April 23, 2020

Keene Simonds
Executive Officer
San Diego County Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Re: San Diego County Water Authority letters, dated April 2, 2020.

Dear Keene,

On behalf of the Fallbrook Public Utility District (“FPUD”) and the Rainbow Municipal Water District (“RMWD”), we would like to jointly respond to your letters to each of our agencies dated April 10, 2020 related to the April 2, 2020 letters you received from the San Diego County Water Authority (“SDCWA”) (“SDCWA Letters”). In the SDCWA Letters, SDCWA submitted to LAFCO the following:

- a request to have LAFCO stay proceedings on LAFCO’s consideration of the applications for reorganization (“FPUD/RMWD Applications”) filed by our two Districts, which Applications involve a detachment from the Districts from SDCWA; and

- its application for a determination under Government Code sections 56127, 56128 and 56036.6 a determination that it is not a “district” as to Part 4 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, (Government Code sections 56000 et seq. (“CKH Act”)) (“SDCWA Application”);

- a premature and improper request for LAFCO to require a county-wide vote, contrary to the express requirements of the County Water Authority Act.

This letter provides the Districts’ response to all three components of the SDCWA Letters.

1. **SDCWA’s Request for LAFCO to Stay Proceedings on the Applications**

The COVID-19 “stay home except for essential needs order” imposed by Executive Order N-33-20 is having a significant impact on our region, and we understand the challenges it presents to local governments, special districts and the public at large. That stated, as public officials responsible to the public, it is our duty to continue working on behalf of our constituents, customers and ratepayers—even during this “stay home except for essential needs” order. As you also identified in your letter, despite the present challenges, LAFCO continues to serve its
key role in the region, providing service to its constituents. We appreciate your efforts on behalf of our ratepayers.

Given that this unprecedented public health crisis is causing serious financial hardship for so many residents of our service areas – and will likely do so for months, if not years to come – it is imperative that we all help where we can; especially as it relates to our respective ratepayers. By seeking to detach from SDCWA and instead purchase our water from the Eastern Municipal Water District, we anticipate saving our ratepayers $8-10 million per year. These are savings that would translate to their bottom line, providing discretionary income to help them recover not only from the financial impacts due to COVID-19 today, but also from the rising cost of water over the past years.

In light of all this, we do not believe that it is necessary or prudent for LAFCO to grant SDCWA’s request to delay LAFCO’s review and processing of the FPUD/RMWD Applications due to the COVID-19 situation, unless LAFCO has a pressing reason to do so. There is nothing new in the FPUD/RMWD Applications that SDCWA was not already aware of. In fact, SDCWA has been aware of our Districts’ plans to pursue detachment for nearly a year, and as SDCWA noted in its letter, SDCWA took its necessary board action last year regarding our respective detachment applications. Also, it is important to note that despite the COVID-19 situation SDCWA – like most public agencies across the region – continues to move forward on many significant actions.

However, we are sensitive to any potential resource constraints LAFCO and its relatively small staff may encounter, especially during these unprecedented times. We would expect that if LAFCO stopped processing our applications, it would not be an arbitrary decision to just stop processing the FPUD/RMWD Applications, but would be part of a larger decision to stop all operations and stop processing all other proposals before LAFCO. We also understand many of the Commissioners are leading the public health efforts for their communities and our entire region. For these reasons, we are willing to work with your Commission. Accordingly, if LAFCO, because of operational constraints, needs to delay consideration of SDCWA’s Application from its May Commission meeting to its June Commission meeting, the Districts agree to such a delay. Otherwise, as is our right as the applicants, we do not agree to have the FPUD/RMWD Applications, including, but not limited to, consideration of SDCWA’s Application, delayed. We instead expect that the FPUD/RMWD Applications proceed as required under state law and local rules.

Even if a delay in considering SDCWA’s Application occurs, given that the entire LAFCO process will likely take at least a year, the Districts fully expect that all other future statutory timelines be maintained. This is essential for our Districts to provide our ratepayers relief, as soon as possible, since they will be feeling the financial impacts of this crisis for quite some time, Additionally, it is imperative that we provide them with a secure supply of water at the lowest possible cost, as soon as possible.

2. SDCWA’s Application for Determination that it is not a “District” as to Part 4 of the CKH Act
The Districts generally do not object to SDCWA’s Application, except as discussed below in Section 3. In fact, the Districts are confused as to whether such an application is even necessary given the long-standing practice of LAFCO to process those components of changes of organization and reorganizations involving SDCWA, as exempt under both Parts 4 and Parts 5 of the CKH Act\(^1\) presumably as a result 1976 approvals by both SDCWA and LAFCO referenced in SDCWA’s Application.

3. **SDCWA’s Premature and Improper Request for a County-Wide Vote Contrary to the Express Requirements of the County Water Authority Act**

FPUD and RMWD object to any attempt by SDCWA to request that LAFCO impose a legally impermissible term and condition on a future LAFCO approval of the FPUD/RMWD Applications. SDCWA has done just this by submission of its resolution supporting the SDCWA Application, which resolution focuses almost entirely on SDCWA’s confused belief that it can ask LAFCO to impose a term and condition on the FPUD/RMWD Applications that is expressly contrary to applicable law. Simply put, and as we have stated previously, a countywide vote is not called for in the County Water Authority Act. (See County Water Authority Act § 45-11 (a)(2), attached.) In fact, the County Water Authority Act specifically requires that detachment be determined only by the electors in those districts that are seeking detachment. The SDCWA request also has no precedent in LAFCO law and such a request could have profound effects on other, future Commission actions. Arbitrarily ignoring the clear statutory requirements on how elections are conducted would open the door to all LAFCO actions being required to conduct a countywide vote, effectively negating the basic role of the Commission.

In closing, as we move forward, we request that the FPUD/RMWD Applications be processed and considered in a timely manner. We must reiterate, the negative financial impact of delays in the process are significant – about $800,000 per month – so unnecessary delays will continue to inflict financial harm on the ratepayers of our two Districts.

Sincerely,

Jack Bebee
General Manager
Fallbrook Public Utility District

Tom Kennedy
General Manager
Rainbow Municipal Water District

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\(^1\) We call your attention to LAFCO’s Directory of Special Districts in San Diego County (2011) ("Directory"), which indicates that SDCWA is already exempt from conducting authority/protest proceedings. The Directory, which can be found on LAFCO’s website at https://www.sdlafco.org/home/showdocument?id=3114, provides in pertinent part as follows:

LAFCO has purview over some aspects of SDCWA boundary change; however, SDCWA is exempt from conducting authority proceedings (commencing with Government Code § 57000).

(Directory, Section II, Agencies with Restricted LAFCO Oversight, p. 105.)