



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

6a

AGENDA REPORT
 Public Hearing

July 10, 2023

TO: Commissioners

FROM: Priscilla Mumpower, Assistant Executive Officer
 Chris Cate, LAFCO Consultant
 Adam Wilson, LAFCO Consultant

SUBJECT: CONTINUED HEARING |
Proposed “Fallbrook PUD & Rainbow MWD Wholesaler Reorganizations” –
Concurrent Annexations to Eastern Municipal Water District and Detachments
from San Diego County Water Authority with Related Actions (RO20-05 and
RO20-04)

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will continue the public hearing opened on June 5, 2023 to consider two separate reorganization proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD). The two proposals have been administratively combined for hearing purposes by the Executive Officer. The proposals seek LAFCO’s approval to transfer wholesale water service responsibilities within the applicants’ jurisdictional boundaries from the San Diego County Water Authority to Eastern MWD. The purpose of the proposals is to achieve cost-savings to the applicants and their retail ratepayers based on the difference in charges between the two wholesalers. At the request of the Commission, additional information is being presented as part of the continued hearing and involves alternatives to the recommended exit fee as well as responses to written comments made by Chair Adán Ortega with the Metropolitan Water District of Southern California. Revised draft resolutions of approvals are also provided. Public testimony at the continued hearing is limited to this additional information.

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BACKGROUND

Opening of the Public Hearing & Detailing of the Staff Recommendation

San Diego LAFCO opened its noticed public hearing on the reorganization proposals on June 5, 2023. At the hearing, the Commission received a detailed presentation from staff and its consultants on the administrative review process and the central policy issues underlying the consideration of both proposals. The presentation concluded with staff outlining five distinct alternative actions available to the Commission that are premised on different policy priorities. These alternative actions are organized linearly and are as follows.

- Option One involves approving the proposals with only standard conditions.
- Option Two involves approving the proposal with additional conditions that include requiring the applicants to pay exit fees to County Water Authority.
- Option Three involves deferring consideration of the proposals until the completion of a scheduled municipal service review on the County Water Authority.
- Option Four involves disapproving the proposals without prejudice.
- Option Five involves disapproving the proposals.

As detailed at the June 5th meeting, staff believes three of the five available alternatives – Options Two, Three, and Four – are readily merited based on the administrative reviews and distinguished by addressing different and otherwise appropriate Commission policy priorities. Among these three merited alternatives, staff recommends **Option Two** with special terms to require the applicants pay a combined annual exit fee payment for five years totaling \$24.305 million. This recommendation prioritizes the stand-alone merits of the applicants’ proposals and concurrent policy enhancement of supporting a viable agriculture economy in North County. Related actions in support of the recommendation include making exemption findings under the California Environmental Quality Act. Any approval would be subject to voter confirmation within the applicants’ jurisdictional boundaries.

Continuing the Public Hearing & Request for Additional Information

After approximately seven hours of public testimony, San Diego LAFCO closed the public hearing on June 5, 2023 and began its deliberations on both proposals. The Commission ultimately took action to continue the public hearing with direction to LAFCO staff to provide additional information to further inform the deliberations. Specifically, the Commission requested additional alternatives to the recommended exit fee as well as responses to written comments made by Chair Adán Ortega with the Metropolitan Water District of Southern

California (“MET”). The continuation was initially set to August 7, 2023 but subsequently reset by the Commission to July 10th with additional details footnoted.¹

DISCUSSION

This item is for San Diego LAFCO to consider additional information on the proposed reorganization proposals filed by Fallbrook PUD and Rainbow MWD to change wholesaler providers. The additional information involves (a) alternatives to the recommended exit fee and (b) responses to written comments and suggestions therein by MET Chair Adán Ortega and communication received and relating to MET’s June 13th Finance, Audit, Insurance, and Real Property (FAIRP) Committee Meeting. The latter pertinently addresses comments made by Chair Ortega that MET approvals may be needed to accommodate both proposals. Revised draft resolutions of approval are also attached and provided by Commission Counsel.

The additional information requested by the Commission is separately provided in two attached memorandums. The first memorandum has been prepared by Consultant Chris Cate and analyzes six alternatives to the recommended exit fee. The second memorandum has been prepared by Consultant Adam Wilson and addresses comments by MET Chair Adán Ortega, San Diego CWA, and Eastern MWD.

ANALYSIS

The attached memorandums provide additional information to further inform San Diego LAFCO in continuing its deliberations on the proposed reorganizations. The staff recommendation, nonetheless, remains the same – Option Two with a combined annual exit fee of \$4.9 million over a five-year period that totals \$24.3 million.

RECOMMENDATION

It is recommended San Diego LAFCO approve both reorganization proposals under Option Two as detailed in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO:

Option One:

Approve both reorganization proposals as submitted (no modifications) with standard conditions. No exit fees would apply. Approval is prefaced on prioritizing the stand-alone merits of the proposals and its local benefits – including direct support to agriculture in North County. Approval includes accommodating sphere of influence actions and exemption findings under CEQA as well as subject to confirmation by registered voters within the affected territory.

¹ On June 14, 2023 the Commission held a special meeting and approved two recommendations by staff (1) to oppose Assembly Bill 530 or any related legislation and (2) to re-calendar and advance the continued hearing date – for the proposed reorganization proposals filed by Fallbrook PUD and Rainbow MWD – from August 7, 2023 to July 10, 2023.

Option Two (recommended)

Approve both reorganization proposals as submitted (no modifications) with special conditions. This includes requiring the applicants to pay a combined adjusted exit fee of \$24.3 million divided equally over five years. Approval is prefaced on the stand-alone merits of the proposals and its local benefits – including direct support to agriculture in North County – while also providing net-revenue protection to the County Water Authority and its member agencies for the first 60 months. Approval includes accommodating sphere of influence actions and exemption findings under CEQA as well as subject to confirmation by registered voters within the affected territory.

Option Three:

Continue consideration of the reorganization proposals in conjunction with completing a holistic assessment of wholesale water supply issues in San Diego County via the scheduled municipal service review on the County Water Authority.

Option Four:

Disapprove the reorganization proposals without prejudice. Disapproval is prefaced on weighing the external disbenefits of the proposals to the County Water Authority and its member agencies as of date. This option could be combined with Option Three.

Option Five:

Disapprove the reorganization proposals. Disapproval is prefaced on weighing both the local and external disbenefits of the proposals.

PROCEDURES FOR CONSIDERATION

This item has been placed on San Diego LAFCO’s agenda for action as part of a noticed continued public hearing. The following procedures are suggested.

1. Commissioner disclosures (new), if any.
2. Receive verbal presentation from staff and consultants.
3. Presentation from applicant Fallbrook PUD if requested.
4. Presentation from applicant Rainbow MWD if requested.
5. Presentation from subject agency County Water Authority if requested.
6. Re-open the public hearing.
7. Discuss additional information and consider the staff recommendation.

On behalf of the Executive Officer,



Priscilla Mumpower
Assistant Executive Officer

Attachments:

- 1) Alternatives to Exit Fee Memo, Chris Cate
- 2) Response to MET Chair and Related Communications Memo, Adam Wilson
- 3) Revised LAFCO Resolutions of Approval



MEMORANDUM

DATE: June 30, 2023

TO: Keene Simonds, Executive Officer

FROM: Chris Cate, 3MC Strategies

SUBJECT: Exit Fee Alternatives

At the June 5th hearing of the LAFCO Commission, staff was directed to provide alternatives to the staff recommendation involving an exit fee to be paid by Fallbrook Public Utility District (Fallbrook) and Rainbow Municipal Water District (Rainbow) should the Commission approve the detachments. This memorandum provides the requested information. It is organized to include a summary of the baseline recommendation, premises in developing alternatives, evaluation of alternatives, and impacts on the applicants. Conclusions are also provided.

Baseline Recommendation – Option Two

Option Two as detailed in the agenda report issued for the June 5th hearing represents the staff recommendation for an exit fee and totals \$24.3 million. This baseline recommendation incorporates three distinct components as summarized below.

1. The first component to the recommended exit fee draws from Dr. Hanemann’s independent analysis that the annual net revenue impact to the CWA, should the detachments proceed, is \$12.58 million (based on FY 2022). The baseline recommendation uses this estimate in developing an exit fee.
2. The second component to the recommended exit fee also draws from Dr. Hanemann’s analysis that an exit fee is economically justified as an adjustment period for CWA and should extend no less than three years and no more than ten years. The baseline recommendation utilizes a five-year exit fee duration.
3. The third component to the recommended exit fee involves a credit for the full budgeted construction cost for the ESP North County Pump Station totaling \$38.6 million that would otherwise need to be funded by CWA. This part relatedly assumes CWA would pay (directly or by reimbursement) for the project in cash as opposed to debt financing.



STRATEGIES

The net effect of these three distinct components to the baseline recommendation is an annual exit fee in the amount of \$4.8 million paid in five consecutive years.

Premises in Developing Alternatives

At the request of LAFCO staff, and consistent with Commission feedback, 3MC Strategies has developed six distinct alternatives to the baseline recommendation. Each of the six alternatives increase the exit fee and are premised on a combination of (a) extending the duration of the annual exit fee and/or (b) adjusting the credit for the ESP North County Pump Station – either as a transition to assume debt financing or applying the applicants’ proportional share of the project savings based on revenue shares. This latter premise merits additional details and related context given unique local conditions and is summarized below.

- As was stated in the original LAFCO staff report, the development of the ESP North County Pump Station and the associated costs are contingent – one way or another – on the proposed detachments. Since detachments are “directly dependent” to the development of the ESP North County Pump Station, staff believes it would result in an overall “cost-avoidance” which means Rainbow and Fallbrook have mitigated or eliminated any potential costs to the project for the CWA and all remaining agencies, whether the project be paid utilizing debt proceeds or cash.
- There is some debate should this project proceed whether CWA would pay by utilizing debt financing or by using cash. Option Two assumes cash. This assumption means reduction of approximately \$40 million in required revenues from CWA member agencies would provide relief in the short-term. Alternatively, if the project were to be paid by the issuance of debt, detachments would provide long-term relief to member agencies far greater than their proportional share of approximately \$40 million due to the need to pay interest on the debt. In either scenario, should detachments be approved, each member agency would be relieved of an either short-term or long-term obligation as the capital project is solely contingent on the outcome of detachment.
- The 2021 CWA Long-Range Financing Plan assumes two debt issuances in the foreseeable future, in 2022 and 2029. Between 2025 and 2028, CWA assumes its capital program be paid for entirely by PAYGO.¹ In 2022, CWA issued \$170 million in bonds to be used toward its capital program. Overall, CWA plans to fund approximately 65 percent of its Capital

¹ According to CWA in the 2021 Long Range Financial Plan, the PAYGO Fund was established in Fiscal Year 1990 to serve as a mechanism to collect Capacity Charges and Standby Charges to be used to pay for the cash portion of the CIP. The PAYGO Fund is a “capital fund”, as opposed to a “reserve fund,” meaning that the monies in the fund will be spent directly on capital expenditures, not held in reserve for some other purpose. The PAYGO Fund is projected to be spent over the next eleven years in conjunction with cash generated by operations to fund the pay-as-you-go portion of the CIP.



STRATEGIES

Improvement Program with cash and the balance from a combination of long-term fixed rate debt, short-term debt, and variable rate-debt.²

- The project is not intended to be constructed by CWA. Rather, the project would be built in partnership with the two agencies, with each being responsible for the construction of the project with funds allocated by CWA. This model was used for the Valley Center MWD portion of the project. Based on information provided by CWA, funds from the bond issuance in 2022 were not used to fund the Valley Center portion of the project. This may be due to the fact that each of the agencies for which the project would be constructed own the asset, therefore bonds may not be able to be issued to pay for the improvements.

Two additional premises apply to the development of the six alternatives: (1) the revenue loss analysis conducted by Dr. Hanemann is used as a base for determining the exit fee amount and (2) Fallbrook’s share of the Net Exit Fee amount is 35% of the total and Rainbow’s share is 65%.

Exit Fee Alternatives

The six alternatives to the recommended exit fee (Option Two) are described below and further distinguished in the proceeding table.

- 1) **Option 2A** | Increases the Exit Fee Period to Seven Years
- Alternative continues to provide full cash payment credit for ESP North County
- 2) **Option 2Ai** | Increases the Exit Fee Period to Ten Years
- Alternative continues to provide full cash payment credit for ESP North County
- 3) **Option 2B** | Reduces the ESP North County Credit by Financing Cost Over 20 Years
- Alternative continues to set the exit fee duration to five years
- 4) **Option 2Bi** | Increases the Exit Fee Period to Seven Years & Reduces the ESP North County Credit by Financing Cost Over 30 Years
- 5) **Option 2C** | Reduces the ESP North County Credit by Apportioning the Applicants Respective Share (Cost-Savings) of the Project
- Alternative continues to set the exit fee duration to five years
- 6) **Option 2Ci** | Increases Exit Fee Period to Seven Years & Reduces the ESP North County Credit by Apportioning the Applicants Respective Share (Cost-Savings) of the Project

² CWA Water Revenue Bonds Series 2022A Official Statement. Pg. A-55.



Summary of Alternative Exit Fees								
Options	Annual Fee	Annual Fee Duration	EPS Credit Assumption	EPS Credit Amount	Fallbrook TOTAL	Rainbow TOTAL	TOTAL	% Increase
2 Baseline	\$12,581	5.0 Years	Cash Full	\$38.614	\$8,502	\$15,789	\$24,291	---
2A	\$12,581	7.0 Years	Cash Full	\$38.614	\$17,308	\$32,144	\$49,453	103.6
2Ai	\$12,581	10.0 Years	Cash Full	\$38.614	\$30,519	\$56,677	\$87,196	259.0
2B	\$12,581	5.0 Years	Finance @ 20 Yrs.	\$9.653	\$18,638	\$34,613	\$53,251	119.2
2Bi	\$12,581	7.0 Years	Finance @ 30 Yrs.	\$9.010	\$27,670	\$51,387	\$79,057	225.5
2C	\$12,581	5.0 Years	Cash Share	\$2.587	\$21,111	\$39,207	\$60,317	148.6
2Ci	\$12,581	7.0 Years	Cash Share	\$2.587	\$29,918	\$55,562	\$85,480	253.3

Additional details and related analysis follows.

• **Option 2 (Baseline Recommendation):**

Option 2 (Staff Recommendation)						
Year	1	2	3	4	5	Total
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$62,904,840
ESP NC Budget Credit	\$7,722,800	\$7,722,800	\$7,722,800	\$7,722,800	\$7,722,800	\$38,614,000
Recommended Exit Fee	\$4,858,168	\$4,858,168	\$4,858,168	\$4,858,168	\$4,858,168	\$24,290,840
... Fallbrook Share	\$1,700,359	\$1,700,359	\$1,700,359	\$1,700,359	\$1,700,359	\$8,501,794
... Rainbow Share	\$3,157,809	\$3,157,809	\$3,157,809	\$3,157,809	\$3,157,809	\$15,789,046

Option 2 reflects staff’s original recommendation presented at the June 5, 2023 hearing. It requires Fallbrook and Rainbow to pay an exit fee totaling \$62.9 million over a period of five years less a \$38.6 million credit tied to the full budgeted cost of the ESP North County Pump Station. This credit results in a total exit fee amount of \$24.3 million – or \$4.9 million annually.

• **Option 2A: Increases Exit Fee Period to Seven Years**

Option 2A – 103.6% Greater Than Option 2					
Year	1	2	3	4	5
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968
ESP NC Budget Credit	\$5,516,286	\$5,516,286	\$5,516,286	\$5,516,286	\$5,516,286
Net Exit Fee	\$7,064,682	\$7,064,682	\$7,064,682	\$7,064,682	\$7,064,682
... Fallbrook Share	\$2,472,639	\$2,472,639	\$2,472,639	\$2,472,639	\$2,472,639
... Rainbow Share	\$4,592,043	\$4,592,043	\$4,592,043	\$4,592,043	\$4,592,043
Year	6	7	Total		
Exit Fee	\$12,580,968	\$12,580,968	\$88,066,776		
ESP NC Budget Credit	\$5,516,286	\$5,516,286	\$38,614,000		
Net Exit Fee	\$7,064,682	\$7,064,682	\$49,452,776		
... Fallbrook Share	\$2,472,639	\$2,472,639	\$17,308,472		
... Rainbow Share	\$4,592,043	\$4,592,043	\$32,144,304		

*Fallbrook and Rainbow receive credit of ESP NC Pump Station total budgeted cost divided over 7-year period



Option 2A deviates slightly from Option 2, and specifically increases the exit fee period to seven years. This option involves Fallbrook and Rainbow paying an exit fee totaling \$88.1 million over a period of seven years. This alternative maintains the credit to the applicants in the amount of \$38.6 million – tied to the full budgeted cost of the ESP North County Pump Station. The expansion in the duration period to seven years while maintaining the same credit increases the total exit fee amount to \$49.5 million – or \$7.1 million annually – and reflects a two-fold increase from Option 2.

• **Option 2Ai: Increases Exit Fee Period to Ten Years**

Option 2Ai – 259.0% Greater Than Option 2						
Year	1	2	3	4	5	6
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968
ESP NC Budget Credit	\$3,861,400	\$3,861,400	\$3,861,400	\$3,861,400	\$3,861,400	\$3,861,400
Net Exit Fee	\$8,719,568	\$8,719,568	\$8,719,568	\$8,719,568	\$8,719,568	\$8,719,568
... Fallbrook Share	\$3,051,849	\$3,051,849	\$3,051,849	\$3,051,849	\$3,051,849	\$3,051,849
... Rainbow Share	\$5,667,719	\$5,667,719	\$5,667,719	\$5,667,719	\$5,667,719	\$5,667,719
Year	7	8	9	10	Total	
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$125,809,680	
ESP NC Budget Credit	\$3,861,400	\$3,861,400	\$3,861,400	\$3,861,400	\$38,614,000	
Net Exit Fee	\$8,719,568	\$8,719,568	\$8,719,568	\$8,719,568	\$87,195,680	
... Fallbrook Share	\$3,051,849	\$3,051,849	\$3,051,849	\$3,051,849	\$30,518,488	
... Rainbow Share	\$5,667,719	\$5,667,719	\$5,667,719	\$5,667,719	\$56,677,192	

* Fallbrook and Rainbow receive credit of ESP NC Pump Station total budgeted cost divided over 10-year period

Option 2Ai expands on Option 2A by increasing the exit fee period to ten years. This option involves requiring Fallbrook and Rainbow pay an exit fee totaling \$125.8 million over a period of ten years. This alternative maintains the credit to the applicants in the amount of \$38.6 million – tied to the full budgeted cost of the ESP North County Pump Station. The expansion of the duration period to 10 years while maintaining the same credit increases the total exit fee amount of \$87.2 million – or \$8.7 million annually – and reflects a more than three-fold increase from Option 2.

• **Option 2B: Reduces the ESP North County Credit by Financing Cost Over 20 Years**

Option 2B – 119.2% Greater Than Option 2						
Year	1	2	3	4	5	Total
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$62,904,840
ESP Credit Over 20 Years	\$1,930,700	\$1,930,700	\$1,930,700	\$1,930,700	\$1,930,700	\$9,653,500
Net Exit Fee	\$10,650,268	\$10,650,268	\$10,650,268	\$10,650,268	\$10,650,268	\$53,251,340
... Fallbrook Share	\$3,727,594	\$3,727,594	\$3,727,594	\$3,727,594	\$3,727,594	\$18,637,969
... Rainbow Share	\$6,922,674	\$6,922,674	\$6,922,674	\$6,922,674	\$6,922,674	\$34,613,371

* ESP NC Pump Station cost divided over 20 years.

**Fallbrook and Rainbow receive 1/20th of cost each year for 5 years



Option 2B requires Fallbrook and Rainbow pay an exit fee totaling \$62.9 million over a period of five years. This alternative maintains the credit to the applicants tied to the full budgeted cost of the ESP North County Pump Station with a modification from the recommendation. This modification divides the project cost over 20 years and brings the credit down to a total of \$9.7 million. The 20-year period presumes the County Water Authority will debt finance the cost of the project over this same period.³ The reduced credit results in a total exit fee amount of \$53.2 million – or \$7.1 million annually – and reflects more than a two-fold increase from Option 2.

Option 2B can be amended to extend the term by which it is assumed CWA would finance the project, to either 25 or 30 years. If the Commission chooses to assume the project would be financed over 25 years, the annual exit fee amount would increase by \$386,140 for a total exit fee of \$55.2 million. If the Commission chooses to assume the project would be financed over 30 years, the annual exit fee amount would increase by \$643,567 for a total exit fee of \$56.5 million.

• **Option 2Bi Increases the Exit Fee Period to Seven Years & Reduces the ESP North County Credit by Financing Cost Over 30 Years**

Option 2Bi – 225.5% Greater Than Option 2					
Year	1	2	3	4	5
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968
ESP Credit Over 30 Years	\$1,287,133	\$1,287,133	\$1,287,133	\$1,287,133	\$1,287,133
Net Exit Fee	\$11,293,835	\$11,293,835	\$11,293,835	\$11,293,835	\$11,293,835
... Fallbrook Share	\$3,952,842	\$3,952,842	\$3,952,842	\$3,952,842	\$3,952,842
... Rainbow Share	\$7,340,993	\$7,340,993	\$7,340,993	\$7,340,993	\$7,340,993
Year	6	7	Total		
Exit Fee	\$12,580,968	\$12,580,968	\$88,066,776		
ESP Credit Over 30 Years	\$1,287,133	\$1,287,133	\$9,009,933		
Net Exit Fee	\$11,293,835	\$11,293,835	\$79,056,843		
... Fallbrook Share	\$3,952,842	\$3,952,842	\$27,669,895		
... Rainbow Share	\$7,340,993	\$7,340,993	\$51,386,948		

*ESP NC Pump Station cost divided over 30 years.

**Fallbrook and Rainbow receive 1/30th of cost each year for 7 years

Option 2Bi requires Fallbrook and Rainbow pay an exit fee totaling \$88.1 million over a period of seven years – as outlined in Option 2A. This alternative maintains the credit to the applicants tied to the full budgeted cost of the ESP North County Pump Station with a modification from the baseline recommendation to divide the cost over 30 years. This modification brings the credit down to a total of \$9.9 million. The 30-year period presumes the County Water Authority will debt finance the cost of the project over this same period.

³ LAFCO did not analyze the projected debt service payments (principal and interest) should CWA debt finance the project. Rather, staff divided the budgeted cost of the project over various time periods as explained.



The expansion in the duration plus the reduced credit results in a total exit fee amount of \$79.1 million – or \$11.3 million annually – and reflects more than a three-fold increase from Option 2.

Option 2Bi can be amended to reduce the term by which it is assumed CWA would finance the project, to either 20 or 25 years. If the Commission chooses to assume the project would be financed over 20 years, the annual Exit Fee amount would reduce by \$643,567 for a total Exit Fee of \$74.6 million. If the Commission chooses to assume the project would be financed over 25 years, the annual Exit Fee amount would reduce by \$257,427 for a total Exit Fee of \$77.3 million.

• Option 2C: Reduces the ESP North County Credit by Apportioning the Applicants Respective Share (Cost-Savings) of the Project

Option 2C – 148.6% Greater Than Option 2						
Year	1	2	3	4	5	Total
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$62,904,840
Rainbow ESP Credit	\$339,803	\$339,803	\$339,803	\$339,803	\$339,803	\$1,699,016
Fallbrook ESP Credit	\$177,624	\$177,624	\$177,624	\$177,624	\$177,624	\$888,122
Net Exit Fee	\$12,063,540	\$12,063,540	\$12,063,540	\$12,063,540	\$12,063,540	\$60,317,702
... Fallbrook Share	\$4,222,239	\$4,222,239	\$4,222,239	\$4,222,239	\$4,222,239	\$21,111,196
... Rainbow Share	\$7,841,301	\$7,841,301	\$7,841,301	\$7,841,301	\$7,841,301	\$39,206,506

* Fallbrook and Rainbow receive credit for their portion of ESP NC Pump Station based on 2021 share of CWA Gross Water Sales Revenue spread over 5 years

Option 2C requires Fallbrook and Rainbow pay an exit fee totaling \$62.9 million over a period of five years. This alternative maintains a credit to the applicants tied to the full budgeted cost of the ESP North County Pump Station project with a modification to the baseline recommendation. The modification reorients the credit to match the applicants’ respective share of the cost and equal to their revenue share of County Water Authority’s 2021 revenues. In 2021, Fallbrook accounted for 2.2% of CWA revenues while Rainbow accounted for 4.3% of revenues. This modification lowers the credit and results in a total exit fee amount of \$60.3 million – or \$12.1 million annually – and reflects a two-fold increase from Option 2.



- **Option 2Ci: Increases Exit Fee Period to Seven Years & Reduces the ESP North County Credit by Apportioning the Applicants Respective Share (Cost-Savings) of the Project**

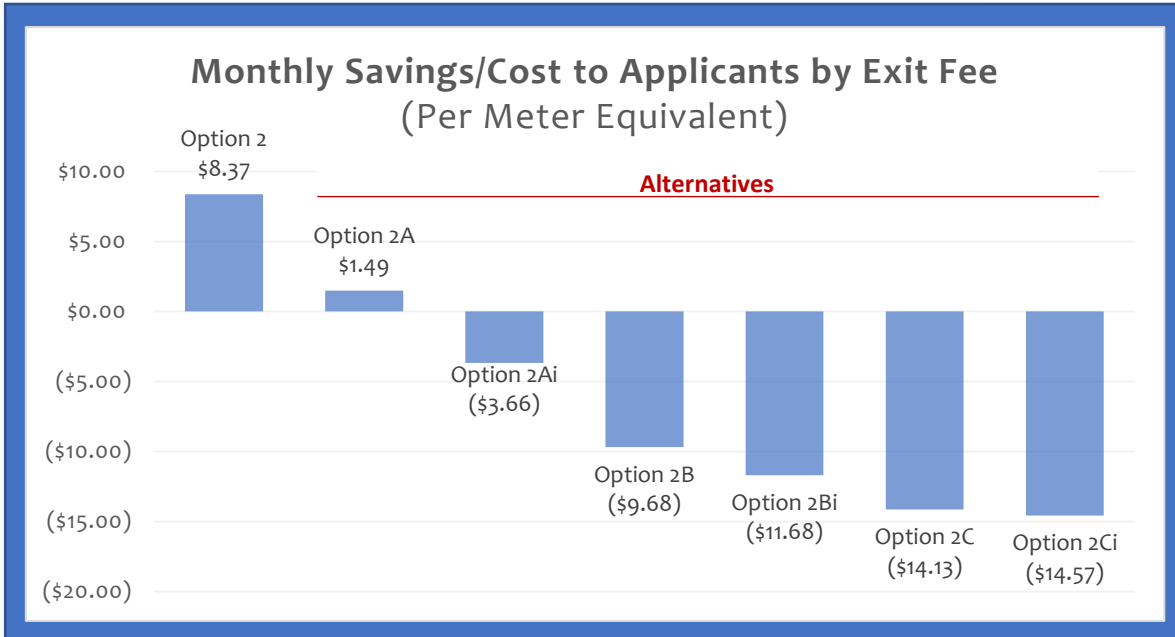
Option 2Ci – 252.2% Greater Than Option 2					
Year	1	2	3	4	5
Exit Fee	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968	\$12,580,968
Rainbow ESP Credit	\$242,717	\$242,717	\$242,717	\$242,717	\$242,717
Fallbrook ESP Credit	\$126,875	\$126,875	\$126,875	\$126,875	\$126,875
Net Exit Fee	\$12,211,377	\$12,211,377	\$12,211,377	\$12,211,377	\$12,211,377
... Fallbrook Share	\$4,273,982	\$4,273,982	\$4,273,982	\$4,273,982	\$4,273,982
... Rainbow Share	\$7,937,395	\$7,937,395	\$7,937,395	\$7,937,395	\$7,937,395
Year	6	7	Total		
Exit Fee	\$12,580,968	\$12,580,968	\$88,066,776		
Rainbow ESP Credit	\$242,717	\$242,717	\$1,699,016		
Fallbrook ESP Credit	\$126,875	\$126,875	\$888,122		
Net Exit Fee	\$12,211,377	\$12,211,377	\$85,479,638		
... Fallbrook Share	\$4,273,982	\$4,273,982	\$29,917,873		
... Rainbow Share	\$7,937,395	\$7,937,395	\$55,561,765		

* Fallbrook and Rainbow receive credit for their portion of ESP NC Pump Station based on 2021 share of CWA Gross Water Sales Revenue spread over 7 years

Option 2Ci requires Fallbrook and Rainbow to pay an exit fee totaling \$88.1 million over a period of seven years. This alternative maintains the credit to the applicants tied to the full budgeted cost of the ESP North County Pump Station project with a modification to the baseline recommendation that mirrors Option 2C. This modification reorients the credit to match the applicants’ respective share of the cost and equal to their revenue share of County Water Authority’s 2021 revenues. (As stated above, Fallbrook accounted for 2.2% of CWA revenues while Rainbow accounted for 4.3% of revenues.) The expansion of the duration period paired with the modified credit results in a total exit fee amount of \$85.5 million – or \$12.2 million annually – and reflects a near three-fold increase from Option 2.

Exit Fee Alternatives’ Impact on the Applicants

The purpose of the detachment proposals is to achieve cost-savings to the applicants. Dr. Hanemann’s independent analysis concluded that the annual savings to Fallbrook and Rainbow customers totals \$7.7 million (FY 2022) if detachment were to be approved. On a per meter basis, detachment would result in monthly savings of \$23.50, before the payment of any exit fees. When reviewing each exit fee alternative, it’s helpful to understand the potential impact each would have on the applicant’s ratepayers. The chart below summarizes, the potential savings, or costs, of each alternative to the applicant’s ratepayers on a monthly basis. The total annual exit fee for each alternative was divided by the total number of meters for each applicant, then divided by twelve to arrive at a monthly cost. This number was then subtracted from the monthly savings of \$23.50 to arrive at a net monthly savings for Fallbrook and Rainbow customers.



This chart summarizes the potential monthly savings or costs under all exit fees options – recommended and alternatives – to the applicant’s ratepayers based on households (per meter equivalents). Without any exit fee, the estimated average monthly savings to the applicants’ ratepayers is \$23.50 per household.

Conclusion

The six alternatives detailed in this memorandum were developed with input from LAFCO staff and build on the core criteria incorporated in the baseline recommendation – Option Two – presented at the June 5th hearing with respect to setting a reasonable exit fee should the detachments proceed. Specifically, this involves continuing to use Dr. Hanemann’s estimated annual net revenue impact of \$12.581 million as the basis of any exit fee as well as deferring to his professional judgement that the duration of any exit fee does not exceed 10 years. The alternatives also continue to focus only on the ESP North County with regards to applying credits to the applicants. Lastly, a comparison of each alternative against the projected savings for Fallbrook and Rainbow applicants is provided to assist the Commission in deliberating the various alternatives presented in this memorandum.

With the above considerations in mind and drawing from the preceding analysis, the following core conclusions are provided to assist in the Commission’s deliberations:

- Options 2A appears as the most reasonable substitute should the Commission prefer an alternative to the baseline recommendation. Although the exit fee is more than double the baseline recommendation, there is still a projected monthly savings to the applicant’s ratepayers (\$1.49), albeit minimal when compared to Option 2 (\$8.37).



STRATEGIES

- All of the remaining alternatives increase the annual exit fee from between \$28.9 million to \$62.9 million above the baseline recommendation. Pertinently, all of the alternatives shift from a monthly savings of \$8.37 (including baseline exit fee recommendation) to a monthly cost for the applicants' ratepayers between \$3.66 and \$14.57.

MEMORANDUM TO SAN DIEGO LAFCO

TO: MR. KEENE SIMONDS, EXECUTIVE OFFICER
FROM: MR. ADAM WILSON, CONSULTANT
DATE: JULY 27, 2023

RE: RESPONSE TO MET CHAIR AND RELATED COMMUNICATIONS

OVERVIEW:

At the request of the Executive Officer, this memorandum serves as supplemental response to written comments received on June 5, 2023 by Metropolitan Water District of Southern California (“MET”) Chair Adán Ortega. The memorandum similarly addresses related comments received on June 14th from the San Diego County Water Authority (SDCWA) and Eastern Municipal Water District (EMWD). These communications collectively tie to MET’s role and/or interest in the reorganization proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD) to leave SDCWA and join EMWD.

SUMMARY CONCLUSION:

MET’s Finance, Audit, Insurance, and Real Property Committee (FAIRP) held a meeting on June 13, 2023 and the topic of the reorganization proposals and their potential implications for MET was part of the agenda. FAIRP’s deliberations during the June 13th meeting appear instructive for LAFCO purposes. Markedly, MET Counsel advised FAIRP that Board approval is **NOT REQUIRED** when there is an exchange (reorganization) of territory between two member agencies. Further, in the course of its deliberations, FAIRP was abundantly clear that they do **NOT** want MET to take a position and do **NOT** want to be directly involved with the LAFCO proceedings related to the Rainbow MWD and Fallbrook PUD reorganization proposals. Considering this, and with the proceeding summary in mind, it would be appropriate for LAFCO to continue forward and seek final resolution at the July 10 hearing, and irrespective of MET activities – including the formation of an Ad Hoc Committee.

POINTS OF REASONING:

During the FAIRP meeting, MET staff gave a brief presentation and concluded the following:

- Chapter 3 - MET Act: Applies when there is an exchange or reorganization of territory of two member agencies. Board approval has NOT been required for these changes. Historically, they have viewed them simply as internal reorganizations amongst member public agencies.
- Section 455 – MET Act: The MET Act was amended in 1969 to include Section 455. This section specifically addresses reorganizations within Metropolitan’s jurisdictional boundary, and specifically states internal boundary changes between Metropolitan member agencies do NOT require Board approval.

After Staff's presentation, the following comments by Chair Ortega were made in reference to MET law:

- Chair Ortega: "I have never challenged the interpretation of the law" and "Now in my communications with San Diego LAFCO, I have never told them not to approve it."

Director Camacho then suggested an Ad Hoc Committee should be formed for better and further clarification, in which the following comments were then made:

- Chair Ortega: "I will seriously consider putting together an Ad Hoc Committee to address policy issues and hopefully it can be informed by the guidance of the law, by our General Counsel, as we contemplate policies that may help us cope with uncertainty that we're facing on this front."
- Director Peterson: "I think the most prudent thing for MET to do is stay out of this."
- Director De Jesus: "...I feel that Metropolitan, not to be naïve, but the Metropolitan may be meddling in areas that we probably should not get involved in."
- Chair Ortega: "I would not set up an Ad Hoc Committee to get involved in the San Diego detachment issue...they can evaluate our actions and then determine whether it's in their interest, given what's happening in planning, whether to proceed or not. But I would not ask this Board to take an official position on what's going on in San Diego."
- Director Dennstedt: "So I appreciate all the comments and I think its best left between San Diego and Fallbrook and that LAFCO agency to make those determinations...."
- Director Kurtz: "I think we ought to have that discussion, but that any policy change would apply to the next request, not in the middle of the discussion that is underway in San Diego right now."

Transcript of the FAIRP Meeting is attached.

CORRESPONDENCE:

- MET Chair Adán Ortega submitted comments to San Diego LAFCO and stated that "As Chair of Metropolitan's Board of Directors I must assert our board's prerogative to approve any service change under the annexation provisions of the Metropolitan Act (Part 7. Changes in Organization)." This comment conflicts with MET staff's presentation as noted above.
- The SDCWA letter appears to suggest the LAFCO Commission should take pause until MET matters are reviewed. However, based on MET staff's presentation and the FAIRP committee discussion (noted above), the reorganization proposals are not conditioned to any outside efforts by MET and are not subject to a decision by MET.
- The EMWD seeks to reiterate their neutral position on the proposals and encouraged "San Diego LAFCO to move forward expeditiously with its process, especially now that the MWD FAIRP Committee communicated that MWD will not be weighing in on this LAFCO proceeding."

Correspondence received by MET Chair Adán Ortega, SDCWA, and EMWD are attached.

FINAL POINTS / RECOMMENDATIONS:

- MET law governs internal reorganizations within their own boundaries and the Rainbow MWD and Fallbrook PUD reorganization proposals do NOT require MET Board approval.
- FAIRP Committee does NOT want to get involved in the Rainbow MWD and Fallbrook PUD reorganization proceedings.
- FAIRP Committee does NOT want MET to take an official position on the Rainbow MWD and Fallbrook PUD reorganization proposals
- San Diego LAFCO Commission should proceed with their July 10 hearing to conclude consideration of the Rainbow MWD and Fallbrook PUD reorganization proposals and irrespective of any future efforts by MET to form an Ad Hoc Committee to discuss long-term planning and policies.
- San Diego LAFCO should be a participatory party to MET's independent long-term efforts.

Attachments: as stated

FINANCE, AUDIT, INSURANCE, AND REAL PROPERTY COMMITTEE

June 13, 2023

Item 1: Public comment

Tom Kennedy: My name is Tom Kennedy. I'm the General Manager at Rainbow Municipal Water District. I'm also a member of the San Diego County Water Authority Board. I'm here to talk to you about your item, I believe it's 7b regarding annexations. And I just want to give a little background for this committee so you have the full picture. Rainbow's a small rural agency in Northern San Diego County. We're home to the Avocado Festival, and used to have the largest avocado growing region in the state, but we've lost over a million trees in the last 15 years due to the cost of water. And we've been struggling with how to protect our region's only economic infrastructure and the workers that supports many of whom are low income and we have in the Fallbrook area, is in the highest rates of poverty in San Diego County.

And so we've tried to work within the structure at the Water Authority to affect rates that are equitable for our region as opposed to those that meet the needs of the urban areas down south. But as some of you come from smaller agencies within this Board, it's difficult when you're the minority vote structure and you are unable to affect policies that impact your region. And so we initiated a process over four years ago to commence detachment from the Water Authority and annexation Eastern Municipal Water District. And the MWD Act is clear. We're a little puzzled now by the Chair's involvement in this matter because the law is clear, and I'm sure you've heard from your legal counsel about what the law says about this and that we're surprised by the last minute introduction of, what we believe is, inaccurate information into the LAFCO process.

We've been, our application at LAFCO have been processed for over three and a half years with extensive input from all parties. And here at the 11th hour, we've got some concerns being brought up that, that we don't believe are politically accurate, or legally accurate. People tell me that, oh, this is just political payback for the Chair, helping out those people who helped got him elected. But I don't think so. I hope not. And I hope the Chair can make time to meet with some of us agents, our agencies, Fallbrook and Rainbow, so that we can figure it out better where he's coming from and he can understand what we're doing. I think that there's important for this Board to understand that there won't be any impacts to Metropolitan or regional planning efforts with regard to the detachment.

We're gonna use the same amount of water we do from the Skinner service area, whether it gets invoiced through the San Diego County Water Authority or it gets invoiced to Eastern Municipal Water District, it's not gonna change the source of water, it's not gonna change the treatment plant, pipelines, turnouts or anything. So it's hard for us to understand that there's gonna be an impact. There's also the fact that there's a considerable departure fee being levied by LAFCO, \$64 million we're gonna have to pay to get out. Now we're gonna get some credits for savings the Water Authority has, but that's what the staff has determined. So there's no impacts to the Water Authority. They're only gonna be held whole for at least five years, and considering they've already had four years to plan for it, by the time we're done, there'll be a 10 year offering [?] period.

So, in closing, I just wanted to come up here and inform you folks of where we are down in Rainbow and encourage the Chair, should he have any further concerns, to reach out to us. We'd be happy to meet at the time and place of his choosing so that we can all understand each other's positions a little more clearly. Thank you.

Item 7b: Annexation Policies within Metropolitan's Current Boundaries

Chair Smith: All right. Moving on to item 7B is the annexation policies with Metropolitan's current boundary. I will ask Mr. Chapman to please introduce the presenter.

Shane Chapman: Thank you, Chair Smith. This will be a two-part presentation and Ethel Young, a resource specialist in the Real Property Group with over 30 years of experience here at Metropolitan, principally administering the Board's policy on annexations will take us through the first part. And then Cathy Stites from the Legal Department will then take over and will walk us through the language in the MWD Act as it relates to annexation. So Ethel, please.

Ethel Young: Thank you, Shane. Good morning, Chair Smith and committee members. This is an informational presentation regarding Metropolitan's annexation policy and processes. I will start with going over the history formation of Metropolitan service area and our process for discretionary annexation, which are the most common processes staff handles. Staff counsel, Cathy Stites, who will conclude the presentation with the review of the law relevant to Metropolitan's annexation process, including the MWD Act and LAFCO.

Annexation is the growth of Metropolitan service area, which currently exercises and reports to the Finance, Audit, Insurance, and Real Property Committee and to Metropolitan's Board at the request of the member agency.

Metropolitan was formed in the late 1920s by the original cities of the coastal plain of Southern California. Between 1942 and 1954, 14 additional member agencies joined Metropolitan with the addition of the Municipal Water Districts and County Water Authority.

Between 1960 and 1971, Ventura County, with Upper San Gabriel and Las Virgenes MWDs joined. In 1971, the city of San Fernando joined after the earthquake. And in 1997, Coastal MWD consolidated with MWDOC, which leaves the current total of 26 member agencies.

Metropolitan's current service area is approximately 5,181 square miles. The MWD Act authorizes Board approval or discretionary annexations and automatic annexations, which do not require Board approval. Cathy will further discuss automatic annexations later in the presentation.

Metropolitan's most common process is the approval of discretionary annexations of new territory governed by the procedures set forth in the Administrative Code section 3100 through 3108. The annexation process begins as a member agency request to annex property into Metropolitan's service area. Staff reviews the required materials submitted by the member agency, included for example, legal description and map, acreage, and parcel information, land use existing and proposed, water use efficiency plan and CEQA compliance documents, meeting the Administrative Code requirements within section 3100.

Committee and Board set the terms and conditions for the annexation and approve the member agency request. Subject to water service regulations, no direct or indirect benefit of area outside the District, no obligation for additional facilities, water availability, annexation criteria, terms and conditions.

Member agency approval of the annex Metropolitan's resolution, LAFCO board approval, which includes public hearing and then recording at the county recorder's office completed.

Metropolitan's annexation fee is section 3300 of Metropolitan's Administrative Code and is either the back tax computation or the per an acre charge, whichever is greater. The per an acre charge is typically used to calculate the annexation charges. This year's rate is \$6,875 per a net acres. Once parcels are annexed, Metropolitan's ad valorem tax is applied and for agencies who request

it, the standby charge is applied. All but four member agencies request that MWD levy the standby charge. They are Los Angeles, Santa Monica, Beverly Hills, and West Basin.

This chart shows the per an acre annexation charge over the past 10 years. Over the past 10 years, Metropolitan's Board approved annexations for Calleguas, Western, Eastern and San Diego County Water Authority.

This chart shows the relationship of the acres of territory annexed and the acre feet of water supply added to the area annexed to Metropolitan over the past 10 years by these member agencies.

In total, during the past decade, Metropolitan annexed approximately 1,433 acres with a new water demand of 886 acre feet per year.

Metropolitan's authority to annex rise out of the MWD Act, the MWD Administrative Code and the MWD Policy Principles. The only annexation specific policy adopted recently was done in 2016 as a response to legislation providing LAFCOs with the authority to do forced annexations, and making it clear Metropolitan opposes such efforts unless the new territory is subject to all the terms and conditions applicable to all the other rate paying customers.

At this time, I'd like to call up Cathy Stites, who will continue the presentation with review of the laws relevant to Metropolitan's annexation process, including MWD Act and LAFCO. Cathy.

Cathy Stites:

Thanks Ethel. We were asked to address LAFCOs authority over Metropolitan and also to go through the sections of the MWD Act as they relate to annexations.

So in addition to our Act, and Administrative Code, and the policies that this Board adopts, the LAFCO laws were adopted in 1963 and with their adoption, the legislature gave the authority to change public agency boundaries to the LAFCO commissions in each county. It was intended to address the rapid growth following World War II and to ensure the public agency obligations didn't overlap or duplicate one another.

However, based on the MWD Act and limited exemptions in the LAFCO laws, Metropolitan determines its own boundary changes and annexations, and LAFCOs may not force Metropolitan to take on new territory involuntarily, nor alter our boundaries from that of our member agencies.

However, LAFCOs do have to approve any final boundary changes to Metropolitan and its member agency's boundaries. It's essentially a ministerial function recording a certificate of completion on the property that makes the boundary change official, and allows Metropolitan to assess its special levies, including its ad valorem tax and when requested, the standby charge.

However, the LAFCOs are also required to do a municipal service review and determine a sphere of influence for all public agencies within each county. There is no exception from that requirement on LAFCO for Metropolitan Water District. And so in five of the counties that Metropolitan resides in, those LAFCOs have deemed Metropolitan's sphere of influence co-terminus with its member agencies in that county.

Los Angeles County has not done that to date. And ironically, the law contemplates that for multi-county agencies like Metropolitan, it is the county with the most assessed value that should do the MSR and sphere of influence. But to date, LA has elected not to do that.

So I was asked to also go through the MWD Act as it applies to annexation, and a few of the relevant sections. The annexation laws in our Act are in part 7, sections 350 to 455.

Chapter 1 governs annexation of new territory to a Metropolitan Water District. Articles 1, 3 and 4 provide authority for discretionary or Board-approved annexations of new territory that require Board approval. This is distinct from automatic annexations under articles 2 and 5 that do not require Board approval. These were limited to the original cities within Metropolitan and the cities within the County Water Authority pursuant to provisions in both acts, basically grandfathering in the original cities in their right to annex, and largely the automatic annexations have been exhausted. There are some pockets of areas that could still be automatically annexed, but it's limited and it doesn't happen that frequently.

Chapter 2, deals with the exclusion of territory or what they call detachment. Basically, chapter 2 just confirms that when area is detached from a Metropolitan member agency, it should be concurrently detached from Metropolitan unless it's absorbed into another member agency, consolidated, merged, dissolved, whatever that is.

And chapter 3 of the Act applies when there is an exchange or reorganization of territory between two member agencies. Board approval has not been required

for these changes. Historically, we viewed them simply as internal reorganizations amongst member public agencies.

So I was asked to provide a few sections of the Act. These are all, our Act is on our website if you want to see the entire section. But section 350 deals with discretionary or Board-approved annexations. You can see it allows territory to be annexed to a Metropolitan Water District upon terms and conditions fixed by our Board.

Section 450 deals with detachments and it states that areas excluded from a member public agency shall be excluded from Metropolitan. This is to ensure that if they are detached, water's not served outside the service area.

Section 455 addresses exclusions, or excuse me, exchanges or what we call reorganizations that are internal to Metropolitan's boundaries. Section 455 was added to Metropolitan's Act in 1969 in the amendments that were done at that time. To clarify the boundary changes between Metropolitan member agencies did not require its Board's approval. This was on the heels of Western obtaining the Lake Matthew area from Eastern, and it was part of a packet of amendments done at that time.

So that concludes what I was asked to address, and I'd be willing to take any questions.

Chair Smith: Thank you, Ethel and Cathy for the presentations. So we may have questions or a statement here. We'll start with our Chair, Chair Ortega.

Chair Ortega: Thank you very much, Chair Smith, and thank you very much to Real Property and the legal team for giving us this thorough statutory review of what governs annexations and detachments within our service area. I have never challenged the interpretation of the law. What I have done is to defend the Board's policy prerogative on these issues. The reason I thought that this was important is that it involves two separate counties. The issues in San Diego are not member agency-sponsored by either party that would be impacted. Thirdly, it would be imposed by a third party, and it's based on the issue of affordability. And finally, it coincides with our planning process. And I think it's important for the Board to understand that as affordability gains more traction in the public discourse, that we may not be in charge of our own destiny, based on the precedent that would be taken if this annexation and detachment takes place.

Now in my communications with San Diego LAFCO, I have never told them not to approve it. What I have asked them to do is to consider it in the context of our

planning. As you know, they've used the rationalization that a letter was submitted by our General Manager, our then-General Manager in 2020. And I don't think any of us would dispute that our water supply conditions and our governance have dramatically changed over this period. We went through, last year, a dramatic issue with respect to the State Water Project in the State Water Project-dependent areas. I think the Board deserves to weigh if such impacts translate into an annexation that would be fully dependent on imported water, not sharing in the supply portfolio that either member agency of Metropolitan has developed.

I think the other implication here with respect to policy considerations that the Board ought to make is what other third parties feel that they have the ability to change the boundaries of our member agencies, and what impacts could that have?

I think as we're planning for the next 25 years, we need to have our eyes open. Just yesterday, for example, we distributed a new report by the grand jury in Orange County that is basically saying, I read it, it said that number one, Metropolitan and our member agency in Orange County has failed to develop alternative water supply resources fast enough. And so now they're suggesting the creation of yet another entity that would be superimposed to plan and expedite projects. I think they too should be paying attention to our planning process. I think Metropolitan, in its history, has shown incredible foresight, and just because the methods of communication have shifted and people are not interested in the boring work that we do, doesn't mean that things are not happening.

We have a process in place right now to plan for the next 25 years, and the integrity of that process is going to weigh on how we deal with outside sources. Yesterday, for example, I addressed a forum of cities that have been gathered by the Sonora Institute in Arizona for cities to have a more coherent way of weighing in on water policy. And one of the things I did is I talked about our climate adaptation master planning process and that they ought to pay attention to that process because it's going to impact, I think, water planning in Southern California in a very fundamental way. And so I have nothing against the entities in San Diego County that are looking for more affordable water. I think they share that with many other communities in California and in Southern California in particular. But if we're going to start moving our member agency boundaries to assure the lowest cost for water based on what our member agencies have done to price their water, then it's the Wild West, and I don't know how we manage that. And the Board ought to be able to have a policy discussion and weigh its options as we're moving forward with our plans.

And so with that, I hope that the Board will opine its direction to the staff in terms of any follow up that might need to be done on this front. But again, I'm not suggesting that we go out and oppose what's going on with LAFCO in San Diego. I hope that LAFCO would pay more attention to our planning process, as I do the grand jury in Orange County. And then I hope that the Board, as we move forward with our planning, understands that this is a risk because of its unprecedented nature. So thank you very much.

Chair Smith: Yeah, thank you for those introductory remarks. Looking for any members of the committee or other members that would like to make comments on this issue.
Director Armstrong.

Director Armstrong: Thank you, Chair. No, I think this was really informative and I appreciate it, and I think this all really does bring to light a need for a policy discussion on this. I'm not clear actually how all of this applies to this current effort going on within the Water Authority in Fallbrook and Rainbow, I'm not sure how all of these act provisions apply to that. So a request I would have would be to help us understand more on that and especially going forward.

I want to just also kind of reiterate, I represent Eastern, but Eastern, our position is very neutral on this. We're not advocating for it or the opposite either, we're just neutral on this. But I do think this is important and I think it's important that we get, if there is going to be some direction or some action from Metropolitan, that it happens very quickly too, because I know the LAFCO commission is meeting again I think in early August, and I think we should, if we're going to have some resolution to something, we should work to have that done before that point in time. But anyways, I think this is important going forward, and I would think it brings to light the need for further policy discussion. I just would hope if it's going to impact this, we do it really quickly so that we can keep things moving and not stall their process. Thank you.

Chair Smith: Great. Director Camacho.

Director Camacho: Yeah, I'm not on the committee.

Chair Smith: Oh, it's okay, you're up next.

Director Camacho: In trying to go through all of this and have it all make sense to me as well because it is a little bit confusing, I just had a few things. One, I wanted to get a better understanding of what you meant by the Wild West, if you have examples of what that means, could potentially mean for MWD and the family. And to Director Armstrong's point for better and further clarification, we may even

want to put together or ask you to consider putting together maybe a ad hoc committee that could get a outside third party legal opinion, that will look at things and kind of get us that definition of what exactly this all means and how it should take place.

I also understand that there is legislation working through the process right now, to deal with annexation such as this, and maybe the folks of San Diego should be deciding some of their own fate. So those are my three comments, but I did have, of the three, that one question, I just want to better understand what the Chairman meant by the Wild West, if there's examples of what that means? Thank you.

Chair Ortega:

Thank you, Director Camacho. Thank you, Chairman Smith. Well, to put it simply, I spent the early part of my career in water as the assistant general manager of Western Central Basin. They took different approaches to funding their local projects. West Basin put the cost of their water recycling project under the leadership of Director Rich Atwater, who's our colleague on this Board on the volumetric rate. Central Basin placed their cost on a standby charge. There's a area in a investor-owned utility where a UCLA study about a year ago found that the poorest people are paying the highest water rates, and the reason is that under the Public Utilities Commission, their rate is weighted on the cost of imported water from West Basin. So it was suggested to me that maybe a way to get this severely disadvantaged area that's paying the highest water rates in the county some relief is by redrawing the boundaries so that this investor-owned utility would rest fully within the Central Basin Municipal Water District.

Well, knowing full well what was involved in financing the West Basin Recycling Project and the bond covenants, of course I indicated that it wouldn't be a good idea. And I think that from that, I took seriously the fact that there is a basic burden here that has to be addressed. But if we're going to start redrawing boundaries as a way of providing that relief, the Wild West means that we won't be able to predict on a year to year basis, or our member agencies won't be able to predict, what may change within their boundaries and in their assurances to the bond market in order to pay the debt for the resiliency projects that they are building. It's a very fundamental issue.

And so if that starts happening everywhere, because this unprecedented action in two counties, I mean, there's a lot simpler lines that we could redraw than those that are taking place right now between San Diego and Riverside Counties. And so the Wild West means greater unpredictability and uncertainty for our member agencies on how they pay for their projects. Now, I have great

sympathy for agriculture. I'm a graduate of the California Agricultural Leadership Program, and I know full well, and I've looked at what's happening in San Diego, and while there are issues that have been explained today, a lot of the burden could be shifted to other portions of agriculture in San Diego County. San Diego, just for everybody's knowledge, I chaired the Water Committee for the State Board of Food and Agriculture for seven years. And one fact that few people know about San Diego County is that it has the largest number of family farms in California. You would never guess it. And so, it's a huge issue there. And I think the desire would be to help all of agriculture in San Diego County, not just some, and to do it in a way that's orderly and that guarantees, ultimately, that they're going to get the outcome that they want. And my fear right now is that there may be expectations of an outcome that we may frustrate with our planning process because at the end of our planning process, guess what we're going to talk about? Rates and rate structures.

And so, I believe that everybody should have their eyes open and I would be the first to welcome their input into our planning process, which I've been pushing for. I've been asking the General Manager, to the degree that we can, that we need to be involving people that will be impacted by our policies. And so it's with that, that I'm answering Director Camacho's question, and I'm sorry to be a little long-winded. But I will seriously consider putting together an ad hoc committee to address the policy issues and hopefully it can be informed by the guidance of the law, by our General Counsel as we contemplate policies that may help us cope with uncertainty that we're facing on this front. Thank you.

Chair Smith:

And Director Camacho, the way I see the Wild West is money and water. So that's what we're in the business for. So for the water aspect, having agencies leave completely undermines all of the water planning of the agency. How can you plan for water use when you don't know who's going to use your water? And money is when we have CIP projects and we have 30-year bonds. If an agency leaves and they don't pay their mortgage, then you've just lost out on all of the money. So, when we've talked about the Wild West, that's kind of what I boiled it down to in the most simplest terms. So, yeah, and I think I agree with our Chair about creating some sort of annexation policy, ad hoc committee. Director from Eastern is involved and of course the Water Authority is involved. And it's something that's happening very quickly in August. And if that committee could get into the details, there's a lot of information. I mean you know me, I read everything with this agency and I think I've read a thousand pages on this issue. So, I'd be happy to entertain that direction. Yep, Director Quinn, is that you down there?

Director Quinn: Thank you for the opportunity to speak on this, and I feel much better educated and more well-rounded on this issue thanks to Chair Ortega's comments. I also have sympathy and am quite sensitive to the affordability issues raised by, I believe, it was Tom Kennedy in public comment. And I think that that's worthwhile having additional conversations and I know that this Board is doing so. But I would also be interested in a discussion around when these annexations or when these types of changes are going to impact the source of supply as well if you're going from a predominantly Colorado River to a predominantly State Water Project area or such. We ran into a similar issue just last month with our vote on Rubidoux and we had mentioned having a policy discussion. So I support the Chair's recommendation to form an ad hoc committee to look at some of these issues. And that's it. Thanks.

Chair Smith: Thank you. Any others?

Katano Kasaine: Director Peterson.

Chair Smith: Director Peterson? Yep.

Director Peterson: Thank you, Mr. Chairman. Nothing's more fundamental in this country than self-determination. I mean, we became a country because we weren't being represented by a king. And it's the same way with agencies. We had a letter that was written by our General Manager; there was no objection to that letter. The letter said, "We're neutral, we're not going to get involved in this." We didn't get involved in the Valley secession at all. There was no discussion at Met, and I think that was appropriate. We never got involved when Las Virgenes conceded quite a bit of land. We were forced to take all of LA County and yet we knew we'd never service them and they're paying taxes, they're voting in our elections, and you provide them all the services in L.A. So, it made no sense. And so, we decided to deannex. Met didn't get involved in that at all.

I think the most prudent thing for Met to do is stay out of this. And if you try to tie it into some climate action plan, that will mean it will never end or end at a long, long time from now, not in August. And to me, I think that self-determination is very important in this country. It's fundamental. I don't see any difference in sales from Met, same source of water's going to be going to San Diego and going to Eastern. And I just think, to me, that the issue of self-determination is very, very important. And I've appreciated Met's not getting involved in the Valley secession and of the secession of parts of my district to LA. And if the whole issue comes down to the votes, how about annexing Coronado Island? You get all those votes right back, they're taking water and they're not paying for it. They're not paying for that \$6,000 an acre. You can get all those

votes back right then and there. So, if you have annex Coronado, I think the pot would be right.

Chair Smith: All right. Any other commenters? Director De Jesus? Oh, I've got this here. Go ahead.

Director De Jesus: Yeah. Well, I just want to thank the Directors for their comments and I think what it says is that this issue, as simple as some of us may think it should be, is very complicated. And so I appreciate putting together a committee. I'm not so sure if ad hoc, sub or a full Board is really what we're looking for of we're all having to eventually vote on it. I think we should be asked to attend such meetings so we can listen to some of these questions and ask some of the questions. I'm not an expert at this by no means, certainly, and I think that's the reason why I'm making the appeal that this be more transparent and allow us to at least hear and listen to some of these issues.

My knee-jerk reaction to all this, if I may share, is that perhaps I feel that Metropolitan, not to be naive, but that Metropolitan may be meddling in areas that we probably should not get involved in. And right away I think of the risk factor. I mean, are we looking for a lawsuit here as a result of us getting involved to some degree that is not in agreement with others? Those are the kind of things I think that need to be considered. If it doesn't impact Metropolitan and its mission, if you will, relative to I think, Chair Smith, you mentioned water and dollars, if you will, then I need to be more convinced or at least understanding, educated as to why we would want to be so concerned about an agency's ability to plan, if you will.

That's not our business. I don't think we want to get into that, into that deep in the weeds, if you will, on how others have to figure out how to manage their allocations, if you will. But I understand those other impacts that it has on some of the things that you said, for example, the long-term financial plans and the future of those particular agencies. But I would have to believe taking a step back that those agencies are considering those impacts. And if they had any objections to that, that they would be making it to the LAFCO, if you will, or even going public with it or you know what? Suing. I mean, some of these agencies, that's all they like to do is just file lawsuits. And so, to the extent something like that would impact them, then do it to others, if you will, as well. Thank you.

Chair Smith: Yeah. Chair Ortega.

Chair Ortega: Well, thank you very much. When I look back at the minutes of the past annexation issues, one of them was mentioned here with respect to Eastern and

Western. Two things happened. The two member agencies were engaged, and they were talking to each other and there was consent. Secondly, they came to the Metropolitan Board. I mean, read the minutes. It kind of goes through the whole process of what happened. The issue that we're addressing here, and I would not set up an ad hoc committee to get involved in the San Diego detachment issue. That would not be the purpose of a subcommittee or of an ad hoc committee. The purpose would be to look at the precedent and determine the policy implications for Metropolitan and its member agencies, particularly, as we're dealing with the issue of affordability because that issue is gaining steam, and it's something that we have to take seriously. I know we went through this exercise at a workshop just a few weeks ago to talk about our definition of affordability and how we deal with it. I had a meeting yesterday with the president of the Western Municipal Water District Board and Director Dennstedt, who had a very innovative way of dealing with affordability issues.

But going forward, we need to understand what we're dealing with here. And if there's third parties that could come in and redraw your boundaries in order to make water less expensive, here's another term, it's a race to the bottom. Who else is going to take that cue? Who else is going to jump in and say, "Hey, I have the authority to do this." You've got land use planning entities like SCAG and SANDAG and others. The grand juries or others that are out there. Everybody assumes the legislature could always jump in, but we need to understand that category of risk and the challenge that it presents to us in our ability to do long-term planning. And so, that would be the nature of such a discussion. It would not be to get involved in this detachment issue. They can evaluate our actions and then determine whether it's in their interest, given what's happening in planning, whether to proceed or not. But I would not ask this Board to take an official position on what's going on in San Diego.

Chair Smith: I have a couple more speakers on the queue. And a reminder, you can push your button. So, Director Miller?

Director Miller: I agree with what's being said here. This is a very complex issue. This is not something that gets done every day. If it's not unprecedented, it's nearly unprecedented on what's happening here. The San Diego Water agencies, agencies, the vast majority, if not all of them, are against this. I liken it to sitting down with 20 people and agreeing to spend money on projects and just as soon as the projects gets done, five agencies decide they don't want to pay for it because their costs are driven up. We all make 30, 40, 50 year plans and they all come with costs and they all come with foresight and planning, and you can't really plan on anything when you can have people decide they want to exit it at

any moment, when they decide, well, I can get something cheaper over here than I can here.

This is a direct shift of costs from a couple of agencies to a bunch of other agencies and those bunch of other...we talk about self-determination. I don't get a vote on whether I want to accept those added costs. The person that's going to get the cheaper cost gets to vote. I'd like to vote that Tim Smith pays my property taxes. So if I'm the only one that gets allowed to vote, I'm going to vote, "Yeah." So that's what we're looking at here. And I don't think the San Water Authority has been unreasonable in making their requests of an exit fee and what have you. I worry about my rate payers just as every water agency out there should worry about your rate payers. I'm going to be charging my rate payers more money and they're not going to get better water, more water or actually anything for their money. They're just going to get to pay the bill.

And I think this is a far-reaching decision that's going to be made down there. And I agree with the Chair, and an ad hoc committee to make sure that the Met is in the right position with the right policy on this issue, has a value to us, because as the Chair said, another agency down the road can use this as a precedent to get off. Maybe one agency wants to merge with another agency because they can get water for \$10 an acre foot, cheaper. Because in the ultimate game here, using the numbers that have been proposed down there, we're talking about two agencies paying \$25 a month less for their water and everybody else paying more. And that's a precedent, when people start chasing \$20 an acre foot or \$20 a month, man, it doesn't take much to find another agency that might be able to, that you could hook onto and get a, who has wells like Orange County, and you can get cheaper water. So I think an ad hoc committee to make sure that the Met is in the proper position and has the proper policy is a good idea. Thank you.

Chair Smith: Thank you Director Miller. I have Director Dennstedt and then Director Kurtz.

Director Dennstedt: Thank you, Mr. Chair. And thank you for all the comments and I appreciate legal counsel's presentation on the articles and what is being followed, and I appreciate the Chair bringing up the fact that Eastern and Western had an MSR review here recently. It took many, many, many, many years to go through that, but I really think that Metropolitan did not take a position on that. They didn't get involved in it. It really came down to the will of the people and what the people of Murrieta in that annexation area wanted and what they were vocalizing, and how they wanted to have their agencies, their water bills, maintained and issued. So I am not a fan of lawsuits and getting in the middle of creating more. We talk about affordability. Well, let's talk about the

affordability of the legal counsel and no offense to the sharks in the room, but there are condos in Maui.

So I don't think that's the area that we need to go and to get involved in some unnecessary litigation that costs all of our customers additional monies that they're all having to pay for that, when we enter into those things. I think it really comes down to local control and what those agencies want to manage for themselves. And the exchange of water is still the exchange of water within the Met family and the overlying territories. So I appreciate all the comments and I think it's best left between San Diego and Fallbrook and that LAFCO agency to make those determinations, and ultimately the voters who will be, have the ability to be able to protest on that or not to make that change actually happen. So those are my comments. Thank you.

Chair Smith: Okay. Thank you. Director Kurtz.

Director Kurtz: I'm not a member of the committee, so thank you, Mr. Chair, for allowing me just take a moment. I do agree with the Chair of our Board that there may be better ways to handle affordability than searching for the cheapest water within the same area, but I feel equally as strong that making a policy specific to a certain decision makes bad policy. Cities, by law, are prevented from changing the rules in the middle of the process, and I think that's a good thing. It's always on a going forward basis. You also make bad policy when you try to do it too fast because you've got a deadline, so you have to just deal with the box and that doesn't make good policy.

The legislation was mentioned, and it is my understanding, and please correct me if I have this wrong, but the legislature believes that as well, and any policy they may adopt would be on a going forward basis and would not affect any annexation that is in the process at this current time. So I'd just ask that as we go forward, we might consider that ourselves. This is something we need to talk about, there are different perspectives on it. I hope it's not the beginning of the Wild Wild West and we're going to see these multiply, but water affordability is an issue. This is one way people are dealing with it. I think we ought to have that discussion, but that any policy change would apply to the next request, not in the middle of the discussion that is underway in San Diego right now. Thank you.

Chair Smith: Okay. I'm not sure about that legislation one, Cynthia, I don't know if there's someone that could address whether it's going forward or current.

Cathy Stites: Well, I think you're referring to AB 530.

Chair Smith: Yep.

Cathy Stites: Just coming out of San Diego, and my understanding is that they're looking for a procedural exception to allow it to go forward.

But right now it would be a change to the County Water Authority Act that would require a vote of all residents within a County Water Authority on a detachment to approve it, a majority, versus just the area that is being detached. So right now, under existing law, it's only the detached area and the voters there that would vote for it and a majority has to vote to approve it. This would extend it to the 1.9 million voters within the entire Authority. And there is only one Authority, just like one Metropolitan Water District. And my understanding is that it would apply. So it could potentially, if it goes forward and if the legislature enacts it, it could apply to the current proposed detachment. That's just my understanding. The legislature could change that. It's still in its initial format, so amendments could be made, but yes.

Chair Smith: Yeah, and that was my understanding too. I wanted to make sure, Director Kurtz, you got that information.

Director Kurtz: Thank you.

Chair Smith: So Chair Ortega, I guess it's up to you for the creation of the committee. I'll leave that up to your prerogative. It sounds like there's some consensus here to get a better understanding. Even people who may not want to get involved, still want to understand the facts. We all don't have the time to get into all of the information, so thank you for suggesting that. I don't...

Director Dick?
[off mic]: Clarification on what kind of committee, sir?

Chair Smith: Yeah, so there was a clarification question about what type of committee, but I think I'll leave that up to the Chair, whether it's ad hoc, is it intended to be a temporary committee.

[off mic] [inaudible]

Chair Ortega: Well, I think that an ad hoc committee can vet the issues and set up a Board workshop that could involve everybody, but I think that an ad hoc committee can take the deep dive and then consider some of these issues that, for example, Director Kurtz raised about respecting ongoing processes and things of that sort.

Chair Smith: Great. All right. Well, I don't see any more hands. Thank you. Oh. I know you by first name. Go ahead.

Director Garza: It's all good.

Chair Smith: Director Garza. Yeah.

Director Garza: Thank you Chair for the opportunity. I'll make my remarks brief because I sense that we're about to tie it up here.

First of all, just, I hope that my comments are of value either now or later as we undergo this process. Everything I've heard this morning, frankly, has been healthy. There really isn't anything that I've heard that's wrong. I think everyone's points really are valid in terms of what our current policy guidance allows us, but I think it also shows that there are some gaps within our policies, and I'm really encouraged by our commitment to establish some sort of body. I think the recommendation from our Director from Eastern is valid on this. So I'm looking forward to that.

My comments, again, really aren't in any way to have a position either for or against Fallbrook or Rainbow or Eastern on this issue. But I think that what I'm hoping that we'll do is when we get to the next stage is that we'll remember that sometimes the lenses that we look at for policy aren't just exclusively legal. There are other lenses that we have to look at things through. There are processes that depend on certainty, and if we have processes that allow for fluid tactics and instruments within our policy guidance, I think that starts undermining our agency at that point. Because again, these instruments, whether if it's insurance or financing or rates, things that are our agency still depends on our demand and it requires that certainty.

So I'm definitely concerned about pitting agencies against agencies in the future. If somebody wants to start negotiating on rates, one against another, and for me the question is where does it stop, right? I really do think that it can become, it's a cautionary tale of us just going to the bottom of the barrel. So I'm looking forward to what next steps are and I appreciate the opportunity to make comments. Thank you.

Chair Smith: Great. Thank you, Director Garza. So I think we have a direction that we're going to be going forward with the next steps, and I will go back to my agenda.

Sellen, Erica A

From: Simonds,Keene
Sent: Monday, June 5, 2023 9:08 AM
To: Sellen, Erica A; Luckett, Tamaron; Holly Whatley (hwhatley@chwlaw.us)
Subject: Fwd: June 5th Agenda item 6a

Follow Up Flag: Follow up
Flag Status: Completed

Email comment

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From: Ortega Jr.,Adan <AOrtegaJr@mwdh2o.com>
Sent: Monday, June 5, 2023 8:48:09 AM
To: Simonds,Keene <Keene.Simonds@sdcountry.ca.gov>
Cc: Sandy Kerl <skerl@sdca.org>; Hagekhalil,Adel <AdelH@mwdh2o.com>; Joe Mouawad P.E. <mouawadj@emwd.org>
Subject: [External] June 5th Agenda item 6a

Dear Mr. Simmonds,

Your agenda Item 6a regarding the proposed detachments of two member agencies of the San Diego County Water Authority calls for LAFCO's approval of their "concurrent" annexations to Eastern Municipal Water District.

At last month's Executive Committee meeting, an item was voted to be added to our June Finance, Audit, Insurance, and Real Property Committee meeting to review legal requirements and the board's annexation policies where a change of service is requested within Metropolitan's current boundaries.

Additionally, at least one other county LAFCO in our service area, does not believe that they have any jurisdiction over MWD and our existing member agency boundaries because our agency pre-dates the formation of LAFCO.

As Chair of Metropolitan's Board of Directors I must assert our board's prerogative to approve any service change under the annexation provisions of the Metropolitan Act (Part 7. Changes in Organization). Such matters may impact not only finance, long term planning and water supply issues, but the balance of our weighted voting system and thus our governance.

I hope that you and your commissioners will take these factors into consideration.

Thank you,

*Adán Ortega, Jr.
Board Chair
Metropolitan Water District
of Southern California*

Keene Simonds, Executive

San Diego LAFCO Commissioners
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103
(keene.simonds@sdcounty.ca.gov)

06/14/2023

Re: MWD Committee Action on LAFCO-Related Issues

Dear LAFCO Commissioners and Mr. Simonds,

Yesterday at Metropolitan Water District of Southern California (“MWD”) its Finance, Audit, Insurance and Real Property Committee (the “Committee”) met to discuss MWD’s Annexation policies and procedures (Item 7b). This letter serves as a courtesy report to you by the Water Authority of the meeting, as it is germane to your discussions today.

After a robust board discussion with different points of view expressed, the Committee endorsed a recommendation to the MWD Board Chair by the MWD Director representing Eastern Municipal Water District to establish an ad hoc committee to address the relevant issues as discussed, including:

- Impact on MWD’s State Water Project Dependent Area of new demands on MWD that must be met entirely with imported water, since the agencies that wish to detach will not be sharing in the water supply portfolio of either impacted MWD member agency;
- Changed circumstances since MWD’s former General Manager communicated with San Diego LAFCO in 2020, including water supply and governance issues;
- Legal analysis of the authority of LAFCO or any third party other than the MWD board of directors to change boundaries within the MWD service area;

MEMBER AGENCIES

Carlsbad MWD • City of Del Mar • City of Escondido • Fallbrook Public Utility District • Helix Water District • Lakeside Water District • City of National City
City of Oceanside • Olivenhain MWD • Otay Water District • Padre Dam MWD • Camp Pendleton Marine Corps Base • City of Poway • Rainbow MWD
Ramona MWD • Rincon del Diablo MWD • City of San Diego • San Dieguito Water District • Santa Fe Irrigation District • Sweetwater Authority
Vallecitos Water District • Valley Center MWD • Vista Irrigation District • Yuima Municipal Water District

- Impact on MWD’s position of a precedent that would allow member agencies to avoid paying for water supplies and related investments made and being used to serve them, including after enrolling in any MWD incentive program;
- Impact on MWD’s financial position if its member agencies are weakened as a result of forced detachments by third parties such as LAFCO that do not have expertise in the water industry, and/or deliberately ignore MWD’s long term planning initiatives;
- What say voters should have on proposed detachments;
- Impact on MWD’s ability to implement affordability strategies;
- How the potential precedent may impact on ability to implement MWD’s climate action planning now underway;
- First of a kind transfer between MWD member agencies that is not being sponsored by either the detaching (Water Authority) or annexing (Eastern) agency (in every prior exchange, the two impacted MWD member agencies requested and sponsored the change);
- First of a kind transfer between two MWD member agencies located in different counties; and
- First of a kind transfer to be imposed by any LAFCO or other third party.

The MWD board representative from Eastern MWD agreed that there is a need for policy discussion and that it is not well understood how the provisions of the MWD Act apply to the applications of Fallbrook and Rainbow. He requested that the MWD board’s review occur as soon as possible so that it might be prepared to give input to San Diego LAFCO prior to its next scheduled August 7 meeting.

The LAFCO staff has aptly noted in its final report that the input from MWD has been “materially divergent.” In his remarks in committee, Board Chair Ortega said that he met with San Diego LAFCO’s Executive Officer and sent follow up communications in the hope that San Diego LAFCO will pay attention to MWD’s planning processes and that there is a risk associated with any San Diego LAFCO outcomes due to the unprecedented nature of these applications that have not been endorsed by its member agencies.

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Vallecitos Water District • Valley Center MWD • Vista Irrigation District • Yuima Municipal Water District

Thank you for your consideration of these important matters.



Sincerely,
Sandra L. Kerl
General Manager

cc via email:

Adán Ortega, Chair, and MWD Board of Directors
Mel Katz, Chair, and Water Authority Board of Directors
Adel Hagekhalil, General Manager, MWD
Tom Kennedy, General Manager, Rainbow MWD and Rainbow Board of Directors
Jack Bebee, General Manager, Fallbrook PUD and Fallbrook Board of Directors
Joe Mouawad, General Manager, Eastern MWD and Eastern Board of Directors
Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator

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Vallecitos Water District • Valley Center MWD • Vista Irrigation District • Yuima Municipal Water District



June 14, 2023

Keene Simonds, Executives
San Diego LAFCO Commissioners
San Diego County LAFCO
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Subject: Reiterating EMWD's Position of Neutrality, Readiness to Serve, and Support of the LAFCO Process

Dear Mr. Simonds and LAFCO Commissioners:

We are writing to clarify and to reiterate Eastern Municipal Water District's (EMWD) position on the LAFCO proceedings related to Rainbow Municipal Water District (Rainbow) and Fallbrook Public Utilities District (Fallbrook). Recent correspondences have inferred that EMWD's position on this LAFCO process have changed, which is inaccurate. EMWD's position has not changed.

In addition, EMWD's neutrality on the outcome of this LAFCO process has been mischaracterized as opposition, which is also not accurate.

Due to these recent misstatements, we wanted to clearly reiterate EMWD's position on this matter:

- 1) EMWD supports the San Diego LAFCO process moving forward;
- 2) EMWD remains neutral on the outcome of this LAFCO process; and
- 3) EMWD stands ready to fulfill its commitment to serve Rainbow and Fallbrook if that is the determination made by San Diego LAFCO.

In addition, at the Metropolitan Water District ("MWD") Finance, Audit, Insurance, and Real Property (FAIRP) Committee meeting on June 14, 2023, the committee was clear that it would not weigh in on this particular LAFCO proceeding. However, the committee members, including Director Armstrong,

Board of Directors

Philip E. Paule, *President* Stephen J. Corona, *Vice President* Jeff Armstrong Randy A. Record David J. Slawson

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Mr. Keene Simonds, Executive Director

Page 2

communicated interest in exploring whether a policy addressing internal boundary changes among MWD member agencies is necessary for the future. Please see attached FAIRP Committee discussion transcript.

We encourage San Diego LAFCO to move forward expeditiously with its process, especially now that the MWD FAIRP Committee communicated that MWD will not be weighing in on this LAFCO proceeding. The public has already invested over four years of time and resources into this process, and we believe that it is in everyone's best interest for San Diego LAFCO to make its final determination as soon as possible. As such, EMWD has no concerns or objections with LAFCO staff's recommendation to re-calendar the next LAFCO Commission hearing from August 7th to July 10th.

Thank you for your prompt consideration of this correspondence.

Sincerely,

A handwritten signature in black ink that reads "Phil Paule". The signature is written in a cursive, flowing style.

Philip E. Paule
Board President

A handwritten signature in blue ink that reads "Jeff Armstrong". The signature is written in a cursive, flowing style.

Jeff Armstrong
Board of Director
EMWD's Representative
on the MWD Board of Directors



Joe Mouawad, P.E.
General Manager



Attached: Transcript of MWD's FAIRP Committee Meeting, June 13, 2023

CC: Adán Ortega, Chair, and MWD Board of Directors
Mel Katz, Chair, and Water Authority Board of Director
Adel Hagekhalil, General Manager, MWD
Tom Kennedy, General Manager, Rainbow MWD and Rainbow Board of Directors
Jack Bebee, General Manager, Fallbrook PUD and Fallbrook Board of Directors
Holly Whatley, LAFCO General Counsel
Adam Wilson, Ad Hoc Committee Moderator

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RESOLUTION NO. _____

SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION

MAKING DETERMINATIONS, APPROVING, AND ORDERING A REORGANIZATION

“FALLBROOK PUBLIC UTILITY DISTRICT REORGANIZATION:
WHOLESALE WATER SERVICES”

CONCURRENT ANNEXATION TO EASTERN MUNICIPAL WATER DISTRICT AND DETACHMENT
FROM SAN DIEGO COUNTY WATER AUTHORITY WITH RELATED ACTIONS
LAFCO FILE NO. RO20-05

WHEREAS, on March 18, 2020 and March 19, 2020, the Rainbow Municipal Water District (MWD) and Fallbrook Public Utility District (PUD), respectively, filed a resolution of application to initiate proceedings with the San Diego County Local Agency Formation Commission, hereinafter referred to as “Commission,” pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, on April 28, 2020 the Executive Officer administratively combined the proposals for hearing purposes (Combined Proposals); and

WHEREAS, each application seeks approval to reorganize and transfer wholesale water service responsibilities within each applicant’s jurisdictional boundaries – totaling approximately 79,050 acres – from the San Diego County Water Authority (CWA) to Eastern Municipal Water District (MWD); and

WHEREAS, of that total acreage, the jurisdictional boundaries of Fallbrook total approximately 28,193 acres; and

WHEREAS, the Combined Proposals necessitate concurrent annexations to Eastern MWD and detachments from San Diego CWA with conforming sphere of influence amendments to accommodate the jurisdictional changes; and

WHEREAS, on October 24, 2019, pursuant to Government Code Section 56124, San Diego LAFCO entered into a memorandum of understanding (MOU) with Riverside LAFCO. The MOU delegates to San Diego LAFCO the responsibility to process the Combined Proposals and prepare related analyses – including, but not limited to – a municipal service review on Eastern MWD to inform a conforming sphere of influence action; and

WHEREAS, on April 2, 2020, pursuant to Government Code Section 56127, CWA applied for “non-district” status for purposes of Part 4 (conducting authority proceedings) of CKH as it relates to the Combined Proposals; and

WHEREAS, on May 4, 2020, pursuant to Government Code Section 56128, San Diego LAFCO determined CWA is not a district or special district for purposes of Part 4 (conducting

authority proceedings) of CKH as it relates to the Combined Proposals, resulting in protest and election proceedings taking place under CWA's principal act should the Commission approve Fallbrook PUD and/or Rainbow MWD's reorganization proposals; and

WHEREAS, on June 1, 2020, San Diego LAFCO approved the establishment of an advisory committee to directly assist the Executive Officer in the administrative review of the Combined Proposals; and

WHEREAS, on February 7 & March 7, 2022, San Diego LAFCO received and approved a final report on a scheduled municipal service review on the Fallbrook region and the local agencies operating therein subject to the Commission's oversight – including Fallbrook PUD and Rainbow MWD; and

WHEREAS, an applicable master property tax transfer agreement, dated December 2, 1982, applies to the Combined Proposals; and

WHEREAS, the Commission's Executive Officer has reviewed the proposed reorganization and prepared a report with recommendations; and

WHEREAS, the Executive Officer's report and recommendations on the proposal have been presented to the Commission in the manner provided by law; and

WHEREAS, staff published an advertisement notice of public hearing regarding this proposal in the San Diego Tribune and Village News on April 24th and May 4th, respectively; and

WHEREAS, the Commission heard and fully considered all the evidence presented at a noticed public meeting on the proposal on June 5, 2023 and **July 10, 2023**; and

WHEREAS, the Commission considered all the factors required by law under Government Code Sections 56425, subdivision (a), and 56668 and adopted local policies and procedures.

NOW, THEREFORE, THE COMMISSION DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

1. The Recitals above are incorporated herein by reference.
2. At the hearing, the Commission called for, heard, and considered all public comments by interested parties and read and considered the Executive Officer's report.
3. The Commission serves as responsible and lead agency under the California Environmental Quality Act (CEQA) in considering the two distinct "projects" associated with the proposed reorganization and as detailed in the Executive Officer's report: (a) reorganization and (b) the related conforming sphere of influence action. The Commission's findings follow.

- a) Fallbrook PUD's and Rainbow MWD's initiating actions involving the reorganization proposals position these agencies to serve as lead agencies in assessing the potential impacts - and specifically the annexation to Eastern MWD and detachment from County Water Authority - under CEQA. In their roles as lead agency, both Fallbrook PUD and Rainbow MWD have made findings that the proposal qualifies as a project but is exempt from further review under State CEQA Guidelines Section 15320. Staff independently concurs this exemption appropriately applies given the underlying action involves the transfer of existing municipal service functions within the same area with no additional powers or expansions therein.
 - b) San Diego County LAFCO serves as lead agency under CEQA for the conforming sphere of influence actions associated with accommodating the reorganizations. It is recommended the Commission find these actions – and specifically establishing a sphere for Eastern MWD covering its wholesale function to include the affected territory and concurrently removing these lands from the County Water Authority sphere – collectively qualify as a project under CEQA but exempt from further review under State Guidelines 15061(b)(3). This exemption appropriately applies given it can be seen with certainty that spheres are planning policies and any associated actions (establishment, update, or amendment) in and of itself does not change the environment or authorize any new uses or services.
4. The Commission APPROVES an amendment to Eastern MWD's sphere of influence to include the affected territory and concurrently remove these lands from the County Water Authority sphere as further shown and described subject to all conditions below and in doing so makes the statements provided as Exhibit "A."
 5. The Commission APPROVES the reorganization without modifications and subject to conditions as provided. Approval involves all of the follow
 - a) Annexation of the affected territory to the Eastern MWD as shown in "Exhibit B-1" and described in "Exhibit B-2."
 - b) Detachment of the affected territory from the San Diego CWA as shown in "Exhibit B-1" and described in "Exhibit B-2."
 6. The Commission CONDITIONS all approvals on the following terms being satisfied by **July 10, 2024** unless an extension is requested in writing and approved by the Executive Officer:
 - a) Completion of the 30-day reconsideration period provided under Government Code Section 56895.

- b) Submittal to the Commission of final map and geographic description of the affected territory as approved by the Commission conforming to the requirements of the State Board of Equalization – Tax Services Division.
- c) Submittal to the Commission of the following payments:
- A check made payable to LAFCO in the amount of \$100.00 for the County of San Diego-Clerk Recorder to reimburse for filing a CEQA Notices of Determination for the Sphere of Influence update and the reorganization consistent with the findings in the resolution.
 - A check made payable to the State Board of Equalization for processing fees in the amount of \$3,500.00.
 - A check made payable to San Diego LAFCO in the amount of \$1,439.96 to reimburse one-half of the cost of the public hearing notice published in the San Diego Union Tribune.
 - A check made payable to San Diego LAFCO in the amount of \$400 to reimburse one-half of the cost of the public hearing notice published in the Village News.
- d) Within 30 days of the adoption of this Resolution, the execution of an obligation to indemnify and hold harmless, to the fullest extent permitted by law, the Commission, including its officers, agents, employees and volunteers, from and against any and all claims, losses, costs and expenses for any damage or injury arising out of or in connection with the Combined Proposals, and, upon the Commission's request, the deposit of funds for the defense of the Commission. Such costs and expenses shall include reasonable attorneys' fees due to counsel of Commission's choice, expert fees and all other expenses of litigation.
- e) Pursuant to Government Code Section 56886, subdivision (v), the Commission imposes an exit fee of \$8,506,750.00 to be paid to CWA in five annual installments of \$1,701,350.00. The first payment shall be made to CWA within 30 days of the certification of the election results described below, if a majority of the electorate votes in support of Fallbrook's proposal.
7. The four remaining annual installments of \$1,701,350.00 for the exit fee described in 6.e above shall each be paid to CWA on the successive yearly anniversaries of the initial payment until completed.
8. The Commission assigns the proposal the following short-term designation:
"Fallbrook PUD Reorganization"
9. The affected territory as designated by the Commission is inhabited as defined in Government Code Section 56046.

10. The Commission delegates to the Executive Officer the performance of all conducting authority proceeding requirements under Government Code Section 57000 for purposes of the Eastern MWD annexation.
11. Pursuant to Water Code Appendix Section 45-11, subdivision (a)(2), the Board of Directors of Fallbrook PUD shall submit to its electors at the next available general or special election the proposition of detaching from CWA. **The provisions of the County Water Authority Act regarding such elections in effect at the time the Executive Officer issued the Certificate of Filing for the proposal shall govern such election.**
12. In the above-referenced election, the voters shall approve the proposition of detaching from CWA.
13. The Eastern MWD is a registered-voter district.
14. The Eastern MWD utilizes the County of Riverside assessment roll.
15. The affected territory will be liable for any existing bonds, contracts, and/or obligations of the Eastern MWD as provided under Government Section 57328, and will be subject to any previously authorized taxes, benefit assessments, fees, or charges of Eastern MWD provided under Government Code Section 57330, which Eastern MWD shall be authorized to assess, levy, and/or collect within its boundaries.
16. Pursuant to Government Code section 57202, the effective date of the approval shall be the date of recordation of the certificate of completion, but only after all terms set forth in Number 6 above have been completed as attested by the Executive Officer.
17. As allowed under Government Code Section 56107, the Commission authorizes the Executive Officer to make non-substantive corrections to this resolution to address any technical defects, errors, irregularities, or omissions.
18. Under Government Code Sections 56880-56882, the Executive Officer is hereby authorized and directed to mail copies of this Resolution.
19. The Executive Officer is further authorized and directed to prepare, execute, and record a Certificate of Completion, make the required filings with the County Assessor, County Auditor, and the State Board of Equalization as required by Section 57200, et seq., of the Government Code.

**

PASSED AND ADOPTED by the Commission on **July 10, 2023** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**

Attest:

Keene Simonds
Executive Officer

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EXHIBIT A
SPHERE OF INFLUENCE DETERMINATIONS

-Placeholder-

EXHIBIT B-1
MAP OF THE AFFECTED TERRITORY

-Placeholder-

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EXHIBIT B-2
GEOGRAPHIC DESCRIPTION OF THE AFFECTED TERRITORY

-Placeholder-

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RESOLUTION NO. _____

SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION

MAKING DETERMINATIONS, APPROVING, AND ORDERING A REORGANIZATION

“RAINBOW MUNICIPAL WATER DISTRICT REORGANIZATION:
WHOLESALE WATER SERVICES”

CONCURRENT ANNEXATION TO EASTERN MUNICIPAL WATER DISTRICT AND DETACHMENT
FROM SAN DIEGO COUNTY WATER AUTHORITY WITH RELATED ACTIONS
LAFCO FILE NO. RO20-04

WHEREAS, on March 18, 2020 and March 19, 2020, the Rainbow Municipal Water District (MWD) and Fallbrook Public Utility District (PUD), respectively, filed a resolution of application to initiate proceedings with the San Diego County Local Agency Formation Commission, hereinafter referred to as “Commission,” pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, on April 28, 2020 the Executive Officer administratively combined the proposals for hearing purposes (Combined Proposals); and

WHEREAS, each application seeks approval to reorganize and transfer wholesale water service responsibilities within each applicant’s jurisdictional boundaries – totaling approximately 79,050 acres – from the San Diego County Water Authority (CWA) to Eastern Municipal Water District (MWD); and

WHEREAS, of that total acreage, the jurisdictional boundaries of Rainbow total approximately 50,857 acres; and

WHEREAS, the Combined Proposals necessitate concurrent annexations to Eastern MWD and detachments from San Diego CWA with conforming sphere of influence amendments to accommodate the jurisdictional changes; and

WHEREAS, on October 24, 2019, pursuant to Government Code Section 56124, San Diego LAFCO entered into a memorandum of understanding (MOU) with Riverside LAFCO. The MOU delegates to San Diego LAFCO the responsibility to process the Combined Proposals and prepare related analyses – including, but not limited to – a municipal service review on Eastern MWD to inform a conforming sphere of influence action; and

WHEREAS, on April 2, 2020, pursuant to Government Code Section 56127, CWA applied for “non-district” status for purposes of Part 4 (conducting authority proceedings) of CKH as it relates to the Combined Proposals; and

WHEREAS, on May 4, 2020, pursuant to Government Code Section 56128, San Diego LAFCO determined CWA is not a district or special district for purposes of Part 4 (conducting

authority proceedings) of CKH as it relates to the Combined Proposals, resulting in protest and election proceedings taking place under CWA's principal act should the Commission approve Fallbrook PUD and/or Rainbow MWD's reorganization proposals; and

WHEREAS, on June 1, 2020, San Diego LAFCO approved the establishment of an advisory committee to directly assist the Executive Officer in the administrative review of the Combined Proposals; and

WHEREAS, on February 7 & March 7, 2022, San Diego LAFCO received and approved a final report on a scheduled municipal service review on the Fallbrook region and the local agencies operating therein subject to the Commission's oversight – including Fallbrook PUD and Rainbow MWD; and

WHEREAS, an applicable master property tax transfer agreement, dated December 2, 1982, applies to the Combined Proposals; and

WHEREAS, the Commission's Executive Officer has reviewed the proposed reorganization and prepared a report with recommendations; and

WHEREAS, the Executive Officer's report and recommendations on the proposal have been presented to the Commission in the manner provided by law; and

WHEREAS, staff published an advertisement notice of public hearing regarding this proposal in the San Diego Tribune and Village News on April 24th and May 4th, respectively; and

WHEREAS, the Commission heard and fully considered all the evidence presented at a noticed public meeting on the proposal on June 5, 2023 and **July 10, 2023**; and

WHEREAS, the Commission considered all the factors required by law under Government Code Sections 56425, subdivision (a), and 56668 and adopted local policies and procedures.

NOW, THEREFORE, THE COMMISSION DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

1. The Recitals above are incorporated herein by reference.
2. At the hearing, the Commission called for, heard, and considered all public comments by interested parties and read and considered the Executive Officer's report.
3. The Commission serves as responsible and lead agency under the California Environmental Quality Act (CEQA) in considering the two distinct "projects" associated with the proposed reorganization and as detailed in the Executive Officer's report: (a) reorganization and (b) the related conforming sphere of influence action. The Commission's findings follow.

- a) Fallbrook PUD's and Rainbow MWD's initiating actions involving the reorganization proposals position these agencies to serve as lead agencies in assessing the potential impacts - and specifically the annexation to Eastern MWD and detachment from County Water Authority - under CEQA. In their roles as lead agency, both Fallbrook PUD and Rainbow MWD have made findings that the proposal qualifies as a project but is exempt from further review under State CEQA Guidelines Section 15320. Staff independently concurs this exemption appropriately applies given the underlying action involves the transfer of existing municipal service functions within the same area with no additional powers or expansions therein.
 - b) San Diego County LAFCO serves as lead agency under CEQA for the conforming sphere of influence actions associated with accommodating the reorganizations. It is recommended the Commission find these actions – and specifically establishing a sphere for Eastern MWD covering its wholesale function to include the affected territory and concurrently removing these lands from the County Water Authority sphere – collectively qualify as a project under CEQA but exempt from further review under State Guidelines 15061(b)(3). This exemption appropriately applies given it can be seen with certainty that spheres are planning policies and any associated actions (establishment, update, or amendment) in and of itself does not change the environment or authorize any new uses or services.
4. The Commission APPROVES an amendment to Eastern MWD's sphere of influence to include the affected territory and concurrently remove these lands from the County Water Authority sphere as further shown and described subject to all conditions below and in doing so makes the statements provided as Exhibit "A."
 5. The Commission APPROVES the reorganization without modifications and subject to conditions as provided. Approval involves all of the following.
 - a) Annexation of the affected territory to the Eastern MWD as shown in "Exhibit B-1" and described in "Exhibit B-2."
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- d) Within 30 days of the adoption of this Resolution, the execution of an obligation to indemnify and hold harmless, to the fullest extent permitted by law, the Commission, including its officers, agents, employees and volunteers, from and against any and all claims, losses, costs and expenses for any damage or injury arising out of or in connection with the Combined Proposals, and, upon the Commission's request, the deposit of funds for the defense of the Commission. Such costs and expenses shall include reasonable attorneys' fees due to counsel of Commission's choice, expert fees and all other expenses of litigation.
- e) Pursuant to Government Code Section 56886, subdivision (v), the Commission imposes an exit fee of \$15,798,250.00 to be paid to CWA in five annual installments of \$3,159,650.00. The first payment shall be made to CWA within 30 days of the certification of the election results described below if a majority of the electorate votes in support of Rainbow's proposal.
7. The four remaining annual installments of \$3,159,650.00 for the exit fee described in 6.e above shall each be paid to CWA on the successive yearly anniversaries of the initial payment until completed.
8. The Commission assigns the proposal the following short-term designation:
"Rainbow MWD Reorganization"
9. The affected territory as designated by the Commission is inhabited as defined in Government Code Section 56046.

10. The Commission delegates to the Executive Officer the performance of all conducting authority proceeding requirements under Government Code Section 57000 for purposes of the Eastern MWD annexation.
11. Pursuant to Water Code Appendix Section 45-11, subdivision (a)(2), the Board of Directors of Rainbow MWD shall submit to its electors at the next available general or special election the proposition of detaching from CWA. **The provisions of the County Water Authority Act regarding such elections in effect at the time the Executive Officer issued the Certificate of Filing for the proposal shall govern such election.**
12. In the above-referenced election, the voters shall approve the proposition of detaching from CWA.
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NOES:

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ABSTAIN:

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Attest:

Keene Simonds
Executive Officer

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