



April 18, 2022

MEMBER AGENCIES

- Carlsbad Municipal Water District
- City of Del Mar
- City of Escondido
- City of National City
- City of Oceanside
- City of Poway
- City of San Diego
- Fallbrook Public Utility District
- Helix Water District
- Lakeside Water District
- Olivenhain Municipal Water District
- Otay Water District
- Padre Dam Municipal Water District
- Camp Pendleton Marine Corps Base
- Rainbow Municipal Water District
- Ramona Municipal Water District
- Rincon del Diablo Municipal Water District
- San Dieguito Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vallecitos Water District
- Valley Center Municipal Water District
- Vista Irrigation District
- Yuima Municipal Water District

**VIA EMAIL**

Chair Desmond,  
LAFCO Commissioners, and  
Executive Officer Simonds  
San Diego County Local Agency Formation Commission  
2550 Fifth Avenue, Suite 725  
San Diego, CA 92103

**Re: April 11 Letter from Rainbow/Fallbrook Counsel**

Dear Chair Desmond, LAFCO Commissioners and Executive Officer Simonds:

We are in receipt of the letter sent to you all from counsel for Rainbow and Fallbrook on April 11, 2022 (the "Letter"). This letter serves as the response by the Water Authority.

We cite in various instances below to our September, 2020, Response we filed at LAFCO, as that document refutes – in great detail – the erroneous assertions in the Letter. We urge the Commissioners, staff, and LAFCO counsel to carefully review that Response, as it was prepared at the outset of these proceedings at great expense by our agency for your use. What follows is a brief summary of some key points.

1. The County Water Authority Act Is Only One Part of The Applicable Law, And Does Not Mean What The Letter Claims

The Letter tells LAFCO that "the law must be the Commission's guide." The Water Authority agrees. However, the Letter only provides some of the law, and then ignores the plain meaning of the County Water Authority Act ("CWA Act"), adding text that does not exist in it.<sup>1</sup>

First, the CWA Act is not the only applicable law here. Rainbow and Fallbrook are not just seeking to detach from the Water Authority. Rather, they are asking for detachment *and* annexation into Eastern *and* sphere of influence changes for both the Water Authority and Eastern. This clearly implicates more than just the CWA Act, as detachment is just one element in these reorganization applications.

What do the LAFCO statutes say? Here are a few important statutes counsel ignore:

<sup>1</sup> A full explication of the legal argument stated below is found at the Water Authority's Response filed in September of 2020 with LAFCO, at pages 152 *et seq.* Rainbow and Fallbrook's counsel well know what the Response says, but nonetheless ignore in their Letter all the LAFCO law cited in that Response.

*LAFCO statutes generally govern, as stated in Government Code Section 56100(a), which provides:*

Except as otherwise provided in Section 56036.5 and subdivision (b) of Section 56036.6, this division [the LAFCO Statutes] provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. All changes of organization and reorganizations shall be initiated, conducted, and completed in accordance with, and as provided in, this division.

*LAFCO statutes allow the Commission to disapprove, approve, or approve with conditions reorganization requests, per Government Code Section 56375(a)(1):*

[LAFCO may] review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

*LAFCO statutes allow the Commission to impose any of a host of conditions on a reorganization request, as stated in Government Code Section 56886:*

Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions.

*LAFCO statutes allow a broad range of financial and other conditions, per Government Code Section 56886, including:*

The "levying or fixing and the collection of any of the following, for the purpose of providing for any payment required pursuant to subdivision (a): (1) Special, extraordinary, or additional taxes or assessments; (2) Special, extraordinary, or additional service charges, rentals, or rates; (3) Both taxes or assessments and service charges, rentals, or rates."

Payment for outstanding "bonds, *including revenue bonds*, or other contracts or obligations" and taxes by "imposition, exemption, transfer, division, or apportionment." (Emphasis added.)

"Any other matters necessary or incidental to any of the terms and conditions specified in this section."

*LAFCO statutes have a detachment section that includes a broad range of obligations to be covered, including revenue bonds, per Government Code Section 57354:*

[Detaching areas] "continue to be liable for the payment of principal, interest, and any other amounts which become due on account of any bonds, *including revenue bonds*, or other contracts or obligations of the district and any improvement district within which the detached territory has been situated, as are outstanding on the effective date of detachment. It shall be subject to the levying or fixing and collection of any of the following which may be necessary to provide for that payment: (a) taxes or assessments; (b) service charges, rentals, or rates; (c) Both taxes or assessments and service charges, rentals, or rates."

Therefore, contrary to counsels' Letter, LAFCO clearly has both authority and responsibility under LAFCO law to do what is fair and correct for all ratepayers in the County. The Letter purposefully addresses none of these laws, so as to lead the Commissioners to believe they are powerless to do anything but what Rainbow and Fallbrook demand.

Second, counsels' interpretation of the County Water Authority Act is in error. The Letter asserts that, "the CWA Act requires that property taxes pledged to repay existing debt and other obligations assessed on properties within detaching districts continue to be assessed until the debt is discharged." Letter, page 2. But this is not what the CWA Act says. It nowhere states that only pre-existing property taxes can continue, and nothing else. That is simply text that Fallbrook and Rainbow would like to graft onto the CWA Act. The CWA Act clearly states that the departing lands "continue to be *taxable* by the county water authority for the purpose of paying the *bonded and other indebtedness of the county water authority outstanding or contracted for* at the time of the exclusion . . . ." "Taxable" does not mean it must have already been taxed (though it might have been). Instead, it means it *can be taxed*. This is the same type of intent seen in Government Code Section 57354 quoted above that says "continue to be liable."<sup>2</sup>

The clear intent of these laws is to make sure that areas which want to "exit stage left" have to pay their fair share, because otherwise the remaining agencies would have to shoulder an unfair portion of costs already incurred. This is the way Dr. Hanemann phrased it in his report:

"The question confronting LAFCO is whether two SDCWA member agencies with a distinctive set of needs and situated at a distinctive location should be allowed to walk away scot-free, entirely unencumbered by any of the financial commitments that SDCWA has assumed on behalf of its member agencies." (Hanemann Report, p.13)

The Water Authority's interpretation is that both the CWA Act and the LAFCO statutes answer that question: no – the law does not allow agencies to leave obligations incurred on their behalf scot-free.<sup>3</sup> To find to the contrary would impact all of the remaining member agencies and ratepayers across San Diego County, violating the letter and intent of the applicable laws.<sup>4</sup>

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<sup>2</sup> See our Response at pages 161-169 for a full discussion of these issues.

<sup>3</sup> The attempt by Rainbow and Fallbrook to exempt revenue bonds by their interpretation of the CWA Act is a "scot-free" escape maneuver. The CWA Act does not exempt revenue bonds when it says "bonds," of which revenue bonds are just a type. The LAFCO statutes, written more recently at a time when revenue bonds became more common, specifically includes them in the term "bonds," and rightfully so, given the shift from reliance on ad valorem property taxes and general obligation bonds to revenue bond financing.

<sup>4</sup> Rainbow and Fallbrook attempt to play down the financial impact by arguing that their leaving would only result in "\$1 per month impact on other SDCWA ratepayers." Letter, p.5. LAFCO staff have previously identified numbers much higher than this, but the argument itself is demeaning. Just because Rainbow and Fallbrook say that \$1 a month means nothing does not mean a struggling family in our service area would agree, or that the \$1 monthly charge to pay Fallbrook and Rainbow costs is the only cost increase those families are facing. In the face of inflation and rising gas, food, housing, prescription drugs and utility costs and more, why would families choose to give up even one of their precious dollars so that Rainbow and Fallbrook can change their minds and the course set more than 25-years ago to provide a reliable water supply to their customers? For most people, every penny counts.

Finally, we note what is the most important aspect of this proceeding that the Letter totally ignores: LAFCO should never reach the question of an “exit fee” at all. The applications ask LAFCO to approve Rainbow and Fallbrook moving to Eastern in Riverside County. Not only would this disrupt decades of water planning in San Diego County, it would take our County’s voting rights at MWD and move them to Eastern. This is directly contrary to the interests of all water ratepayers and taxpayers in San Diego County. Eastern has been, and continues to be, an adverse litigant trying to stop the refund of overcharges by MWD for the benefit of all San Diego County ratepayers. Its MWD board representative regularly votes against San Diego County’s interests at MWD. With many recent votes at MWD being by razor-thin margins, increasing Eastern’s voting power at the expense of San Diego County is directly harmful to our entire County, and LAFCO should not countenance such a result.

As shown above, LAFCO has the statutory ability to disapprove the applications. It should do so, and therefore never reach the issue of an “exit fee.”

## 2. The Hanemann Report Speaks for Itself

The Letter attacks the Water Authority’s comment that the staff “cliff notes” summary of the Hanemann Report was in error. It was not in error. Staff claimed that Dr. Hanemann had concluded that under “industry standards” there was no meaningful difference in reliability between the Water Authority and MWD. This was completely incorrect, and nowhere did Dr. Hanemann say any such thing. Instead, as we pointed out in detail previously, he said the converse: that there is a meaningful difference in reliability between the two agencies.<sup>5</sup> Indeed, that is precisely why he said that the applications were a “gamble” for Rainbow and Fallbrook ratepayers, because when water runs short MWD water will come at a much higher price. Today, MWD is already facing a situation where it may be *unable to obtain the water it needs at any price*.<sup>6</sup>

It is worth pointing out that the Water Authority, and not Rainbow and Fallbrook, has been repeatedly asking LAFCO to ensure the Hanemann Report is provided to ratepayers in their service areas. In any case, the Commissioners need not subject themselves to endless arguments between counsel as to what the Hanemann Report says. Go read it and make your own judgments.

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<sup>5</sup> MWD has made clear in its approved [budget](#) that it must make substantial investments in order for its water supply to be reliable, that those investments will be expensive and that rate increases will be needed to pay for them. Dr. Hanemann presented this in detail in his report, explaining that the Water Authority’s rates are higher today because it is ahead of MWD in the investment cycle needed for a reliable supply of water. Hanemann Report, p.51.

<sup>6</sup> MWD is already in the process of both restricting water use in parts of its service area to health and safety needs and imposing \$2,000 fines for using more water than allocated. MWD has also directed its staff to go out and try and find more water across the State due to State Water Project cutbacks and delivery of only 5%. One need only turn on the television or go online to follow news reports of the historic drought now gripping the State of California and Southwest. This is already fulfilling Dr. Hanemann’s prediction, and it is long past time for Fallbrook and Rainbow to level with their customers about the nature and extent of the gamble they are taking if LAFCO should approve these applications.

3. Conclusion

This proceeding has been difficult, and will no doubt continue to be so. Rainbow and Fallbrook have chosen to seek radical and controversial changes to the highly successful planning and management of water in San Diego County. It should not surprise anyone that their applications create many difficulties for all.

The only thing any of the parties can ask for from the Commission is a fair and impartial review of all of the relevant facts and the law, a full and complete hearing on all material matters, and a result that is in accord with those parameters.

The Water Authority thanks the Commission for its continued efforts in this regard.

Sincerely,



Mark J. Hattam  
General Counsel

cc via email:

Holly Whatley, LAFCO General Counsel  
Adam Wilson, Ad Hoc Committee Moderator  
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