



September 26, 2019

Mary Lou West
Fallbrook Public Utility District
990 East Mission Road
Fallbrook, CA 92028

Dear Mrs. West:

Enclosed are the signed signature pages for the Memorandum of Understanding (MOU) for the Annexation of Rainbow Municipal Water District and Fallbrook Public Utility District into Eastern Municipal Water District for wholesale imported water services.

Should you have any questions, please contact me at (951) 928-3777, extension 4235, or you can reach me by email at zelayas@emwd.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheila Zelaya", with a long horizontal flourish extending to the right.

Sheila Zelaya
Board Secretary

Enclosure

Board of Directors

Ronald W. Sullivan, *President* Philip E. Paule, *Vice President* Stephen J. Corona Randy A. Record David J. Slawson

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MEMORANDUM OF UNDERSTANDING

PLANNING PROCESS AND GENERAL TERMS FOR CONSIDERATION OF THE ANNEXATION OF RAINBOW MUNICIPAL WATER DISTRICT AND FALLBROOK PUBLIC UTILITY DISTRICT INTO EASTERN MUNICIPAL WATER DISTRICT FOR WHOLESALE IMPORTED WATER SERVICE

This Memorandum of Understanding (“MOU”) is made and entered into this 7 day of AUGUST, 2019, by and between **EASTERN MUNICIPAL WATER DISTRICT** (“Eastern”), **RAINBOW MUNICIPAL WATER DISTRICT** (“Rainbow”), and **FALLBROOK PUBLIC UTILITY DISTRICT** (“Fallbrook”). Eastern, Rainbow, and Fallbrook may be collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, Rainbow and Fallbrook each provide retail water service within individual areas of service located within San Diego County, California as generally depicted on **Exhibit A**, attached hereto and incorporated herein; and

WHEREAS, Eastern provides both retail and wholesale water service within Riverside County, California, as additionally depicted on Exhibit A, and is a member agency of the Metropolitan Water District of Southern California (“Metropolitan”); and

WHEREAS, Rainbow and Fallbrook are wholesale water customers of the San Diego County Water Authority (“San Diego CWA”), also a member agency of Metropolitan, and are geographically adjacent to Eastern; and

WHEREAS, Eastern and San Diego CWA each acquire imported water from Metropolitan and make imported water supplies, and other water supplies, available on a wholesale basis to retail water agencies within their respective service areas; and

WHEREAS, Rainbow and Fallbrook contemplate detachment from San Diego CWA and have initiated discussions with Eastern regarding the opportunity for annexation to Eastern for the direct receipt of Metropolitan water deliveries in lieu of water supplies currently provided to them by San Diego CWA; and

WHEREAS, the Parties desire to work cooperatively to explore, analyze, plan, and consider the aforementioned annexation opportunity; and

WHEREAS, the purpose of this Memorandum of Understanding (MOU) is to formalize the mutual understandings between the Parties for the exploration, planning, and consideration of Rainbow and Fallbrook’s annexation to Eastern for the receipt of wholesale water deliveries.

Memorandum of Understanding – Annexation of Rainbow Municipal Water District and Fallbrook Public Utilities District into Eastern Municipal Water District for Wholesale Imported Water Service

NOW, THEREFORE, in consideration of the Recitals and mutual understanding of the Parties as expressed herein, the Parties agree to pursue the aforementioned opportunity in accordance with the following considerations:

1. Rainbow and Fallbrook will, each, be responsible for all costs and obligations associated with their respective detachment(s) from San Diego CWA and annexation into Eastern, including, but not limited to processing costs and other costs or obligations as required by law.
2. Rainbow and Fallbrook will continue to own and retain capacity in wholesale imported water system points of connection.
3. Imported water supplies from Metropolitan will be delivered to Rainbow and Fallbrook through wholesale water system points of connection in which Rainbow and Fallbrook own capacity, and will be billed by Eastern at Metropolitan's then current and applicable Full Service rate (currently \$1,050 per acre-foot for Tier 1 Full Service Treated Water and \$731 per acre-foot for Tier 1 Full Service Untreated Water) plus Eastern's then current commodity rate (Rate Code E302, currently \$11 per acre-foot), or any subsequent replacement rates thereof.
4. It is anticipated that no new or additional infrastructure or capital facilities will be required to support the changes in wholesale imported water service contemplated herein. Any new or additional facilities as may be required shall be funded, owned, operated, and maintained by Rainbow or Fallbrook, as appropriate.
5. If deemed necessary, Rainbow and Fallbrook may pursue an agreement with San Diego CWA to receive deliveries of wholesale imported water through the San Diego CWA owned aqueduct.
6. As Rainbow and Fallbrook currently exist within the service area of Metropolitan, no additional fees for annexation to Eastern will be required by Eastern.
7. Eastern will not charge a connection capacity fee for new water meters that may be installed in Rainbow or Fallbrook.
8. Rainbow and Fallbrook in collaboration with Eastern will prepare and process an application for detachment from the San Diego CWA and annexation into Eastern through the San Diego County Local Agency Formation Commission (LAFCO). Concurrently, Eastern in collaboration with Rainbow and Fallbrook will prepare and process an application for a conforming change to Eastern's

Memorandum of Understanding – Annexation of Rainbow Municipal Water District and Fallbrook Public Utilities District into Eastern Municipal Water District for Wholesale Imported Water Service

Sphere of Influence through the Riverside County LAFCO. Parties shall coordinate with these LAFCOs on the proper timing of the applications.

9. Rainbow and Fallbrook will be responsible for any and all LAFCO fees covering detachment from San Diego CWA, annexation to Eastern, and conforming changes to Eastern's Sphere of Influence.
10. Eastern will coordinate with Metropolitan to seek a determination of changes to the administration of pertinent programs, benefits, fees, charges, and other such rights and obligations as may be necessary or useful to the potential detachment of Rainbow and Fallbrook from San Diego CWA and annexation into Eastern, and as pursuant to the Metropolitan Water District Act, Metropolitan's Administrative Code, or other Metropolitan adopted rules or policies. Subject to such determination by Metropolitan, the Parties propose the following:
 - a. Metropolitan's Readiness-to-Serve and Capacity Charges attributable to the Rainbow or Fallbrook areas of San Diego CWA shall be transferred from San Diego CWA to Eastern, and payable by Rainbow and Fallbrook to Eastern in a manner consistent with that by which Metropolitan allocates such costs to its member agencies.
 - b. Standby Charge revenue collected by Metropolitan within and attributable to the Rainbow or Fallbrook areas of San Diego CWA shall be made available to Eastern to utilize as credits to offset Rainbow and Fallbrook's portion of Eastern's Readiness-to-Serve Charge as provided for by law and under Metropolitan's Administrative Code.
 - c. Tier 1 supply allocation and Purchase Order obligations attributable to the Rainbow and/or Fallbrook areas of San Diego CWA shall be transferred from San Diego CWA to Eastern.
 - d. Any basis for Metropolitan imposed water supply contingencies such as cutbacks, curtailments, or tier based allocation adjustments under Metropolitan's Water Supply Allocation Plan (WSAP) or other Metropolitan Board adopted supply allocation plan attributable to the Rainbow or Fallbrook areas of San Diego CWA shall be transferred from San Diego CWA to Eastern. If Metropolitan has limited supply allocations to Eastern, supply to all Eastern's wholesale customers, including Rainbow and Fallbrook, shall be allocated using a formula and methodology established by Eastern, which will be based upon Metropolitan's WSAP or other Metropolitan Board adopted supply

Memorandum of Understanding – Annexation of Rainbow Municipal Water District and Fallbrook Public Utilities District into Eastern Municipal Water District for Wholesale Imported Water Service

allocation plan in effect at the time of such allocation. Any new or additional water supply projects, programs, or other measures implemented by Eastern that would benefit Rainbow and/or Fallbrook in terms of supply reliability enhancement under Metropolitan's WSAP or other Metropolitan Board adopted supply allocation plan in effect at the time of such allocation may, at Eastern's discretion, be offered to Rainbow or Fallbrook for consideration and financial participation.

- e. Any Metropolitan incentive program agreements that are in place with Rainbow or Fallbrook and administered through San Diego CWA will be transferred to Eastern. Eastern will communicate, make available, and administer any future Metropolitan incentive programs on behalf of Rainbow and Fallbrook.
 - f. Assessed valuation and service area population attributable to the Rainbow or Fallbrook areas of San Diego CWA will be reassigned from San Diego CWA to Eastern as it pertains to Metropolitan representation, pursuant to the provisions of the Metropolitan Water District Act, Water Code Appendix Section 109-1 et seq.
 - g. Preferential Rights attributable to the Rainbow or Fallbrook areas of San Diego CWA will be reassigned from San Diego CWA to Eastern, pursuant to the provisions of the Metropolitan Water District Act Sections 109-135.
 - h. Any other right or obligation established by Metropolitan's rules and policies, including the Metropolitan Water District Act and Metropolitan's Administrative Code, that Metropolitan determines should be transferred or reassigned from San Diego CWA to Eastern and effectuated by the Parties as a result of the detachment and annexation contemplated herein.
- 11. Any reallocation of property tax revenue will be determined through the San Diego LAFCO and Riverside LAFCO process for detachment and annexation.
 - 12. This MOU shall remain in effect for a period of two years following the date of final execution unless: a) replaced by a subsequent written agreement between the Parties; or b) sooner terminated by any of the Parties through and upon written notice to the other Parties.
 - 13. Rainbow and Fallbrook shall each indemnify, defend, and hold Eastern harmless from and against any and all claims, liabilities, penalties, fines, or actions caused by, resulting from, or claimed to have been caused by or

Memorandum of Understanding – Annexation of Rainbow Municipal Water District and Fallbrook Public Utilities District into Eastern Municipal Water District for Wholesale Imported Water Service

resulting from, Eastern's execution of this MOU, Eastern's performance of annexation-related obligations, or its assistance to Rainbow or Fallbrook to effectuate the purposes of this MOU. Rainbow and Fallbrook hereby further agree to defend, indemnify, and hold Eastern, its agents, officers, and employees, free and harmless from and against any of the foregoing liabilities, claims, or any cost or expense that is incurred by Eastern on account of any of the foregoing liabilities, including liabilities or claims as a result of Rainbow or Fallbrook's actions hereunder. Eastern's representation in any such defense or indemnification shall be conditioned upon Eastern's timely written tender of any such claim to Rainbow and Fallbrook. Eastern shall consult with Rainbow and Fallbrook in the selection of its legal representation in any such defense, with the final selection of attorneys at Eastern's sole, reasonable discretion, and with great weight given to Rainbow and Fallbrook's recommendations. Rainbow and Fallbrook shall have no duty to pay or reimburse legal fees independently incurred by Eastern. Rainbow and Fallbrook's obligation to defend, indemnify, and hold Eastern harmless for any matters pertaining to the detachment from San Diego CWA and annexation into EMWD contemplated herein shall survive expiration or termination of this MOU.

14. Subject to the approval of the Parties and their respective Board of Directors following completion of the exploration, planning, and analysis contemplated herein, the obligations, commitments, and responsibilities of the Parties, as then determined and as defined in this MOU, shall be defined through a subsequent agreement for implementation.
15. This MOU and the rights of the Parties hereto shall be governed by and enforced in accordance with the laws of the State of California. Venue of any action brought hereunder will be in Riverside County, California.
16. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.
17. The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of the parties.
18. This MOU may be amended by a writing signed by all of the Parties.
19. Potential future activities identified in this MOU that if implemented may be deemed "projects" under the California Environmental Quality Act (CEQA) shall require the Parties' future compliance with CEQA. Such compliance may include, but is not limited to, a determination that the environmental

Memorandum of Understanding – Annexation of Rainbow Municipal Water District and Fallbrook Public Utilities District into Eastern Municipal Water District for Wholesale Imported Water Service

impacts of potential activities have been adequately considered and mitigated in compliance with CEQA and any and all applicable environmental laws.

In witness whereof, the Parties have executed this MOU as of the date last executed.

Eastern Municipal Water District

Rainbow Municipal Water District

By: 

By: _____

Paul D. Jones II, P.E., General Manager

Tom Kennedy, General Manager

Dated: 8/9/19

Dated: _____

Fallbrook Public Utilities District

By: _____

Jack Bebee, General Manager

Dated: _____

Memorandum of Understanding – Annexation of Rainbow Municipal Water District and Fallbrook Public Utilities District into Eastern Municipal Water District for Wholesale Imported Water Service

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Eastern Municipal Water District

By: _____

Paul D. Jones II, P.E., General Manager

Dated: _____

Rainbow Municipal Water District

By:  _____

Tom Kennedy, General Manager

Dated: 8/12/19 _____

Fallbrook Public Utilities District

By: _____

Jack Bebee, General Manager

Dated: _____

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Eastern Municipal Water District

Rainbow Municipal Water District

By: _____

By: _____


Paul D. Jones II, P.E., General Manager

Tom Kennedy, General Manager

Dated: _____

Dated: _____

Fallbrook Public Utilities District

By: 

~~Jack Bebee, General Manager~~ Don McDougal, Board President

Dated: August 26, 2019