



November 30, 2022

Keene Simonds
Executive Officer
San Diego Local Agency Formation Commission
2250 Fifth Avenue, Suite 725
San Diego, CA 92103

RE: Prospectus Document

The Fallbrook Public Utility District (Fallbrook PUD) and Rainbow Municipal Water District (Rainbow MWD) submit this joint set of comments on the October 2022 San Diego LAFCO Prospectus on the Reorganization Proposals submitted by Fallbrook PUD and Rainbow MWD. For ease of review, we have included our comments for each of the headings in the sections of the Prospectus titled "Tentative LAFCO Staff Conclusions" set out in Prospectus pages 5 and 6 (without the narrative), as well as our comments on "Other Terms and/or Measures May also be Appropriate Based on Commission Preferences" and "Other Terms and/or Measures Raised by Others Appear Problematic" set out in Prospectus page 6.

Prospectus Heading: LAFCO Statute Governs

The only reported appellate opinion regarding the legal coordination of LAFCO statutes and a water agency's principal act is the Antelope Valley-East Kern Water Agency case (AVEK Case) in which the court determined that the principal act, almost identical in pertinent respects to the County Water Authority Act, must prevail with respect to financial obligations of detaching property owners. Rather than restate our position here we refer you to our letter to LAFCO dated February 15, 2022, which can be found at the following link:

<https://www.sdlafco.org/home/showpublisheddocument/6124/637805980274130000>

Prospectus Heading: Eastern MWD's Supplies are Reliable

We agree that Eastern's supply is adequate and can reasonably accommodate demands into the future for both districts and that the analysis performed by Dr. Hanemann correctly summarizes the situation. Yes, the entirety of the Southwest US region is in a difficult situation right now, but SDCWA's reliance on Colorado River supplies is no panacea, as that river system is just as stressed as any water source.

Prospectus Heading: Eastern MWD's Finances are Healthy and can reasonably

We agree that Eastern's finances are healthy and can reasonably provide positive foundation for service.

Prospectus Heading: Fallbrook PUD and Rainbow MWD's Ratepayers Will See Cost-Savings

We agree that the districts' ratepayers will see cost savings. This was the primary motivating factors in filing the applications. We have highlighted our forecasts of savings in numerous filings with LAFCO beginning with our initial applications in April 2020. Both FPUD and RMWD's most recent cost of service studies and Proposition 218 notices additionally illustrate the estimated cost savings associated with detachments, which notices can be found at the following links:

<https://www.fpud.com/files/de696d089/Prop.+218+Notice+%28water+and+waste+water+2022%29+Final+Draft.pdf>

<https://www.rainbowmwd.com/files/86e3d390b/RMWD+Prop+218+Notice.pdf>

Prospectus Heading: County Water Authority Member Agencies' Ratepayers Will See Cost-Increases

We agree that the detachments of Fallbrook PUD and Rainbow MWD will cause a small net revenue reduction for SDCWA (approximately 1.8% of operating revenue). This could result in minor cost increases (on a per customer basis) for remaining agencies but only if there is no exit fee AND the San Diego County Water Authority makes no adjustments to existing expenditures and supply purchases. The minor increase to member agencies is a fraction of the savings estimated to be realized by customers of the detaching agencies on a per customer basis.

As Dr. Hanemann correctly identified in his analysis, the impact of the roll off of member agencies such as the City of San Diego, Padre Dam, etc. will have financial impacts on SDCWA that are significantly larger than the detachment if SDCWA does not make any adjustments. There is no "exit

fee” being proposed by SDCWA for these roll off impacts, so we do not see a legal, equitable, or practical justification to impose them in this situation.

Prospectus Heading: Approval of the Proposals is Reasonable if Conditioned on an Exit Fee

Since Dr. Hanemann did not seek legal advice nor review the County Water Authority Act, his report did not reflect that the County Water Authority Act provides for a period of adjustment by explicitly providing that, as in the AVEK case (again, the only reported appellate opinion regarding the legal coordination of LAFCO statutes and a water agency’s principal act), the property being detached continues to have the property taxes paid to retire the existing debt or other obligations for the Authority at the time of detachment. (See, County Water Authority Act section 45-11 (a)(2).) Further, the San Diego County Water Authority, in its resolution issuing bonds, recites to investors that member agencies have no obligation to buy any water and no obligation for any portion of the debt. (See, further detail in the following section comment.)

Prospectus Heading: Five Years is an Appropriate Length for an Exit Fee

As stated above an appropriate “exit fee” is provided by the provisions of the County Water Authority Act in the form of continued property taxes to retire bonded and other indebtedness existing at the time of detachment until satisfied. Instead of selecting a set number of years, the exit fee of property taxes would continue as provided in the County Water Authority Act until such time as the debt is retired. (See, County Water Authority Section 45-11 (a)(2).) Specifically, Section 45-11 (a)(2) provides in pertinent part, as follows:

“. . .provided, that the taxable property within the excluded area shall 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 and until the bonded or other indebtedness has been satisfied; . . .”

This provision clearly states that properties that have been taxed by a county water authority “for the purpose of paying the bonded and other indebtedness of the county water authority” “shall continue to be taxable.” Property taxes, which SDCWA does collect in FPUD and RMWD, is the only mechanism the legislature provided to deal with these debts or contracts.

Further, the SDCWA Board of Directors, when issuing each and every debt instrument, adopts a resolution where it has clearly affirmed (and reaffirmed repeatedly) that no member agency has any specific

obligation to pay any portion of the debt issued, nor does any member agency have any obligation to purchase any amount of water. This has been approved by the SDCWA for decades, most recently as early 2022.

Prospectus Heading: Offsetting the Exit Fee to Reflect Ancillary County Water Authority Savings is Reasonable

In addition to the savings to the San Diego County Water Authority by the eliminating the planned construction of the ESP North County Pump Stations,* the remaining member agencies would still be served by the various capital improvements, worth billions of dollars, to which the detaching districts have contributed over many years. Remaining member agencies will also save money by eliminating the operations and maintenance costs related to the detaching districts. These agencies will also receive the direct financial benefit of the share of cash reserves paid by the detaching agencies which will remain under SDCWA control. Unless LAFCO imposes a term and condition on the detachments requiring the San Diego County Water Authority to transfer to the two districts their proportionate share of SDCWA's reserves, the remaining member agencies will benefit from the legally problematic windfall associated with those revenues.

*In its September 2020 "Combined Response" the San Diego County Water Authority then estimated the value of the two North County ESP Pump Stations, at \$40 Million. (See, San Diego County Water Authority Response to Reorganization Proposals dated September 18, 2020, at page 61, footnote 65.) We note that Fallbrook PUD and Rainbow MWD have been funding its share of the San Diego County Water Authority's Emergency Storage Project since its inception in 1998 to the benefit of the other member agencies, and yet the North County ESP Pump Stations have yet to be constructed. The analysis of financial impacts is not complete unless it includes both reduced revenue and cost savings to member agencies.

Prospectus Heading: Loss of Voting Rights at MET is a Valid Concern with a Possible Solution

The loss of voting rights at Metropolitan Water District is not a significant impact to SDCWA. During the last ten years, and nearly 1000 votes, there has only been one vote of any consequence by which the decision was decided by the margin of voting rights involved here. To focus on this issue in this manner is to ignore that MWD voting rights are adjusted periodically on the assessed valuation of various districts. The pace of development in Riverside County versus the slow growth policies currently in San Diego County will have a greater impact than detachment over time. It is also not a reasonable premise to assume that the San Diego County Water Authority and Eastern Municipal Water District would always be on opposite sides of

every issue. Further, some sort of MOU would likely be considered contrary to the Metropolitan District Act itself, and therefore any such term and condition would be considered illegal. On this point our districts and SDCWA seem to be in agreement.

Prospectus Heading: Class 20 CEQA Exemptions Are Appropriate

We agree that Class 20 CEQA exemptions are appropriate here just as those exemptions have been applied in these circumstances uniformly statewide in such circumstances. Please see our previous correspondence on this point from July 2020 at:

<https://www.sdlafco.org/home/showpublisheddocument/4964/637311764405430000>

Prospectus Heading: Other Terms and/or Measures May Also Be Appropriate Based on Commission Preferences

Possible examples:

- *A LAFCO prescribed “roll-out” requiring Fallbrook PUD and Rainbow MWD to remain member agencies with County Water Authority for a specified period of time before allowing the detachments to formally proceed.*

Due to the various procedures and legal requirements (set forth in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000), for winding up approved applications, requiring membership in the San Diego County Water Authority would be cumbersome if not infeasible. Besides, once detachment is approved by LAFCO and subsequently approved by the voters on the detaching districts, it is highly unlikely that the San Diego County Water Authority would want representatives of the districts serving as voting members on the governing board.

- *Requiring the completion of a municipal service review on the County Water Authority.*

While we agree that a Municipal Service Review needs to be completed for the San Diego County Water Authority, there is no nexus between that statutorily required activity and the unrelated pending detachments which have been underway for almost three years. Further, the purpose of an MSR is to evaluate each agency as to their financial, technical, and operational performance as well as evaluate any changes in the sphere of influence. In this situation, nearly three years of analysis has been done on the impact of detachment on SDCWA, so an MSR would provide no additional useful information to the Commission as they consider the matter.

Prospectus Heading: Other Terms and/or Measures Raised by Others Appear Problematic

Example:

- *The County Water Authority is on record requesting San Diego LAFCO condition any proposal approvals on expanding the “affected territory” for purposes of calling an election to include all registered voters within its member agencies’ boundaries. Commission Counsel does not believe this option is available to the Commission.*

We agree with Commission Legal Counsel that a vote by the residents of all Water Authority member agencies is not a legally permissible option and would be contrary to the explicit provisions on this subject in the County Water Authority Act. (See, County Water Authority Act section 10-11 (a)(2).)

As always, Fallbrook PUD and Rainbow MWD truly appreciate the efforts by LAFCO staff to bring forth these items for discussion as the processing of the applications nears its conclusion. We are available to respond to any questions LAFCO staff may have regarding the applications themselves or the comments in this letter.



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Rainbow MWD



Jack Bebee
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