

May 31, 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

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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

OTHER
REPRESENTATIVE

County of San Diego

VIA EMAIL

Michael Patrick George
Delta Watermaster
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
(Michael.george@waterboards.ca.gov)

RE: Fallbrook PUD and Rainbow MWD May 18, 2022 Letter on Reduced Reliance on the Delta (the "Letter")

Dear Mr. George:

We are in receipt of the above Letter from the General Managers of Fallbrook PUD and Rainbow MWD. The Letter significantly misstates facts, and unfortunately makes personal attacks on you and your office. I am the General Counsel for the San Diego County Water Authority, and as such address herein the serious factual errors in the Letter.

First, Fallbrook and Rainbow make material misrepresentations to you and to the state and local officials copied on their letter. They call the QSA water transfer between IID and the Water Authority a "temporary agreement" and assert that, "the SDCWA/IID agreement has a price reset provision in 2035 where should both parties not reach agreement on a price for the water, the agreement for the additional transfer water would end." These statements are in error.

In regards to the alleged "temporary" water transfer between IID and the Water Authority, the agreement runs to 2047, and may be mutually extended past that date by the parties. Indeed, in a vote at our agency in 2017, the Authority extended the corollary Exchange Agreement with MWD so as to match the 2047 date in the IID transfer agreement. It is inaccurate and misleading for the Letter to call a water transfer that still has 25 years remaining, and can be extended beyond that, a "temporary agreement." It is particularly egregious in that the Water Code, as you well know, specifies that temporary water transfers are those of *one year or less*. See Water Code section 1728 ("a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less").

More important, the Letter directly misleads you -- and the many public officials the Fallbrook and Rainbow General Managers sent the Letter to -- by claiming that when the

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pricing methodology of our agreement changes in 2035, “should both parties not reach agreement on a price for the water, the agreement for the additional transfer water would end.” The Letter clearly intends for the reader to believe that the IID/SDCWA transfer would end in 2035 if the parties cannot agree on a price at that time. Not so. The actual facts are that in the Fifth Amendment, IID and the Water Authority agreed to replace the base contract price of the underlying 1998 agreement with a new price schedule through the year 2034. In 2035, when the new pricing ends, there is an automatic reversion to the original contract price terms for the remaining term of the agreement to 2047. See Article 5.2(k). Contrary to the statements made in the Fallbrook/Rainbow Letter, no further agreement is needed. There is no ability in the contract for either party to simply terminate the agreement in 2035 if it does not like the pricing which was already contractually agreed.

The General Managers of Fallbrook and Rainbow who signed the letter are also both members of the Board of Directors of the Water Authority. As such, they have been fully briefed and well-informed of these facts and agreements by the Water Authority. To send the Letter to numerous important State of California officials with facially false statements about the IID/Water Authority transfer agreement -- without any initial opportunity for review by my office and our agency to confirm or comment on the purported legal conclusions about the transfer agreement -- is irresponsible at best. I trust that the information provided in this letter will correct the record regarding these facts and the agreements, but we would be happy to provide any further information you may find necessary or useful.

The Letter then goes on to recite the past acts of Fallbrook and Rainbow and how they have historically complied with Bay-Delta requirements. We wanted you to be aware that no one has challenged any such past actions of Fallbrook and Rainbow, and they are immaterial to analysis of the Bay-Delta impacts of the current reorganization requests.

The Letter ignores the “elephant in the room”: that detachment from the Water Authority, and sole reliance on MWD for imported water, will increase reliance on the Bay-Delta. This is the issue we have raised scores of times at LAFCO, including the need for CEQA review, and is the issue raised by your earlier correspondence with LAFCO. Fallbrook and Rainbow cannot controvert this core issue because it has already been dispositively shown that Bay-Delta usage would increase under their proposed reorganization. Past compliance activities by these agencies are not the issue at LAFCO, or in your correspondence.

If you require any further information, please feel free to contact my office. Thank you.

Sincerely,



Mark J. Hattam
General Counsel

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cc via email:

Wade Crowfoot, Secretary Natural Resources
E. Joaquin Esquivel, Chair State Water Resources Control Board
Jessica Pearson, Executive Officer, Delta Stewardship Council
Keene Simonds, Executive Officer, San Diego LAFCO
Water Authority Board of Directors
Sandra L. Kerl, General Manager, SDCWA
Claire Collins, Special Counsel Water Authority
Fallbrook PUD Board of Directors
Rainbow MWD Board of Directors
Jack Bebee, General Manager Fallbrook PUD
Tom Kennedy, General Manager Rainbow MWD
Paula de Sousa, Counsel Fallbrook PUD
Alfred Smith, Counsel Rainbow MWD