



# San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

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September 11, 2019

**Delivered by Electronic Mail**

Ms. Claire Hervey Collins  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, California 90071  
[claire.collins@lewisbrisbois.com](mailto:claire.collins@lewisbrisbois.com)

**SUBJECT: Fallbrook PUD and Rainbow MWD Joint Proposal Inquiry to Detach from County Water Authority and Annex to Eastern MWD**

Ms. Collins:

The San Diego County Local Agency Formation Commission (LAFCO) is in receipt of your letter from August 27, 2019 written on behalf of the San Diego County Water Authority. Your letter addresses the above-referenced proposal inquiry involving the Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD) and identifies several concerns and requests with respect to related LAFCO processes and procedures. The responses below address your letter and are paired with general clarifications to further aid the Water Authority in its understandable interest in a fair and detailed review of the proposal should Fallbrook PUD and Rainbow MWD choose to proceed.

- **Necessary LAFCO Approvals**

The proposal inquiry necessitates three distinct LAFCO approvals under statute. The first approval would involve an amendment to include all of the affected territory (i.e., Fallbrook PUD and Rainbow MWD) to Eastern MWD's sphere of influence to accommodate the subsequent consideration of an annexation and – among other items – address the factors prescribed under Government Code Section 56425 and potentially 56430. The second approval would involve an amendment to remove the affected territory from the Water Authority's sphere of influence to similarly accommodate the subsequent consideration of a detachment. The third and final approval would involve the reorganization itself and the actual boundary changes and – among other items – address the factors prescribed under Government Code Section

<b>Administration</b> Keene Simonds, Executive Officer County Operations Center 9335 Hazard Way, Suite 200 San Diego, California 92123 T 858.614.7755 F 858.614.7766 <a href="http://www.sdlafco.org">www.sdlafco.org</a>	<b>Jim Desmond</b> County of San Diego  <b>Dianne Jacob, Vice Chair</b> County of San Diego  <b>Greg Cox, Alternate</b> County of San Diego	<b>Mary Casillas Salas</b> City of Chula Vista  <b>Bill Wells</b> City of El Cajon  <b>Paul McNamara, Alternate</b> City of Escondido	<b>Mark Kersey</b> City of San Diego  <b>Chris Cate, Alternate</b> City of San Diego	<b>Jo MacKenzie, Chair</b> Vista Irrigation  <b>Barry Willis</b> Alpine Fire Protection  <b>Erin Lump, Alternate</b> Rincon del Diablo MWD	<b>Andy Vanderlaan</b> General Public  <b>Harry Mathis, Alternate</b> General Public
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56668. Related findings for each of the three LAFCO approvals would also be required under California Environmental Quality Act and presumably as a “responsible agency.”

- **Affected LAFCOs**

San Diego and Riverside LAFCOs are responsible under statute for separately taking one or more actions associated with the three necessary approvals outlined in the preceding section. Riverside LAFCO is responsible under statute for considering the amendment to Eastern MWD’s sphere of influence to add all of the affected territory given these lands lie entirely within Riverside County. (Alternatively – and as provided in the preceding section – Riverside LAFCO could delegate consideration to San Diego LAFCO). San Diego LAFCO is responsible under statute for considering the amendment to the Water Authority’s sphere of influence to remove all of the affected territory along with the actual boundary changes given these lands lie entirely within San Diego County. (Alternatively – and as provided in the preceding section – San Diego LAFCO could delegate consideration to Riverside LAFCO.)

- **MOU Between San Diego and Riverside LAFCOs**

At the request of Fallbrook PUD and Rainbow MWD to clarify proposal steps and related actions San Diego and Riverside LAFCO have reached tentative agreement on a memorandum of understanding (MOU). This agreement is premised on each LAFCO retaining – and choosing not to delegate to the other – the baseline statutory approvals identified in the preceding section and sequences the order of the anticipated proposal processing consistent with statute to begin with Riverside and followed by San Diego. This sequencing – most notably – means San Diego LAFCO would take up the proposal only if Riverside LAFCO first approves an amendment to add the affected territory to Eastern MWD’s sphere of influence. Specific details are currently being drafted with the expectation San Diego LAFCO will present the MOU for its Commission approval on October 7<sup>th</sup> as part of the business calendar with the opportunity for public comment. San Diego LAFCO will also provide the Water Authority and the other three subject agencies advanced copies for review.<sup>1</sup>

- **Suggested Multi-County Study and Advisory Committee**

Your letter requests San Diego LAFCO take a lead role to oversee the preparation of a multi-county study to fully evaluate the proposal and specifically “forensically analyze” the impacts of the boundary changes on the Water Authority and its other 22 member agencies. You similarly request San Diego LAFCO form a multi-county advisory committee to provide input on the scope of the study and advise LAFCO on the associated results. We understand that the underlying intent of these requests is to ensure the proposal is fully vetted with a focus on the financial impacts for all affected agencies with input from stakeholders; both LAFCOs share these goals. Towards this end, and specific to the potential financial impacts to the Water Authority as provided in the letter, San Diego LAFCO acknowledges this is a pertinent consideration and intends to appropriately evaluate it in the analysis of the boundary changes itself

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<sup>1</sup> Riverside LAFCO currently expects to consider the MOU at its October 24<sup>th</sup> meeting.

assuming the proposal comes forward. The scope and scale of the analysis, however, will be determined by San Diego LAFCO in step with reviewing an actual proposal and independently assessing whether the need exists and/or emerges to retain one or more third-party consultants.

I hope the above information proves helpful in addressing the items outlined in your August 27<sup>th</sup> letter and further clarifies anticipated processes and procedures should Fallbrook PUD and Rainbow MWD proceed with the proposal. I am available by telephone at 858.614.7755 or e-mail at [keene.simonds@sdcounty.ca.gov](mailto:keene.simonds@sdcounty.ca.gov) to discussion further.

Sincerely,



Keene Simonds  
Executive Officer

Attachment:

- 1) Water Authority Letter, Dated August 27, 2019

cc:

Holly Whatley, Commission Counsel, San Diego LAFCO  
Sandra Kerl, Acting General Manager, San Diego County Water Authority  
Mark Hattam, General Counsel, San Diego County Water Authority  
Jack Bebee, General Manager, Fallbrook PUD  
Paula de Sousa Mills, Counsel, Fallbrook PUD  
Tom Kennedy, General Manager, Rainbow MWD  
Lloyd Pellman, Counsel, Rainbow MWD  
Paul Jones, General Manager, Eastern MWD  
Gary Thompson, Executive Officer, Riverside LAFCO  
Tiffany North, Commission Counsel, Riverside LAFCO

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Claire Hervey Collins  
633 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, California 90071  
Claire.Collins@lewisbrisbois.com  
Direct: 213.680.5039

August 27, 2019

File No. 44112.02

**VIA E-MAIL AND U.S. MAIL**

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

Ms. Holly Whatley, Esq.  
San Diego LAFCO Counsel  
Colantuono, Highsmith & Whatley PC  
790 E. Colorado Blvd., Suite 850  
Pasadena, CA 91101-2109

Re: Maintaining Local Control Over Rainbow-Fallbrook-Eastern LAFCO Proceedings

Dear Mr. Simonds and Ms. Whatley:

Thank you for meeting with me and San Diego County Water Authority (“**Water Authority**”) staff and counsel to discuss the role you envision that San Diego County LAFCO (“**SD-LAFCO**”) will have with respect to the potential application of Rainbow Municipal Utilities District (“**Rainbow**”) and Fallbrook Public Utilities District (“**Fallbrook**”) to detach from the Water Authority and annex for the purpose of wholesale water service only into Eastern Municipal Water District (“**Eastern**”), (the “**Potential Application**”).

**Potential Application**

The changes contemplated by the Potential Application will significantly impact San Diego County’s physical infrastructure, rate-payers, and water supply reliability, and will have virtually no impact in Riverside County. Under the Potential Application, as we understand it, Eastern will merely serve as a pass-through entity, delivering Metropolitan Water District water to Fallbrook and Rainbow, but will not be providing any facilities, storage, water rights or other water reliability infrastructure. In contrast, meaningful impacts in San Diego County would result from the detachment, including changes to infrastructure in San Diego County, and a significant reduction in water supply reliability for Fallbrook and Rainbow. Financially, their ratepayers will be potentially charged with repayment of hundreds of millions of dollars of outstanding obligations to the Water Authority, incurred on behalf of these agencies and their ratepayers. These are issues of significant local concern to San Diego County, while of negligible impact on Riverside County.

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## **Current Plans of LAFCOs**

You advised that you have already agreed with the Riverside County (“**RivCo**”) LAFCO executive officer that RivCo LAFCO would process the Sphere of Influence change application for Eastern, while SD-LAFCO would process the detachment-annexation application. The Water Authority strongly objects to SD-LAFCO ceding local control of any portion of this LAFCO process to Riverside County, including the proposed amendment to Eastern’s sphere of influence. An amendment of Eastern’s sphere of influence to include any portion of the Water Authority’s current sphere of influence or service territory should not be piecemealed from the potential annexation and detachment nor be considered in advance of SD-LAFCO’s comprehensive study of the physical and financial impacts of the Potential Application.

## **San Diego LAFCO Should Have Authority Over the Potential Application**

Based on the terms of the Potential Application, as we understand it, it is clear that SD LAFCO is the appropriate LAFCO to handle all phases of the LAFCO process. We believe that ceding responsibility for any portion of this process, including amendments to Eastern’s Sphere of Influence, to Riverside County would violate the spirit and intent of the Cortese-Knox-Hertzberg Local Government Reorganization Act by stripping authority from local decision makers in San Diego County, where the real impacts would take place.

## **Option for San Diego and Riverside LAFCOs to Handle Potential Application**

Although the Water Authority believes that San Diego LAFCO can and should have sole authority over all parts of the Potential Application, the Authority understands that RivCo LAFCO would have an interest in the proceedings given Eastern’s role as the potential annexing entity. The Water Authority believes that RivCo LAFCO’s role should be limited in the process, commensurate with the limited potential effects on Riverside County. Consistent with recommendations of the Governor’s Office of Planning and Research<sup>1</sup>, the Water Authority therefore requests that the Memorandum of Understanding (“**MOU**”) that you explained would be entered into between SD-LAFCO and RivCo LAFCO provide for the following terms:

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<sup>1</sup> See Appendix M “Multi-County LAFCO Review” of the *LAFCO Municipal Service Review Guidelines*, California Governor’s Office of Planning and Research (2003) [“OPR recommends that LAFCOs work together to develop a schedule and plan for managing cross-county municipal service reviews.” The OPR also states that multi-county collaboration “is especially important for municipal service reviews which may lead to the consideration of proposals that have the potential to cause significant environmental, fiscal or economic impacts on the other county.”]

1. Establish SD-LAFCO as the “Lead LAFCO” for the entire Potential Application, including amendments to the spheres of influence;
2. Establish the scope of authority of each LAFCO;
3. Set out the scope of a multi-county study for all portions of the Potential Application, including all sphere amendments and the detachment and annexation proposal;
4. If RivCo LAFCO insists on retaining a formal role in the process, consider establishing a multi-county advisory committee to provide advisory input to LAFCO on the scope of the study, who should pay for the study, the qualifications of the prospective independent consultants, and to advise on the results or findings of the study; and
5. Require approval by both LAFCO boards of the MOU on their regular agenda to provide for stakeholder comments, and not on the consent agenda, as you suggested.

### **SD-LAFCO as “Lead LAFCO” Under Multi-County Agreement**

We believe that SD-LAFCO should have first and final say on whether an out-of-County district may take over service to districts within San Diego County or be entitled to any portion of San Diego County’s property tax revenues. These are issues of San Diego County-wide significance, for which Riverside County should have no role. While we assume the bulk of these issues would be addressed in the detachment-annexation stages, given the interrelated nature of the sphere of influence changes, we believe all issues should be evaluated sequentially by San Diego County’s own LAFCO operating under a multi-county LAFCO MOU. In addition to ensuring local review by the county in which the impacts will almost exclusively occur, San Diego, this approach promotes efficiency and inter-county dialogue consistent with the intent of the Cortese-Knox-Hertzberg Act. As the Commission on Local Governance for the 21<sup>st</sup> Century stated in connection with the enactment of AB 2838 (Chapter 761, Statutes of 2000):

[Multi-county LAFCO agreements] allow an expedited determination of which LAFCO will assume jurisdiction over a proposal and may thereby avert unnecessary hearings or delays. Perhaps as important, they facilitate dialogue among adjoining LAFCOs, thereby providing more comprehensive guidance to applicants, ensuring consistency in the decision-making process of participating LAFCOs, and developing a regional perspective on issues.<sup>2</sup>

A multi-county agreement providing for vesting the Lead LAFCO role in SD-LAFCO will promote efficiency, consistency, and dialogue, while effectuating the spirit and intent of the Cortese-Knox-Hertzberg Act.

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<sup>2</sup> Growth Within Bounds, p. 79. California Commission on Local Governance.

### **Scope of Multi-County Study**

Given the interrelated nature of the potential sphere of influence change, detachment, and annexation, good government requires — and the Water Authority urges — SD-LAFCO to ensure that the MOU with RivCo LAFCO would also provide for a multi-county study that would be prepared for all steps of the process, and under which SD-LAFCO would serve as the Lead LAFCO for all phases of the process including the multi-county study, the Potential Application, and the related sphere of influence amendments.

A comprehensive study should be conducted by a third-party independent consultant and include the full participation of all stakeholder agencies, including, but not limited to, the Water Authority's 24 member agencies and the communities they serve. The MOU should also establish how this study should be conducted, including what the appropriate vehicle is (for example a Municipal Service Review, focused study, or other special study), who should conduct it (potentially a third party), and what factors should be considered. We believe that, at a minimum, the study should forensically analyze and evaluate the impacts of the potential detachment and annexation on water reliability for Fallbrook and Rainbow's combined 55,000 customers, the requirements for capital improvements for new infrastructure, and the financial impacts of the sphere change and detachment on the County's economy as a whole and specifically the impacts to the Water Authority's other 22 member agencies and the more than 3 million rate payers they serve.

### **Consideration of Multi-County Advisory Committee**

We understand that RivCo LAFCO may seek to retain a role in the application process given that Eastern is in its county and would require a sphere change and be the recipient of any annexation. Although, as stated above, Eastern's impacts will be negligible, in the spirit of the Cortese-Knox-Hertzberg's promotion of facilitating inter-county dialogue, a multi-county advisory committee could be established to provide advisory input to LAFCO on the scope of the special study, whether an RFP is necessary, who should be paying for the study, the qualifications of prospective independent consultants, and to advise the LAFCOs on the results of the study. A multi-county advisory committee would assure RivCo LAFCO that any relevant concerns of Riverside County would be adequately addressed, while SD-LAFCO retains ultimate decision-making authority as Lead LAFCO.

### **Significant Local Concerns Require Public Review**

We appreciate the cooperation between the two LAFCOs to date, but again urge you to have the matters consolidated within San Diego County. The issues discussed herein are of significant local concern to San Diego County, while of negligible impact on Riverside County. Of course, a full, complete, and independent analysis of all of these and other issues would be completed as part of

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the multi-county study and/or Municipal Service Review process, and presented to the Commissioners for determination.

Preparing a comprehensive MOU subject to public review and comment is warranted in a situation such as this, in which any decision will carry significant policy, political, infrastructure, and financial implications for the affected San Diego County entities, including the Water Authority and its 24 member agencies. For the same reason, the MOU should not be considered by either LAFCO on consent calendar, but instead should be presented in a way that will provide meaningful opportunities for the affected agencies, their constituents, and the general public to comment on how the Potential Application will be processed and the scope of a multi-county special study.

We would be happy to discuss these matters further with you in the coming weeks or address your Commission at its next meeting.

Sincerely,



Claire Hervey Collins of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC:JLB

cc: Jack Bebee, FPUD General Manager  
Mark J. Hattam, SDCWA General Counsel  
Tom Kennedy, RMWD General Manager  
Sandra L. Kerl, SDCWA Acting General Manager  
Lloyd Pellman, Esq.  
Paula de Sousa Mills, Esq.