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Refer To File # 501668-0005

**VIA EMAIL: KEENE.SIMONDS@SDCOUNTY.CA.GOV
AND FIRST CLASS MAIL**

July 31, 2020

Mr. Keene Simonds
Executive Officer
San Diego County LAFCO
9335 Hazard Way, Suite 200
San Diego, California 92123

Re: Fallbrook PUD and Rainbow MWD Wholesaler Reorganization (2020)
(RO20-04; RO20-05)

Dear Mr. Simonds:

This to address the issue stated at the July 6, 2020 advisory committee meeting regarding applications RO20-04 and RO20-05 regarding an “exit fee.” Although we believe the relevant statutes are clear and the obligation of RMWD ratepayers to SDCWA is on-going payment of property taxes, we understand that LAFCO could propose certain terms and conditions related to any LAFCO action. The term “exit fee” has been used by LAFCO in the context of discussions with the subcommittee established by the Commission. As we will describe below, this term is not founded in statute – either within the CWA Act or CKH. We do not want more casual observers of this process to think that the concept of an “exit fee” is some sort of benchmark that we must reach. We had hoped that the parties could jointly agree to an alternative arrangement and propose these mutually agreed upon terms to LAFCO. Unfortunately, after well over a year of efforts, we have not been able to achieve any level of substantive engagement with SDCWA on the matter.

As a result, the issue of an “exit fee” is already addressed in the Act, which governs the proposed detachments.

Section 45-11 of the Act expressly addresses the process for detachments. Section 45-11(a)(2) of the Act expressly states in relevant part as follows:

“...the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded area or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to the terms and conditions previously fixed

under subdivision (c) or (d) of Section 10 for the annexation of the excluded area or part thereof to the county water authority, the taxable property within the excluded area or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexations as so fixed and until the aggregate sums have been so raised by the special tax levies.”

In sum, the detaching district's property taxes continue to be paid to the SDCWA until the existing debt is paid off.

No other provision of the Act provides for any other sums to be calculated and paid to SDCWA in the event of a detachment.

C-K-H is silent as to any provisions for any other payment to be made to SDCWA in the event of a detachment by a member district.

The State Legislature has provided for a detaching agency to forfeit to the SDCWA its property taxes for so long as the SDCWA debt existing needs the property tax contributions to retire the existing debt although the detaching agency is no longer receiving services from SDCWA. The forfeiture to SDCWA of the property taxes generated in the detaching area on such a continuing basis is the only statutory fee for exiting SDCWA. The Act has been amended 40 times since its original enactment; the process for annexation has been amended 7 times, the last in 2000, while the process for exclusion or detachment has been amended 3 times, the last in 1985. (A compilation of the amendments is attached.)

SDCWA has no other such rights, powers, or authority under the Act regarding detachments beyond the continuing collection of property taxes necessary to retire debt existing at the time of detachment.

Contrast that with the process for a district to join SDCWA through annexation as provided in Section 45-10 of the Act.

The application of a district to annex to SDCWA is to be made to the board of directors of the SDCWA (45-11(c) and the board may grant or deny the application. If the board exercises its discretion and grants the application, the board may fix terms and conditions and those terms and conditions must be imposed in addition to any terms and conditions required by the commission (45-11(d)(1)). The issue of annexation subject to the terms and conditions imposed by the SDCWA board and by LAFCO would be voted upon by the electors within the district. If annexation occurs the district then becomes responsible for its property tax being used to pay existing debts of the SDCWA.

The distinction between annexations and detachments are clear in that the SDCWA Board has been given by the Legislature much control over the process of joining SDCWA. The Legislature, having failed to grant SDCWA any such powers in the event of a detachment, such powers cannot be implied from the provisions of the Act. Most significant is the fact that in annexations the Board, if approving of such, may impose terms and conditions which LAFCO is expressly required to impose; that is not true for detachments.

The only "exit fee" provided by the Legislature is the continuation of the property tax payments for existing SDCWA debt.

This should resolve any misconceptions that might have arisen regarding the basis for an "exit fee."

Very truly yours,



Lloyd W. Pellman
Nossaman LLP

LWP:ls

Attachment

cc: Via email:

Robert Barry, Chief Policy Analyst, San Diego LAFCO
Holly Whatley, Counsel, San Diego LAFCO
Aleks Giragosian, Deputy Counsel, San Diego LAFCO
Tom Kennedy, General Manager, Rainbow Municipal Water District
Alfred Smith, General Counsel, Rainbow Municipal Water District
Jack Bebee, General Manager, Fallbrook Public Utilities District
Paula C. P. de Sousa, General Counsel, Fallbrook Public Utilities District
Sandra L. Kerl, General Manager, San Diego County Water Authority
Mark J. Hattam, General Counsel, San Diego County Water Authority

- § 45-5. Powers
 - Stats.1945, c. 670, p. 1337, § 1 – approved 6/4/45
 - (6)
 - Removed the specific rate the authority has to pay for land if its primary actions, such as constructing roads or water conveyances, rendered that land valueless or unsalable.
 - Removed the specific rate the authority has to pay for land if any of its actions that did not fit the prior category rendered the land valueless or unsalable and replaced that rate with “the reasonable rate determined by the Division of State Lands.”
 - Stats.1968, c. 424, p. 876, § 1 – approved 6/28/68
 - (11)
 - Removed the exception for the purchase of water from the requirement that “a portion of the water served by the authority which shall...bear the same ratio to all of the water supply by the authority as the total accumulation of amounts paid by such public agency to the authority on tax assessments and otherwise...toward the capital cost and operating expense.”
 - Stats.1975, c. 586, p. 1257, § 4 – approved 9/8/75
 - (5)
 - Removed the provision explicitly stating that in any proceeding related to eminent domain, the authority shall have the same rights, powers, and privileges as a municipal corporation.
 - There was also some general re-wording of the remaining phrase, but it seems to hold the same meaning in the new version, just with more clarity.
 - Stats.1978, c. 363, p. 1066, § 1 – approved 7/6/78
 - (11)
 - Removed the limit that the authority could not acquire water and water rights within the county in which the authority is organized and/or located.
 - Removed language stating the authority could provide, sell, and deliver water at wholesale for municipal, domestic, and other beneficial uses and purposes and replaced it with broader language stating the authority could provide, sell, and deliver water for beneficial uses.
 - ◆ Changed language in a later related clause from “domestic, municipal or other beneficial uses” to “beneficial uses.”
 - Removed language requiring the authority to give one year’s written notice to purchasers of surplus water before reallocating it on a determination it is needed within the authority’s district.
 - Added a new section (12) and (13), renumbering the previous (12) as a new (14).

- Stats.1981, c. 456, p. 1708, § 1 – approved 9/11/81
 - (12)
 - Removed clause limiting the authority’s powers with respect to sewage/waste/sea waters to situations where those functions are assigned to the county water authority by elected officials and in accordance with Section 208 of the federal Water Pollution Control Act.
- Stats.1989, c. 32, § 1 [page 96] – approved 5/30/89
 - (11)
 - Removed clause giving public agencies preferential right to purchase water from the authority given certain requirements.
 - Added sentence requiring the board of directors, as far as practicable, to provide its member agencies with adequate water supplies.
 - Added sentence requiring the board to adopt reasonable rules, regulations, and restrictions to allocate available water supplies to its member agencies for the greatest public interest and benefit if the authority’s water supplies are inadequate to fully meet the needs of those agencies.
- SB 1173 – approved 7/5/1995
 - Digest
 - (1) The County Water Authority Act authorizes an authority formed pursuant to that act to acquire, store, treat, reclaim, reuse, distribute, and sell sewage water, wastewater, and seawater for beneficial uses and purposes.
 - ◆ This bill would additionally authorize an authority to repurify and sell those waters, and would define “repurify” for that purpose. The bill would authorize an authority to change its name.
 - (2) Existing law requires the board of an authority to consist of at least one representative of each public agency located within the authority that is appointed in a specified manner. Existing law prohibits a member of a governing body of a public agency from appointing himself or herself to the board of an authority.
 - ◆ This bill would delete that prohibition.
 - Introductory language
 - Changed from “Any authority shall have power:” to “An Authority may do all of the following:”
- (12)
 - Added repurify as an option and defined repurify.
- (15)
 - Added this section, which allows the authority to change its name.

- § 45-5.1. Hydroelectric power
 - SB 552 – approved 9/30/2000
 - (b) (1)
 - Added the ability to sell hydroelectric power at wholesale.
 - Added (c) (1) and (2) – provisions providing power specifically to authorities in San Diego County related to providing gas or electricity to its member agencies.
 - (d)
 - Took existing language and created its own sub-section.
- § 45-5.2. Standby water charges
 - SB 444 – approved 7/2/07
 - (a)
 - Added requirement for authorities to abide by the notice, protest, and hearing procedures in Section 53753 of the Government Code.
 - (b)
 - Added that the maximum cost of standby charges did not apply to a standby charge imposed pursuant to the Uniform Standby Charge Procedures Act.
 - (c)
 - Removed existing procedural requirements and replaced them with those in Section 53753 of the Government Code.
 - Allowed previously adopted charges to stay in place.
- § 45-5.5. Surplus money; investment
 - SB 106 – approved 8/25/97
 - Removed existing procedural requirements and changed them to those in Article 1 (commencing with Section 53600) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.
- § 45-6. Directors; total financial contribution and vote of member public agencies of the San Diego County Water Authority
 - Stats.1957, c. 1356, p. 2684, § 1 – approved 7/4/57
 - Increased the value of assessed valuation per additional representative from one extra per every \$50 million to one extra per every \$70 million.
 - Stats.1959, c. 1561, p. 3895, § 1 – approved 7/3/59
 - Increased the value of assessed valuation per additional representative from one extra per every \$70 million to one extra per every \$90 million.
 - Stats.1963, c. 711, p. 1715, § 1 – approved 7/3/63
 - Increased the value of assessed valuation per additional representative from one extra per every \$90 million to one extra per every \$100 million.
 - Stats.1968, c. 424, p. 880, § 2 – approved 6/28/68
 - Increased the value of assessed valuation per additional representative from one extra per every \$100 million to one extra per every \$115 million.

- Stats.1972, c. 605, p. 1069, § 1 – approved 8/9/72
 - Removed the method of valuation of additional representatives and replaced it with allowing agencies to appoint one additional representative for each full 5% of the assessed value of taxable property.
 - The term of any representative shall not be changed or terminated.
- Stats.1973, c. 754, p. 1356, § 1 – approved 9/25/73
 - Added subsections (a) – (e) to existing text, solely breaking up existing text with the exception of the change listed below.
 - (b) [previously second paragraph]
 - Added details on who could and could not be appointed from water districts.
- Stats.1987, c. 272, § 1 – approved 7/29/87
 - Added section (f)
 - Added requirement and definition for a quorum and allowed some business to continue without a quorum.
- SB 1173 – approved 7/5/95
 - (b)
 - Removed prohibition on a member of a governing body appointing themselves for appointment.
- AB 692 – approved 8/26/97
 - (c)
 - Removed provision allowing for the recall of any member by a majority vote of the governing body of the public agency from which the member is appointed.
 - Replaced the provision mentioned above with provision stating representative serve at the will of the governing body from which they are appointed and may be removed by a majority vote without a showing of good cause.
 - Completely changed the format of (d) and subsequent sections.
 - Section (d) was split into (d) and (e) [the new section (d) came from the middle of the old section (d).]
 - Added sections (f) – (i).
 - Previous sections (e) and (f) became ((j) and (k), respectively.
 - (e)
 - Added section giving agencies the ability to adopt, by ordinance, a policy that the votes of more than 50% of its members can represent all of the votes for the agency at the board of directors.
 - ◆ If the largest member has more than 38% of the total financial contribution, then over 55% is required for a group vote.
 - (k)
 - Added section providing that designees under section (g) do not count toward quorum.

- AB 540 – approved 7/26/98
 - (e)
 - Added that a meeting may be continued by a vote.
- AB 2243 – approved 6/23/04
 - (b)
 - Removed reference to water district, thus allowing a member of a governing body of a member agency to serve as the agency’s representative.
 - Added that for a member agency that is not a water district, only one of the representatives may be a member of the governing body of the agency.
- § 45-7. Bond issues
 - Stats.1961, c. 1505, p. 3348, § 1
 - (i)
 - Removed procedural requirements for determining the validity of bonds and replaced it with those in Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.
- § 45-8. Contract to incur indebtedness; election; indebtedness by contract in lieu of bond issuance; second indebtedness by contract if project construction not commenced
 - Stats.1976, c. 1457, p. 6530, § 1 – approved 10/1/76
 - Added sentence providing that an authority may incur indebtedness by contract other than by voting bonds, limits that debt it 0.1% of total assessed valuation of taxable property, and requires a three-fourths vote.
 - Changes situation where a vote of qualified electors is required from acquiring debt over \$1 million to either acquiring debt that is over 0.1% or situations when compensation shall be payable in a timeframe longer than 20 years.
 - Stats.1981, c. 874, p. 3356, § 1 – approved 9/27/81
 - Added that the 0.1% of assessed valuation is that as defined in Section 135 of the Revenue and Taxation Code or as otherwise hereafter defined by the Legislature.
 - Stats.1985, c. 1408, § 1 – approved 10/1/85
 - Added sections, grouping the entire previous version under (a).
 - Added (b)
 - If a proposition met the requirements of the Revenue Bond Law of 1941, the authority may instead acquire that amount by contract as long as it is payable in 30 or fewer years.
 - Stats.1987, c. 436, § 1 – approved 9/3/87
 - Added (c)
 - If the contract incurred under (b) is repaid in full because the project was not commenced due to administrative/court/other reasons, an authority may incur a second contract no larger than the first contract.

- SB 290 – approved 7/13/99
 - (a)
 - Increased the time frame necessitating voter approval from contracts longer than 20 years to contracts longer than 40 years.
 - Added a new section (b), moving the previous sections from (b) and (c) to (c) and (d), respectively
 - (b)
 - A contract that is between 20-40 years is subject to a referendum.
 - The referendum is initiated by a petition protesting the proposed action that is signed by at least 5% of the total votes for governor in that jurisdiction in the most recent election.
- § 45-8.2. Borrowing money; short-term revenue certificates
 - SB 133 – approved 9/24/98
 - (e)
 - Added that the board may arrange for a letter of credit from a bank or other financial institution (was previously only a line of credit).
 - SB 966 – approved 7/12/99
 - (b)
 - Added that no resolution or indenture can preclude payment from the proceeds of sale of a letter of credit, matching section (e).
- § 45-9. Taxation
 - Stats.1968, c. 424, p. 881, § 3 approved 6/28/68
 - (d)
 - Changed the date before the governing body may elect to pay property taxes from 12/25 to 12/15.
 - Stats.1971, c. 1499, p. 2959, § 3 – approved 11/12/71
 - (d)
 - Added that the governing body cannot elect to pay its property taxes out of funds derived from an ad valorem property tax.
 - Stats.1981, c. 874, p. 3357, § 2 – approved 9/27/81
 - (e)
 - Removed clause that if any fraction of a cent occurs, it must be taken as a full cent on each \$100.
- § 45-10. Annexation
 - Stats.1947, c. 922, p. 2133, § 1 – approved 6/23/47
 - Added new sections and renumbered existing subsections, essentially rewriting the entire section.
 - Added a new section (a) which defined “city” and “water district” for this section.
 - (b) (2)
 - Changed the second option for annexation from focusing on applying to the controller of a county water authority to annexation to, or consolidation with, any city.

- ◆ Added that if a territory has under 12 registered voters, the authority can host a hearing in place of the proposition, and it will be approved by written consent of more than 50% of the assessed valuation of the territory.
 - (e)
 - ◆ Changed the responsibility for filing the paperwork to certify the proceedings resulting in annexation from the governing body of the water district or city to the local area formation commission.
 - ◆ Removed the sub-header (e) (1) and included its text directly in (e).
 - Changed the responsibility for preparing, executing, and filing a certificate of completion from the governing body of the water district or city to the local area formation commission.
 - AB 692 – approved 8/26/97
 - (i)
 - Removed the phrase that made this subsection apply to determining how the number of votes to be cast by directors.
 - SB 1652 – approved 9/24/98
 - (b) (1) (B)
 - Changed the party receiving the filing of the ordinance from the Secretary of State to the county clerk.
 - ◆ [Made similar changes elsewhere throughout the document.]
 - (i)
 - Added back in the phrase deleted in AB 692.
 - SB 1350 – approved 9/17/00
 - (b) (1) (B)
 - Clarifies that the correct county clerk is the one in which the county water authority is situated.
 - (i)
 - Re-removed the phrase deleted in AB 692.
- § 45-10.2. Annexation of territory within federal military reservation to county water authority
 - AB 692 – approved 8/26/97
 - (g)
 - Added that a military reservation shall be deemed to be a public agency for purposes of this act.
 - Removed section that provided that as a member of the board of directors, the representative of the military reservation shall be entitled to cast a vote independent of the assessed valuation of taxable property within the reservation.

- SB 1652 – approved 9/24/98
 - (e)
 - Changed the party with whom the proceedings are filed from the Secretary of State to the county clerk of the county in which the county water authority is situated.
 - ◆ [Made similar changes elsewhere throughout the document.]
 - (g)
 - Removed the addition from AB 692 related to a military reservation being deemed a public agency.
 - Re-added in section related to the voting rights of the military representative.
- SB 1350 – approved 9/17/00
 - (g)
 - Added back in the phrase deleted by SB 1652 and originally added by AB 692.
 - Re-removed the addition from SB 1652 (that was also in the original bill) related to voting rights of the military representative.

- § 45-11. Exclusion of territory

- [Original document for reference](#) (pg. 2004 of the pdf)
- [Stats.1951, c. 997, p. 2628, § 1](#) – approved 6/1/51 (pg. 2508 of the pdf)
 - Made substantial additions to the original bill.
 - The entire original section was put into (a) (2).
 - Sections (a) (1), (b), and (c) (1) – (3) were added.
 - (a) (2)
 - Changed that the process in this subsection applied
 - Changed the applicability of this subsection from a vote on withdrawing from “any authority incorporated thereunder” to “such county water authority.”
 - ◆ Made related changes in the section from “authority” to “county water authority.”
 - Added section providing that if the area that is being excluded is subject to special taxes levied or to be levied by the authority under the provisions of paragraphs (c) and (d) of section 10, then it shall continue to be taxable for the purpose of raising certain sums until that money has been raised.
 - Added section providing that the Secretary of State shall issue a certificate within 10 days of receiving the filing.
 - ◆ Added that the Secretary of State shall then transmit the original of that certificate to the secretary of the water authority and shall forward a certified copy to the county clerk in the county in which the authority is located.

- [Stats.1957, c. 1356, p. 2685, § 3](#) – approved 7/4/57 (pg. 2142 of the pdf)
 - Added subsections to (a) (1): (a), (b), (c), (d).
 - These subsections explain when exclusion pursuant to (a) (1) shall not occur.
- [Stats.1985, c. 1408, § 3](#) – approved 10/1/85 (pg. 906 of the pdf)
 - (a) (1) [former (a) (1) (a) – (a) (1) (d)]
 - Removed subsections (a) (1) (a) – (a) (1) (d) and replaced the type of situation in which exclusion shall not occur.
 - Added section (d).
- § 45-13. Administrative authority
 - Stats.1985, c. 1408, § 4 – approved 10/1/85
 - Added that all matters and things necessary for the administration of the affairs of the authority can be provided by resolution (previously was just by ordinance).
 - SB 629 – approved 7/6/99
 - Added sections (b) (1) – (b) (3)
 - AB 650 – approved 10/12/03
 - Added section (c)
 - SB 373 – approved 10/06/05
 - Added section (d)
- § 45-15.5. Claims for money or damages; law governing
 - Stats.1963, c. 1715, p. 3409, § 92 – approved 7/15/63
 - Changed the section of the Government Code applicable to claims against the authority from Chapter 2 of Division 3.5 of Title 1 to Part 4 of Division 3.6 of Title 1.