

COLANTUONO
HIGSMITH
WHATLEY, PC

HOLLY O. WHATLEY | (213) 542-5704 | HWHATLEY@CHWLAW.US

MEMORANDUM

TO: Chair Desmond and San Diego LAFCO Commissioners FILE NO: 49021.0002

FROM: Holly O. Whatley, Commission Counsel DATE: June 2, 2023

CC: Keene Simonds, Executive Officer
Priscilla Mumpower, Local Government Analyst II
Aleks Giragosian, Assistant Commission Counsel

RE: Recent Developments Regarding Option Three in Staff Report re Rainbow Municipal Water District and Fallbrook Public Utility District Reorganizations

I write to update you on legislative developments that could affect one option set forth in the Rainbow Municipal Water District and Fallbrook Public Utility District Reorganizations. Option Three in the staff report is to continue consideration of the reorganization proposals until completion of a scheduled municipal service review (“MSR”) on the County Water Authority, which staff estimates would take approximately 18 to 24 months to complete.

As set forth in the staff report, any Commission approval of the proposals is subject to voter confirmation by a majority of each respective applicant’s registered voters. The County Water Authority Act does not allow voter approval by anyone outside the detaching districts’ territory. Assembly Bill (AB) 530 was introduced by Assemblymember Boerner on February 8, 2023 to address and manage methane emissions in California. But on May 15th, the bill was comprehensively amended to revise the County Water Authority Act to also require a confirming vote of the entire

790 E. COLORADO BOULEVARD, SUITE 850, PASADENA, CALIFORNIA 91101-2109 | (213) 542-5700

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electorate of a county water authority should any member agency of such county water authority receive approval from LAFCO to detach.

The pending legislation creates uncertainty as to whether choosing Option Three would mean that any later Commission approval after the MSR is completed would be subject to an expanded jurisdictional territory for the subsequent voter confirmation, i.e. the entire County Water Authority territory. If the legislation passes in its current form, it would presumably be effective January 1, 2024, which would be before the MSR could be completed. In this scenario, deferring a decision until after the MSR's completion could mean voter approval within the entire County Water Authority territory would be required.

Given the legislation, one potential approach to address the uncertainty in proceeding with Option Three is a hybrid approach combining Options Two and Three. Specifically, the hybrid approach involves the Commission approving the proposals with the additional condition of completion of the MSR with a confirming determination needed before proceeding with the election to confirm the approval and filing of the Certificate of Completion. There is a strong argument that the provisions regarding voter approval in existence at the time of such approval would apply regardless of a later change in the law as proposed by AB 530. However, AB 530's provisions may be amended or a different bill may be introduced or amended regarding this same topic, which could materially affect our analysis of whether such amendments would affect the voter approval requirements of any approval of the two detachment applications.

In short, the pending legislative activity creates uncertainty in whether choosing Option Three would materially change the territory for any subsequent voter approval. The above hybrid option serves as a potential remedy. We wanted the Commission to be aware of such uncertainty as it considers the full range of options in the staff report.