

MEMBER AGENCIES

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- Rainbow
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- Vista Irrigation District
- Yuima
Municipal Water District

OTHER
REPRESENTATIVE

- County of San Diego

August 5, 2019

VIA E-MAIL

Board of Directors
Eastern Municipal Water District
2270 Trumble Road
Perris, CA 92570
boardmember@EMWD.org

Re: Action/Info Item IV.A. August 7 Board Meeting (Memorandum of Understanding Rainbow/Fallbrook (the "MOU"))

Dear Board of Directors:

This letter pertains to the above-referenced MOU that your agency is considering on August 7, 2019. This letter constitutes an objection by the San Diego County Water Authority (the "Water Authority") to any proposed approval of the MOU at this time.

One of our overall concerns is that there has not yet been a full public review and analysis as to what is being proposed by Rainbow, Fallbrook, and Eastern before commitments such as the MOU are being made. The Water Authority wants to ensure that members of the public are allowed to see the full scope of what is being proposed, and what the possible changes would entail -- including what losses of reliability may be at issue for Rainbow and Fallbrook, what risks the changes may bear for Eastern, and what increased water rates may have to be paid by San Diego County residents and businesses. The Water Authority is committed to having a full, fair, and public review and analysis of the Rainbow/Fallbrook proposal. A predicate environmental review (discussed below) is part of that necessary process.

Further, without such care at the front end of a proposal, material errors can be made. For example, the slide called "Equivalent Wholesale Treated Water Cost Comparison" on page 68 of your Board packet shows a wholesale water charge by the Water Authority of \$1,704 an acre-foot, implying that such would be the costs otherwise paid by Fallbrook and Rainbow at the Water Authority. However, because of the lower agricultural rate that Rainbow and Fallbrook pay on some of their purchases from us, and the fact that these agencies do not pay our transportation rate on all their water, the overall per acre-foot cost they actually pay is closer to \$1,400.

Most important, entry into the MOU at this time would violate the California Environmental Quality Act (“CEQA”), because no CEQA review has been performed. Your agency’s agenda materials erroneously state that the item is “not a project” under CEQA. The Board materials do not provide any basis for this conclusion.

Instead, the actual text of the MOU provides for EMWD to take several actions in connection with an augmentation to its Sphere of Influence, as well as a proposal for Rainbow and Fallbrook to detach from San Diego County Water Authority and annex into Eastern. CEQA is clear that “(a) ‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) an activity directly undertaken by any public agency....” (CEQA Guidelines Section 15378.)

“The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term ‘project’ does not mean each separate governmental approval....” (CEQA Guidelines Section 15378(c).) The Attorney General has also opined that changes to a Sphere of Influence require CEQA compliance if the action could possibly have a significant effect on the environment. (63 Ops. Cal. Atty. Gen. 758.)

The “whole of the action” here would include a proposed sphere of influence change, detachment, and annexation proceedings, changes that would require, by the Rainbow General Manager’s own admission, changes in the physical environment. (*See, e.g.*, attached email thread between Rainbow’s Tom Kennedy and Ken Weinberg stating Rainbow’s intention to “*build new pipelines* from north to south so [Rainbow] can stay on the MWD system and get off SDCWA altogether.”) (Emphasis added.)

The MOU you are considering fails to comply with a single requirement of CEQA Guidelines Section 15004(b)(4), and therefore Eastern’s approval of the MOU at this time would be a violation of CEQA. The MOU seeks to claim it is “non-committal” by stating that its purpose is to formalize the “exploration, planning, and consideration” of the project. However, in actuality it formally commits the parties to a variety of duties without any precursor study, including bearing costs and indemnity risks, delivery of water at specific rates, and exemption from fees. It also says that there may be “new or additional facilities” that would be paid for by Rainbow and Fallbrook (again without a study).

Finally, we also note that Eastern has not in any way consulted with SDCWA with respect to this project, though its General Manager has been working with Rainbow and Fallbrook on the matter since at least 2018 (as shown in recent PRA responses by Rainbow and Fallbrook). If such consultations had occurred, considerations such as stated above could have been discussed earlier.

Eastern Municipal Water District
August 5, 2019
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We respectfully request that the Board not approve the MOU at this time. We thank the Board for its careful consideration of the important matters raised in this letter.

Sincerely,



Mark J. Hattam
General Counsel

Enclosure

cc: (via email):

Jack Bebee, FPUD General Manager
Paul Jones, EMWD General Manager
Tom Kennedy, RMWD General Manager
Sandra L. Kerl, SDCWA Acting General Manager
Steven O'Neill, Esq.
Alfred E. Smith, Esq.
Paula de Sousa Mills, Esq.

From: Ken Weinberg <keneweinberg@gmail.com>
Sent: Monday, November 26, 2018 10:40 AM
To: Tom Kennedy
Subject: Re: Project Status

EXTERNAL EMAIL – USE CAUTION WHEN OPENING ATTACHMENTS OR HYPERLINKS.

When I talked with Paul his approach to the cost of the pipeline would be for Rainbow's incremental use. If its 15 cfs or peak 30 cfs it would be just that capacity for a pipeline that may be debt free and a facility Rainbow has paid for the last 40 or 50 years. It has some precedent with City of San Diego and P4. May be cheaper.

Yes, I will be at ACWA this week. Significant savings. Also, the District face high risk with potential discontinuance of TSAWR and if TSDCWA transportation is charged in future. I built in toggles to see the affects. Something your Board should consider in the long term. All of it applies to FPUD too.

Ken

From: Tom Kennedy <tkennedy@rainbowmwd.com>
Date: Monday, November 26, 2018 at 10:13 AM
To: Ken Weinberg <keneweinberg@gmail.com>
Subject: RE: Project Status

Excellent – that connection fee was going to be a significant sticking point as it is huge. 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. I have a feeling that we can build pipelines at a lower cost than what SDCWA will charge for those huge pipelines. We could also benefit from better hydraulic connectivity in our network with these pipelines.

I look forward to the first draft – I presume it will show significant savings over SDCWA. Will you be at ACWA this week?

Tom Kennedy | General Manager | Rainbow Municipal Water District
3707 Old Highway 395, Fallbrook, CA 92028 | 760-728-1178 | www.rainbowmwd.com

NOTICE: All e-mails to and from the Rainbow Municipal Water District may be considered public records and are subject to public disclosure pursuant to the California Public Records Act.

From: Ken Weinberg <keneweinberg@gmail.com>
Sent: Monday, November 26, 2018 9:52 AM
To: Tom Kennedy <tkennedy@rainbowmwd.com>
Subject: Re: Project Status

EXTERNAL EMAIL – USE CAUTION WHEN OPENING ATTACHMENTS OR HYPERLINKS.

Tom

I didn't want to bother you over the Holiday weekend. I talked with Paul Jones last week and had a good discussion and have the information I needed to complete the financial analysis. Specifically, there will be no annexation charge to join