October 7, 2019

TO: Commissioners

FROM: Keene Simonds, Executive Officer

SUBJECT: Proposed Memorandum of Understanding with Riverside LAFCO | Establishing Approval Responsibilities for Multi-County Reorganization Involving Eastern Municipal Water District, Fallbrook Public Utility District, Rainbow Municipal Water District, and San Diego County Water Authority

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a proposed memorandum of understanding (MOU) with Riverside LAFCO to establish approval responsibilities for a pending reorganization affecting Riverside and San Diego Counties. The proposed MOU provides clarifications under statute and assigns all related approvals to San Diego LAFCO with respect to Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District’s (MWD) interest in transferring wholesale water provision from San Diego County Water Authority to Eastern MWD. The proposed MOU is consistent with feedback provided by Riverside LAFCO and it is recommended the Commission proceed with approval with any desired revisions. Staff will forward any approval by the Commission to Riverside LAFCO for their consideration.

BACKGROUND

Earlier this calendar year San Diego LAFCO staff was contacted by Fallbrook PUD and Rainbow MWD representatives regarding available options under LAFCO statute for the agencies to change wholesale water suppliers from the San Diego County Water Authority
to Eastern MWD, the boundaries of which are currently entirely within Riverside County. These communications have transitioned from their exploratory beginnings to more certainty that Fallbrook PUD and Rainbow MWD may proceed with a reorganization in the nearer term, although no application has yet been received. The anticipated proposal involves the following four distinct approvals under LAFCO statute:

- Amendment to the Eastern MWD sphere of influence to add the affected territory (i.e., Fallbrook PUD and Rainbow MWD’s jurisdictional boundaries).
- Annexation of the affected territory to Eastern MWD.
- Amendment to the County Water Authority sphere of influence to remove the affected territory.
- Detachment of the affected territory from County Water Authority.

DISCUSSION

This item is for San Diego LAFCO to consider a proposed MOU with Riverside LAFCO to clarify and establish approval responsibilities for the expected reorganization proposal by Fallbrook PUD and Rainbow MWD. The proposed MOU responds to ambiguities in statute regarding the processing of this type of multi-county reorganization with respect to determining LAFCO roles for each of the approvals outlined in the preceding section. This includes – pertinently – recognition both LAFCOs could reasonably assert “principal county” or “lead LAFCO” status for one or more of the approvals. The proposed MOU has been developed in consultation with Riverside LAFCO as well as input from the subject agencies and provides the following provisions:

- San Diego LAFCO assumes principal county status for all related approvals for the reorganization proposal. This includes specific delegation by Riverside LAFCO for San Diego LAFCO to take action on the Eastern MWD sphere of influence.
- San Diego LAFCO will follow its own policies and procedures in evaluating all related approvals for the reorganization proposal. The policies and procedures of Riverside LAFCO may be considered but not binding on San Diego LAFCO.
- Riverside LAFCO agrees to provide technical staff assistance to San Diego LAFCO in the evaluation of the reorganization proposal as requested, including – but not limited to – analysis of Eastern MWD and its ability to assume wholesale water supply responsibilities for Fallbrook PUD and Rainbow MWD. All technical services provided by Riverside LAFCO will be billed at its established hourly staff rate with reimbursements paid by the applicants – Fallbrook PUD and Rainbow MWD – through collection by San Diego LAFCO.

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1 It is assumed Fallbrook PUD and Rainbow MWD will file a joint-reorganization proposal with the Commission. However, it is also possible the two agencies will choose to file separate proposals that will be considered on their own merits.
• San Diego LAFCO agrees to consult with and provide opportunities for Riverside LAFCO to comment on all related recommendations on the reorganization proposal ahead of consideration by the Commission.

• The MOU remains in effect unless both LAFCOs agree to terminate.

ANALYSIS

The proposed MOU between San Diego and Riverside LAFCOs remedies statutory ambiguities and provides clear direction to Fallbrook PUD and Rainbow MWD in choosing to proceed with initiating the reorganization with all actions going through the Commission. The proposed MOU – notably – is different than a version initially drafted by San Diego LAFCO staff and the source of earlier discussions with the applicants. The initial draft divided decision-making between the two LAFCOs, with Riverside taking up the Eastern MWD sphere action first and followed by San Diego taking up the remaining actions and highlighted by the reorganization itself. The County Water Authority’s objections to this initial draft have led Riverside LAFCO to reconsider its role and Riverside LAFCO now prefers to delegate all approval responsibilities to San Diego LAFCO. Staff believes the proposed MOU before the Commission appropriately responds to Riverside LAFCO’s preferences – and by extension the concerns of the County Water Authority – in consolidating all decision-making with San Diego LAFCO while allowing Riverside LAFCO opportunities to advise going forward.

RECOMMENDATION

It is recommended that San Diego LAFCO approve the proposed MOU with Riverside LAFCO based on the preceding analysis. This recommendation is consistent with Alternative One in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO and can be accomplished with a single-motion:

   Alternative One (recommended):
   Approve the proposed MOU with Riverside LAFCO provided as Attachment One with any desired revisions and forward to Riverside for their consideration.

   Alternative Two:
   Continue consideration to a future meeting and provide direction to staff concerning additional information, as needed.

(continued)
PROCEDURES

This item has been placed on the agenda for action as part of San Diego LAFCO’s business calendar. The following procedures are suggested in the consideration of this item:

1) Receive verbal report from staff unless waived;
2) Invite comments from any subject agencies and other interested attendees; and
3) Consider recommendation.

Respectfully,

Keene Simonds
Executive Officer

Attachments:
1) Proposed MOU with Riverside LAFCO
2) Related Correspondence
   - Letter from County Water Authority, dated August 27, 2019
   - Letter to County Water Authority, dated September 11, 2019
   - Letter from County Water Authority, dated September 17, 2019
   - Letter from Rainbow MWD, dated September 24, 2019
RIVERSIDE LOCAL AGENCY FORMATION COMMISSION AND
THE SAN DIEGO LOCAL AGENCY FORMATION COMMISSION INVOLVING A
REORGANIZATION PROPOSAL TO DETACH THE FALLBROOK PUBLIC
UTILITY DISTRICT
AND RAINBOW MUNICIPAL WATER DISTRICT FROM THE SAN DIEGO
COUNTY WATER AUTHORITY AND CONCURRENTLY ANNEX TO THE
EASTERN MUNICIPAL WATER DISTRICT

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made this ___ day of
October 2019 by and between the San Diego Local Agency Formation Commission
(“SDLAFCO”), a corporate public entity, and the Riverside Local Agency Formation
Commission (“RLAFCO”), a corporate public entity. Each may be referred to
individually as “LAFCO” or collectively as “LAFCOs.”

RECITALS

WHEREAS, the Fallbrook Public Utility District (“FPUD”) is a special district that
provides — among other services — water to the community of Fallbrook;

WHEREAS, the Rainbow Municipal Water District (“RMWD”) is a special district that
provides — among other services — water to the unincorporated communities of
Rainbow, Bonsall, and portions of Vista, Oceanside and Fallbrook;

WHEREAS, the San Diego County Water Authority (“SDCWA”) is a public agency that
produces, imports and sells wholesale water to its 24 retail member agencies and cities in
San Diego County;

WHEREAS, FPUD and RMWD are member agencies of SDCWA;

WHEREAS, the Eastern Municipal Water District (“EMWD”) is a special district
that provides retail water service to some cities and wholesale water to other cities
and special districts in Riverside County;

WHEREAS, FPUD and RMWD are contemplating the initiation of proceedings to
obtain wholesale water from EMWD and detach from SDCWA and annex to
EMWD;

WHEREAS, the contemplated detachment and annexation would require conforming
sphere of influence amendments approved by the relevant LAFCO (“Proceedings”);
WHEREAS, San Diego County and Riverside County are both an “affected county” for purposes of the Proceedings, which is defined in Government Code section 56012 as “any county that contains, or would contain, any territory for which a change of organization is proposed or ordered either singularly or as part of a reorganization or that contains all or any part of a district for which a change of organization or reorganization is proposed with respect to territory outside that county;”

WHEREAS, Riverside County is the “principal county” for purposes of EMWD’s sphere of influence amendment and annexation proceedings because, under Government Code section 56066, Riverside is “the county having the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district or districts for which a change of organization or reorganization is proposed;”

WHEREAS, San Diego County is the “principal county” for purposes of SDWA’s sphere of influence amendment and detachment proceedings because, under Government Code section 56066, San Diego is “the county having the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district or districts for which a change of organization or reorganization is proposed;”

WHEREAS, under Government Code sections 56123, RLAFCO has exclusive jurisdiction to process an application for the proposed change of organization to EMWD, and SDLAFCO has exclusive jurisdiction to process an application for the proposed change of organization to SDCWA;

WHEREAS, under Government Code section 56124, “If a proposed change of organization or a reorganization applies to two or more affected counties, for purposes of this division, exclusive jurisdiction may be vested in the commission of an affected county other than the commission of the principal county if all of the following occur:

(a) The commission of the principal county approves of having exclusive jurisdiction vested in another affected county.
(b) The commission of the principal county designates the affected county which shall assume exclusive jurisdiction.
(c) The commission of the affected county so designated agrees to assume exclusive jurisdiction.”;
WHEREAS, RLAFCO approves of having exclusive jurisdiction for purposes of EMWD’s sphere of influence amendment and detachment proceedings vested in San Diego County;

WHEREAS, RLAFCO designates San Diego County to assume exclusive jurisdiction for purposes of EMWD’s sphere of influence amendment and detachment proceedings;

WHEREAS, SDLAFCO agrees to assume exclusive jurisdiction for purposes of EMWD’s sphere of influence amendment and detachment proceedings for any application received for a reorganization as described above;

WHEREAS, the Parties desire to enter into this MOU to memorialize their understanding.

NOW, THEREFORE, in consideration of the covenants, conditions and promises contained herein, the parties mutually agree as follows:

1. **Sphere of Influence.** Any sphere of influence determination in connection with FPUD’s or RMWD’s application to detach from SDCWA and annex to EMWD will be the exclusive jurisdiction of SDLAFCO.

2. **Reorganization Proceedings.** Any reorganization proceeding in connection with FPUD’s or RMWD’s application to detach from SDCWA and annex to EMWD will be the exclusive jurisdiction of SDLAFCO.

3. **Applicable Policies and Procedures.** The Proceedings will be governed according to SDLAFCO’s policies and procedures. SDLAFCO is not required to follow RLAFCO’s policies and procedures in processing a sphere of influence or reorganization application submitted by FPUD or RMWD.

4. **Consultation.** SDLAFCO agrees to consult with RLAFCO staff regarding the Proceedings and before making any recommendations in connection with FPUD’s or RMWD’s application to detach from SDCWA and annex to EMWD. RLAFCO agrees to provide technical assistance to process the relevant applications upon SDLAFCO’s request. Any technical assistance provided by RLAFCO in connection with the Proceedings will be billed to FPUD and RMWD at RLAFCO’s established hourly rate.

5. **Term.** This MOU will take effect upon its execution by both SDLAFCO and RLAFCO and shall remain in effect until the Proceedings are complete.
6. **LAFCOs’ Responsibilities.** The LAFCOs will advise FPUD, RMWD, SDCWA, and EMWD that the required application and corresponding documentation and fees must be submitted to SDLAFCO pursuant to this MOU. Nothing in this MOU will be construed to limit in any way the provision of State law governing the consideration process for a sphere of influence determination or reorganization proceeding.

7. **Modification.** This MOU constitutes the entire agreement and understanding between the LAFCOs with respect to the subject matter hereof and supersedes any previous agreements, oral or written. This MOU may be modified only by subsequent mutual written agreement and will not be effective until signed by all parties.

8. **Termination.** This MOU may be terminated by either LAFCO upon 30 days’ notice in writing to the other LAFCO. Under Government Code section 56651, the Proceedings shall be deemed initiated on the date a petition or resolution of application of FPUD or RMWD is accepted for filing and a certificate of filing is issued by the executive officer of SDLAFCO to FPUD or RMWD. Once the Proceedings are initiated, RLAFCO is prohibited from terminating this MOU until SDLAFCO’s Proceedings are complete.

9. **California Law.** This MOU shall be construed in accordance with the laws of the State of California. Any action commenced related to this MOU shall be filed in the Superior Court of either San Diego or Riverside County. This MOU shall be construed as though jointly drafted by the Parties with the assistance of independent legal counsel.

10. **Indemnification.** LAFCOs agree to indemnify, defend at their own expense, including attorneys’ fees, and hold each other harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature, whatsoever, caused by or arising out of or related to any negligent act or willful misconduct of that party, its officers or employees or any other agent acting pursuant to its control and performing under this MOU.
12. **Notices.** All notices shall be personally delivered or mailed, via first-class mail to the below listed addresses:

   a. Keene Simonds  
      Executive Officer  
      San Diego Local Agency Formation Commission  
      9335 Hazard Way, Suite 200  
      San Diego, California 92123  
      (858) 614-7755  
      keene.simonds@sdcounty.ca.gov

   b. Gary Thompson  
      Executive Officer  
      Riverside Local Agency Formation Commission  
      6216 Brockton Avenue, Suite 111-B  
      Riverside, California 92506  
      (951) 369-0631  
      gthompson@lafco.org

   c. Courtesy Copy to: 
      Holly O. Whatley  
      General Counsel for SDLAFCO  
      Colantuono, Highsmith & Whatley, PC  
      790 East Colorado Blvd., Suite 850  
      Pasadena, California 91101  
      hwhatley@chwlaw.us

   d. Courtesy Copy to: 
      Tiffany N. North, Assistant County Counsel  
      Counsel for RLAFCO  
      Office of Riverside County Counsel  
      3960 Orange Street, Ste. 500  
      Riverside, California 92501  
      tnorth@rivco.org

13. **Severance.** Should a provision of this MOU be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

14. **Counterparts.** This MOU may be executed in one or more counterparts,
each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, these parties have executed this MOU on the day and year shown above.

SAN DIEGO LOCAL AGENCY FORMATION COMMISSION

RIVERSIDE LOCAL AGENCY FORMATION COMMISSION

Keene Simonds, Executive Director

Gary Thompson, Executive Director

APPROVED AS TO FORM

APPROVED AS TO FORM

Holly O. Whatley, General Counsel

Tiffany N. North, Assistant County Counsel
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.
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 Research¹, 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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¹ 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 21st 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.\(^2\)

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.

\(^2\) 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
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.
Page is Blank for Photocopying
September 11, 2019

Delivered by Electronic Mail
Ms. Claire Hervey Collins
Lewis Brisbois Bisgaard & Smith, LLP
633 West 5th Street, Suite 4000
Los Angeles, California 90071
claire.collins@lewbrisbois.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
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 proceeding 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 proceeding 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 7th 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.¹

- **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

¹ Riverside LAFCO currently expects to consider the MOU at its October 24th 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 27th 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 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 Sebee, 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
September 17, 2019

VIA ELECTRONIC MAIL ONLY

Keene Simonds
Executive Officer
San Diego LAFCO
9335 Hazard Way, Suite 200
San Diego, CA 92123
E-Mail: Keene.Simonds@sdcounty.ca.gov

Re: LAFCO MOU Regarding Rainbow-Fallbrook-Eastern Proceedings

Dear Mr. Simonds:

Thank you for your September 11, 2019 response to my August 27, 2019 letter. The Water Authority appreciates San Diego LAFCO’s willingness to analyze issues related to the potential Rainbow-Fallbrook-Eastern LAFCO Proceedings in advance of any LAFCO taking formal action.

The Water Authority understands that the sequencing proposed in your letter means that San Diego LAFCO would act only if Riverside LAFCO first approves a sphere amendment to Eastern MWD. However, because the changes contemplated by the Potential Applications may significantly impact San Diego County’s physical infrastructure, rate-payers, and water supply reliability (and will have virtually no impact in Riverside County) we continue to believe that retaining local control over a consolidated multi-county process is essential to ensuring rate neutrality and minimizing financial and other impacts to the Water Authority’s other 22 member agencies and their ratepayers. We believe the proposed MOU should make clear that the San Diego LAFCO will be performing its own independent analyses and determinations.

You indicate that the MOU was developed “at the request of Fallbrook PUD and Rainbow MWD to clarify proposal steps and related actions.” We request that the draft MOU be shared with the Water Authority and our 22 other member agencies (which are among the affected parties) at the earliest possible time – and no later than September 23, 2019 – so that all parties have an opportunity to review and provide meaningful input prior to the October 7 Commission meeting. Given the lack of urgency, however, we suggest that a better schedule would be to distribute the draft MOU as soon as it is available to all parties, and then set the MOU for consideration at your November meeting, in order to allow our member agencies an opportunity to meet and consult with their own governing boards and/or city councils.
We thank you for considering preparation of a multi-county study and formation of a multi-county advisory committee. We appreciate that the scale and scope of the analysis of a proposed reorganization will be determined by San Diego LAFCO commensurate with the proposal. Based on our understanding of the proposal, however, we believe that such a proposal is unprecedented in San Diego and possibly the state; given this unique situation, we again urge San Diego LAFCO to consider a well-vetted multi-county process to ensure that all affected parties have an opportunity to contribute to a meaningful evaluation of the potential actions contemplated by the proposal.

We also urge the San Diego LAFCO to ensure that Rainbow and Fallbrook undertake a consultation process with the Water Authority and its other 22 member agencies, pursuant to Legislative Policy L-107. While the Water Authority has been provided with the general outlines of a proposal, there has been fairly little provided in the way of detailed analysis of the core issues – including rate neutrality – and we understand that there has been no formal engagement of the other 22 member agencies. We suggest that perhaps San Diego LAFCO could facilitate such a process in order to ensure meaningful dialogue aimed at identifying and attempting to resolve issues associated with the potential reorganization.

Very truly yours,

Claire Hervey Collins of
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC:JLB
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
September 24, 2019

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

Subject: Draft MOU with Riverside County LAFCO

Dear Keene:

Thank you for the opportunity to review the draft Memorandum of Understanding (MOU) between SDLAFCO and Riverside LAFCO regarding the proposed applications of Rainbow Municipal Water District and Fallbrook Public Utility District for detachment from the San Diego County Water Authority and annexation to Eastern Municipal Water District. Rainbow MWD has no specific comments related to the draft MOU.

On behalf of Rainbow MWD, I want to express my appreciation of SDLAFCO’s efforts in developing this MOU as it helps clarify the steps that we will need to follow should my Board decide to file an application to initiate the detachment/annexation process.

Sincerely,

RAINBOW MUNICIPAL WATER DISTRICT

[Signature]

Tom Kennedy
General Manager
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