December 9, 2019

VIA E-MAIL

Jack Bebee
General Manager
Fallbrook Public Utility District
990 E. Mission Rd.
Fallbrook, CA 92028
E-Mail: jackb@fpud.com

Re: Water Authority’s Preliminary Comments on Fallbrook’s Board Memo Regarding Possible Detachment

Dear Mr. Bebee:

We write on behalf of the San Diego County Water Authority (“Water Authority”) to address your Board Memo for Item K on the Fallbrook Public Utility District (“Fallbrook”) December 9, 2019 Agenda (“Item K”). We ask that you please share this with the Fallbrook Board of Directors before your meeting to consider the item.

As the Water Authority has stated before, it is committed to providing accurate information in these proposed LAFCO proceedings, for the benefit and to represent the interests of all of its member agencies and their customers, which includes both Rainbow Municipal Water District (“Rainbow”) and Fallbrook. Many critical questions have not been addressed by Fallbrook, which would enable it to meet and have a meaningful conversation with our other member agencies. Chief among them are:

1. What is Fallbrook’s proposal regarding payment of existing Water Authority obligations incurred to provide a reliable water supply to its customers?

2. How will Fallbrook’s customers including agricultural users be impacted by relying on MWD’s lower water supply reliability—a fact that is established but not quantified in the board memo?

3. Will a service change to a more Delta-dependent and less reliable source of water comply with state law and water policy, including CEQA?
With due respect, we feel that the staff report presents an incomplete story as to the history of our agency interactions on detachment. Your agenda item provides some, but not all, of the materials we have exchanged.

For almost a year, Rainbow and Fallbrook staff worked in secret to hold meetings with Eastern, engage PR firms, undertake legal discussions with LAFCO, and make extensive preparations to detach from the Water Authority without ever even talking to the Water Authority, which has been its water supplier since the 1940’s. Once the Water Authority was informed by Rainbow General Manager Tom Kennedy – who said at the time he also spoke for Fallbrook – that your agencies intended to apply to detach, the Water Authority officers promptly met with both General Managers. Since then, the Water Authority has continued to seek a higher level of analysis from your agency in order to fairly and accurately analyze the detachment proposal and ensure that the Water Authority’s member agencies would be able to do the same. We were not even provided with the Draft Plan for Services included in your board packet, and only obtained it in connection with your published agenda item. While we have therefore had a limited opportunity for review, we wanted to provide you with our preliminary comments before your board action.

Fallbrook should meet with the Water Authority’s other member agencies to discuss your proposal relating to the long-term financial obligations incurred in part to provide Fallbrook ratepayers with a reliable water supply.

The Water Authority’s Chairman, Jim Madaffer, asked at the very first meeting with you and Mr. Kennedy that your districts provide a proposal with regard to Water Authority financial obligations. **As you are well aware, this is the principal concern that has been raised by the Water Authority’s other member agencies.** You and Mr. Kennedy promised to provide such a proposal but have never done so, and in fact, we are unaware of either district proposing anything to the Water Authority’s other member agencies except, “detach and pay nothing.” While the Water Authority’s obligations will be covered either way, this is a matter of utmost concern to our member agencies, the ratepayers they represent and the public we all serve.

The draft resolution recognizes that the County Water Authority Act ("CWA Act") requires a detaching agency to “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 detachment and until the bonded or other indebtedness has been satisfied.” (Emphasis added.) This statutory language pre-dates Prop. 13 and Prop. 218, after which time the nature of public finance – and its former reliance on bonds and taxes – changed in favor of fees and charges. However, the intent of the CWA Act is that a detaching agency must expect to pay a share of debt outstanding or contracted for at the time of its detachment from the Water Authority. Numerous sections of the LAFCO legislation require similar debt payments.

Your board memo states that, if Fallbrook detaches from the Water Authority, it will be required to pay the Water Authority $150,000 per year based on the CWA Act. (See page 23 of the Draft Plan for Providing Services at p. 105 of Item K). But this only covers the ad valorem property tax attributable to Fallbrook’s area, not the Water Authority’s “bonded or other indebtedness.” The explanation in the Draft Plan would confuse the average reader, who might mistakenly think that
exposure to paying $150,000 per year is the only financial risk of detachment. That is not the case.

LAFCO has the clear authority, in connection with establishing terms and conditions of detachment, to require payment of a proportionate share of bonded and other indebtedness as a condition of detachment (it also has discretion to require an agency-wide vote on the matter, as recently described in the resolution passed by the Water Authority board of directors). Accordingly, and in light of all of these facts and circumstances, we suggest Fallbrook revise its estimate of savings to at least provide a range of savings, from what is stated now (on the low end) to include a high end estimate accounting for a proportionate share of current bonded and other indebtedness. This would only be prudent given it is already known that some of the Water Authority’s other member agencies are advocating for this treatment by LAFCO.

Providing both a low and high range of the potential costs of detachment will also provide a more accurate comparison to current Water Authority supply costs, and enable your ratepayers to consider the impacts on reliability in that context.

Impacts on and choices for agricultural water users

We believe it is important for the Fallbrook board to disclose to your agricultural users and public that, during the drought of the early 1990’s, MWD cut agricultural water supplies by 90%. It was only due to action by the Water Authority’s board of directors—who valued and prioritized San Diego County’s agriculture—to adopt a melded rate that saved agriculture in our County. In other words, the Water Authority’s other member agencies voted to take greater cuts in their own municipal and industrial uses in order to continue to provide a water supply to our County’s growers. This is likely one reason other Water Authority member agencies are frustrated with Fallbrook’s change of heart now, in seeking less reliable water and asking them to pay the share of costs Fallbrook caused the Water Authority to incur.

Had Fallbrook been a member of Eastern at that time (located in Riverside County), its growers would likely have been stuck with MWD’s 90% water supply cutback. At least one public official from Riverside County has recently already expressed a concern and requirement that Fallbrook and Rainbow have no access to Eastern’s independent water supplies and infrastructure if the annexation to Eastern is approved by LAFCO. As is apparent from the Draft Plan for Service, the proposed annexation to Eastern includes no water supply, no storage and no other infrastructure for the benefit of Fallbrook customers, but is simply a paper annexation whereby Fallbrook will pay Eastern a $11 per AF service charge.

Finally, we note that the Water Authority has recently amended its Transitional Special Agricultural Water Rate (TSAWR) to make it permanent, representing a significant discount in exchange for lower reliability. Moreover, under the Water Authority’s rate structure, growers have a choice to either pay this lower rate or pay full rates to ensure reliability and storage, which a high number of Fallbrook agricultural customers already choose to do. We believe it would be useful to provide this information to allow a fair comparison of ratepayer options.
Increased reliance on exports from the Bay-Delta

The staff report correctly notes that MWD receives its imported water from the State Water Project and the Colorado River. However, what the report does not discuss is that the impact of increasing reliance on MWD may be contrary to state statute requiring agencies to reduce reliance on imported water supplies from the Bay-Delta.

The State Water Project draws water from the environmentally sensitive Bay-Delta region and conveys it to MWD via the California Aqueduct. The Legislature has been concerned about impacts to the Bay-Delta, and has passed extensive legislation about it. One of these statutes is Water Code section 85021, which expresses a clear policy that the State wants local agencies to reduce, not increase, reliance on the Bay-Delta (emphases added):

“The policy of the State of California is to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.” (emphasis added)

Fallbrook’s conjunctive use project is consistent with this policy; however, attachment to Eastern and the resulting exclusive reliance on MWD for imported water is not. The Water Authority has made investments consistent with state policy to become less reliant on Bay-Delta water. It is steadily reducing its purchases of MWD Bay-Delta water, to the point that in wet months, the Water Authority buys zero MWD water. While there have been statements made that Fallbrook will receive “the same” water at a lower cost from Eastern, that is not accurate. The water being delivered into the Water Authority’s service area through MWD pipelines -- and thus delivered to Fallbrook and Rainbow -- is the Water Authority’s highly reliable water supplies.

Need for CEQA review

The Water Authority and its member agencies will want to ensure that any potential environmental effects are adequately considered and studied. The Resolution states that the action before the Board is exempt from CEQA. As Fallbrook presumably knows, during the proposed LAFCO process for detachment, LAFCO will be the lead agency and will be required to perform a full CEQA analysis. (People ex rel. Younger v. Local Agency Formation Com. (1978) 81 Cal. App. 3d 464.) Further, as briefly discussed above, Fallbrook’s planned increased reliance on water exported from the Bay-Delta will almost certainly require a CEQA-based environmental analysis. For this reason, the proposed detachment cannot be exempt under the “common sense” exemption. There may of course be other aspects of the proposal that trigger CEQA analysis.

We respectfully disagree that Fallbrook’s actions are categorically exempt from CEQA; several exceptions to the application of categorical exemptions under CEQA Guidelines Section
15300.2 apply here, notably that the detachment would have a cumulative impact on Bay-Delta resources. There is also a reasonable possibility that the detachment could have a significant effect on the environment in Fallbrook due to the unusual circumstance of an agency choosing a less reliable water supply. This could potentially result in water supply cutbacks and the concomitant impacts on agriculture, which is the heart of Fallbrook’s economy and ecology and the very reason your agency is seeking detachment in the first place. Categorical exemptions must be construed strictly, cannot be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment (McQueen v. Mid-Peninsula Regional Open Space (1988) 202 Cal. App. 3d 1136.)

**A note regarding the ESP project**

The Emergency Supply Pump Project—which was authorized by the Water Authority’s board of directors in the current budget cycle and would have benefitted Rainbow and Fallbrook customers—is currently suspended at the request of Rainbow and Fallbrook. There are no “savings” to be credited to Fallbrook and Rainbow for money that was never spent by the Water Authority.

The Water Authority is in the process of reviewing the proposed Plan for Service in more detail, and would be happy to discuss all of the issues raised in this letter in more detail in the coming weeks. We raise these issues now to ensure full and fair disclosure of all relevant information for all 24 of our member agencies and the ratepayers they serve in San Diego County.

Very truly yours,

Claire Hervey Collins of
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC:JLB

Cc: Sandy Kerl
Mark Hattam
Water Authority Board of Directors