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File No. 60065.00009

March 24, 2015

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

Re: Fallbrook PUD/ Validity of Resolution No. 12-12

Dear Mr. Ott:

Best Best & Krieger LLP represents the Fallbrook Public Utility District (“Fallbrook”) as special counsel on various matters, including the Fallbrook reorganization application to San Diego Local Agency Formation Commission (“LAFCO”) involving the dissolution of Rainbow Municipal Water District (“Rainbow”) and annexation of Rainbow’s territory to Fallbrook. We were asked to review the validity of actions taken by the Rainbow Board of Directors (“Rainbow Board”), namely the adoption of Rainbow Resolution No. 12-12, in light of Rainbow’s request to LAFCO that Rainbow Ordinance 95-1 remain effective following the reorganization. In written correspondence to LAFCO and at the LAFCO Special District Advisory Committee meeting, Rainbow emphasized that because Ordinance 95-1 was initiated by petition, duly qualified and subsequently adopted in lieu of a special election pursuant to Elections Code section 9214, it must survive the dissolution of Rainbow. Rainbow suggests that if LAFCO does not require continuation of Ordinance 95-1 following the effective date of the reorganization, that LAFCO will have somehow violated “Constitutionally protected rights of the people.”

We find this position interesting in light of Rainbow’s adoption of Resolution No. 12-12, which circumvented the clear intent of Ordinance 95-1. As stated above, Rainbow Ordinance 95-1 is a debt limitation ordinance initiated by the voters and adopted by the Rainbow Board in lieu of election. It requires a two-thirds voter approval for Rainbow to incur public debt whenever Rainbow carries a cumulative public debt exceeding \$1 million. Notwithstanding the requirements of Rainbow Ordinance 95-1, on October 23, 2012, the Rainbow Board passed Resolution No. 12-12, which authorized Rainbow’s general manager to incur new debt totaling \$18,227,880 through the Safe Drinking Water State Revolving Fund, even though Rainbow’s outstanding debt at the time stood at \$3.4 million. A careful reading of Resolution No. 12-12 and Ordinance 95-1, along with facts contained in Rainbow Board and committee meeting minutes before and after the 2012 action (all summarized below), show that the Rainbow Board



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and Rainbow staff actively circumvented Ordinance 95-1. Technically, the Rainbow Board may have met the “letter of the law” by voting to reduce Rainbow’s \$3.4 million in debt before incurring \$18 million in new debt. However, the Rainbow Board violated the spirit and intent of the ordinance, which requires two-thirds voter approval to incur public debt whenever Rainbow carries a cumulative public debt exceeding \$1 million.

DISCUSSION

1. THE FACTS AND OUTCOME UNDER RESOLUTION 12-12

On April 27, 1995, the Rainbow Board adopted Ordinance 95-1. The ordinance requires two-thirds voter approval to incur public debt whenever Rainbow carries a cumulative public debt exceeding \$1 million. On October 23, 2012, the Rainbow Board passed Resolution No. 12-12, which authorized Rainbow’s general manager to incur new debt totaling \$18,227,880 through the Safe Drinking Water State Revolving Fund. The debt would cover development of the Beck and Morro Reservoir Projects. The resolution included a provision requiring the general manager to repay Rainbow’s outstanding debt “to a level below one million dollars” before “receipt of any Safe Drinking Water State Revolving Fund monies for the Beck or Morro Reservoir projects.” The resolution acknowledged the existence of Ordinance 95-1 and its requirement that voters approve any proposed new public debt when Rainbow is carrying cumulative debt in excess of \$1 million. The resolution further acknowledged that Rainbow’s outstanding debt at the time stood at \$3.4 million.

Official Rainbow Board meeting minutes preceding this action show that the Rainbow Board and Rainbow staff were aware that taking on such new debt required the approval of voters under Rainbow’s own Ordinance 95-1. Rainbow, however, chose not to honor its own ordinance and instead employed a tactic to skirt it, despite the protests of at least one Rainbow Board Member.

At a May 24, 2011, meeting, where the potential State Revolving Loan funds were discussed, at least two Rainbow Board Members emphasized their concerns related to Ordinance 95-1 requiring voter approval to incur such new debt. Rainbow Board Members told the general manager to return with a recommendation for the timing of an election. A month later, a newsletter to ratepayers from Rainbow disclosed the possibility of taking on the new debt, and stated that the “time frame might be extended due to our requirements to obtain voter approval.”



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Sixteen months later, at a September 25, 2012 Rainbow Board meeting, more discussion ensued regarding how and when to hold an election to authorize incurring the debt for the reservoir projects. The minutes of the meeting suggest that the election requirement of Ordinance 95-1 was problematic to some Rainbow staff and Rainbow Board Members. Specifically, the Rainbow Board was informed by legal counsel that Rainbow would have to wait 103 days to hold an election from the date of authorizing such an election.

On October 4, 2012, the Rainbow Budget and Finance Committee met. Members were informed that the State had offered Rainbow the State Revolving Fund loans of \$18 million. Ordinance 95-1, again, was discussed, as was the State's short 60-day requirement for accepting the loans.

Soon after, on October 23, 2012, the Rainbow Board was informed that Rainbow staff had found a means of accepting the loans from the State without having to ask for voter approval. As noted above, the Rainbow Board approved Resolution No. 12-12 authorizing Rainbow staff to take on more than \$18 million in debt after the existing debt of Rainbow was paid to a level below \$1 million. Rainbow Board minutes reflect that the Rainbow Board was informed by Rainbow staff that in voting for the resolution, Rainbow "was abiding by the letter of Ordinance 95-1." The resolution passed unanimously, although one Rainbow Board Member who voted in favor said he did so under protest.

On November 20, 2012, Rainbow Board meeting minutes indicate that Rainbow had "paid off the existing loan" and was awaiting the State's final paperwork for the new loans.

As these facts show, Rainbow was aware of Ordinance 95-1 at each step in the process of incurring over \$18 million in new debt. However, Rainbow chose to openly maneuver around the voter requirement contained in Ordinance 95-1, despite having three times the threshold amount of debt triggering an election for voters to approve Rainbow taking on the debt. This lack of regard for Ordinance 95-1 was made clear when Rainbow paid off its \$3.4 million in existing debt to create a momentary situation in which Rainbow technically could claim its debt was below the \$1 million threshold required in Ordinance 95-1. Rainbow then incurred over \$18 million in new debt without seeking voter approval, thereby violating the spirit and intent of its own ordinance.



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CONCLUSION

Based on Rainbow Ordinance 95-1, Resolution No. 12-12, and the minutes of meetings before and after Resolution No. 12-12's adoption, Rainbow actively circumvented the intent of Ordinance 95-1 when it took action to incur over \$18 million in new debt without first seeking voter approval. Although Rainbow may have technically complied with the requirements of the ordinance, the spirit and intent of the ordinance were violated by this action. We find it disingenuous of Rainbow to push as fervently as it has for LAFCO to continue imposing Ordinance 95-1 post-reorganization, when Rainbow, itself, has shown a complete lack of commitment to the ordinance's purpose.

Should you have any questions, please feel free to contact me directly at 619-525-1328.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Paula C. P. de Sousa'.

Paula C. P. de Sousa
of BEST BEST & KRIEGER LLP

cc: Brian Brady, General Manager, Fallbrook Public Utility District
Robert James, General Counsel, Fallbrook Public Utility District

PDS/mod