December 2, 2019

VIA E-MAIL AND U.S. MAIL

Tom Kennedy
General Manager
Rainbow Municipal Water District
3707 Old Highway 395
Fallbrook, CA 92028
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Re:  RMWD’s Board Agenda Item re Application to LAFCO for Reorganization

Dear Mr. Kennedy:

We write on behalf of the San Diego County Water Authority (“Water Authority”) to address deficiencies and inaccuracies in your Board Action Memo for Item 15 on Rainbow Municipal Water District’s December 3, 2019 Agenda (“December 3 Board Memo”).

The Water Authority would like to bring to Rainbow’s attention that in the December 3 Board Memo there are two attachments listed on page 51 under Supporting Documents as being attached to the Memo that are not actually attached or included in any portion of the agenda packet. Please provide these documents to the Water Authority immediately as well as to your Board and to the public; these documents are necessary to fully understand the proposed action and its basis.

As the Water Authority has stated before, it is committed to providing accurate information in these proposed LAFCO proceedings for the benefit of all of its member agencies and their customers, which includes both Rainbow and Fallbrook as well as the 22 other member agencies. The Water Authority fully appreciates that Rainbow is seeking to preserve the character of its agricultural community—indeed, the Water Authority shares that objective. Its Board of Directors has demonstrated its commitment to that objective many times over the years, not only with the adoption of special water rates for its agricultural customers, but by also minimizing MWD’s cutbacks in water service. The Water Authority’s member agencies chose to reduce their own water usage so that more water could remain available for our agricultural water users.
The following statements in the December 3 Board Memo are incorrect or lack the context necessary to present a full and true account of the facts:

**Statement 1.** “The District’s and MWD’s existing geographic service areas also would not be altered as a result of the detachment and annexation actions because MWD is already capable of serving RMWD and the FPUD through existing infrastructure.”  
(p. 45 (and similar statements elsewhere in Board memo).)

**Correction:** It appears from prior statements by Rainbow management that **only a portion** of the Rainbow service area can receive service from the existing MWD infrastructure. Rainbow has previously stated that it will have to construct new pipelines to be able to deliver MWD water to the southern part of its service area. Rainbow General Manager Tom Kennedy said to Rainbow consulting expert Ken Weinberg in a November 26, 2018, e-mail: “We are doing a cost analysis to build new pipelines from north to south so we can stay on the MWD system and get off SDCWA altogether.” If Rainbow now believes it has infrastructure in place to allow it to receive all of its deliveries from MWD without any new infrastructure for its southern service area, it should publicly explain how such deliveries will take place.

**Statement 2.** “While these investments may be good for agencies south of the Districts, neither FPUD nor RMWD receive commensurate benefits from these improvements.”  
(p. 45 (and similar statements throughout the Board Memo, such as claims that Fallbrook and Rainbow have provided subsidies at p.48).)

**Correction:** This statement is not true and is contradicted later on in the same paragraph. Four of the eight RMWD connections are hydraulically connected to the Water Authority’s Twin Oaks Valley Water Treatment Plant clearwells and are capable of receiving water treated at that facility as well as the Carlsbad Desalination Plant. In FY 2019, deliveries from these SDCWA connections met 60 percent of RMWD’s total demand.

RMWD has further benefitted from the increased reliability provided by the Water Authority’s QSA supplies and Carlsbad Desalination Plant. In 2009, MWD’s 13 percent cutback was reduced to 8 percent as a direct result of the Water Authority’s supply reliability investments. Again in 2016, RMWD’s mandatory conservation standard was reduced from 36 percent to 28 percent due to the Carlsbad Desalination Plant being certified as drought-resilient.

**Statement 3.** “Over the last 20 years, the all-in melded treated water rate from SDCWA has tripled.”  
(Board Memo, p. 46 of 238.)

**Correction:** **This statement is misleading** for two reasons:

1. Rainbow does not pay the full treated water rate because its TSAWR customers receive a discount off this rate; and
(2) It fails to acknowledge that SDCWA’s rate increases include a substantial component attributable to MWD rate increases over the same timeframe. The Board Memo does not disclose that MWD, the service provider Rainbow and Fallbrook seek to move to, had treated full service rates that more than quadrupled in the same time period.

Statement 4. “SDCWA has essentially refused to engage with either District on the matter [of detachment].” (Board Memo, p. 48 of 238.)

Correction: This is not true. The Water Authority has been willing to engage with the agencies, and has done so. In an October 14, 2019 Letter from the Water Authority to Fallbrook (copying Rainbow), the Water Authority explained that the LAFCO process is supposed to be collaborative and urged the two agencies to consult with the Water Authority and its member agencies. Unfortunately, the high level, or “concept” approaches provided so far by Rainbow and Fallbrook have not provided any substantial data or analytical rigor necessary for the Water Authority or affected parties to professionally and responsibly evaluate the proposed detachments.

Statement 5. “[SDCWA] is over $400 million more expensive than the exact same water, from the exact same sources . . . .” (p. 48 and similar claims about MWD’s equal water reliability throughout the Board Memo.)

Correction: This statement is not true. Though the water may be delivered through MWD pipes, the Water Authority’s water is not the “exact same water” as MWD’s water. In fact, the vast majority of the Water Authority’s supply, which both Rainbow and Fallbrook benefit from, is water from the QSA, which MWD delivers via an Exchange Agreement with the Water Authority. This water is higher priority Colorado River water than MWD’s water from the Colorado River. This is because it is water conserved by the Imperial Irrigation District and transferred to the Water Authority, and IID has higher priority rights on the Colorado River than MWD. By moving onto MWD water, both Rainbow and Fallbrook will be moving onto less reliable water, which Rainbow’s own expert has admitted. Rainbow consulting expert Ken Weinberg stated to Rainbow General Manager Tom Kennedy in an April 12, 2019, e-mail (emphasis added): “I do think we have to admit that RMWD reliability will be greater remaining in SDCWA except for the TSAWR customers and that MWD planning documents rely more heavily on future achievements (imported water, local supplies) but the issue is at what cost and how much reliability is necessary.” “Future achievements” would include, for example, implementation of one or more tunnels to secure higher reliability of MWD’s imported water from the State Water Project. While the Water Authority appreciates Mr. Weinberg’s statement above, he has failed to provide the kind of rigorous analysis of the respective water supply sources that would normally be associated with due diligence on a transaction of this magnitude and importance to ratepayers.
Statement 6. “. . . the actual cost increase [for other Water Authority member agencies as a result of Rainbow and Fallbrook detaching] per acre foot is only about $18.64.” (p. 49.)

Correction: Though the Water Authority released preliminary data from 2018 that showed a loss of over $13 million per year from a Rainbow/Fallbrook detachment, the Water Authority has not yet completed a full financial analysis and neither has Rainbow or Fallbrook. Further, there are significant other unexamined issues such as effects on the Water Authority’s financing costs (i.e. bond ratings) and potential detachments of other member agencies that are ignored by statements such as this. This statement, and similar cost assertions in the Board Memo, also assume that Rainbow and Fallbrook would not be required as part of the LAFCO conditions to fund any share of the contractual obligations and debt incurred by the Water Authority to secure reliable water supplies to serve their agencies.

Statement 7. “When these savings [from not constructing ESP pump stations] are taken into consideration, there would be no negative impact on agencies to the south for many years.” (p.50.)

Correction: These projects—which would have benefitted Rainbow and Fallbrook customers—are currently suspended with the concurrence 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.

CEQA

The Board Memo states that “. . . the action before the Board is exempt [from CEQA].” (p. 52.) As Rainbow presumably knows, during the proposed LAFCO process for detachment, LAFCO will be required to perform a full CEQA analysis. (People ex rel. Younger v. Local Agency Formation Com. (1978) 81 Cal. App. 3d 464.) The Water Authority’s member agencies will want to ensure that any potential environmental effects are adequately considered and studied. For example, as discussed above, to the extent that Rainbow intends to construct new infrastructure, it would most certainly require environmental analysis under CEQA. Further, Rainbow’s planned increased reliance on water from the Bay-Delta as a result of its exclusive reliance on MWD imports would almost certainly require a CEQA-based environmental analysis. There may of course be other actions that trigger CEQA review.

A Vote is Premature

Rainbow’s proposed application for detachment from the Water Authority is premature as several key data points are missing, incomplete or inaccurate as described above. One of the most significant areas of deficiency is the absence of a professional due diligence analysis of the level of water supply reliability Rainbow currently has with service from the Water Authority, and what level of water supply reliability Rainbow would have with service from MWD. The Water
Authority believes that a vote from Rainbow’s Board to seek to detach from the Water Authority at this time would be based on incomplete and inaccurate information and will have negative consequences for Rainbow and its ratepayers not the least of which will be potentially unnecessary and avoidable LAFCO fees and obligations. The Water Authority hopes that your board will choose to ask management to provide complete and accurate information before any action is taken.

Very truly yours,

Claire Hervey Collins of
LEWIS BRISBOIS BISGAARD & SMITH LLP

CHC:JLB
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