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October 8, 2021

Keene Simonds, Executive Officer  
Adam Wilson, Moderator  
San Diego Local Agency Formation Commission  
2550 Fifth Avenue, Suite 725  
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and via email [Keene.Simonds@sdcounty.ca.gov](mailto:Keene.Simonds@sdcounty.ca.gov); [adwilson858@yahoo.com](mailto:adwilson858@yahoo.com)

Dear Messrs. Simonds and Wilson:

We write on behalf of our client San Diego County Water Authority to seek clarification about the final deliverables from the ad hoc committee, and the process LAFCO is undertaking relative to the tasks originally set out for the committee by the Commission. We ask that you share this letter with all committee members and with the LAFCO Commissioners and that it be made a part of the public record.

At Monday's ad hoc committee meeting, the next steps in the committee's process were outlined as follows, and were subsequently confirmed in Mr. Wilson's email of October 6, 2021:

- October 11, 2021 – Dr. Hanemann to release his complete draft report
- October 12-25, 2021 – two week period for agencies to review report and provide comments
- Late October 2021 – release of draft Municipal Service Review for Fallbrook/Rainbow region, prior to November 1, 2021 LAFCO commission meeting
- October 26-November 8, 2021 – two week period for agencies to rebut comments
- November 15-19, 2021 – individual meetings between LAFCO staff and the 10 ad hoc committee members to "determine main and side topics" for the December meeting
- December 13, 2021 – "final" ad hoc committee meeting

In response to Jack Bebee's questions, as to what exactly the December meeting would cover, Mr. Simonds stated that staff would be asking the members to "go on the record" in connection with the three primary questions analyzed by Dr. Hanemann:

1. Relative water supply reliability of Eastern MWD versus San Diego County Water Authority;
2. Whether Rainbow and Fallbrook's assumed impacts on rates as a result of switching water wholesalers are based on sound assumptions, and result in reasonable conclusions; and
3. Whether a departure fee is appropriate, and if so, a basis for determining that fee.

Given that the expert's report is not yet complete, and therefore the committee has not had an opportunity to review it and deliberate on its analysis, this timing does not appear workable. Furthermore, a "final" meeting on December 13, 2021 would leave uncompleted the majority of the tasks assigned to the ad hoc committee by the Commission.

LAFCO established the ad hoc committee at its [June 1, 2020 Commission meeting](#), at which time it also determined the duties of the committee, choosing "Option 2a." The committee's duties were described as follows:

*"Provide real-time input to LAFCO staff with respect to the processing and evaluating the Fallbrook PUD and Rainbow MWD proposals. The Committee would continue work up and until staff determines the proposals are complete and the necessary information has been collected/ analyzed and the Executive Officer proceeds to prepare a report with recommendations."*

The ad hoc committee's duties are then broken into two steps of tasks. Step One, entitled "Processing the Proposals" entailed the following tasks (we have numbered these for identification purposes):

1. Scale and Scope Review
  - a. Key Assumptions
  - b. Distinguishing Differences in Proposals
  - c. Identify Key Stakeholders
  - d. Input on LAFCO Consultants (Topics and Firms)**
  - e. Legal Topics to Consider
- 2. Input on Consultant Tasks**
3. Set and Revisit Timelines

We believe that items 1.d. and 2 (bolded for emphasis) are being addressed by the ad hoc committee by virtue of the Dr. Hanemann report process outlined above. We do not believe that items 1a-c and e, nor 3 have been addressed by the committee. Importantly, we are not clear on the who are defined as the "Key Stakeholders" (other than the parties), and there has not been any discussion of the "Legal Topics to Consider." These are not within the scope of Dr. Hanemann's work, nor his expertise, but are within the scope of the committee.

Step Two of the committee's tasks, as outlined in the agenda materials of June 1, 2020, is entitled "Evaluating the Proposals" and entails the following tasks (again numbered for identification):

- 1. Review Stakeholder Comments**
- 2. Input on Consultant Analysis**
3. Consider Standard Jurisdictional Change Factors in Statute
4. Identify and Consider Local Factors
5. Discuss Appropriate Measurables
6. Identify and Consider Alternative Options
7. Identify and Consider Potential Terms [of detachment from SDCWA]
  - a. Compensation [i.e. "exit fee"]**

- b. Infrastructure Improvements
  - c. Special Assessments/Taxes
  - d. Expanded Vote
8. Continue to Mediate Any Remaining Differences
- a. LAFCO Policy L-107

We believe that item 1 (to the extent "Stakeholders" are limited to Rainbow, Fallbrook, EMWD, and SDCWA), is being partially undertaken currently in connection with those parties' submittals both prior to Dr. Hanemann's engagement, as well as in response to Dr. Hanemann's inquiries and draft reports. However, it was not our understanding that "Stakeholders" was limited only to those parties; in fact, we understood that other Water Authority member agencies, as well as regional organizations and cities may also be stakeholders in the process. Following the outcome of the Hanemann report, we suggest that the stakeholders be identified and engaged in order to provide meaningful feedback. Additionally, we have made many comments in areas outside Dr. Hanemann's scope, and there has been no review of such materials by the committee. Just as a few examples, our September 18, 2020, detailed response to LAFCO set out issues such as earthquake supply risks, voting rights at MWD, CEQA compliance, meaning of the CWA Act, and mandatory tax increase voting provisions, none of which were (now should have been) addressed by Dr. Hanemann, yet all of which are relevant to the committee process. We also set out a number of material questions that should be asked of the agencies, almost none of which have even been discussed yet.

Further, it is our understanding that your meetings with the ad hoc committee members proposed for November, as well as the December 13, 2021 meeting, is intended to provide the forum for the committee members – individually and collectively – to provide their input on Dr. Hanemann's analysis, consistent with Item 2. However, we are concerned that staff's individual consultations with each of the members poses Brown Act serial meeting issues, and also may prevent the important deliberative purpose served by a committee approach to review of these issues and completion of tasks. Item 7.a. (exit fee) is also arguably covered at least in part by the discussion of Dr. Hanemann's suggestions regarding the size and potential duration of an exit fee payable to the Water Authority, along with the comments and recommendations of the parties, but the Water Authority notes that due to the unique nature of the proposed reorganization, there is no "industry standard" for such a determination, and the ultimate determination for the Commission will be based both on expert information as well as functional and political considerations, which are outside the scope of Dr. Hanemann's charge.

Based on Mr. Simonds' description last Monday of the remaining steps in the process, the committee will be polled (i.e., asked to "go on the record") on the three questions assigned to Dr. Hanemann and included in his report. However, this is not consistent with the committee's expertise or charter as approved by the parties and adopted by the Commission, and ignores the many other issues related to the reorganizations that are not included within the scope of Dr. Hanemann's work and about which he admittedly has no expertise. As clearly stated by its charter, the committee's ongoing task should be to ensure and confirm that all of the "*necessary information has been collected/analyzed*" (it clearly has not been), until such time as the applications may be deemed complete and LAFCO's Executive Officer is in a position to write a final report with recommendations. The committee was not tasked to second guess whether Dr.

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Hanemann is right or wrong on a given topic, but instead to provide for his analysis to be performed, reviewed, and considered in connection with the overall reorganization process.

If the final meeting of the ad hoc committee is to be held December 13, 2021, then it will not be possible for the committee to fulfill its primary and stated purpose of completing the tasks enumerated above and determining that the proposals may be deemed complete by LAFCO's Executive Officer so that he in turn may prepare a report and make recommendations to the Commission. The only information that will be available by December 13 is an incomplete subset of the tasks initially assigned to the committee. Furthermore, if the committee will now be tasked to review and evaluate expert analysis on the merits, that review must be coupled with an opportunity for active deliberation by the committee, including an opportunity for each of the parties to be heard.

We did not receive any notice of the anticipated final schedule and process until Mr. Simond's announcement at last Monday's meeting. Please advise how you anticipate the remaining necessary tasks will be accomplished consistent with the committee's charter so that it can fully perform the role assigned to it.

In addition, please advise whether Dr. Hanemann himself will be directly presenting his findings to the Commission, and if so whether that would happen before or at the same time as the Executive Officer's report is presented.

Very truly yours,



Claire Hervey Collins  
Partner

cc: Client