



FALLBROOK PUBLIC UTILITY DISTRICT
BOARD OF DIRECTORS
SPECIAL BOARD MEETING

NOTICE AND AGENDA

THURSDAY, JANUARY 4, 2024
9:00 A.M.

FALLBROOK PUBLIC UTILITY DISTRICT
990 E. MISSION RD., FALLBROOK, CA 92028
PHONE: (760) 728-1125

THIS MEETING WILL BE HELD AT THE ABOVE DATE, TIME, AND LOCATION AND MEMBERS OF THE PUBLIC MAY ATTEND IN PERSON AT THE DISTRICT OFFICE LOCATED AT 990 E. MISSION RD., FALLBROOK, CA 92028. FOR THE CONVENIENCE OF MEMBERS OF THE PUBLIC WHO DO NOT WISH TO ATTEND IN PERSON, FALLBROOK PUBLIC UTILITY DISTRICT PROVIDES A MEANS TO OBSERVE AND PROVIDE PUBLIC COMMENTS AT THE MEETING VIA WEB CONFERENCE USING THE BELOW CALL-IN AND WEBLINK INFORMATION. PLEASE NOTE THAT IN THE EVENT OF TECHNICAL ISSUES THAT DISRUPT THE ABILITY OF MEMBERS OF THE PUBLIC TO VIEW THE MEETING OR PROVIDE PUBLIC COMMENTS THROUGH THE WEB CONFERENCE OPTION, THE MEETING WILL CONTINUE.

Join Zoom Meeting

<https://us06web.zoom.us/j/83868094372?pwd=8N7nlHcLoVqwrzeZeHlaCC1FCKKPew.1>

MEETING ID: 838 6809 4372

AUDIO PASSCODE: 138016

Dial by your location

+1 346 248 7799 US (Houston); +1 720 707 2699 US (Denver); +1 253 215 8782 US (Tacoma);

Find your local number: <https://us06web.zoom.us/j/83868094372?pwd=8N7nlHcLoVqwrzeZeHlaCC1FCKKPew.1>

PUBLIC COMMENTS: Members of the public may submit public comments and comments on agenda items in one of the following ways:

SUBMIT COMMENTS BEFORE THE MEETING:

- By emailing to our Board Secretary at leckert@fpud.com
- By mailing to the District Offices at 990 E. Mission Rd., Fallbrook, CA 92028
- By depositing them in the District's Payment Drop Box located at 990 E. Mission Rd., Fallbrook, CA 92028

All comments submitted before the meeting by whatever means must be received at least 1 hour in advance of the meeting. All comments will be read to the Board during the appropriate portion of the meeting. Please keep any written comments to 3 minutes.

REMOTELY MAKE COMMENTS DURING THE MEETING: The Board President will inquire prior to Board discussion if there are any comments from the public on each item.

- Via Zoom Webinar go to the "Participants List," hover over your name and click on "raise hand." This will notify the moderator that you wish to speak during oral communication or during a specific item on the agenda.
- Via phone, you can raise your hand by pressing *9 to notify the moderator that you wish to speak during the current item.

MAKE IN-PERSON COMMENTS DURING THE MEETING: The Board President will inquire prior to Board discussion if there are any comments from the public on each item, at which time members of the public attending in person may make comments.

If you have a disability and need an accommodation to participate in the meeting, please call the Secretary at (760) 999-2704 for assistance so the necessary arrangements can be made.

I. PRELIMINARY FUNCTIONS

CALL TO ORDER / ROLL CALL / ESTABLISH A QUORUM

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMENT

Members of the public are invited to address the Board of Directors on any item that is within the subject matter jurisdiction of the legislative body. The Board President may limit comments to three (3) minutes.

II. ACTION/DISCUSSION CALENDAR -----(ITEM A)

A. CONSIDER WATER BILLING AND SERVICE AGREEMENT WITH
EASTERN MUNICIPAL WATER DISTRICT

Recommendation: Staff recommends the Board authorize the General Manager and General Counsel to execute the Water Billing and Service Agreement with non-substantive changes.

IV. ADJOURNMENT OF MEETING

DECLARATION OF POSTING

I, Lauren Eckert, Executive Assistant/Board Secretary of the Fallbrook Public Utility District, do hereby declare that I posted a copy of the foregoing agenda in the glass case at the entrance of the District Office located at 990 East Mission Road, Fallbrook, California, at least 24 hours prior to the meeting in accordance with Government Code § 54956.

I, Lauren Eckert, further declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

January 2, 2024
Dated / Fallbrook, CA

/s/ Lauren Eckert
Executive Assistant/Board Secretary

MEMO

TO: Board of Directors
FROM: Jack Bebee, General Manager
DATE: January 4, 2024
SUBJECT: Board Consideration of Water Billing and Service Agreement with Eastern Municipal Water District

Purpose

For the Board to consider approval of a Water Billing and Service Agreement (Agreement) with Eastern Municipal Water District (EMWD).

Summary

On December 9, 2019, the Board of Directors unanimously adopted Resolution No. 4985, a Resolution of Application requesting San Diego Local Agency Formation Commission (LAFCO) to commence proceedings for the detachment and exclusion of the District from the San Diego County Water Authority (SDCWA), and annexation of the District into EMWD. This process required both approval by LAFCO and approval by the voters. After three years of review, LAFCO approved the District’s Reorganization Application on July 10, 2023. On November 7, 2023, a Special District Election was duly held, at which time one ballot measure for the District was voted upon, regarding detachment of the District from the County Water Authority – Measure “A.” The election was held and conducted in accordance with the California Elections Code and the County Water Authority Act and nearly 95% of voters approved the measure. While SDCWA initially opposed the process and initiated litigation, on December 21st, 2023 the parties entered into a settlement agreement that included dismissal of the litigation by SDCWA. On December 28th 2023, LAFCO filed a Notice of Completion in San Diego County and on December 29th the Notice of Completion was filed in Riverside County for the detachment and exclusion of the District from the San Diego County Water Authority (SDCWA), and annexation of the District into EMWD. This was the final step and as of January 1st, 2024 the District is now part of EMWD service territory and a wholesale customer of EMWD.

To formalize the water services and billing arrangements with EMWD an agreement was prepared by the parties and is attached as Attachment A. The Agreement is consistent with the Memorandum of Understanding (MOU) that was initially developed by the parties and executed on September 26, 2019. The key aspects of the agreement include:

- The District pays the Metropolitan Water District (MWD) rates for water supplied plus an administrative fee to EMWD.
- The EMWD administrative fee is based on the cost to provide the administrative services and is initially established at \$11 per acre-foot. This is the same cost that was in place at the time the MOU was developed.
- During any shortages EMWD will establish allocations consistent with the approach used for other wholesale water agencies.

Budgetary Impact

The terms identified in the Agreement are consistent with the financial analysis used in the rate setting process that resulted in the District reducing rates for all customers including an average 5% decrease for the typical residential customer. It is also anticipated that rates will not need to be increased next year.

Recommended Action

Staff recommends the Board authorize the General Manager and General Counsel to execute the Water Billing and Service Agreement with non-substantive changes.

WATER BILLING AND SERVICE AGREEMENT

EASTERN MUNICIPAL WATER DISTRICT AND FALLBROOK PUBLIC UTILITY DISTRICT

This Water Billing and Service Agreement (“Agreement”) is made and entered into on _____ 2024 by and between **EASTERN MUNICIPAL WATER DISTRICT** (“Eastern”) and the **FALLBROOK PUBLIC UTILITY DISTRICT** (“Fallbrook”). Eastern and Fallbrook may be individually referred to herein as a “Party” and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, Eastern is a municipal water district formed pursuant to California Water Code section 71000 et seq; and

WHEREAS, Eastern is a member agency of the Metropolitan Water District of Southern California (“Metropolitan”), which provides Eastern with imported water supplies; and

WHEREAS, Eastern’s service area includes large parts of Riverside County, extending to its southern border with San Diego County, and adjacent to the service area of the San Diego County Water Authority (“Water Authority”); and

WHEREAS, Fallbrook is a public utility district formed pursuant to California Public Utility Code section 15501 et seq; and

WHEREAS, on March 17, 2020, Fallbrook filed a Reorganization Application with the Local Agency Formation Commission for the County of San Diego (“San Diego LAFCO”) seeking approval to detach from Water Authority and a corresponding annexation into Eastern; and

WHEREAS, on July 10, 2023, San Diego LAFCO approved Resolution No’s. 23-11 and 23-12 conditionally approving the reorganization applications of both Fallbrook and the Rainbow Municipal Water District to concurrently annex into Eastern and detach from the Water Authority; and

WHEREAS, on December 28, 2023 and December 29, 2023, respectively, San Diego LAFCO filed a Certificate of Completion pursuant to Government code section 57200 et seq, with the County of San Diego and the County of Riverside thereby finalizing the reorganization of Fallbrook with its concurrent detachment from the Water Authority and annexation into Eastern’s service area; and

WHEREAS, the purpose of this Agreement is to define the terms, conditions and financial arrangements whereby Eastern will provide water service to Fallbrook.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals.

The Recitals set forth above are incorporated into and are a part of this Agreement.

2. Delivery of Water.

Eastern will provide Fallbrook with treated potable water delivered to Eastern by Metropolitan. Water will be transported through Metropolitan's "San Diego Pipeline #1" and "San Diego Pipeline #4" to connections through which Fallbrook will take delivery. These connections are identified by Metropolitan as "SD-02", "SD-08", and "FB-3". Such water shall be initially provided by Eastern to Fallbrook in accordance with a water delivery protocol included in an Operations Plan between Fallbrook and Water Authority, which water delivery protocol may be modified from time to time as agreed to by Fallbrook and Water Authority, and in coordination with Eastern.

As a member agency of Metropolitan, Eastern shall receive water delivery orders from Fallbrook and shall communicate such orders to Metropolitan. Fallbrook acknowledges, understands, and agrees that it shall be entirely responsible for the scheduling, receipt, and distribution of water in accordance with the aforementioned Operations Plan and that Eastern shall bear no liability or responsibility for Fallbrook's compliance therewith. Further, Eastern is providing Fallbrook water that is treated and supplied by Metropolitan for potable use, and Eastern bears no responsibility for the reliability of Metropolitan's supply, nor for water quality issues, including but not limited to issues relating to compliance with local, state, and federal regulatory standards. During supply allocations by Metropolitan, Eastern will develop supply allocations for its other wholesale agencies, including Fallbrook, in accordance with the Metropolitan supply allocation plan that is in effect.

Additionally, as a member agency of Metropolitan, Eastern shall provide Fallbrook with access to Metropolitan programs including those such as, but not limited to, Metropolitan's Local Resources Program (LRP).

3. Rates for Delivered Imported Water.

Eastern shall bill Fallbrook for deliveries made through the aforementioned connections which shall be based upon Metropolitan and Eastern rates. Eastern's billing shall include a nominal per acre-foot administrative overhead fee; charges incurred by Eastern under Metropolitan's current rate structure including Metropolitan's full-service, treated, volumetric rate for deliveries; Readiness-to-Serve charges ("RTS"); Capacity Charges ("CC"); and other Metropolitan charges as may be assessed (collectively, the "Water Delivery Costs"). These charges will be allocated proportionally to Fallbrook and determined as follows:

- a. Metropolitan Water Commodity Charge – This charge shall reflect the then current rate charged by Metropolitan to Eastern for delivery of treated potable water and shall be based on actual water volumes delivered by Eastern to Fallbrook.

- b. Metropolitan Fixed Charge Components – Fallbrook shall pay its proportional share of Metropolitan’s fixed charges, including the Capacity Charge (CC) and Readiness to Serve Charge (RTS). Fallbrook shall receive credit for Metropolitan’s Stand-By charge that is assessed on properties located in the Fallbrook service area.

- c. Metropolitan Credits & Other Charges; Future Participation in Eastern Programs– Eastern shall pass-through any credits or charges to Fallbrook for Metropolitan programs that Fallbrook is currently participating or benefitting from, including, but not limited to, credits for the Local Resources Program (LRP) or charges for Conservation Programs and Eastern shall provide Fallbrook access to participate in and/or benefit from any Metropolitan programs offered to its member agencies. Any new or additional water supply projects, programs, or other measures implemented by Eastern that would benefit Fallbrook in terms of supply reliability enhancement, at Eastern's discretion, will be offered to Fallbrook for consideration and financial participation.

- d. Eastern’s Administrative Charge – Eastern has initially established an administrative charge of \$11.00 per acre-foot for Fallbrook using Rate Code E404 (or any subsequent replacement thereof). The administrative charge is subject to reasonable annual adjustments by Eastern. The administrative charge, and any subsequent adjustments, shall be based on estimated costs for Eastern to administer the delivery and billing of water to Fallbrook, which includes Eastern’s direct operational and administrative costs for services provided to Fallbrook, and its proportional share of indirect costs incurred by Eastern as a member agency of Metropolitan benefitting Fallbrook and other wholesale water agencies within Eastern’s boundaries with a direct Metropolitan connection. In the event Eastern elects to perform a comprehensive cost of service study for reassessment of the administrative charge, Fallbrook and Eastern shall meet to discuss in good faith the appropriate methodology for the study.

- e. Other Fees & Charges – Fallbrook understands, acknowledges, and agrees that Metropolitan may assess additional costs or fee components in the future, which are not yet defined, and that may change the content, manner, and timing of billing to its member agencies. Components of Metropolitan's rates and charges that comprise the Water Delivery Costs described herein are based upon Metropolitan's current rate structure and may be subject to change in the future. In the event Metropolitan alters its rate structure or assesses additional costs or fee components to its member agencies, Eastern shall assess Fallbrook amended Water Delivery Costs that include any such changes in a manner that recovers costs equivalent to the components described herein, as well as any additional costs or fee components imposed by Metropolitan. This includes proportionate penalties which may be assessed under Metropolitan's Water Supply Allocation Plan.

- f. Changes in Fees & Charges – In the event Metropolitan makes changes to its rates or rate structure that may affect the amount or structure of Eastern’s rates (including but not limited to the setting of new baselines for tiered deliveries), or assesses additional costs or fees to its, member agencies, Eastern will ensure that any such changes are passed to Fallbrook.

4. Payment and Billing Procedure for Water Delivery Costs.

As a member agency of Metropolitan, Eastern will receive monthly billings representing the quantity of water delivered to Fallbrook over the preceding month. Eastern shall submit monthly invoices to Fallbrook for the Water Delivery Costs within 10 days of Metropolitan's billing representing the Water Delivery Costs. Invoice(s) shall be due and payable by Fallbrook to Eastern within thirty (30) calendar days following the date of Eastern's invoice. Payments by Fallbrook not received within 45 calendar days of invoice date may, at Eastern's discretion, incur a 5% late fee and a 6% percent annual interest charge.

5. Disputes.

In the event that any dispute between the Parties arises under this Agreement the Parties shall first attempt to resolve such dispute at the management level. If the dispute is not resolved within a mutually acceptable period of time (not to exceed 90 calendar days from the date written notice of such dispute is delivered by either Party), the Parties shall attempt to resolve the dispute at the Board of Directors level. If this process and the involvement of the Parties Boards of Directors does not result in resolution of the dispute within 120 days from the date of referral to such level, then the dispute shall be referred to and finally resolved through legal proceedings. The use of the foregoing procedure is a condition precedent to the commencement of any legal proceedings hereunder.

6. Term.

This Agreement shall commence on January 1, 2024, and shall remain in effect unless terminated by written mutual agreement of the Parties.

7. Indemnification.

Fallbrook shall release, hold harmless, immediately defend at its own expense, and indemnify Eastern, its officers, employees, and agents against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from all acts or omissions to act of Fallbrook or its officers, agents, or employees in purchasing water pursuant to this Agreement, including any water quality related issues, and any issues related to the operation and functionality of the systems of Fallbrook, Metropolitan or the Water Authority in rendering services under this agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from Eastern's sole negligence or willful acts.

8. Limitation of Waiver.

Except as may be expressly provided in writing signed by the Parties, the failure or delay of either Party to insist in any instance on strict performance of any provision of this Agreement shall not be construed as a waiver of any such provision or the relinquishment of any rights under that provision in the future, but the same shall continue in full force and effect.

9. Attorney's Fees.

If any action is instituted to enforce this Agreement, the prevailing party shall be reimbursed all reasonable attorney's fees, costs of collection, as well as any other costs and expenses incurred in connection with the enforcement effort.

10. Applicable Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

11. Assignment.

Neither Party shall assign, sell, or otherwise transfer any obligation or interest in this Agreement without the specific written consent of the other Party.

12. Notices.

Any notice required by this Agreement to be given or delivered to any Party shall be deemed to have been received when personally delivered or mailed in the United States mail addressed as follows:

Eastern Eastern Municipal Water District
Post Office Box 8300
Perris, Ca. 92572-8300
Attn: General Manager

Fallbrook Fallbrook Public Utility District
990 E. Mission Road
Fallbrook, Ca. 92028
Attn: General Manager

13. Preparation of This Agreement.

This Agreement shall not be construed against the Party preparing it but shall be construed as if both parties prepared it.

14. Entire Agreement.

This Agreement represents the entire understanding of the Parties. No prior understanding, whether oral or written, shall be of any force or effect with respect to those matters covered by this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date of the last signature below.

**FALLBROOK PUBLIC UTILITY
DISTRICT**

EASTERN MUNICIPAL WATER DISTRICT

By: _____
Jack Bebee, General Manager

By: _____
Joe Mouawad, General Manager

Dated: _____

Dated: _____

Legal Review:

Legal Review:

By: _____

By: _____