

April 9, 2021

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
Municipal Water District

Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER
REPRESENTATIVE

County of San Diego

Gloria Gray, Chairwoman
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

RE: General Manager's April 7, 2021 letter to San Diego LAFCO

Dear Chairwoman Gray:

I write on behalf of the four members on the San Diego delegation to the MWD Board of Directors, in consultation with our board officers and agency manager, Sandy Kerl. After close of business this past Monday, we received a copy of a deeply troubling letter sent by Mr. Kightlinger to San Diego's Local Agency Formation Commission (LAFCO) regarding the detachment proceedings described below. A copy of the letter is provided to you and the Board with this letter (Attachment 1).

The San Diego LAFCO proceeding pertains to applications by two Water Authority member agencies, Fallbrook Public Utility District (Fallbrook) and Rainbow Municipal Water District (Rainbow), to detach from the Water Authority and annex into Eastern Municipal Water District. At Eastern they propose to pay \$11 an acre-foot as an administrative fee in order to purchase MWD water; they are not purchasing and would not have access to any of Eastern's facilities or non-MWD supplies. The agencies propose to detach from the Water Authority without any payment for local water supplies that were developed and are now being used to meet their customers' baseload water demands.

Under the applicants' proposal, MWD water supply reliability is a central issue, now being addressed in the LAFCO proceeding. The Water Authority's initial Response to LAFCO in September 2020 discussed in detail the different water supply sources available to the Water Authority and MWD.¹ Similarly, the applicants, Eastern and MWD all provided information assessing the respective water supply reliability of both wholesale agencies.² Later, the independent expert retained by LAFCO³ requested that the parties answer specific questions about MWD's water supplies. MWD again provided

¹ See Water Authority Response [here](#).

² See 1) [Eastern's February 12, 2020 technical memorandum](#); 2) [Eastern's December 17, 2020 technical memorandum](#); 3) [MWD's September 17, 2020 letter](#); and 4) [MWD's February 22, 2021 letter](#).

³ Dr. Michael Hanemann was retained by LAFCO with the unanimous agreement of all parties. See Item 4e of the San Diego County Local Agency Formation Commission Ad Hoc Advisory Committee – Rainbow MWD & Fallbrook PUD Reorganization Proposals – Draft Minutes (subsequently approved) on page 7 of 8 of the [Committee's December 7, 2020 Agenda packet](#).

detailed answers to Dr. Hanemann's questions in a letter report dated February 22, 2021.⁴

Mr. Kightlinger requested that his April 7 letter be distributed to the Water Authority's board of directors (which the Water Authority has done), but at the same time his letter is not copied and to our knowledge has not been distributed to the MWD board of directors. In fact, none of his prior letters on the detachment proceedings has been distributed to the MWD board.⁵ We believe it is important for the MWD board to be informed now about this matter, for the reasons described below.

Objection to Mr. Kightlinger's claim of "complete fabrications." In his April 7 letter, which was almost immediately published on social media by MWD staff,⁶ Mr. Kightlinger accuses the Water Authority of mischaracterizing Metropolitan's press release regarding the State Water Project allocation and states that the Water Authority's comments about water supply reliability have "*absolutely nothing to do with the current detachment proceedings before SDLAFCO...[and] are also complete fabrications.*" Here is how Mr. Kightlinger's statements are likely to be interpreted, using a standard English dictionary as a point of reference:

If someone fabricates information, they invent it in order to deceive people. You use "complete" to emphasize that something is as great in extent, degree, or amount as it possibly can be. COBUILD Advanced English Dictionary. Copyright © HarperCollins Publishers (emphasis added)

Thus, in spite of an extensive record (which Mr. Kightlinger is obviously well aware of) evidencing that *water supply reliability is a central issue in the LAFCO proceedings*, he chose to publish and broadcast statements that the Water Authority took actions that were intended to deceive to the greatest extent possible. As an MWD member agency, we take extremely seriously and emphatically deny Mr. Kightlinger's characterization, which is not only conduct unbecoming of Metropolitan's General Manager in commenting about a member agency, but also *impugns the reputation of our agency, management and staff and board of directors before the public, elected officials and other water agencies*. Accordingly, we demand an immediate retraction by Mr. Kightlinger of these statements.

In the Water Authority's letter to LAFCO which Mr. Kightlinger attacks, the Water Authority quoted directly from MWD's press release and attached the full release to its letter. We did not and do not question MWD's ability to respond to the *current drought* based on the historically high level of water in storage (which we have helped pay for and support). Our comments, *which are factually accurate and have been presented at all times in a professional manner*, address only that investments the Water Authority has already made in conserved water and our desalination facility provide a higher degree of

⁴ See MWD's February 22, 2021 letter [here](#).

⁵ Mr. Kightlinger has submitted four letters dated [September 19, 2019](#); [September 17, 2020](#); [February 22, 2021](#); and [March 1, 2021](#).

⁶ Presumably the posting was made at Mr. Kightlinger's direction; a separate issue may be presented if Mr. Kightlinger says that is not the case.

long-term water supply reliability than water exported from the Bay Delta or water with lower Colorado River priorities. We believe many MWD board members would acknowledge the accuracy of this basic factual premise, but in any case, it is improper to conflate the two issues involving near-term and long-term water supply reliability as Mr. Kightlinger has done in his letter.

Objection to Mr. Kightlinger’s claim that water supply reliability has “absolutely nothing to do with the current detachment proceedings before SDLAFCO.” We do not understand how Mr. Kightlinger can justify making this assertion, let alone in a letter intended to be published by MWD staff on social media to elected officials and water industry professionals (who have no knowledge of the LAFCO proceedings). In truth and in fact, water supply reliability is a central issue in the LAFCO proceedings.

As noted earlier, the San Diego LAFCO has independently retained expert consultant services from Dr. Michael Hanemann to exercise his professional judgment in analyzing three topics, the second of which is water supply reliability.⁷

The Consultant shall prepare a written memorandum analyzing whether any substantive differences exist with respect to the overall water supply reliability between the San Diego County Water Authority and Eastern Municipal Water District. The Consultant shall use their professional expertise in quantifying and/or qualifying “substantive” relative to addressing water supply reliability. If the information on file and/or as augmented by the Commission Agreement Administrator is deemed insufficient, the memorandum should succinctly identify the missing, incomplete, incorrect or otherwise unsubstantiated information needed to address the topic.

See Attachment 2, Professional Services Agreement for Consultant Services excerpt Exhibit A. See also footnote 1, and for a record of all filings go to <https://www.sdlafco.org/resources/major-proposals/fallbrook-pud-rainbow-mwd-wholesaler-reorganization-2020>

The point made by the Water Authority in its letter is simple and accurate: MWD plans to make and has stated that it will have to make substantial investments—which it has already proposed in the billions of dollars—in order to provide long-term water supply reliability for its member agencies. Given MWD’s ongoing planning studies of both a Bay Delta tunnel and regional recycled water project (which the Water Authority’s delegates have supported even though the water supplies are not needed by our agency) and intention to move forward with one or both projects, we are at a complete loss to understand why Mr. Kightlinger takes such offense at noting that further investment will be needed by MWD over the long term. The Water Authority’s comments did not address, were not intended to criticize and did not criticize MWD’s past investments in

⁷ Note that while the scope references Eastern, it is as described earlier, merely a pass-through agency under the pending proposals in which the applicants have no access to Eastern’s local water supplies and will be 100% reliant on MWD water.

water conservation or storage or the beneficial impact of those investment in the near-term. Rather, the comments were only intended to report—accurately—that while the Water Authority has already made substantial (multi-billion dollar) investments to secure its long-term reliability, comparable long-term investments remain to be made by MWD in the form of the Delta tunnel, regional recycled water project or other local projects.

Suggested policy issues for future MWD board consideration. Beyond our objection to these specific comments made by Mr. Kightlinger, we believe our MWD Board would benefit from a discussion of the following policy questions:⁸

- 1) What should the MWD Board’s policy be regarding detachments and annexations among MWD member agencies, including consideration of water resource and financial impacts on all involved agencies?
- 2) Given state water law and policy favoring local water supply development and reduced reliance on the Bay Delta, what should the MWD Board’s policy be where it is demonstrated that a proposed detachment would increase demand on the Bay Delta?⁹
- 3) Once it is established, should the Board policy for detachments and annexations apply equally to all member agencies? In other words, if Eastern can annex Water Authority member agencies and retail customers, may Western, without censure do the same with Eastern’s customers.

We want to be very clear that we are not casting any blame on MWD (or any other agency) for our own member agencies’ initiation of the detachment proceedings. That is a decision the agencies made and are entitled to pursue through the LAFCO process. Nor have we criticized and we do not criticize Mr. Kightlinger or any agency for providing information to LAFCO in order for it to complete its review and ultimately, make its findings and recommendations. We understand fully that differences of opinion may reasonably exist based on agreed-upon or even disputed facts.

However, what we are concerned about is an effort now underway in San Diego County to substitute a PR campaign for the judgment of a knowledgeable consultant and process at LAFCO; *and, in particular for purposes of this letter, we are concerned about the baseless and improper comments made by MWD’s General Manager in his April 7 letter about the Water Authority, which may be widely and unfairly distributed by others.* We reiterate our request that the General Manager immediately retract his April 7 letter and cease further publication of his inaccurate and intemperate statements about the Water Authority.

Chair Gray, thank you very much for your consideration; we look forward to your

⁸ We are flexible as to timing of the Board’s consideration of these policy issues and believe it may be more productive if the discussion occurs under the leadership of the new General Manager.

⁹ Another issue in dispute in the LAFCO proceedings is whether the shift from Water Authority supplies to sole reliance on MWD will increase demand on the Bay Delta. See [Supplemental Email - Reduced Reliance on the Delta](#) and [MWD response](#).

response to our request and to discussing the policy issues with the MWD Board of Directors on a future board agenda.

Sincerely,



Mike Hogan
MWD Director on behalf of himself and Directors Butkiewicz, Goldberg and Smith

cc MWD Board of Directors
Jeff Kightlinger, General Manager, MWD
Marcia Scully, General Counsel, MWD
Water Authority Board of Directors
Sandy Kerl, General Manager, Water Authority
Mark Hattam, General Counsel, Water Authority
Kristina Lawson, Counsel, Water Authority
Keene Simonds, Executive Officer, LAFCO
Robert Barry, Project Manager, LAFCO
Adam Wilson, Moderator, LAFCO
Jack Bebee, General Manager, Fallbrook PUD
Paula C.P. de Sousa, Counsel, Fallbrook PUD
Tom Kennedy, General Manager, Rainbow MWD
Alfred Smith, Counsel, Rainbow MWD
Nick Kanetis, Deputy General Manager, Eastern

Attachment 1: Jeff Kightlinger's April 7, 2021 letter with attachments
Attachment 2: Professional Services Agreement for Consultant Services between
SDLAFCO and Dr. Michael Hanemann



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

April 7, 2021

Via Electronic Mail Only

Mr. Keene Simonds, Executive Officer
Mr. Robert Barry, Project Manager
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123
keene.simonds@sdcounty.ca.gov
robert.barry@sdcounty.ca.gov

Response to San Diego County Water Authority Letter dated April 1, 2021, submitted regarding Proposals by Rainbow Municipal Water District and Fallbrook Public Utility District, Reference Nos. RO20-04 and RO20-05

Dear Mr. Simonds and Mr. Barry:

The Metropolitan Water District of Southern California (Metropolitan) provides this response to the attached correspondence submitted by the San Diego County Water Authority (SDCWA) on April 1, 2021 regarding the proposal by Rainbow Municipal Water District (Rainbow) and Fallbrook Public Utility District (Fallbrook) to detach from the San Diego County Water Authority (SDCWA) and attach to Eastern Municipal Water District (Eastern).

SDCWA provided comments in their April 1, 2021 correspondence on three matters: the State of California's adjustment to the State Water Project (SWP) allocation and Metropolitan's press release on that action; SDCWA's recent negative outlook from bond rating agencies; and criticism of SDCWA by the Vice President of SDCWA's member agency Valley Center Water District. Metropolitan has no opinion on and is not commenting on the second two matters but wishes to respond to SDCWA's mischaracterization of Metropolitan's press release regarding the SWP allocation.

The State of California's Department of Water Resources regularly posts adjustments to the SWP's annual allocation throughout the year depending on changes to hydrology and inflow to reservoirs. Typically, the water supply allocation starts out low and is adjusted upward as winter and spring storms develop adding precipitation to the Sierra Mountains. This year because of the extreme drought conditions and the lack of storms, the allocation adjustment moved downward from 10% to 5%. Given that downward adjustments are rare events and that 5% is an extremely low allocation from the SWP, Metropolitan sent out a press release.

Mr. Keene Simonds
Mr. Robert Barry
April 7, 2021
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As you can see from the attached press release, Metropolitan was informing the public that California is indeed in drought conditions and that consumers should maintain a sound water conservation ethic. The release went on to state that Metropolitan is well prepared for this drought and thanks to a record high level of water in reserve, Metropolitan has never been more reliable. Finally, the release commented on the fact that California's water infrastructure needs more investment to deal with the challenges of climate change.

In its letter, SDCWA completely mischaracterizes the press release by stating that "MWD's future water reliability is uncertain without major investments". And that "the Water Authority has already made investments that MWD is only now contemplating, the cost of which are already estimated in the many billions of dollars for MWD but are not included in its near or long-term projected water rates."

While these statements have absolutely nothing to do with the current detachment proceedings before SDLAFCO, they are also complete fabrications. Metropolitan has invested heavily in local resources and conservation which has lowered consumer demand throughout its service area to prepare Southern California for this drought. Hundreds of millions of Metropolitan dollars have been spent on these efforts in San Diego County alone over the past twenty-five years in partnership with SDCWA and its member agencies significantly helping the San Diego region be better prepared for climate change and the current dry conditions.

Metropolitan has been heavily investing in storage and demand management since the 1990's contrary to the baseless SDCWA comment that Metropolitan is now only contemplating these investments. In fact, it was those investments that increased Metropolitan's ability to store water from only 400,000 acre-feet in 1990 to our current maximum storage capacity of 5.1 million acre-feet. That investment is why Metropolitan is going into the current drought with record reserves of more than four million acre-feet in storage to minimize drought impacts to Southern California. The press release goes on to comment on the need for California to reinvest in the state's water infrastructure, which the Newsom Administration has acknowledged and has made the central part of the administration's water plan.

The proposed reorganization before SDLAFCO involves two agencies with collective annual imported water purchases of about 21 thousand acre-feet per year. The agencies are already entirely within Metropolitan's service area and will remain so after any reorganization. Metropolitan's access to SWP and deliveries of imported water to those agencies will remain entirely unchanged regardless of any SDLAFCO action taken. Metropolitan's news release regarding the SWP allocation and drought in California is not remotely relevant to this reorganization and we don't understand the attempt to insert them in this matter. However, we do feel the need to address the misstatements and mischaracterizations in the SDCWA April 1, 2021 letter.

We would be happy to provide any additional information desired. Please feel free to contact me if you have any questions.

Mr. Keene Simonds
Mr. Robert Barry
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Sincerely,



Jeffrey Kightlinger
General Manager

Attachments

cc via electronic mail only w/attachments:

Sandra Kerl, General Manager, SDCWA, skerl@sdcwa.org
Jack Bebee, General Manager, Fallbrook, jackb@fpud.com
Paula C. P. de Sousa, Counsel, Fallbrook, paula.desousa@bbklaw.com
Nick Kanetis, Deputy General Manager, Eastern, kanetisn@emwd.org
Tom Kennedy, General Manager, Rainbow, tkennedy@rainbowmwd.com
Alfred Smith, Counsel, Rainbow; asmith@nossaman.com
Kristina Lawson, Counsel, SDCWA, klawson@hansonbridgett.com
Mark J. Hattam, General Counsel, SDCWA, MHattam@sdcwa.org
San Diego County Water Authority Board of Directors



April 1, 2021

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
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San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER
REPRESENTATIVE

County of San Diego

VIA EMAIL AND U.S. MAIL

Mr. Adam Wilson, Moderator
San Diego County LAFCO
(adwilson858@yahoo.com)

Re: Fallbrook/Rainbow Reorganization Applications

Dear Mr. Wilson:

For the upcoming Ad Hoc Committee meeting on April 5, 2021, we felt it important to inform LAFCO, the Committee, and Dr. Hanemann of the following important recent events, all of which pertain to the pending reorganization applications of Fallbrook and Rainbow. We ask that you distribute this letter to LAFCO and its staff, and all Committee members.

A. State Water Project Shortages and MWD Statement

The State of California recently reduced MWD's 2021 allocation of State Water Project deliveries to 5% due to dry conditions. In responding to this news, MWD issued a news release with a statement from its General Manager Kightlinger, which stated that though MWD has enough stored water to cover it for needs this year, MWD's future water reliability is uncertain without major investments. Mr. Kightlinger said:

“We need reinvestments in our water infrastructure to ensure the reliability of our imported supplies and new investments in local supply development.”

A copy of this news release is attached.

The Water Authority already has done exactly as Mr. Kightlinger suggested, investing billions of dollars in QSA and desalinated water supplies for the entire San Diego region. Those investments, which directly benefit Fallbrook, Rainbow, and all Water Authority member agencies, provide water reliability that is far more secure than the State Water Project on which MWD heavily relies, and which will be the sole source of water supply available to Fallbrook and Rainbow if they move to Eastern.

In fact, the Water Authority is often cited as a best practices example in statewide discussions of the Governor's goal and state policy mandate of moving to a “water portfolio” standard. The Water Authority's conservation investments in Imperial County have secured a right to QSA water that represents the region's cheapest and most reliable water. Those QSA rights are superior to MWD's Priority 4 rights to Colorado River water. As to our desalination facility in North County, this water is entirely immune to drought impacts. Similarly, our member agencies' local source

Mr. Adam Wilson

April 1, 2021

Page 2 of 3

and potable water reclamation innovations (such as the City of San Diego's Pure Water Program) are on the cutting edge of international standards for sound and sustainable water stewardship.

In short, the Water Authority has already made investments that MWD is only now contemplating, the cost of which are estimated in the many billions of dollars for MWD but are not included in its near or long-term projected water rates.

B. Fallbrook/Rainbow Detachments Are Cited By Standard and Poors As Financial Risk To Water Authority

The Water Authority recently went to market to sell bonds, and it received a financial rating report from Standard and Poors which LAFCO must consider in its review of the pending applications. Though Standard and Poors continued to rate the Water Authority as AAA, it also gave the Water Authority a negative outlook. Attached is the S&P Report of March 17, 2021, and on page 2 is the negative outlook rating.

Standard & Poor's states in its Report that potential detachment is a key driver of financial concern. It states on page 2, "Uncertainty resulting from two member agencies' applications to detach from the authority is an additional credit stressor." It also states on page 6:

"While we do not believe any of the aforementioned issues will have a financial effect in the near-term, we do believe ongoing litigation has associated costs and introduces potential longer term political risk -- especially if an approved detachment sets a precedent if members can easily detach from the authority. This would be further exacerbated if the two members are not required to pay for their portion of the associated debt and infrastructure costs that the authority has undertaken to provide reliable water sources."

The above emphases are added because it is critical that LAFCO, the public, and other member agencies of the Water Authority fully understand the implications of the Fallbrook/Rainbow sought reorganizations. If LAFCO were to allow those agencies to leave the Water Authority without having to bear their share of the financial obligations incurred to provide a base load water supply, then not only would the ratepayers in the rest of San Diego County have to foot the bill for such detachments, but the Water Authority's credit could be adversely affected, raising borrowing costs for the rest of the County as well. This would be a compounding financial blow to all our member agencies.

The questions raised in the Standard and Poors analysis are directly attributable to the speculation and uncertainty created by the detachment filings and the comments regularly made associated with them, in which the proponents ask to be relieved of their share of their obligations for the very water reliability investments cited above. Such a precedent would not only damage the Water Authority, but any other similarly situated public agencies contemplating capital investments necessary to meet conservation, environmental, or local water resource development.

Mr. Adam Wilson
April 1, 2021
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C. Other Member Agencies May Seek Detachment If LAFCO Were To Approve The Fallbrook/Rainbow Applications

The “slippery slope” risk articulated by Standard and Poors in their above Report was recently highlighted by Enrico Ferro, Vice President of the Valley Center Water District (“Valley Center”). His statements were made at a March 16, 2021, Farm Bureau Water Committee meeting attended by Water Authority staff members. In that meeting Mr. Ferro of Valley Center (which agency is adjacent to Rainbow) made clear that if the pending detachments were approved it would be a clear encouragement for other agencies to also leave. He said, “I applaud Fallbrook and Rainbow for doing this. I say to myself why aren’t more agencies doing this?” He also stated that he believes other agencies are going to seek detachment.

The simple fact is, as stated by both Standard and Poors and Valley Center Board Officer Ferro, that if agencies are simply allowed to walk away from their San Diego County water reliability obligations, exiting into Riverside County with a “free pass” from LAFCO, it will naturally encourage other agencies to do the same. This would not be prudent governance and would harm the rest of San Diego County water ratepayers.

In closing, we look forward to the meeting on April 5 where we can discuss these important matters with the rest of our Committee members. Thank you.

Sincerely,



Sandra L. Kerl
General Manager

Enclosures

cc via e-mail:

Jeffrey Kightlinger, General Manager, MWD
Jack Bebee, General Manager, Fallbrook PUD
Paula C. P. de Sousa, Counsel, Fallbrook PUD
Nick Kanetis, Deputy General Manager, Eastern MWD
Tom Kennedy, General Manager, Rainbow MWD
Alfred Smith, Counsel, Rainbow MWD
Water Authority Board of Directors
Kristina Lawson, Counsel, Water Authority
Mark J Hattam, General Counsel, Water Authority



The Metropolitan Water District of Southern California

NEWS RELEASE

P. O. Box 54153, Los Angeles, California 90054-0153 • (213) 217-6485 • www.mwdh2o.com

Contacts: Rebecca Kimitich, (213) 217-6450; (202) 821-5253, mobile
Maritza Fairfield, (213) 217-6853; (909) 816-7722, mobile

March 23, 2021

METROPOLITAN STATEMENT ON REDUCTION OF STATE WATER PROJECT ALLOCATION TO 5 PERCENT

Jeffrey Kightlinger, general manager of the Metropolitan Water District of Southern California, issues the following statement regarding the reduction of Metropolitan's State Water Project allocation from 10 percent to 5 percent due to ongoing dry conditions:

“The state’s deteriorating water supply conditions reinforce the need to maintain the lower water use we have seen among Southern Californians since the last drought. This water conservation ethic, combined with Metropolitan’s investments in storage and a more flexible system, has allowed us to build a record high level of reserves that will help us manage through this critically dry year.

“California’s existing water system, however, isn’t prepared for the extremes brought by future climate change that may arrive sooner than later. We need reinvestments in our water infrastructure to ensure the reliability of our imported supplies and new investments in local supply development.”

###

The Metropolitan Water District of Southern California is a state-established cooperative that, along with its 26 cities and retail suppliers, provide water for 19 million people in six counties. The district imports water from the Colorado River and Northern California to supplement local supplies, and helps its members to develop increased water conservation, recycling, storage and other resource-management programs.

RatingsDirect®

San Diego County Water Authority, California; CP; Note; Water/Sewer

Contacts:

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Negative Outlook

Credit Opinion

Enterprise Profile

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Related Research

San Diego County Water Authority, California; CP; Note; Water/Sewer

Credit Profile		
US\$196.27 mil wtr rev rfdg bnds ser 2021C due 05/01/2038		
<i>Long Term Rating</i>	AAA/Negative	New
US\$145.965 mil wtr rev rfdg bnds ser 2021S-1 due 05/01/2028		
<i>Long Term Rating</i>	AA+/Negative	New
US\$101.055 mil wtr rev rfdg bnds (green bnds) ser 2021B due 05/01/2038		
<i>Long Term Rating</i>	AAA/Negative	New
San Diego Cnty Wtr Auth Wtr		
<i>Long Term Rating</i>	AAA/Negative	Outlook Revised

Rating Action

S&P Global Ratings revised its outlook to negative from stable on San Diego County Water Authority, Calif.'s (the authority) existing debt. At the same time, S&P Global Ratings assigned its 'AAA' long-term rating to the authority's anticipated \$101 million series 2021B and \$196 million series 2021C senior lien water revenue refunding bonds, and assigned its 'AA+' long-term rating to the authority's anticipated \$146 million series 2021S-1 subordinate lien water revenue refunding bonds. Finally, S&P Global Ratings affirmed its:

- 'AAA' rating on the authority's existing senior-lien revenue bonds;
- 'AAA' rating on the authority's exiting certificates of participation (COPs);
- 'AA+' rating on the authority's existing subordinate-lien bonds; and
- 'A-1+' short-term rating on the authority's existing commercial paper (CP) debt.

The negative outlook reflects our view of the heightened business risks associated with potential projected declines in water sales volumes as new upcoming local potable reuse projects come online, further challenged by the authority's rising contractual costs and near-term forecasted financial metrics that we consider weak relative to those of its peers at the 'AAA' rating level. Like many utilities in Southern California, we anticipate the authority will continue to experience hydrological volatility and ongoing behavioral changes in customer water use that has been a source of declining water demand since the past decade. Affordability is already a credit vulnerability for the authority as its existing rates are elevated relative to those of its regional and national peers. We expect the authority to continue to rely on withdrawals from the rate stabilization fund through 2023, given its rising cost of service and a desire to moderate rate increases for members. Uncertainty resulting from two member agencies' applications to detach from the authority is an additional credit stressor.

The authority is issuing 2021S-1 medium term notes to refund extendable commercial paper and 2016S-1 bonds to reduce market exposure and increase cash flow savings. The 2021 B&C bonds will refinance outstanding series 2019

bonds. The bonds include a make whole call. They will be self-designated green bonds.

We base our 'AAA' rating on the authority's revenue base, which is primarily locally derived. This, coupled with operating expense flexibility, limits exposure to federal revenue.

Credit overview

The authority has been successful establishing water supply control and diversification. Management has also demonstrated an ability to navigate volatile hydrological cycles through adopting rate increases as needed and building prudent financial reserves and storage to mitigate variability. The primary risk to the authority is the reduced consumption stemming from conservation, weather, economic contraction and the development of local supply by their member agencies. The reduced consumption introduces a financial challenge given that contractual water costs are increasing. Forecasted coverage is narrow relative to peers at the 'AAA' level and if rate increases are not sufficient to offset consumption declines, the rating could be lowered. We believe this will require a higher degree of fixed charges to meet fixed reliability objectives. In our view, management is taking important steps to mitigate this changing cost profile, including increasing the fixed charge component of the rate structure to capture contract costs and infrastructure contributions. Establishing the appropriate balance of fixed charges and maintaining ample cash is important given the nature of volatile hydrological conditions and the continued increases in local supply which will reduce the demand for the authority's supply. Maintaining historically strong coverage and liquidity levels will be a delicate balance of imposing rate increases while not burdening affordability. Astute long-term planning will be crucial to these efforts.

S&P Global Economics acknowledges a high degree of uncertainty related to the effects of COVID-19, including the rate of spread and peak of the outbreak. Nevertheless, we believe measures to contain COVID-19 have pushed the region and nation into economic contraction. While the approval and early administration of a number of vaccines is a positive development, it is merely the first step toward a return to social and economic normality; equally critical is the widespread availability of effective immunization, which could come by mid-2021. We use this assumption in assessing the economic and credit implications associated with the pandemic. As the situation evolves, we will update our assumptions and estimates accordingly.

The negative outlook reflects our view that there is a one-in-three chance that the authority's financial profile could realize diminished financial capacity that would no longer be consistent with a 'AAA' rating. A return to stable outlook would be incumbent on greater clarity regarding the authority's upcoming long-range financial plans and its ability to plausibly demonstrate that it can maintain healthy operating margins even with potentially reduced water sales.

Environmental, social, and governance factors

Given its location in Southern California, we believe the authority faces elevated environmental risk due to the region's inherent water supply scarcity, sea level rise, wildfire and seismic exposure. In particular, its imported water supply (both the State Water Project and the Colorado River) remain susceptible to environmental scrutiny and risks related to climate change, rising temperatures, and shifting precipitation patterns. The authority has been effective in obtaining alternative higher reliability supply sources and management has a comprehensive resource plan, which has assisted in their ability to navigate different hydrological conditions. The water authority also faces climate risks associated with sea level rise and weather conditions that result in algae blooms, which would affect the desalination facility

operations. However, management notes that recent upgrade at the desalination facility have potentially mitigated the risk of operational shutdowns in the future. Management has a climate change action plan in place that is frequently updated and partners with Scripps Institution of Oceanography in climate change analysis and mitigation efforts.

With respect to seismic, wildfire, and cyber risks, management has robust emergency planning, including cyber policies and cyber insurance. The Integrated Contingency Plan (ICP), which is the emergency planning document, complies with the National Incident Management System and is compliant with state and federal regulations. The plan was updated in September 2020 as required by the America's Water Infrastructure Act. To prepare for a major emergency, the Water Authority regularly activates its Emergency Operations Center for planned event control, coordinates with member agencies on emergency preparedness issues, and participates in County of San Diego Operational Area exercises.

In addition to environmental risk, rising water costs contribute to elevated social risk as members have become increasingly sensitive to rising water costs, which has resulted in some member discord, lawsuits and potential detachment. Management continues to work with the members to address affordability concerns, including utilizing the rate stabilization fund to mitigate large rate increases. We understand management supports SB 222 which creates a framework for ratepayer support. Despite above-average ESG exposure, the management team is tenured and experienced with strong water supply leaders and maintains robust infrastructure maintenance and operational policies which contributes to a strong governance position.

Negative Outlook

Downside scenario

We could lower the ratings if consumption declines pressure water sales revenue by more than currently forecast--due to economic conditions or the development of significantly lower cost water supply alternatives or the loss of a major member--without being mitigated by reduced water purchases, rate increases, or an increased fixed-charge rate structure. In addition, the rating could be pressured if the authority further depletes the rate stabilization fund beyond the minimum target level established by the board or fails to implement rate increases to maintain financial metrics commensurate with a 'AAA' rating. The rating could also be pressured if the authority takes on a meaningful amount of additional leverage.

Return to stable scenario

We could return the ratings to stable if the authority produces a credible financial plan that demonstrates stable financial results based on a stronger alignment of its cost structure with fixed revenue that we believe is commensurate with peers at a 'AAA' level.

Credit Opinion

Enterprise Profile

The authority is a primary and supplemental water provider for 24 member agencies throughout San Diego County. The level of dependence varies from 100% dependence to no utilization of authority supplies during above normal rainfall cycles. Since 1990, the water authority has provided an average of 85% percent of the water supply within its service area, ranging from a low of 75 percent and a high of 95%. Per capita water use has declined 46% over that same period, the result of conservation, local supply development, economic conditions, member use restrictions, and supply allocations. Year to date, consumption is flat relative to 2019, reflecting local weather conditions as well as ongoing pandemic related economic effects. Management expects consumption to increase incrementally during the forecast period, which we believe may be an aggressive assumption. New demand forecasting including a long-range financial plan will be released in September 2021. Overall, authority management has committed itself and its member agencies to managing through different hydrological conditions and has made the necessary rate increases to maintain consistent financial performance to support operational requirements. We view this as a credit positive, as discussed in the financial profile section. That said, continued declines in consumption will necessitate higher rate increases and we believe affordability is already a credit vulnerability.

The state is adopting new water-use objectives for retail water agencies for indoor and outdoor use, system water loss, variances, and potable reuse credit. The state expects to adopt these standards by June 2022. Such objectives could further reduce demand and lead to development of additional alternative local resources. We believe the continued development of local supply could further reduce the demand for authority supply. That said, diversification of supply is beneficial to the regional water supply picture and management does not expect local supply to negatively affect the authority's financial position. As major projects come on-line, such as the two regional recycled water projects, demand for water authority supply may decline but the authority will still be required to supply water when projects are offline. Reliability planning will become an even greater strategic focus for the authority. We believe the current water supply management team demonstrates considerable acumen in strategic supply planning. Further, member agencies are required to pay certain charges irrespective of whether they order water from the water authority in a given year. During the recent fiscal sustainability council, the authority adopted an even higher percentage of fixed charges, which we view positively given the authority's fixed cost profile and role as a supplemental supply provider. We believe integrating a higher percentage of fixed charges to meet fixed obligations is critical to maintaining the rating.

The authority has a higher degree of litigation and member discord than is standard in the sector, in our opinion. This includes ongoing rate litigation with Metropolitan Water District, some of which has been settled in the authority's favor and some of which is ongoing. In addition, the authority is currently resolving a \$6.1 million lawsuit with Vallecitos Water District regarding overcharges. Lastly, two member agencies have petitioned the Local Agency Formation Commission (LAFCO) for detachment from the authority because they believe they can receive their water supply more affordably directly from Metropolitan Water District (through an arrangement with Eastern Municipal Water). Given the geographic location of the members, they reportedly believe that they do not receive sufficient benefit from remaining with the authority. LAFCO may deny the detachments or approve the detachments with conditions. The authority's management reports that the LAFCO process will likely take up to two years with a draft

report anticipated in Spring 2021. The authority has hired a consultant to advise on the proceedings and the authority intends to seek reimbursement for associated debt and costs attributable to the two agencies. Management believes they could adjust supply requirements through resource planning. While we do not believe any of the aforementioned issues will have a financial effect in the near-term, we do believe ongoing litigation has associated costs and introduces potential longer term political risk--especially if an approved detachment sets a precedent if members can easily detach from the authority. This would be further exacerbated if the two members are not required to pay for their portion of the associated debt and infrastructure costs that the authority has undertaken to provide reliable water sources. Member support for the long-term strategic plan is important to the credit quality in our opinion.

The authority has been successful in their efforts to increase control over their supply and diversify the source of their supply. The majority of the authority's supply is via California's participation in the Colorado River Compact and related subsequent agreements (65%). The initial State Water Project allocation for 2021 is 10% due to below normal precipitation and snowfall in the Northern Sierra. As of March 9, 2021, precipitation is 49% of normal at the Northern Sierra Precipitation 8-Station Index and snow water equivalent is 58% of normal in the Northern Sierra. The Upper Colorado River snowpack is 82% of normal as of March 8 and five-year projections indicate an increased probability of shortage. The authority has made meaningful progress on the acquisition and control of the water supply portfolio through regional agreements and construction of the Carlsbad seawater desalination project. However, Metropolitan Water District of Southern California remains a significant imported water supply source for the water authority, which we consider credit neutral.

The authority's wholesale rates will continue to be pressured by rising purchased water costs and other pass-through obligations. Management's forecast shows the range for projected rates by 2023 to be \$1,716-\$2,800 (including desalinated water) with annual moderate rate increases each year. The authority's most expensive source of supply, which provides about 10% of its water, is the Carlsbad desalination plant. The facility achieved commercial operations in late 2015. Any deliveries of less than the minimum would lead to a true-up credit benefitting the authority, relatively insulating the authority from significant operating risk (other than energy price risk). This source of supply will be more expensive than initially projected because Poseidon (the plant developer and operator) is constructing new intake and discharge facilities that it estimates will cost as much as \$83 million by its 2023 completion. All costs of the intake system are a direct pass through to the authority. The authority prudently has adopted contractual fixed charges to cover a significant portion of these costs directly from pass through payments, which we view favorably.

The authority has a formal asset management program that addresses the long-term sustainability of its infrastructure and facilities. The program includes evaluating the condition and expected useful life of each asset and developing a strategy to rehabilitate and replace these assets. Management regularly communicates its strategic goals internally and to outside parties. Rate adjustments have been timely historically, and management undertakes periodic rate studies that are cost of service based. Drought management planning is strong, and management has generally succeeded in executing strategic plans, including complex capital planning.

San Diego County has a diversified economy based on tourism, international trade, military, and high-tech manufacturing. The economy has been affected by the COVID-19 related shelter-in-place requirements, which have led to business closures and elevated unemployment. Leading employers include the government, education, military,

and health care sectors, all of which, in our opinion, are relatively more stable. Tourism, trade, and retail are also economic drivers and those sectors have exhibited outsized exposure to the current economic contraction. Median household effective buying income is significantly higher than the U.S., helping to blunt the effect of the rising cost of water to the ultimate retail customers of member agencies.

Financial Profile

The authority's financial position has historically been a credit strength although we believe the coverage and liquidity will be less robust during this upcoming forecast period as a result of consumption declines and rising contractual costs. We view favorably that management has, through fiscal sustainability efforts, recently increased the percentage of fixed charges associated with contract and infrastructure costs. We understand that there will be continued efforts to improve the rate structure to provide enhanced stability and cost recovery. In addition, there are no issues with member delinquencies and the authority has the ability to attach delinquencies to the property tax lien of a ratepayer which increases likelihood of collections.

Debt service coverage for all senior and subordinate obligations had consistently exceeded 1.4x, which we view as healthy for a wholesaler, including payments associated with the desalination plant which are technically below the line but we include for coverage purposes. For the forecasted 2021 through 2023, fixed charge coverage, excluding the rate stabilization fund is just over 1.3x, which is narrow in our view. Given the effects of the pandemic, weather, and economic contraction, water sales declined considerably in 2019 from \$595 million to \$582 million and again further in 2020 to \$568 million. Water sales are expected to slightly rebound in 2021 to \$597 million due to normal weather and as well as potential improvement in coronavirus-related business closures and other factors. Expenditures are increasing in forecast periods as well, resulting in fixed charge coverage declining, without the RSF included. We expect the authority to continue to rely on withdrawals from the rate stabilization fund through 2023, given the rising cost of services and a desire to moderate rate increases for members. If water sales continue to decline, with rate increases not keeping up with consumption declines, the current rating could be pressured. Under a stress scenario where there is an additional 5% decline in 2021 followed by no-growth in water sales revenue, the authority would breach sum sufficiency by 2023 without significant additional rate increases. Water consumption trends will continue to pressure rates with increases of just under 5% in 2021.

Management reports that despite the planned use of the rate stabilization fund, the fund will remain above the internal target through the forecast period, with \$81 million in 2023. Management changed the policy in January of 2021 to reflect a 15% drop in water sales. Maintaining the rate stabilization at the current level and continuing to implement reasonable rate increases is critical to maintaining the 'AAA' rating.

The liquidity position has been sufficient to cushion volatility and provide with manageable rate increases. The water authority has over \$265 million in cash and codified reserves in 2020, which is a decline from prior levels that were over \$300 million. After consistently adding to the rate stabilization fund (RSF) during periods of fiscal strength, the authority utilized the RSF in 2019 and expects to leverage those funds through 2023 without breaching the target level. Management also maintains an operating reserve equivalent to at least 45 days' of operating expenses (with \$5 million held for emergencies), and several funds designated for specific capital items. By 2023, liquidity is expected to drop to

just under \$230 million, which we still view as reasonable but is approaching levels that could pressure the rating. Liquidity is a critical to the authority's financial health, given variable hydrology conditions and the development of significant additional local supply.

Revenue and expenses assumptions are reasonable, and management provides interim financial reporting. The long-term planning process is rigorous, and the detailed forecast is updated annually. The authority's reserve policy is robust and articulates a rationale for maintaining its extremely strong liquidity position. Financial planning and operational information is transparent and periodically updated.

The authority's five-year capital improvement plan is manageable, in our view. However, there is discussion of a major capital investment for a regional conveyance system. We believe a project of that magnitude could have a material impact on the authority's leverage ratios which could pressure the rating given how highly leveraged the water authority currently is. The present CIP totals approximately \$1.3 billion. The authority expects to spend approximately \$387.2 million over the next five years on capital improvement projects, though a new long-range forecast plan that is "in progress" and expected to be finalized in September of 2021, one year later than was projected last year.

Related Research

Through The ESG Lens 2.0: A Deeper Dive Into U.S. Public Finance Credit Factors, April 28, 2020

Ratings Detail (As Of March 17, 2021)		
San Diego Cnty Wtr Auth sr lien wtr rev rfdg bnds		
<i>Long Term Rating</i>	AAA/Negative	Outlook Revised
San Diego Cnty Wtr Auth wtr COP (AGM)		
<i>Unenhanced Rating</i>	AAA(SPUR)/Negative	Outlook Revised
San Diego Cnty Wtr Auth wtr (MBIA) (MBIA of Illinois)		
<i>Unenhanced Rating</i>	AAA(SPUR)/Negative	Outlook Revised
San Diego Cnty Wtr Auth CP notes ser 10 due 12/31/2099		
<i>Short Term Rating</i>	A-1+	Affirmed
San Diego Cnty Wtr Auth Wtr (MBIA of Illinois)		
<i>Unenhanced Rating</i>	AAA(SPUR)/Negative	Outlook Revised
San Diego Cnty Wtr Auth CP		
<i>Short Term Rating</i>	A-1+	Affirmed
San Diego Cnty Wtr Auth WTRSWR		
<i>Long Term Rating</i>	AA+/Negative	Outlook Revised

Many issues are enhanced by bond insurance.

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Professional Services Agreement
(San Diego County Local Agency Formation Commission / Michael Hanemann)

PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES
(San Diego County Local Agency Formation Commission / Michael Hanemann)

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into as of the last date indicated below by and between the San Diego County Local Agency Formation Commission, a California public agency, corporate and politic (“Commission”), and Michael Hanemann, an individual (“Consultant”) (collectively, “parties”).

2. RECITALS

- 2.1 Commission has determined that it requires the following professional services from a consultant: 1) an analysis of water rate impacts associated with reorganization proposals filed by Fallbrook Public Utilities District (File No. RO20-05) and Rainbow Municipal Water District (File No. RO20-04) (collectively, “Reorganizations”); 2) an analysis of water service reliability issues associated with the Reorganizations; and, 3) an analysis regarding potential detachment fees and/or related costs and expenses associated with the Reorganizations.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Commission and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services” means such professional services as are set forth in “Exhibit A,” which is attached to this Agreement and fully incorporated herein by this reference.
- 3.2 “Approved Fee” means \$500 per hour. The Approved Fee shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.3 “Commencement Date” means October 16, 2020.

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- 3.4 “Termination Date” means the date upon which all tasks in the Scope of Services are completed or upon the effective date of termination of the Agreement in accordance Section 18, whichever occurs first.
- 3.5 “Commission Agreement Administrator” means Keene Simonds, Executive Officer of the Commission.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall terminate at 11:59 p.m. on the Termination Date unless extended in writing by mutual agreement of the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

5. CONSULTANT’S SERVICES

- 5.1 Time is of the essence in Consultant’s performance of services under this Agreement.
- 5.2 Consultant shall perform the services identified in the Scope of Services. Commission shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of seventy-five thousand dollars (\$75,000.00) unless specifically approved in advance and in writing by Commission.
- 5.3 Consultant shall perform all work to the highest standards of Consultant’s profession and in a manner reasonably satisfactory to Commission. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 Consultant represents that it has advised Commission in writing prior to the date of signing this Agreement of any known relationships with third parties, Commissioners, or employees of Commission which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

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- 5.5 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) Commission has not consented in writing to Consultant's performance of such work.
- 5.6 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.
- 5.7 This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 5.8 Consultant shall be responsible to Commission for all services to be performed under this Agreement. All subconsultants shall be pre-authorized by the Commission Agreement Administrator and their billing rates identified in the Approved Fee. Commission shall pay Consultant for work performed by its subconsultants (including labor) only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. Commission shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.
- 5.9 Consultant shall notify the Commission Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to the Agreement.
- 5.10 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.

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6. COMPENSATION

- 6.1 Subject to the cap in Section 5.2 above, Commission agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee in full satisfaction for such services.
- 6.2 Consultant shall submit to Commission an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall identify the maximum amount payable above, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges. Commission shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall include a copy of each subconsultant invoice for which reimbursement is sought in the invoice.
- 6.3 The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 6.4 Payments for any services requested by Commission and not included in the Scope of Services may be made to Consultant by Commission on a time-and-materials basis pursuant to the Approved Fee and without amendment of this Agreement, so long as such payment does not cause the maximum amount payable above to be exceeded.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of Commission without restriction or limitation upon its use or dissemination by Commission except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to Commission, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Commission or otherwise to act on behalf of Commission as an agent. Neither Commission nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s

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employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of Commission.

Under no circumstances shall Consultant look to the Commission as its employer. Consultant shall not be entitled to any benefits. Commission makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and other applicable federal and state taxes.

9. AGREEMENT ADMINISTRATOR

In performing services under this Agreement, Consultant shall coordinate all contact with Commission through its Commission Agreement Administrator. Commission reserves the right to change this designation upon written notice to Consultant. All services under this Agreement shall be performed at the request of the Commission Agreement Administrator, who will establish the timetable for completion of services and any interim milestones.

10. INDEMNIFICATION

- 10.1 The parties agree that Commission, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the Commission with the fullest protection possible under the law. Consultant acknowledges that Commission would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect Commission as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the Commission requests with respect to a claim provide a deposit for the defense of, and defend Commission, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful

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misconduct of the Commission. Such costs and expenses shall include reasonable attorneys' fees due to counsel of Commission's choice, expert fees and all other expenses of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

- 10.3 Commission shall have the right to offset against any compensation due Consultant under this Agreement any amount due Commission from Consultant as a result of Consultant's failure to pay Commission promptly any indemnification arising under this Section 10 of this Agreement and any amount due Commission from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 of this Agreement are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to Commission, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in Section 10 of this Agreement from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend Commission, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of Commission's choice.
- 10.6 Commission does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by Commission, or the deposit with Commission, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.
- 10.7 In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the Commission, Consultant shall indemnify, defend, and hold

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harmless Commission for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Commission.

- 10.8 Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by Commission, including but not limited to eligibility to enroll in CalPERS as an employee of Commission and entitlement to any contribution to be paid by Commission for employer contribution and/or employee contributions for CalPERS benefits.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.
- 11.2 Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to Commission as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
- 11.3 Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:
- 11.3.1 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.4 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.5 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, Commission may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.

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- 11.6 At all times during the term of this Agreement, Consultant shall maintain on file with Commission's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming Commission and its officers, employees, agents and volunteers as Additional Insureds. Prior to commencement of work under this Agreement, Consultant shall file with Commission's Risk Manager such certificate(s) and Forms CG 20 10 07 04 and CG 20 37 07 04 or the substantial equivalent showing Commission as an Additional Insured.
- 11.7 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.8 All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to Commission. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.9 The insurance provided by Consultant shall be primary to any other coverage available to Commission. Any insurance or self-insurance maintained by Commission and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.10 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the Commission.
- 11.11 Any deductibles or self-insured retentions must be declared to and approved by the Commission. At the option of Commission, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to Commission, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.12 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.
- 11.13 Consultant may be self-insured under the terms of this Agreement only with express written approval from the Commission.

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- 11.13.1 All self-insured retentions (SIR) must be disclosed to the Commission for approval and shall not reduce the limits of liability.
- 11.13.2 Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the Commission.
- 11.14 Commission reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

12. MUTUAL COOPERATION

- 12.1 Commission shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim, action, or proceeding is brought against Commission relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Commission may require in the defense of that claim, action, or proceeding.

13. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by Commission. Commission shall grant such consent if disclosure is legally required. Upon request, all Commission data shall be returned to Commission upon the termination or expiration of this Agreement.

14. RECORDS AND INSPECTIONS

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Commission under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of Commission. Commission shall further have the right to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of

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Commission or as part of any audit of Commission, for a period of three (3) years after final payment under the Agreement.

15. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and Commission's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Commission:

Keene Simonds
Executive Officer
San Diego Local Agency Formation
Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123
858-614-7755

If to Consultant:

Michael Hanemann
[Redacted]
Phoenix, AZ 95018
[Redacted]

With courtesy copy to:

Holly O. Whatley
General Counsel
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd, Suite 8500
Pasadena, California 91101
213-542-5700

17. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 10, Section 13, Paragraph 12.2 and Section 14 of this Agreement shall survive the expiration or termination of this Agreement.

18. TERMINATION

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- 18.1 Commission may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to Commission. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All Commission data, documents, objects, materials or other tangible things shall be promptly returned to Commission upon the termination or expiration of this Agreement.
- 18.2 If Commission terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.2 above and as otherwise provided in this Agreement.

19. GENERAL PROVISIONS

- 19.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Commission's prior written consent, and any attempt to do so shall be void and of no effect. Commission shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 19.4 The waiver by Commission or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Commission or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.

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- 19.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in Commission's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between Commission and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the Commission and Consultant.

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19.10 Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“Commission”

“Consultant”

By Keene Simonds
Keene Simonds
Executive Officer

By: Michael Hanemann
Michael Hanemann

Date: November 12, 2020

Date: 11/6/2020

Attest:

By _____

Date: _____

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Approved as to form:

By _____
Holly O. Whatley
General Counsel

Date: _____

EXHIBIT A

1. The Consultant shall review information and associated documents submitted by the applicants – Fallbrook Public Utility District (RO20-05) and Rainbow Municipal Water District (RO20-04) – as well as responses submitted by other subject and affected agencies or individuals on file with the Commission Agreement Administrator and posted to the Commission website:

<https://www.sdlafo.org/resources/major-proposals/fallbrook-pud-rainbow-mwd-wholesaler-reorganization-2020>.

2. The Consultant shall prepare three written memoranda addressing each of the distinct topics specified below. Each memorandum should be directly sourced to existing information on file with San Diego LAFCO or as augmented by the Commission Agreement Administrator or their designee (e.g. Chief Policy Analyst, Analyst II/I). The Consultant – nonetheless – is expected to exercise his professional judgment in analyzing the information on file and make reasonable assumptions and/or inferences therein in addressing the three topics.

- a) Topic One (Water Rate Impacts)

The Consultant shall prepare a written memorandum analyzing the potential water rate impacts to the San Diego County Water Authority, the Fallbrook Public Utility District, and the Rainbow Municipal Water District under three distinct scenarios: (i) Commission approval of both proposals; (ii) Commission approval of only the proposal filed by Fallbrook Public Utilities District; and (iii) Commission approval of only the Rainbow Municipal Water District. If the information on file and/or as augmented by the Commission Agreement Administrator is deemed insufficient, the memorandum should succinctly identify the missing, incomplete, incorrect, or otherwise unsubstantiated information needed to appropriately address this topic.

- b) Topic Two (Water Supply Reliability)

The Consultant shall prepare a written memorandum analyzing whether any substantive differences exist with respect to the overall water supply reliability between the San Diego County Water Authority and Eastern Municipal Water District. The Consultant shall use their professional expertise in quantifying and/or qualifying “substantive” relative to addressing water supply reliability. If the information on file and/or as augmented by the Commission Agreement Administrator is deemed insufficient, the memorandum should succinctly identify the missing, incomplete, incorrect, or otherwise unsubstantiated information needed to address this topic.

- c) Topic Three (Potential Departure Fees)

The Consultant shall prepare a written memorandum quantifying what – if any – departure fees (also referred to as exit charges) should be made conditions of approval if the Commission approves either or both proposals. This includes – and among other considerations the Consultant believes to be pertinent – addressing potential rate

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impacts to the Water Authority addressed in Topic One. If the information on file and/or as augmented by the Commission Agreement Administrator is deemed insufficient, the memorandum should succinctly identify the missing, incomplete, incorrect, or otherwise unsubstantiated information needed to address this topic.

3. Prepare presentations for and attend meetings of the Ad Hoc Committee on Fallbrook-Rainbow Reorganizations, upon the request of the Commission Agreement Administrator. The Commission Agreement Administrator will provide Consultant with at least 10 business days' notice of any Ad Hoc Committee on Fallbrook-Rainbow Reorganizations meeting. Consultant must submit all materials to the Commission Agreement Administrator at least 5 business days before the proposed meeting date.
 - a) Unless otherwise requested by the Commission Agreement Administrator, the Consultant's attendance at meetings of the Ad Hoc Committee shall be done by teleconference or videoconference.
4. Undertake additional work, including but not limited to generating original documentation/analysis in addressing water rate impacts, detachment fees, costs, or expenses, and water service reliability issues, upon the request of the Commission Agreement Administrator.
5. Be available to answer questions by the Commission staff regarding the Reorganization.

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NON-COLLUSION DECLARATION

TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am _____ Michael Hanemann, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on November 8, 2020, at Phoenix __[City], Arizona __[state].”

Michael Hanemann

Signature

Michael Hanemann

Printed Name of Signatory