



6.d.  
9/26/2019

TO: Local Agency Formation Commission

FROM: Gary Thompson, Executive Officer

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SUBJECT: DIRECTION ON SAN DIEGO LAFCO MEMORANDUM OF UNDERSTANDING REGARDING PRINCIPAL COUNTY STATUS FOR REORGANIZATION INVOLVING EASTERN MUNICIPAL WATER DISTRICT, RAINBOW MUNICIPAL WATER DISTRICT, FALLBROOK PUBLIC UTILITY DISTRICT, AND SAN DIEGO COUNTY WATER AUTHORITY

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Recently, San Diego LAFCO notified our office that two of their special districts, Rainbow Municipal Water District (RMWD) and Fallbrook Public Utility District (FPUD), wanted to detach from the San Diego County Water Authority (SDCWA) and annex into Eastern Municipal Water district (EMWD). The purpose of the potential reorganization and related Sphere of Influence (SOI) amendment is for the desire of RMWD and FPUD to change wholesale providers of water for their retail service operations.

In discussions with San Diego LAFCO, it has been determined that a Memorandum of Understanding (MOU) between our two agencies is in order for processing and adjudicating any proposals that may be received. Technically, San Diego LAFCO is considered the Principal County due to the two districts initiating the process are solely within San Diego County. However, as EMWD is solely within Riverside County and Riverside County is the Principal County with regard to EMWD, two options of processing these potential proposals have been discussed.

Option One would be for EMWD to submit an SOI amendment application to Riverside LAFCO for expanding EMWD's SOI to cover the two districts, and if ultimately approved by the Commission, then San Diego LAFCO would process any applications for the detachments and annexations.

Option Two would be to confirm that San Diego LAFCO, as Principal LAFCO, has jurisdiction over the entire process including the SOI amendment. Under Government Code sections 56123 and 56124, the Commission may transfer exclusive jurisdiction to the affected county LAFCO if all of the following determinations are made:

- 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 to assume exclusive jurisdiction; and,
- c. The commission of the affected county so designated agrees to assume exclusive jurisdiction.

The SDCWA is strongly opposed to Riverside LAFCO having any involvement in processing any application other than a limited role, and declares that as Principal LAFCO, San Diego LAFCO should process all applications. Attached is correspondence to San Diego LAFCO from SDCWA's legal counsel denoting their position.

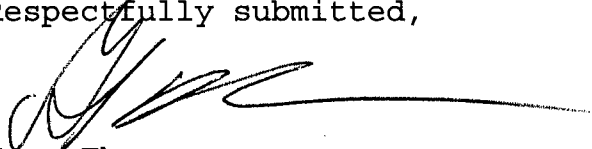
Staff initially agreed that Option One would be acceptable pending confirmation from the Commission. All agencies have been advised of this tentative plan for processing the applications. However, after careful review of the objections raised by the SDCWA, staff believes that to avoid any unnecessary conflict and potential legal action, it would be prudent to recommend Option Two. Since the proposed reorganization only impacts residents of San Diego County with no changes to infrastructure or service levels in Riverside County and no impacts to Riverside County residents, it now seems most prudent to have San Diego act on all aspects of the reorganization application, including the SOI.

**STAFF RECOMMENDATION:**

It is recommended that the Commission:

1. Provide direction to staff regarding further development of the MOU that delegates to San Diego LAFCO all processing and adjudication for the potential future SOI, Detachment and Annexation proposals as San Diego LAFCO is the Principal LAFCO for the territories seeking the change of organizations.

Respectfully submitted,

  
Gary Thompson  
Executive Officer

Attachment-

- 1) SDCWA Letter to San Diego LAFCO dtd 8/27/19
- 2) SDCWA Letter to SD LAFCO dtd 9/17/19

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# **CORRESPONDENCE**

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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.





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

September 17, 2019

File No. 44112.2

**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