



Chairman

Bill Horn
County Board of
Supervisors

February 13, 2015

Vice Chairman

Sam Abed
Mayor
City of Escondido

Adriana R. Ochoa (Sanchez)
Associate Attorney
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101

Members

Dianne Jacob
County Board of
Supervisors

Dear Adriana:

Andrew Vanderlaan
Public Member

Below is a response to the questions you sent me via email on February 5, 2015. Note that references to "Section" in this letter refer to Government Code Section unless otherwise specified.

Lori Zapf
Councilmember
City of San Diego

Lorraine Wood
Councilmember
City of Carlsbad

Question 1. Please confirm that it is LAFCO's position that, pursuant to Gov. Code 57077.4(b)(2), Rainbow will need a 25% protest of the landowners or 25% of the registered voters within Rainbow to submit a protest requesting an election in order for the Commission to order the reorganization subject to an election.

Jo MacKenzie
Vista Irrigation District

Alternate Members

Greg Cox
County Board of
Supervisors

Response: Your summary generally restates the protest requirements accurately in Section 57077.4(b)(2). Note that the landowner threshold requires 25% of the number of landowners who also own 25% of the assessed value of land within the subject territory. Also note that similar protest provisions are contained in Section 57077.3 pertaining to a reorganization not described in Sections 57075, 57076, 57077, 57077.4, or 57111. Section 57077.3 may be applicable to the proposed reorganization, because the latent powers expansion action included in the proposed PUD/MWD reorganization does not fall within the definitions contained in Sections 57075, 57076, 57077, 57077.4, or 57111.

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

One other provision that will need to be reviewed for applicability is Section 57077.1. The chief feature of Section 57077.1 is that, absent majority protest, LAFCO may order any dissolution without an election if certain determinations are made related to special studies, spheres, or service reviews. This law was enacted several years ago to provide LAFCOs throughout California with an expedited dissolution method. Per Subsection 57077.1(c)(2), LAFCO may order the dissolution without an election unless there is a majority protest. This provision was apparently enacted because the Legislature felt a streamlined process should exist to eliminate vestigial districts that have outlived their

Special Counsel

Michael G. Colantuono

usefulness. LAFCO staff will review Section 57077.1 for applicability as part of the analysis of the Fallbrook PUD/Rainbow MWD proposal.

Question 2. For the purposes of the protests, please confirm that the reorganization is called "Proposed Fallbrook PUD and Rainbow MWD Reorganization" with Reference Number: RO/SA(a)(b)14-04; MSR/SR13-66.

Response: With exception of the use of acronyms for PUD & MWD, the name of the reorganization is referenced correctly.

Question 3. Please confirm that the written protests should/may be called "Protest to and Request for an Election Regarding Fallbrook PUD and Rainbow MWD Reorganization (Ref. No. RO/SA(a)(b)14-04; MSR/SR13-66)" in order to be properly accepted by LAFCO.

Response: If LAFCO approves the proposed reorganization, LAFCO staff will prepare the associated registered voter and landowner protest forms and place the forms on our website (sdlafco.org). This will ensure that the forms contain the required information consistent with provisions in the applicable statutes and the Commission's final determinations. Since a determination has not been made yet by LAFCO, the forms cannot be prepared and signatures cannot be affixed. LAFCO's protest forms will be titled consistent with the protest references in Section 57051, rather than the references used in your title.

Question 4. For the purposes of the protests, please confirm whether Rainbow is allowed to preprint registered voter names and addresses on the written protests.

Response: Rainbow MWD's assistance to voters and landowners with matters concerning protests and elections should be carefully reviewed by Rainbow's legal counsel to ensure compliance with applicable laws and constitutional provisions that may regulate / prohibit local agency involvement.

Question 5. Rainbow intends to collect written protests from its registered voters, and then submit the protests to LAFCO at or before the protest hearing. Please confirm that this process is acceptable to LAFCO, and that it is not necessary for the voters to directly submit the protest to LAFCO themselves.

Response: See response for question 4. (Rainbow MWD's assistance to voters and landowners with matters concerning protests and elections should be carefully reviewed by Rainbow's legal counsel to ensure compliance with applicable laws and constitutional provisions that may regulate / prohibit local agency involvement).

Question 6(a). Section 57077.4 of the Government Code merely states that the protests have to be "signed by" the voter—but doesn't specify or distinguish between written signatures versus electronic signatures.

Ms. Ochoa (Sanchez)

Page 3

February 13, 2015

Response: Original handwritten signatures rather than electronic signatures will need to be affixed to the written protest forms.

Question 6(b). What medium is acceptable to LAFCO for submission of protests?

Response: Original handwritten signatures rather than electronic signatures will need to be affixed to the written protest forms.

Question 6(c). Must the protests be individual letters?

Response: Per Sections 57051 and 56704, each written protest must show the date that each signature was affixed to the protest. A single form may contain a single signature or multiple signatures, but the information related to each signature must be the same. The form that will be prepared by LAFCO staff will contain space for multiple signatures. LAFCO staff will need to confer with the Registrar of Voters in the upcoming months to develop an appropriate format and spacing for the form to facilitate the Registrar's counting of the actual protests.

Question 6(d). A list containing signatures and addresses?

Response: Each written protest must state whether it is made by a landowner or registered voter. If signed by a registered voter, the person signing the form must provide the date upon which he/she signs the form; and the place of residence, giving a street and number or other designation sufficient to enable the place of residence to be readily ascertained. If signed by a landowner, in addition to the signature and the date on which the form is signed; a written description sufficient to identify the location of the land must also be provided.

Question 6(e). Will electronic signatures or emails be counted towards a protest?

Response: No

Question 7. I understand that the timeline is a bit of a moving target with respect to exactly how much time Rainbow and its constituents will have in which to mount a sufficient protest. Per the statutes, LAFCO will have 35 days after approval to set the approved proposal out for a protest hearing, and send/publish notice of the hearing. The date of the protest hearing must be no less than 21, nor more than 60 days after notice is given. Given these parameters, it appears Rainbow will have between 21–95 days to gather the 25% protest. Can you give us a better indication of how many days Rainbow will actually have—does LAFCO typically fast track the hearing, or give the full 95 days? Obviously, Rainbow would like to have the maximum amount of notice and opportunity possible to rally its voters.

Response: The minimum amount of time to gather signatures is 21 days and the maximum amount of time is 60 days after the date the notice is given. The date of the hearing specified in the notice cannot be more than 60 days after the notice. All signatures without a date or bearing a date prior to the date of publication will be disregarded per Section 57051.

Question 8(a). Along similar lines, the LAFCO procedures guide states that the protest hearing may be continued for 60 days upon agreement/authorization by LAFCO—what does Rainbow have to do to request a continuance of the protest hearing?

Response: Per Section 57050, the protest hearing may be continued, but not to exceed 60 days from the date specified in the notice.

Question 8(b). Are these requests typically granted?

Response: LAFCO has not received a request for a continuance of a protest hearing, therefore, there is no history as to the likelihood of a continuance. The request for continuance must also be reviewed based on the merits of the request specific to the proposed PUD/MWD Reorganization.

Question 8(c). Would a written request to you for a continuance suffice?

Response: A request for a continuance may be made in writing or verbally at the protest hearing, and a continuance may or may not be granted.

Question 9(a). Is it LAFCO's position that the LAFCO Commission may use its broad powers under the CKH to make an election a condition of approval (and avoid the protest process)? (see, i.e., 57000, 56880, 56886, 56885.5). Section 56885.5 states that "the commission *may make that approval conditional upon any of the following factors...* (3) the approval or disapproval, *with or without election*, as may be provided by this division, of any resolution or ordinance ordering that change of organization or reorganization."

Response: Sections 56880, 56885.5, and 56886 are located in Part 3 of CKH. These particular sections pertain to the commission's authority to approve or disapprove proposals with or without elections. These commission authorities and powers are constrained by specific provisions that pertain to protests and elections in Section 57000 et seq. The 56000 provisions accordingly cannot be read in isolation of mandatory protest and election provisions in Section 57000 et seq.

Per Section 57000 et seq., protest proceedings must be taken pursuant to Part 4 of CKH after adoption of any resolution making determinations pursuant to Part 3. Two exceptions that are explicitly noted are changes of organization or reorganization not described in 57077 (i.e., incorporation or disincorporation). The proposed reorganization of Fallbrook PUD and Rainbow MWD neither involves incorporation nor disincorporation; therefore, Section 57077 et seq., applies and is a mandatory provision that must be followed.

The primary weakness associated with Rainbow's interpretation of the election provisions pertains to the status of the protest process. This is most apparent when Rainbow's interpretation is inverted as follows. For example, if LAFCO were to hold a protest hearing for the proposed reorganization per Section 57077.3 or 57077.4, and 25% or more of the voters submitted valid written protest requiring an election, then under Rainbow's interpretation, the protest could be ignored, and the reorganization could be approved *conditionally* without an

Ms. Ochoa (Sanchez)

Page 5

February 13, 2015

election, because Rainbow states that Section 56885.5 permits a commission to *conditionally* approve a proposal without an election. I believe this would be illogical, because following your interpretation could conceivably permit written protests to be disregarded, no matter what percentage of signatures may be submitted, or whether or not compliance with Section 57077.1 has been achieved. When viewed from another perspective, if the commission would follow Rainbow's interpretation and approve the reorganization subject to a *conditional* election without holding a protest hearing per Section 57077.1–57077.4, then there would be no opportunity for a majority protest per Section 57078. There would also be a compliance issue with the mandatory protest provisions contained in Section 57000 et seq. Note that Section 57078 is a mandatory provision that requires an opportunity for majority protest in the case of any reorganization or change of organization. Following Rainbow's interpretation would, therefore, result in a highly questionable outcome whereby it would deprive voters of a statutory opportunity to terminate proceedings per Section 57078.

Question 9(b). If so, is it likely to happen? Rainbow believes the Commission has discretion to make an election a condition of approval and, if applicable, requests that the Commission do so.

Response: While your interpretation has some inherent structural, consistency, and compliance problems, it will nonetheless be summarized in the staff report for commission review and discussion.

Question 10. Alternatively, is it LAFCO's position that LAFCO may adopt an alternative plan of reorganization (i.e., reorganization as a Municipal Water District) under its broad powers in the CHK (see, i.e., 56880, 56886, 56886.5)?

Response: LAFCO does have board powers to modify proposals. LAFCO staff is currently reviewing the reasonableness of making a number of modifications. However, in the context of the principal act, Fallbrook PUD has stated that the selection of the PUD as the successor agency was made because PUDs have some latent powers and functions that are different than Municipal Water Districts (e.g., transportation, telephone, other communications, power, heat, etc.) and that such latent powers conform to historic/future community needs. This factor and others will have a bearing on LAFCO's final determination as to the appropriateness and legality of potential modifications to Fallbrook PUD's proposal.

In conclusion, I believe the above answers thoroughly and concisely respond to your questions. The subject areas of your questions are good ones, and I appreciate that you contacted me at this juncture in the LAFCO process.

Sincerely,



MICHAEL D. OTT
Executive Officer

MDO:trl

cc: Michael G. Colantuono
Rachel Witt