



December 19, 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 AND U.S. MAIL

Special Districts Advisory Committee
C/O Kim Thorner, Chair
Keene Simonds, LAFCO Executive Officer
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

RE: Special Districts Advisory Committee Meeting December 16

Dear Special Districts Advisory Committee and Mr. Simonds:

Thank you for allowing my public comment at your meeting last Friday. The sought Fallbrook/Rainbow reorganizations are very serious matters, and it is helpful that your Committee is reviewing them in a thoughtful manner. Ms. Thorner, I ask that you please distribute this letter to your entire Committee.

I want to address one item that arose after public comment. During the subsequent meeting, Mr. Bebee -- the General Manager of Fallbrook Public Utility District -- asserted a claim he had previously made at a Water Authority Board meeting: that the County Auditor had agreed with Fallbrook and Rainbow's interpretation of the County Water Authority Act. Neither Mr. Bebee or anyone else has ever provided any such opinion to the Water Authority, and we know of no documentation of such a claim.

The County is dealing with what happens to the limited historic Water Authority property taxes related to Rainbow and Fallbrook (about \$400k per year) if their agencies join Eastern in Riverside County, *not* the obligations those agencies may or may not have to cover their fair share of the Water Authority's outstanding contracts and obligations. The latter, and not the former, is a major issue in dispute between our agencies, as to which there are indeed differences of opinion about the meaning of the County Water Authority Act. We are unaware of any legal opinion by the County weighing in on that major issue in dispute.

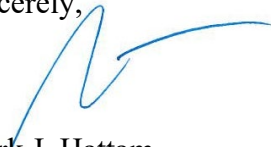
OTHER REPRESENTATIVE

- County of San Diego

Kim Thorner
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We did not want your Committee to be confused by the assertions of Mr. Bebee, and so make this clarification. Thank you.

Sincerely,



Mark J. Hattam
Special Counsel

Cc via email:
Water Authority Board of Directors
Sandra L. Kerl, General Manager, Water Authority
David Edwards, General Counsel, Water Authority



Special Districts Advisory Committee
San Diego Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

December 16, 2022

Dear Honorable Members of the Special Districts Advisory Committee,

I am writing to provide feedback on the Draft Policy Establishment on Out-of-Agency Services as part of the discussion for agenda item 4(d) on December 16, 2022. The draft policy on out-of-agency services, as currently written, will likely have unintended consequences and negative impacts for special districts and the public throughout the San Diego County region.

Local Agency Formation Commissions (LAFCOs) were established by state policy for the purposes of:

1. Encouraging orderly growth,
2. Promoting the logical formation and determination of local agency boundaries,
3. Discouraging urban sprawl, and
4. Preserving open space and agricultural lands.

Government Code Section (GCS) 56133 specifies when LAFCO approval is needed for a city or district to provide out-of-boundary services in a manner that is consistent with LAFCOs' designated authority under state law.

Good policy requires accuracy and precision. In the case of the current draft policy on out-of-agency services, a lack of accuracy and precision in both crafting and applying this policy may lead to reducing or completely eliminating critical services on which the public relies.

Development v. non-development-inducing services

Services provided for the benefit of the public are diverse among special district types and often impact health and safety, but are not always development-inducing. Given the purposes of LAFCOs and intention of GCS 56133, any policy regarding out-of-agency services needs to differentiate between those services that are development-inducing (e.g., infrastructure, zoning changes) and those services that are not. For example, conservation services provided by resource conservation districts (RCDs) are not development-inducing and are in alignment with LAFCOs' purpose to preserve open space and agricultural lands. Yet the broad language of the current draft policy, including the proposed implementation of this policy, does not distinguish between development versus non-development inducing services. It also fails to take into account the complementary functions of LAFCOs and special districts.

Efficiency in the provision of public services

Put into a broader context, LAFCOs' responsibility for the logical formation and determination of local agency boundaries is to promote the efficient provision of public services with an emphasis on reducing duplicate services. As such purpose pertains to SDLAFCO's interpretation and implementation of GCS 56133, the application of the draft policy as currently written does not seem to reflect consideration of public service efficiency for services requiring deep technical expertise and experience. Such services requiring deep technical expertise are more efficiently provided to the public and of higher quality than such services being provided by an inexperienced district or private industry. Likewise, the current draft policy makes no mention of where a sole provider of a critical service in the region would fall under this policy. Underlying the aforementioned issues of services requiring deep technical expertise or sole source service provision is the assumption made in SDLAFCO's draft policy that all services provided are equitable in scope and quality, and that services provided by districts are interchangeable and easily replaced by another district. While some services are generally more consistent from district-to-district (e.g., utility services), this is untrue for other types of services that are unique and require deep technical expertise and extensive experience (e.g., irrigation water management services).

Transparency and accountability

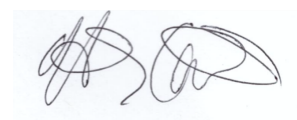
LAFCOs are to be neutral, independent, and provide well-balanced representation, in which representation lies with the Commission. The current draft policy, delegating the authority to the Executive Officer, a non-elected position, to make determinations outside of public view about whether and when exemptions under GCS 56133(e) may apply lacks oversight and transparency in the decision-making process, and therefore a lack of agency accountability.

Finality of determinations

SDLAFCO's draft policy currently states, "Once the Commission or [emphasis added] Executive Officer take actions - whether to approve, approve with conditions, or deny - an out-of-agency service requests the decisions are final and cannot be appealed" (p. 4). This statement stands in conflict with the clause in GCS 56133(d) stating, "If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration." We strongly support the recommendation made during the SDLAFCO meeting on November 7, 2022 regarding an appeals process for determinations under SDLAFCO's out-of-agency services policy.

Thank you for your thoughtful consideration of these issues regarding SDLAFCO's draft policy on out-of-agency services. Please feel free to contact our office should you have any questions or for further discussion.

On behalf of the Board of Directors,



Heather Conklin, Board President
Mission Resource Conservation District

cc: Supervisor Jim Desmond, County of San Diego Board of Supervisors