



May 22, 2023

Fallbrook Public Utility District (FPUD) Comments on Draft agenda report (Draft Report) for the combined public hearing on June 5th, 2023 for the Proposed Rainbow Municipal Water District (RMWD) and Fallbrook Public Utility District (FPUD) Reorganizations (Proposed Reorganization(s)).

We appreciate that this process is being brought forward for a hearing in front of the San Diego Local Agency Formation Commission (LAFCO) and the detailed analysis and extensive work put into this process by LAFCO staff. FPUD does have a few comments, set out below, on the Draft Report.

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General Comments:

1. While it is noted that the FPUD and RMWD applications are separate and were combined administratively for processing and hearing purposes with the agreement of the parties, the Draft Report and LAFCO staff's recommendations in the Draft Report, should make very clear that the Commission must take separate action on each District's Reorganization Application. To this end, we request that all narratives and tables with calculations within the Draft Report that identify the rate or other impacts from, and combined figures (such as population or acreage) related to, the Proposed Reorganizations, be also expressed separately for each District. Last on this same note, we did notice a few instances where the Districts' Proposed Reorganizations are referred to a singular "proposal" as opposed to "proposals" (see for example, Page 2, "Option Two") or "reorganization" as opposed to "reorganizations" (see for example, Page 9). This request is important as we believe that it will result in creating a clean record of proceeding as to each of the Districts' separate Reorganization Applications.

2. The Draft Report together with information provided by SDCWA to LAFCO raise a big question as to the appropriateness of an exit fee (separate and apart from our previously stated position regarding the legality of an exit fee). For example: LAFCO calculated the combined FPUD and RMWD lost revenue to SDCWA resulting from the Proposed Reorganizations at \$12.6 million (\$8.5 million from RMWD and \$4.1 million from FPUD). This is the amount that is sent to SDCWA above the cost of providing the Districts the treated MWD water supplies we are delivered without utilizing SDCWA infrastructure. In contrast, SDCWA has indicated there are **zero** operating costs associated with serving either FPUD or RMWD and that its QSA supplies are cheaper than MWD supplies (FPUD has never received any desalination water).

These statements raise the question as to the benefit FPUD currently receives for the estimated \$4.1 million FPUD sends SDCWA annually, which serves as the basis for the proposed exit fee. It appears that the bulk of FPUD's \$4.1 million helps fund facilities and operations that serve the other SDCWA members--meaning that FPUD ratepayers have been subsidizing SDCWA rates and funding infrastructure used by others for decades. We suggest that the Draft Report more clearly describe and acknowledge that the Commission may consider, as part of its evaluation of whether there is a need for on-going payments as part of an exit fee, that there is a current misalignment of costs and benefits to FPUD due to the location of FPUD in the SDCWA service area as FPUD does not use any SDCWA infrastructure, justifying approval of FPUD's Proposed Reorganization without an exit fee condition.

FPUD has been paying to help fund infrastructure and offset operating costs for other agencies for decades and we hope LAFCO staff will consider this important point as they finalize the presentation and Draft Report, and that LAFCO staff consider making Option 1 the preferred staff recommendation or at least designating Option 1 as a staff "recommended" alternative for the Commission's consideration.

3. Option Three will only lead to further "analysis paralysis." FPUD does not see how Option Three is viable given that by the time the Proposed Reorganizations go to hearing, LAFCO will have just issued the certificate of filing (mind you over 3 years following submission of the Reorganization Applications to LAFCO). The Commission should have long ago made a determination of whether completion of a scheduled Municipal Service Review on SDCWA was required in order to process our Reorganization Applications. We find the Commission's inaction over the last 3 years on this issue a waiver of the need for an SDCWA MSR to process the Proposed Reorganizations.

In addition, the LAFCO staff report clearly concludes that Eastern MWD can provide reliable service at a lower cost and similarly also concisely concludes that there are clear benefits to FPUD's agricultural community and the impacts to the remaining agencies can be offset. While we agree that an analysis of SDCWA would be beneficial to ensure it is taking the necessary steps to continue to be an economically sound institution for the remaining member agencies, the issues relative to FPUD and RMWD are unique compared to the challenges faced by the remaining member agencies. FPUD's utilization of only MWD infrastructure to receive water deliveries, and reliance on agricultural make our situation unique. Simply stated, the detachment of 56,000 customers in Fallbrook, Rainbow and Bonsall will not impact the future evaluation of how SDCWA can best serve 3.2 million customers in its remaining service area.

4. Any statements in the Draft Report implying that FPUD made "requests" regarding the location of the detachment election (that the election be held within FPUD's boundaries) and/or that SDCWA be allowed to continue to collect property taxes from the properties within FPUD to continue to pay for any SDCWA outstanding bonded or other indebtedness, should be corrected. FPUD has only restated what is provided for, and required by, the County Water Authority Act.

Comments on Specific Portions of the Draft Report:

1. Page 17 of the Draft Report identifies that FPUD has one connection on a SDCWA pipeline that would be abandoned if the Reorganization Proposal is approved. As this is not the case, the statement should be revised as FPUD has not used this connection since November 2019.

Additionally, the Draft Report should state that FPUD has not utilized any portion of any SDCWA pipeline since November 2019.

2. Page 18 of the Draft Report references that the Colorado River Supplies under Eastern MWD would be materially lessened given the higher priority of the contract supplies between SDCWA and IID based on the Dr. Hanemann 2021 report. Since the completion of the 2021 report, conditions on the Colorado River have continued to deteriorate, and the Bureau of Reclamation has developed two options for addressing the chronic over-draft. One option is to follow the existing priority system, which would support the conclusion in the 2021 report. The other option would equalize cuts across all users to account for evaporation, which would eliminate any reliability benefit of the SDCWA IID supplies. We suggest that LAFCO staff consider including a sentence that identifies for the Commission, that recent events on the Colorado River create an additional level of uncertainty of the relative reliability of the Colorado River supplies under Eastern MWD or SDCWA.
3. Page 20, we believe the text box regarding jurisdictional disputes inaccurately reflects what FPUD and RMWD believed to be the crux of dispute by SDCWA with the District's Reorganization Applications in March 2020. These specific points were not finalized until SDCWA adopted a resolution in May 2020 setting out these points. Given that FPUD provides more revenue to SDCWA than it receives in services (as stated above), FPUD does not agree with SDCWA points of contention.
4. Page 27, LAFCO lists the total revenue impact at \$12.58 million and the RMWD impact at \$8.517 million but incorrectly identifies the FPUD fee at \$7.285 instead of \$4.07 million (\$12.58 million - \$8.51 million) as correctly listed on page 21.
5. Page 32, the discussion states that both sides accept there are near term unavoidable financial impacts of detachment. This statement is only partially true as because the impacts are not unavoidable. While this is true if SDCWA continues to take no actions to reduce its costs there will be a cost impact to remaining member agencies, SDCWA could reduce its supply commitments to offset the loss in demands. SDCWA could have (and arguably should have) developed agreements to reduce the amounts of higher cost IID transfer and desalination supplies by working with MWD or MWD member agencies. In other words, SDCWA could already have a framework in place to avoid any financial impact. Since SDCWA would no longer need to meet the needs of FPUD and RMWD, it would have an equal amount of higher cost supplies and could have pursued such a transfer. The fact is that SDCWA has chosen to take no action to mitigate any financial impact associated with a variety of recent events, which include but are not limited to the Reorganization Applications. Similarly, the City of San Diego, which has the ability to push changes at SDCWA, has not prioritized this as it does not appear to have FPUD's same level of concern over the cost and affordability of the current supply commitments. SDCWA continues to insist that there is greater reliability from its current water supply commitments claiming that there is no price that can be put on this reliability.

FPUD and RMWD have been clear as members of the SDCWA Board that there must be a balance between cost and reliability. Without such balance, FPUD and RMWD continue to see a decline

in the agricultural industry within our combined boundaries and continue to see threats to the financial viability of SDCWA generally. Due to declining regional demands and local supply development options for transferring supplies will need to be enacted with or without FPUD and RMWD. FPUD wants to clarify that it believes that these impacts are only in the immediate near term. FPUD also believes that these impacts are only “unavoidable” because SDCWA has refused to plan proactively as to impacts not only resulting from the FPUD and RMWD Reorganizations if approved, but also as to upcoming impacts resulting from reduced demand reductions also in the relative near term, associated with member agency water supply diversification projects and lower regional demands.

6. Page 33-34 addresses the authority of LAFCO to impose exit fees. For the reasons set out in our previous correspondence on this topic, FPUD restates its disagreement with the analysis set out in the Draft Report. Additionally, the County Water Authority Act clearly distinguishes the financial requirements for an exclusion (i.e., detachment) of a member agency from a county water authority (see Water Code Appendix Section 45-11 (a)(2)) the requirements applicable to exclusion of just a portion of territory from a county water authority member agency in Section 45-11 (a)(1), which specifically requiring that those exclusions take place in accordance with the provisions of law applicable to those exclusions.” In other words, the legislature did not contemplate financial requirements in addition to those set out in Section 45-11 (a)(2) for exclusion of an entire member agency, while it did so contemplate additional requirements (seemingly of any legally permissible type) for exclusions from a county water authority of just a portion of a member agency.
7. Page 36 addresses the offset to the exit fee resulting from not building the ESP North County Pump Station. We find the dialogue included in the Draft Report around whether to set the credit on a budgeted amount back in 2010 instead of using updated amounts put forward by SDCWA in its 2020 response to LAFCO or the SDCWA adopted budget for FYs 2022 and 2023, confusing. If it is confusing to us, it will likely even be more confusing to others, including Commissioners and members of the public. We believe it is appropriate and more than justified (without conceding our disagreement with the exit fee in the first place) to use the calculated amount based on the SDCWA’s FY 2022 and 2023 budgets—and leaving the discussion on this issue short and to the point.
8. Page 39 discusses the impact of a large earthquake on FPUD water supplies and includes an analysis that FPUD has 73 days of storage available, noting that this provides adequate time for repairs to be made. It should also be noted we have the ability to receive deliveries from our SMRCUP project in coordination with Camp Pendleton. FPUD’s combination of storage and local supplies makes FPUD as resilient as any other SDCWA member agency.
9. Page 44 references potential approval terms that “will be separately address[sic] in a staff memorandum.” When will this be provided for comment?
10. Page 55, section (k) looks like it may incorrectly state the funding source for Eastern MWD, as it states it is funded by general fund allocations by the Riverside County Board of Supervisors. LAFCO staff may also want to consider including a statement to make clear that under the

Municipal Water Districts Law of 1911, municipal water districts, such as Eastern Municipal Water District (Eastern MWD), may include non-contiguous territory.

In summary, we support the recommendation by staff that FPUD should be allowed to detach from SDCWA and annex to EMWD, but we would request there is some reconsideration about how much and how long we should have to continue to pay to subsidize rates for the remaining agencies. We appreciate your on-going efforts to complete this important Reorganization process for our community.

A handwritten signature in black ink, appearing to read "Jack Bebee". The signature is fluid and cursive, with the first name "Jack" being more prominent than the last name "Bebee".

Jack Bebee