



November 20, 2019

VIA E-MAIL

Mark J. Hattam
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

RE: San Diego County Water Authority November 21, 2019, Board Meeting Agenda
Item 10-B – Proposed Resolution Regarding LAFCO Part 4 Exemption Request

Dear Mr. Hattam:

This letter addresses several misstatements and legal inaccuracies in the agenda report to the San Diego County Water Authority (“SDCWA”) Board of Directors dated November 13, 2019 (“Agenda Report”) regarding any proposed detachment by Rainbow Municipal Water District and Fallbrook Public Utility District.

First, in recommending that the SDCWA Board adopt a resolution to seek an exemption from Part 4 of the Cortese-Knox-Hertzberg Government Reorganization Act (“CKH Act”), the Agenda Report fails to mention that the action is not needed as, at the request of SDCWA in 1976, the San Diego Local Agency Formation Commission (“SDLAFCO”) already exempted SDCWA from Part 4 when it adopted a resolution on December 6, 1976. We are informed that since that date SDLAFCO has repeatedly viewed the 1976 exemption as being effective. Such conduct by SDLAFCO would be consistent with the fact that the resolution was not addressing one matter but multiple future ones as evidenced by the language that:

the changes of organization of the San Diego County Water Authority and that proceedings for such changes of organization shall be taken under and pursuant to the principal act of the Authority, to wit: The County Water Authority Act.

A copy of the 1976 SDLAFCO resolution is attached. Accordingly, the action to adopt the Resolution is unnecessary.

Second, we want to correct misstatements of law included within both the Agenda Report and proposed resolution seeking an exemption from Part 4. Specifically, if the County Water District

Act applies to the proceedings following SDLAFCO's approval of any proposed detachment of Rainbow Municipal Water District or Fallbrook Public Utility District (if detachment were to be approved), then, simply put, the provisions of the County Water District Act apply. SDLAFCO would have no authority (as no such authority is granted to a LAFCO under the CKH Act) to revise the requirements of the County Water Authority Act for detachment elections by requiring an election within SDCWA's entire service area. The language in the County Water Authority Act is quite clear, providing that:

. . .The governing body of any public agency may submit to the electors thereof at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency.

(County Water Authority Act, section 11 (a)(2).) SDLAFCO would be similarly restricted from crafting different requirements for elections than those specified in the CKH Act if the "conducting authority" proceedings specified in the CKH Act were to apply.

Next, the report states that SDLAFCO Commissioner Diane Jacobs at the October 7, 2019 SDLAFCO meeting suggested that voters within the entire 24 member service area of SDCWA should have an opportunity to evaluate and vote upon any detachment. That is an overstatement. Actually, what Commissioner Jacobs stated was:

Madam Chairwoman, I could argue that the affected area is the entire County Water Authority and the other 22 member agencies. They are all going to be affected. So maybe that is something we talk about. I don't know what is in the law. But, that is a discussion we need to have at the proper time.

(Statement by Supervisor Jacob – starting at timestamp 50:42 on the video of the meeting at: <https://www.youtube.com/watch?v=EwggHVJva2M&feature=youtu.be>)

We remind the SDCWA Board that Supervisor Jacob's statement was made at this earliest of stages of the process—before any application has been filed, when SDLAFCO was acting on a memorandum of understanding with Riverside LAFCO for SDLAFCO to process any applications which might be filed in such a reorganization and before the SDLAFCO Commission having been provided with any information about the County Water Authority Act and its express provisions for both annexations and detachments. Supervisor Jacob's comments need to be viewed in the context of the matter under discussion before any substantive issues were presented to the SDLAFCO Commission and not considered the "suggestion" that the report describes. For any LAFCO Commissioner to state a substantive matter at such an early stage would be prejudicial and would be evidence of an abuse of discretion regarding the entire process.

Finally, the provision which Commissioner Jacobs had not yet been provided for her consideration is section 45-11 of the County Water Authority Act, as discussed above. The County Water Authority Act is the very legislation by which the SDCWA exists. That provision—Section 45-11—quite clearly and expressly provides that the issue of detachment is to be submitted to the voters within the boundaries of the area being considered for detachment in an election conducted in the manner usually used for elections by the district considering detachment. The process of an election for detachment mirrors the same process set out in that County Water Authority Act for

annexation. Thus, to have any detachment proceed as provided in the County Water Authority Act, there would be a vote required, but it would be limited to those within the boundaries of the district considering detachment.

In summary, the record should be corrected on these points as misinformation only leads to misunderstandings and bad decisions that result from those circumstances.

Sincerely,



Lloyd W. Pellman
Attorney for
Rainbow Municipal Water District



Paula de Sousa
Attorney for
Fallbrook Public Utility District

Attachments

cc: Tom Kennedy, Rainbow Municipal Water District, General Manager
Jack Bebee, Fallbrook Public Utility District, General Manager
Sandy Kerl, SDCWA Acting General Manager
San Diego County Water Authority Board of Directors, via Melinda Nelson,
Clerk of the Board