



May 27, 2021

Mr. Adam Wilson, Moderator
San Diego County LAFCO
adwilson858@yahoo.com

Re: Response to Dr. Hanneman Report and SDCWA Comments

Dear Mr. Wilson,

We appreciated the opportunity to discuss our comments with Dr. Hanneman. We feel his overall approach makes sense, and we feel we had a good discussion with him to identify some potential areas for further focus. As a result, we do not feel it is necessary to submit a detailed list of written comments to Dr. Hanneman.

However, we do feel it is necessary to respond (briefly) to the 74-page document submitted by SDCWA on May 24, 2021. Since this recent SDCWA correspondence just repeats similar arguments and claims SDCWA has previously made numerous times in the past, we do not feel the need to take up more of LAFCO's time with restating our positions on each of those arguments and claims. However, for the benefit of the LAFCO Commissioners, we would like to provide context for some of the key themes raised by SDCWA in its letter.

SDCWA Comments 1-3 - Water Supply Reliability for FPUD and RMWD customers

While SDCWA provides its assessment of the difference in its Colorado River supplies, preferential rights, and the fact that it is slightly less reliant on MWD than EMWD, SDCWA has yet to provide any facts to dispute the Water Supply Reliability Analysis completed by EMWD, which analysis demonstrates EMWD can meet 100% of our projected water needs. In addition, the decision on the level of reliability needed by each agency is the responsibility of the elected governing boards of Fallbrook and Rainbow, and should LAFCO approve the detachment proposals, and under the County Water Authority Act, it will ultimately be up to the ratepayers in Fallbrook and Rainbow This is all consistent with LAFCO Legislative Policy L-109:

“Decision-making with regard to water supply and reliability should be kept at the regional and local level through coordinated activities of local water agencies, cities, special districts and the County of San Diego.”

We do not believe the intent of Policy L-109 was to empower SDCWA, which is an agency created to serve its member agencies and governed by appointed officials from its member agencies, to dictate the water needs of any one (or two) of its member agencies, like Fallbrook and Rainbow, and override the role of their elected bodies. The needs of Fallbrook and Rainbow are largely unique among SDCWA member agencies given the high amount of agricultural water use and outdoor water use, which provide a much

different demand profile during drought conditions than the majority of SDCWA agencies. We support the approach being taken by Dr. Hanneman and believe it will show the reliability of EMWD is sufficient to meet the projected future needs of Fallbrook and Rainbow ratepayers.

SDCWA Comment 4 – SDCWA Preferential Rights

We anticipate Dr. Hanneman will clarify his conclusion on relative reliability of SDCWA and EMWD and how it is related to MWD’s Water Supply Allocation Plan (WSAP) or the details surrounding the concept of preferential rights. There are a couple of key points that are important when discussing the concept of preferential rights at MWD:

- Preferential rights are described in the MWD Act (the statute that created MWD) and are given based on a complex calculation related to total payments to MWD by its member agencies over time. After extensive litigation, SDCWA had its preferential rights increased from ~18% to ~23% a few years ago.

However, in the history of MWD going back to its formation, preferential rights have never been used to calculate how water is apportioned to MWD member agencies during a shortage condition. Even in the famous drought that ended in 1992, which set SDCWA on its quest for alternative water supplies, preferential rights were not used to allocate water. The MWD Act does not prescribe that preferential rights are to be used in any allocation of water. The power to allocate water is held by the Board at MWD. In fact, the term “preferential right” is only present in one location in the statute – where it is defined. The MWD Act has zero references to shortages or shortage allocations. That power is left to the MWD Board to deal with when a situation arises. Thus, when evaluating how the MWD Act and the long standing practices at MWD on shortage allocations, the existence or amount of preferential rights is simply not applicable.

- During the course of its history, MWD has responded to water shortage conditions several times. As noted above, the shortage condition that ended in the “Miracle March” of 1992 was probably the most impactful, but shortage conditions have occurred a few times since, most recently in 2014-2015. Like all other water suppliers, MWD plans for shortage conditions in advance and has and updates a Water Supply Allocation Plan that the MWD Board adopts to manage the allocation process if and when shortages occur.

The founding principle of the WSAP, as adopted by the MWD Board, is not based on preferential rights but on member agency needs. Some member agencies are more dependent on MWD than others. For example, some have local sources and are therefore impacted differently by water shortage conditions, than those with no local water sources. MWD’s WSAP is designed to take into account the mix of supplies that MWD has available as well as the mix of supplies available to member agencies in order to apportion water to ensure an equitable supply of water across the region. It is notable that the term “preferential right” does not appear anywhere in the WSAP. It is also important to note that other MWD agencies base their UWMP around MWD’s WSAP, not on preferential rights. SDCWA did not even include preferential rights in their UWMP water shortage analysis until the recent 2020 version. We are not aware of any other MWD agency that has done a similar analysis instead of using the WSAP.

The key point here is that SDCWA's preferential rights have not in the past, nor will in the foreseeable future, be a factor in how MWD allocates water during a shortage condition. In order for this to occur the MWD Board would have to adopt a new WSAP based on preferential rights.

Another factor to consider is that in the history of MWD shortage allocations, no member agency has ever had a request for water go unfilled. Under MWD's WSAP, should a member agency receive a certain allocation and reach that allocation, further requests for water are not rejected, but are billed at a higher rate. MWD uses financial incentives for member agencies to remain within their allocations. They don't shut off supplies and the MWD Board would have to elect to change this approach to one based on preferential rights.

SDCWA Comment 5 – A Major Elsinore Fault Earthquake

There are a number of potential emergencies that governmental agencies must plan for and prioritize. Both Fallbrook and Rainbow have Emergency Response Plans to address a range of potential disasters from earthquakes to power outages to wildfires to terrorism. Each agency's Board of Directors is primarily responsible for determining what relative level of risk each district is willing to accept for each potential disaster based on the probability of each potential disaster, and the costs associated with mitigating the risks associated with each potential disaster.

While SDCWA has prioritized investments to address a major earthquake on the relatively stable Elsinore Fault, Fallbrook and Rainbow have identified different high priorities including wildfire risk and the risk of power shutoffs.


There are a few fatal flaws in SDCWA's argument about the high relative risk to Fallbrook and Rainbow during an earthquake if they are no longer served by SDCWA:

1. SDCWA cannot provide any additional service now in an earthquake as it has never built the Emergency Storage Project (ESP) facilities to serve water to Rainbow and Fallbrook. The project to provide this service was delayed nearly two decades by SDCWA, so it does not appear it was a high concern by SDCWA until recently.
2. As outlined in Rainbow's application to LAFCO, the Elsinore fault is not an active fault. Only one sizeable quake has been recorded there and that was over 100 years ago. Further, no credible geologic evidence exists that suggests that the fault has any likelihood of a surface rupture. A surface rupture type event is the only type of quake that could cause serious damage to a buried water pipeline.
3. Even though the probability of a major quake on the Elsinore fault is low, both Fallbrook and Rainbow have plans to meet critical water supply needs if one did occur. Fallbrook identifies in detail all the layers of supply reliability available during an earthquake in its recent Urban Water Management Plan. Earthquake response is also discussed in the Water Supply Reliability Report prepared by EMWD. Fallbrook and Rainbow have in place an emergency supply agreement that would grant temporary emergency access to Rainbow to Fallbrook's Santa Margarita supplies in such an event.

4. The reality is that even if SDCWA had built the required facilities referenced above, any extra reliability in an earthquake claimed by SDCWA is contingent upon their pipelines being in service to convey the water north to our service areas. The main pipeline that would be used for this purpose has failed several times over the last 15 years, most recently in 2019. The MWD pipelines north of FPUD and Rainbow have no similar history. Any claim that in an earthquake the damage would be limited only to the MWD owned sections of pipeline is pure speculation. Fallbrook and Rainbow have made investments in facilities to ensure deliveries can be made from separate MWD aqueducts on both sides of I15 and continue to maintain substantial treated water storage facilities within our service areas (the largest in the county). As noted above, Fallbrook and Rainbow also have a mutual aid agreement to support each other during an emergency using their storage and local supplies. These investments will provide substantial local reliability during an earthquake until repairs to the aqueduct can be completed.

Thank you again for the opportunity to have an open discussion with Dr. Hanneman. We appreciate your on-going efforts to efficiently process our applications for reorganization.

Sincerely,



Tom Kennedy
General Manager
Rainbow Municipal Water District



Jack Bebee
General Manager
Fallbrook Public Utility District

cc: San Diego County Water Authority Board of Directors
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