May 4, 2020

TO: Commissioners

FROM: Keene Simonds, Executive Officer
Holly O. Whatley, Commission Counsel

SUBJECT: Consideration of Applications by the San Diego County Water Authority for Non-District Determinations Involving Conducting Authority Proceedings for Proposed Reorganizations Filed by Fallbrook Public Utility District (RO20-05) and Rainbow Municipal Water District (RO20-04) and Related Requests

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider applications from the San Diego County Water Authority to exempt it from standard conducting authority provisions and instead follow its principal act for the recent detachment proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD). Approving the applications would mean any subsequent Commission approval of the Fallbrook and/or Rainbow detachments would not involve protest proceedings but would still be subject to registered voters’ confirmation per the Water Authority’s principal act. Staff believes the qualifying criteria in statute to exempt the Water Authority from standard conducting authority proceedings applies and recommends approval. The Water Authority is also requesting the Commission suspend all further processing activities on Fallbrook and Rainbow’s proposals due to the COVID-19 emergency and separately condition any potential detachments on an expanded vote of registered voters within all 24-member agencies’ jurisdictions. No actions are recommended with respect to these latter two requests.
BACKGROUND

Reorganization Proposals by Fallbrook PUD and Rainbow MWD

San Diego LAFCO received separate reorganization proposals in March 2020 from Fallbrook PUD and Rainbow MWD seeking Commission approval to concurrently (a) detach from the San Diego County Water Authority and (b) annex to Eastern MWD. The stated purpose of the reorganizations as detailed in the proposal materials is to achieve cost-savings for the agencies by transitioning the purchase of wholesale supplies from the Water Authority to Eastern MWD. Staff currently anticipates an approximate 12 to 16-month timeline to process the reorganization proposals and this includes soliciting input from Riverside LAFCO based on an earlier agreement with the Commission.1 Copies of both Fallbrook PUD and Rainbow MWD’s proposals are available on the Commission website (www.sdlafco.org).

Standard and Alternative Conducting Authority Proceedings

All boundary proposals approved by San Diego LAFCO are subject to conducting authority proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH”) unless all affected landowners, voters, and agencies provide written consent. Standard conducting authority proceedings are outlined in Part 4 of CKH and premised on LAFCO first holding a protest hearing to allow landowners and registered voters to file written objections to the Commission approval. An election follows only if more than 25% and less than 50% of the landowners and/or registered voters file written protests with additional details footnoted.2 An election is limited to only registered voters.

CKH also provides an alternative process for conducting authority proceedings in limited circumstances involving certain eligible special districts – including county water authorities.3 This alternative process involves the eligible special district applying and receiving LAFCO approval for a “non-district” determination based on meeting specific criteria. If approved, the alternative process delegates conducting authority proceedings to the special district and based on the processes provided within their principal act.4

DISCUSSION

This agenda item is for San Diego LAFCO to consider applications from the San Diego County Water Authority and related requests in response to separate reorganization proposals recently filed by Fallbrook PUD and Rainbow MWD. The applications seek approval to utilize alternative conducting authority proceedings and delegate the associated processes from CKH to the Water Authority’s principal act. Two related requests accompany the applications and ask the Commission to suspend all proposal processing as well as condition any potential

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1 In October 2019, San Diego and Riverside LAFCOs entered into an agreement to delegate all processing approvals for the Fallbrook PUD and Rainbow MWD reorganization proposals – including associated sphere amendments – to San Diego LAFCO. The agreement specifies San Diego LAFCO shall actively consult with Riverside LAFCO in processing the reorganizations and this includes providing input on all related recommendations.
2 LAFCO approvals proceed without elections when protest levels fall below 25% for both landowners and registered voters. LAFCO approvals are terminated when protest levels exceed 50% for either landowners or registered voters.
3 Reference to Government Code Section 56036.6.
4 A similar alternative process exists involving Part 5 of CKH and the application of terms and conditions.
proposal approvals on an expanded vote of registered voters. A summary discussion on all three requested actions filed by the Water Authority follow.

**Applications for Alternative Conducting Authority Proceedings**

San Diego LAFCO provided written notices to the San Diego County Water Authority on March 25, 2020 regarding the submittal of the reorganization proposals by Fallbrook PUD and Rainbow MWD. The notices advised the Water Authority of their eligibility under statute to apply for non-district determinations to delegate conducting authority proceedings to its principal act. The Water Authority responded within the required 10-day period with formal applications requesting alternative conducting authority proceedings for both proposals. Copies of both applications are provided as Attachments One and Two.

State law prescribes LAFCO approval for alternative conducting authority proceedings for eligible special districts shall be based on the applicant qualifying as a “non-district” and specifically not engaged in any of the following activities:

- The distribution and sale for any purpose, other than for the purpose of resale, of water or of gas or electricity for light, heat, or power.

- Furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users, as defined in subdivision (b), of those services.

- Providing fire or police protection.

- The acquisition, construction, maintenance, lighting, or operation of streets and highways, street and highway improvements, or park and recreation facilities, except as an incident to the exercise of other lawful powers of the applicant.

The Water Authority has attested in its applications to the Commission that it is not engaged in any of the above-listed activities. Staff independently concurs. Additionally, no objections to the applications have been made by Fallbrook PUD or Rainbow MWD.

**Request to Suspend Proposals’ Processing**

The San Diego County Water Authority requests San Diego LAFCO suspend all processing activities on the Fallbrook PUD and Rainbow MWD proposals due to the current COVID-19 emergency. The Water Authority notes it has declared its own emergency and in doing so significantly limiting operations and largely moving to a remote workforce. The request also notes should the Commission proceed in processing the proposals it would be prejudicial to the Water Authority, its member agencies, and their shared constituents. The Water

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3 The notice also advised the Water Authority of the option to apply to delegate terms and conditions under Part 5 of CKH to its principal act.
4 Subsection (b) defines “ultimate user” to mean any user or consumer other than the state, the United States, a city, a county, or a district, or any agency, department, or office of any of those entities or a public utility.
Authority states similar actions to suspend activities has been done by the courts and other public agencies due to the common impacts caused by COVID-19.

Staff has reviewed the request in detail and concludes LAFCO does not have authority in CKH to suspend the processing of a proposal that has been filed with the prerequisite information required under statute and local policy without applicant consent. Staff is also unaware of any recent order or directive by the State providing new discretion to LAFCO to suspended proposal processing. Additionally, while acknowledging the impacts of COVID-19, LAFCO remains fully operational with the understanding some external resources may be impacted and create otherwise atypical delays in bringing the proposals to the Commission.

Staff separately contacted both Fallbrook PUD and Rainbow MWD to determine whether either agency would voluntarily agree to suspend their reorganization proposals on file with LAFCO given the Water Authority’s request. Fallbrook PUD and Rainbow MWD responded in a joint letter to the Commission that in the absence of a LAFCO hardship they do not support suspending the processing of the proposals at this time. A copy of the joint letter is provided as Attachment Three.

**Request to Condition Any Proposal Approvals on Expanded Vote**

The San Diego County Water Authority requests San Diego LAFCO condition any potential detachment approvals involving Fallbrook PUD and/or Rainbow MWD’s reorganization proposals to expand the electorate to include all registered voters in the Water Authority’s entire jurisdictional boundary and its 24 member agencies. This request represents a potential expansion of the eligible electorate from an approximate population base of 55,000 to 3,300,000.\(^7\) The Water Authority justifies the request by noting all member agencies and their ratepayers would be financially impacted should Fallbrook PUD and/or Rainbow MWD detach.

Staff appreciates the Water Authority is choosing to advance the requested condition now for purposes of drawing the Commission’s attention to the topic and the Water Authority’s position therein. Staff also appreciates Fallbrook PUD and Rainbow MWD are similarly choosing to go on record now to oppose the request for reasons detailed in their joint-letter. Actual analysis of the request is deferred to the administrative review of the proposals along with any other requests or recommendations made by affected and subject agencies.

**ANALYSIS**

The San Diego County Water Authority’s applications for “non-district” determinations meet the qualifying criteria in statute and accordingly it would be appropriate for San Diego LAFCO to proceed with approvals. The substantive outcome of these approvals is to ensure any future actions by the Commission to detach Fallbrook PUD and/or Rainbow MWD from the Water Authority will require confirmation from registered voters per the Water Authority’s principal act. With respect to the two related requests made by the Water Authority, staff

\[^7\] The approximate population estimates within Fallbrook PUD and Rainbow MWD are 35,000 and 19,000, respectively.
believes no Commission actions are appropriate and/or needed at this time. This includes taking no action on the request by the Water Authority to suspend all processing activities for the two proposals given the current COVID-19 emergency. CKH does not empower the Commission to suspend work on otherwise duly filed proposals unless requested by the applicants. Neither Fallbrook PUD nor Rainbow MWD have agreed to suspensions in the absence of a LAFCO hardship, which does not apply given the Commission remains fully functional. Additionally, the recent executive orders and directives from the State due to COVID-19 do not provide any new discretion to the Commission to suspend or adjust CKH timelines. Last, and as detailed in the preceding section, the request to condition any detachments of Fallbrook PUD or Rainbow MWD from the Water Authority to include an expanded vote of registered voters in all 24 member agencies’ boundaries is premature to consider at this time. Nonetheless, staff will incorporate the request into the administrative review with any preliminary input provided in the Commission taking up this agenda item.

**RECOMMENDATION**

It is recommended San Diego LAFCO approve the applications filed by the San Diego County Water Authority to exempt it from standard conducting authority provisions and instead follow its principal act for the recent detachment proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD). This recommendation is consistent with Alternative One as outlined in the succeeding section.

**ALTERNATIVES FOR ACTION**

The following alternative actions are available to San Diego LAFCO and can be accomplished through a single-approved motion.

**Alternative One (recommended):**

a) Approve the San Diego County Water Authority application to exempt it from standard conducting authority proceedings under Part 4 of CKH and instead follow its principal act with respect to the detachment proposal filed by Fallbrook PUD (RO20-05).

b) Approve the San Diego County Water Authority application to exempt it from standard conducting authority proceedings under Part 4 of CKH and instead follow its principal act with respect to the detachment proposal filed by Rainbow MWD (RO20-04).

c) Direct Commission Counsel to prepare conforming resolutions of the preceding approvals and making the required findings under Government Code Section 56128 for signature by the Executive Officer.

**Alternative Two:**
Continue the item and request additional information from staff as needed.
PROCEDURES

This item has been placed on San Diego LAFCO's agenda for action as part of a noticed public hearing. The following procedures are recommended in the consideration of this item:

1) Receive verbal presentation from staff unless waived.
2) Initial questions or clarifications from the Commission.
3) Open the hearing and invite comments in the following order:
   - representatives from the San Diego County Water Authority
   - representatives from Fallbrook PUD
   - representatives from Rainbow MWD
   - other interested parties and the general public
4) Discuss item and consider the staff recommendation.

Respectfully,

Keene Simonds
Executive Officer

Attachments:
1) Water Authority Application for Exemption from Standard Conducting Authority Proceedings for RO20-05 (Fallbrook PUD)
2) Water Authority Application for Exemption from Standard Conducting Authority Proceedings for RO20-04 (Rainbow MWD)
3) Joint Letter from Fallbrook PUD and Rainbow MWD