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February 20, 2015

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SUBJECT: Response to February 9, 2015 Email from Rainbow MWD (Bill Pellman)

Andrew Vanderlaan
Public Member

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Councilmember
City of San Diego

Dear Bill:

Lorraine Wood
Councilmember
City of Carlsbad

Below is a response to the questions and comments you sent me via email on February 9, 2015 regarding Rainbow MWD's Ordinance 95-1.

Jo MacKenzie
Vista Irrigation District

Rainbow MWD Comment / Question 1: My reading of the ordinance raises several issues, but I first had to understand the context of it, because, as I recall from our conversation, you characterized it as an ordinance adopted by the Rainbow Board. That it was adopted by the Board twenty years ago is an accurate statement, but I place great weight on the fact that the adoption of the ordinance was the choice that the Board faced in light of an initiative that was circulated and certified: pursuant to statute, once the initiative signatures were certified, the Rainbow Board had to choose between either placing the measure on the ballot and paying for an election or adopting the measure as an ordinance. Under these circumstances the Board determined twenty years ago to not spend the ratepayers money on an election but to adopt the ordinance. Having been adopted and followed for twenty years, this was not a maneuver by the current Board to devise a "poison pill" to ward off any possible change of organization.

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Water District

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Public Member

Section Two B is most critical here. That section reads "District" shall mean the Rainbow Municipal Water District, all entities subsequently acquired by the Rainbow Municipal Water District as the result of any merger or reorganization, and all successors to the Rainbow Municipal Water District.

Executive Officer

Michael D. Ott

Special Counsel

Michael G. Colantuono

Section Three (except for the exemptions set out in Section Four) requires a two thirds approval by the voters for any additional public debt.

In light of these provisions, and its history, I do not believe there is any doubt that the limitation would continue and apply to FPUD if it were to become the successor to Rainbow under the express provisions of the ordinance adopted through the statutory initiative process provided by the Elections Code.

LAFCO Response: Per Government Code Sections 56035, dissolution is defined as the disincorporation, extinguishment, or termination of the existence of a district and the cessation of all its corporate powers, except as the commission may otherwise provide pursuant to Government Code Section 56886, or for the purpose of winding up the affairs of the district. Government Code Section 57450 further stipulates that on and after the effective date of dissolution, the district is considered extinguished and its existence terminated, except as otherwise provided by LAFCO. If LAFCO approves the proposed reorganization, then the Rainbow MWD will cease to be a district on and after the effective date of the reorganization. Absent the approval by LAFCO of a specific condition, a dissolved district's ordinances and regulations are also deemed to be extinguished (repealed) and an annexing agency is not automatically tied to the pre-dissolution acts or ordinances of the extinguished district. Your conclusion that Ordinance 95-1 automatically becomes a responsibility of an annexing agency, other than Rainbow MWD, is at odds with this definition and provisions in State Law regarding LAFCO's overall discretionary authority.

LAFCO staff previously indicated to both the Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD) that if the reorganization proposal is approved, then LAFCO will consider the addition of a condition to the proposed reorganization requiring that the Fallbrook PUD honor the debt provisions contained in Ordinance 95-1, assuming the Ordinance was lawfully adopted by Rainbow MWD in the first place. In addition, we do not feel that there is authorization or a rational basis for Ordinance 95-1 to apply to territory currently within the Fallbrook PUD, since these voters as well as their predecessors were not part of the original initiative drive some 20 years ago.

Rainbow MWD Comment / Question 2: So the question would then be: where would it apply?

LAFCO Response: This question has been previously answered. If LAFCO approves the reorganization, it will also consider whether to modify the proposal to require the continuation of the debt limit provisions contained in Ordinance 95-1. If LAFCO approves such a modification, the debt provisions would apply only to the former boundaries of the Rainbow MWD. As previously stated, there is neither authorization nor a rational basis for Ordinance 95-1 to apply to voters currently within the Fallbrook PUD.

Rainbow MWD Comment / Question 3: Does FPUD want to continue with an application which may result in its attempt to incur new debt be subject to a 2/3 voter approval requirement, knowing the Rainbow ratepayers would likely vote against it?

LAFCO Response: The Fallbrook PUD is aware that if the proposed reorganization is approved, LAFCO will consider adding a condition to the reorganization proposal, which if approved, would transfer the debt provisions of Ordinance 95-1 to the Fallbrook PUD with respect to the territory formerly within the Rainbow MWD. This action would represent a status quo for Rainbow MWD residents and would not result in the scenario described in your question. The Fallbrook PUD is also aware that if this condition is approved by LAFCO, it would

necessitate a two-thirds voter approval requirement when incurring debt above specified limits within the boundaries of the former Rainbow MWD.

Rainbow MWD Comment / Question 4: Would FPUD want to risk a lawsuit by a ratepayer who could recover attorneys' fees pursuant to Section Nine of the ordinance?

LAFCO Response: If LAFCO approves a modification to the reorganization and requires the continuation of the debt provisions in Ordinance 95-1 by Fallbrook PUD, this condition would merely place the Fallbrook PUD board in the role of ordinance administrator. This action would not, in and of itself, change the risk level associated with a lawsuit as contended/IMPLIED in your question. Other unrelated proposal modifications may also be proposed by LAFCO staff, which if approved, may affect Fallbrook PUD's exposure to lawsuits; this is a risk that all applicants face. The Fallbrook PUD is also aware that LAFCO has considerable powers with respect to proposal modifications and that the proposal ultimately considered by LAFCO may not entirely resemble the proposal that was originally initiated by the Fallbrook PUD. It deserves reiteration that proponents and opponents cannot make demands of LAFCO through the adoption of ordinances or other means that are at odds with LAFCO's discretionary authority or responsibilities. LAFCO is not required to first obtain approval from the proponents or opponents, and proponents and opponents cannot limit LAFCO's authority under state statute and case law.

Rainbow MWD Comment / Question 5: If LAFCO were to design a condition that the ordinance apply only in the current Rainbow territory, would that not fly in the face of the express language of Section Two B, since FPUD would clearly be the "successor"?

LAFCO Response: No. As previously indicated, the Rainbow MWD is proposed for dissolution. The effect of dissolution would be the extinguishment, or termination of the existence of a district, and the cessation of all its corporate powers. Rainbow MWD's ordinances will also cease to exist upon the extinguishment of the district. The use of the term "Successor District" with respect to Government Code Section 56000 et seq., only applies to the sole and exclusive purpose of winding up the affairs of dissolved districts; this term does not have applicability to the successor reference within Ordinance 95-1.

Rainbow MWD Comment / Question 6: If LAFCO were to attempt to impose such a condition, would that itself not be grounds for the ratepayers to bring a civil action to enforce the ordinance?

LAFCO Response: No. If the proposed reorganization is approved subject to a term and condition requiring the continuation of the debt limit provisions contained in Ordinance 95-1, the debt limitations would be continued within the same territory that Ordinance 95-1 originally covered. This substantially conforms to the intent of Ordinance 95-1 and would not be grounds for a civil action.

Rainbow MWD Comment / Question 7: Assuming that the application were approved and the ordinance condition were applied only to Rainbow, is there any doubt that the attempt to issue debt would lead to unwieldy election procedures (and challenges and lawsuits) as a result of the complexity of the voting rights?

Mr. Pellman
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LAFCO Response: No. If complex election procedures would ensue per your characterization, it would not be the result of the reorganization; rather it would be associated with pre-existing deficiencies and issues associated with Ordinance 95-1. Furthermore, if the debt provision contained in Ordinance 95-1 was included as a LAFCO condition, then Fallbrook PUD would need to track debt within the former boundaries of Rainbow MWD. This would be analogous to how local agencies throughout California establish zones of benefit, or other finance accounting systems associated with community facilities districts, etc. Divisional accounting would provide the means by which to conduct appropriate accounting and ordinance administration. This seems to be an accounting or administrative issue, rather than a legal one, but we welcome such questions.

Rainbow MWD Comment / Question 8: It would appear that LAFCO under these circumstances has no choice but to condition any approval on the continuation and application of the ordinance, but the consequences are not likely to be pretty.

LAFCO Response: Again, the continuation and application of the provisions in the ordinance are not automatic. LAFCO's discretion is broad under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) and cases construing it.

Rainbow MWD Comment / Question 9: What am I missing as I look at this ordinance and how it came to exist?

LAFCO Response: The primary topics missing from your questions and comments pertain to the overall validity of Ordinance 95-1, plus the lack of harmonization between the Ordinance and other state statutes, such as the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Elections Code, Water Code, etc. A close examination of Ordinance 95-1 may even reveal that the Ordinance is currently unlawful and/or not effective, as it pertains to the Rainbow MWD. For example, the Ordinance may amount to the equivalent of an unlawful local amendment to the Municipal Water District Act (Water Code Section 71000 et seq.), preempted by the Act itself. Analogous reasoning appears in cases arising from Prop. 218, such as *Howard Jarvis Taxpayers Assn v. San Diego* (charter amendment could not require 2/3 voter approval of general taxes which the Constitution permits with majority approval) and *Bighorn-Desert View Water Agency v. Verjil* (water district initiative could not require 2/3 voter approval of water rates which the Constitution authorizes the District Board to impose without an election).

In conclusion, I appreciate that you phoned me earlier this month and followed-up with an email covering some interesting comments and questions. If you have any further comments, please feel free to contact me.

Sincerely,



MICHAEL D. OTT
Executive Officer

cc: Michael G. Colantuono
Rachel Witt