boundary lines follow major roads.

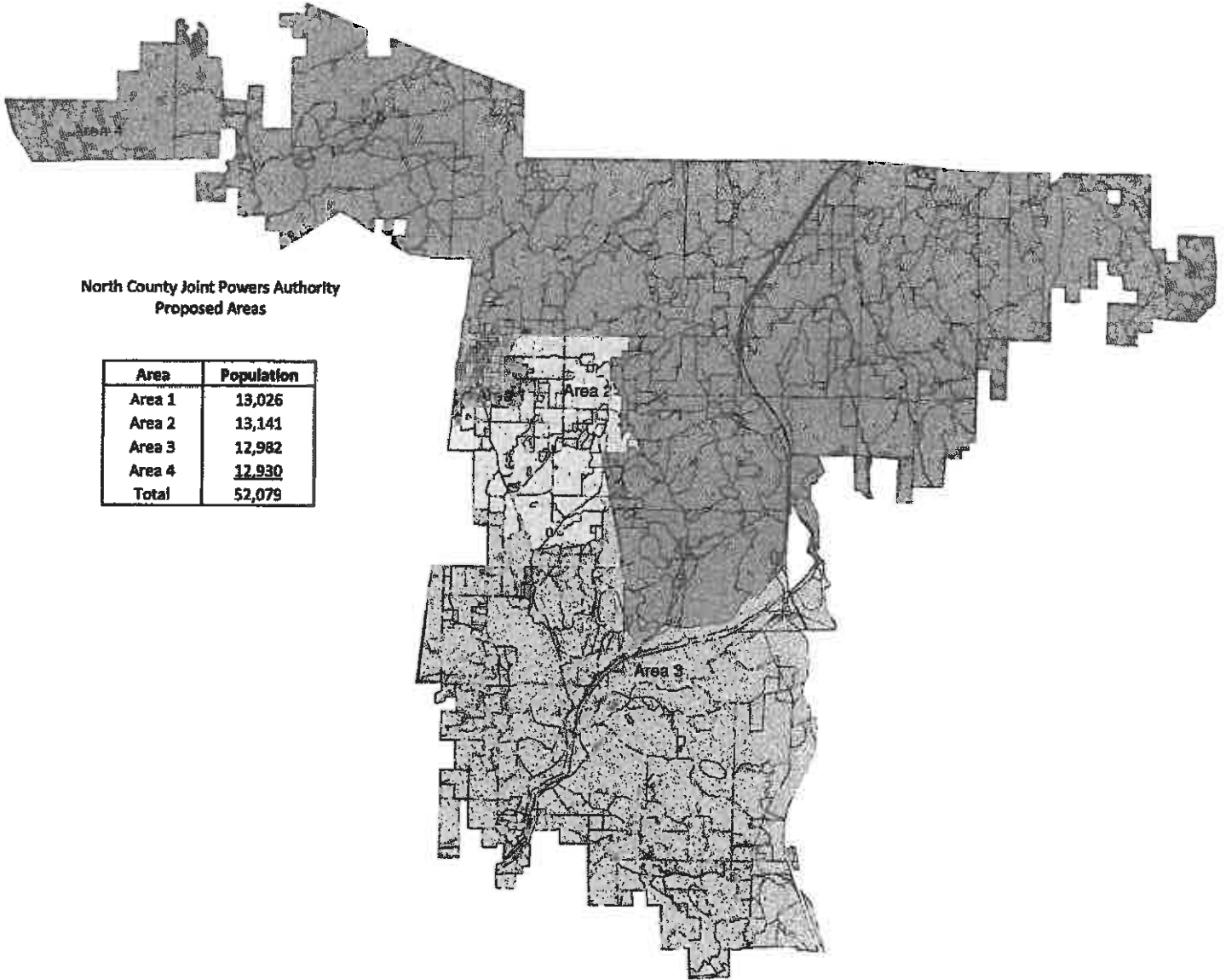
Consideration was also given to topography, geography, contiguity, integrity, and communities of interests of the district. After the determination of the division or "area" boundary, the population within the Federal Census Block, or portion thereof, was totaled according to the ethnicity provided by the 2010 Federal Census. When determining the boundary of a division or "area", no consideration was given to a population's ethnicity.

Attached is a listing of the ethnicity percentages for the Four-Director "Area" Study Map. If you have any questions, please call me.



ROXANNE E. SHEPHERD

Attachments, map via email only



**North County Joint Powers Authority
Proposed Areas**

Area	Population
Area 1	13,026
Area 2	13,141
Area 3	12,982
Area 4	<u>12,930</u>
Total	52,079

2010 Census Ethnicity Percentages

Area	Population	Hispanic or Latino		Black or African American		American Indian and Alaska Native		Native Hawaiian and Other Pacific Islander		Two or More		Total
		Population	%	Population	%	Population	%	Population	%	Population	%	
1	13,026	65.49%	28.98%	1.84%	0.40%	1.39%	0.18%	1.58%	100.00%			
2	13,141	33.12%	60.56%	1.17%	0.29%	2.29%	0.19%	2.17%	100.00%			
3	12,982	19.24%	71.98%	1.36%	0.37%	3.95%	0.22%	2.66%	100.00%			
4	<u>12,930</u>	21.38%	73.33%	0.55%	0.38%	2.43%	0.27%	1.60%	100.00%			
Total Population	52,079											
Area-Wide	52,079	34.87%	58.64%	1.23%	0.36%	2.52%	0.21%	2.01%	100.00%			