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MEMORANDUM

TO: Sacramento Suburban Water District & Del Paso Manor Water District Boards of Directors
Dan York, General Manager, SSWD
Adam Coyan, General Manager, DPMWD

From: Josh Horowitz

Date: July 24, 2024

Re: Decisions Required to Make Final Determination on Whether to Combine Districts and Timeline for Those Decisions

This memorandum provides guidance to the Boards of Directors of the Sacramento Suburban Water District (“SSWD”) and the Del Paso Manor Water District (“DPMWD”) on the process, decisions, and timeline for making a final determination on whether to proceed with a combination of SSWD and DPMWD either by reorganization or consolidation. A reorganization would involve the dissolution of DPMWD and the annexation of its territory and transfer of its assets to SSWD. A consolidation would dissolve both SSWD and DPMWD and form a new agency. Given the decision by the Sacramento Local Agency Formation Commission (“LAFCO”) to pursue a dissolution of DPMWD, this memorandum focuses on the reorganization process.

What follows is a list of decisions, description of the process, and approximate timing in a grouped format for reaching a decision on reorganizing DPMWD into SSWD.

Group 1 – Public Outreach and Initial Decision to Proceed with or Terminate Combination Proposal (Now to Completion of Public Outreach and Joint Board Meeting 1 – Estimated completion time, per communications plan)

- Completion of Public Outreach Process, including SSWD and DPMWD public workshops, briefing of public officials, interested agencies, customers, and other stakeholders, and public notification and receipt of comments -- schedule per Communications Plan approved at July 10, 2024 joint board meeting.

Group 2 – District Form and Governance Decisions (Assuming decision to proceed at 7/30 Joint Meeting – Estimated completion time, 3-4 months)

- Key decisions to be made in this phase include:
 - Pursue reorganization or consolidation?
 - Governance – 11-, 9-, 7, or 5-member board at LAFCO approval.
 - Ultimate size of Board by statute is 5 members, but can be larger (e.g., 7 or 9 members) upon request of SSWD and DPMWD and LAFCO approval.

- The County Water District Law contains a statute authorizing these options.
- Name of new agency – Optional for reorganization – default is surviving district keeps name, but a name change is authorized by statute and the two Boards may approve a new name if desired.
- Management structure – GM, department heads, and new positions.
- Main administrative office location.
- If two Boards still wish to have a five-member Board of Directors composed solely of SSWD Directors and for DPMWD Directors to sit as an advisory committee to oversee CIP and funding issues within the existing Del Paso service area, this could be specified to LAFCO as a condition of approving a reorganization.

The above issues would be included as conditions in the SSWD and DPMWD resolutions of application to LAFCO.

- Decision process – the Boards vet these issues with management and counsel support, and ultimately approve substantially similar conditions on these matters in resolutions of application filed with LAFCO.

Group 3 – Operational and Financial Decisions (After Group 2 governance decisions – Estimated completion time, continuing effort into implementation)

- Process: Many of these items are intended to be on-going activities and conducted mainly at the staff level with Board input and oversight and as due diligence matters under Group 5. However, other matters will need to be decided on by the SSWD and DPMWD Boards. If the decision is made to proceed with a reorganization, decisions on these items will need to be made and incorporated into the two “substantially similar” resolutions to be adopted by both Boards as the two Districts’ applications to LAFCO, together with the items noted above in Group 2. These specific items are denoted by double asterisks (**).
- Decide on employment-related matters:
 - Retention and assignment of existing employees and proposed org. chart. **
 - Review and coordinate DPMWD and SSWD salaries into single schedule. **
 - Review and coordinate DPMWD and SSWD benefits and formation of single unified plan. **
 - Retirement system – PERS contract(s); coordination of any supplemental plans. **
 - Review and coordinate DPMWD and SSWD employee manuals and policies.
- Agreements with consultants and vendors – Inventory agreements and determine which would be assigned or terminated.
 - Selection and retention of key consultants – Auditor, Consulting Engineers, Kirby, Legal Counsel.
- Disposition of real property – inventory of real property owned, leased, and rented by DPMWD and SSWD; easements and rights-of-way.
 - Plan for consolidating offices, corp. yards, and other property.
 - Inventorying and planning for any actions required to maintain easements and other non-fee interests.

- Plan for disposal of any surplus real property. **
- Determine how real property will transfer to the new District and be held for customers' benefit. **
- Disposition of personal property – inventorying, consolidating, and surplusing.
 - Disposition of leased and rented personal property.
 - Vehicle fleet inventory, consolidation, and surplus disposal planning.
 - How personal property will transfer to the new District and be held for customers' benefit. **
- Ordinances, resolutions, rules & regulations, policies – inventory, review, and select (post-combination readoption of retained items).
- Financial System.
 - Select accounting system and software, and financial reporting protocols.
 - Determine how Districts' cash, receivables, and liabilities will transfer to the new District and be held for customers' benefit. **
- Outstanding indebtedness – Combination must not affect bonded indebtedness. **
 - Notify bondholders of proposed combination, including analysis of no material effect.
 - Inventory all non-bonded loans and grants, and provide appropriate notices to lenders and grantors; make assignments to new District as required (post-consolidation).
- Software and operating systems.
 - Inventory and prepare plan for coordinating, transferring, and terminating systems as appropriate.
- Insurance, claims and litigation.
 - Identify outstanding claims and litigation; at appropriate time, notify adverse parties, insurers, and courts, and substitute in new District.
 - Notify ACWA-JPIA of proposed combination and obtain JPIA's input on coverage termination, determination of coverage for new agency, and issuance of new memorandum of coverage to new agency.
- Overall Due diligence plan – In addition to above items, determine scope of any additional due diligence reviews and investigations, including final audits of DPMWD and SSWD and other closing actions.
- Determine timing and scope of consultation on combination proposal with DDW and other regulatory agencies.
 - Determine how DDW permit will issue to new agency
 - Assignment and transfer of DPMWD and SSWD well permits.

Group 4 – Final decision (During course of Group 3 activities, but after those activities required to make decisions for LAFCO application requirements)

- Process would entail holding a joint board meeting to make a final decision on proceeding with a reorganization, or terminating the proposal and considering other

options – if the SSWD and DPMWD Boards decide to proceed, they would adopt “substantially similar” resolutions of application to LAFCO, which then prohibits LAFCO from denying the application and requires it to approve the application with or without conditions.

- Note that Sacramento LAFCO Executive Officer José Henriquez recommends SSWD and DPMWD combine by reorganization because the Cortese-Know-Hertzberg Local Government Reorganization Act of 2000 (the “LAFCO Law”) permits LAFCO to approve the application without an election unless it is successfully protested. If the Board of DPMWD adopts the resolution for dissolution unanimously, then LAFCO may waive the conducting authority hearing for the dissolution only. LAFCO also may waive the conducting authority hearing for the annexation of the DPMWD’s territory and assets and liabilities if it follows certain steps. (For further information, see Step 4 under the bullet point in Group 5 below describing the LAFCO approval process).
- The resolutions should include at least the following information:
 - The actions and conditions of approval that SSWD and DPMWD request from LAFCO;
 - Each District’s designated agent authorized to sign on the Board’s behalf and who will act as the primary contact with LAFCO;
 - A map of the territory affected by the proposal;
 - Specify what should be done with zones of benefit and/or benefit assessments – since neither DPMWD or SSWD have such zones, this should be confirmed;
 - Specify fiscal and operational considerations and requirements, including any proposal to form a new assessment district within the existing DPMWD service area to finance new and improved infrastructure;
 - Specify governance requirements such as directors being elected by division and the composition of the first board of the combined district; and
 - Specify any other conditions of approval requested of LAFCO.
- Approve CEQA document for proposed reorganization.
 - The proposal appears to be exempt from CEQA review under a Class 20 categorical exemption.
 - Review for the probable exemption should be performed by management and counsel and, if exemption eligibility confirmed, a Notice of Exemption prepared for approval by both Boards.
- If approved, direct staff to prepare and file application with Sacramento LAFCO. If not approved, proposal terminates unless Boards desire to explore other options.

Group 5 – LAFCO Application and Approval Process (LAFCO estimates up to one year to complete from date of filing resolutions of application and application)

- Staff prepares and files application with the Sacramento LAFCO.
 - Application must be on LAFCO forms (Except for resolutions of application).
 - There is a substantial amount of information which must be attached to the application, including an outer boundary survey and related maps, plan of service, possible municipal service review updates for DPMWD and/or SSWD.

- Property tax negotiation under Revenue & Taxation Code section 99 with Sacramento County.
 - This is a requirement of the LAFCO Law, but strictly a “check the box” action because neither DPMWD nor SSWD receive a property tax increment from the County.

- The following is a summary of the approval process LAFCO would conduct under the LAFCO Law after DPMWD and SSWD file their application and property tax agreement:
 - Step 1 -- LAFCo staff analysis: Upon receipt of the complete application packet, LAFCO staff will analyze the documents and follow up with the Districts to ensure there is sufficient information to address the LAFCO Law’s information requirements. Once those requirements are satisfied, LAFCo staff will issue a Certificate of Filing, stating the approval hearing date for the proposal. The approval hearing is typically scheduled for the first LAFCO meeting for which at least 21-days’ advance notice can be posted.

 - Step 2 -- Approval Hearing: LAFCO considers the facts of the proposal as shown in the application and supporting materials, the staff report, written and oral testimony, the environmental review, the context and setting of the proposal, and any other pertinent information necessary to permit LAFCO to decide on the proposal. The Commission’s discretionary decision could be unconditional approval, approval with conditions, or denial. A denial can be prohibited if the dissolving District’s Board adopts the resolution of application unanimously. If a denial is authorized and is made, the project is terminated and LAFCO issues a Certificate of Termination. If the application is approved with or without conditions, then the proposal moves to Step 3.

 - Step 3 -- 30-day reconsideration period: The LAFCO Law permits anyone within Sacramento County to request that LAFCO reconsider its approval of an application within 30 days after that approval. The requirements for reconsideration are strict and the Commission decides whether to grant reconsideration. A request for reconsideration rarely succeeds because of the high standard for granting them and the substantial record usually developed to support the application and approval.

 - Step 4 -- Conducting Authority Hearings: If an application has less than 100% landowner consent, a “conducting authority” (also called a protest) hearing must be scheduled, also subject to a minimum 21-day advance notice. This hearing provides an opportunity for landowners and registered voters to protest the approval. The result of the hearing depends on the number of protests received and not withdrawn:
 - If less than 25% of registered voters or 25% of landowners who own at least 25% of the total assessed value of the land protest, then LAFCO’s approval (with or without conditions) stands;
 - If more than 50% of registered voters or landowners protest, then LAFCO’s decision is overturned and the proposal fails; or
 - If the number of protests by registered voters or landowners is between 25% and 50%, then the proposal goes to an election.

As noted previously, a reorganization or consolidation of agencies is generally subject to an election. But if the conducting authority hearing step is used, it is the mechanism to determine if an election is held, and only if the number of submitted (and not withdrawn) protests is between 25% and 50% of landowners or registered voters. If DPMWD and SSWD apply for a reorganization, then the conducting authority hearing step for the dissolution can be bypassed if the resolution of application for the dissolving District is approved unanimously by its Board. If LAFCo staff ensures that the 21-day notice for the LAFO approval hearing is timely given to landowners and registered voters within the affected territory and (1) the notice discloses to the registered voters and landowners that, unless written opposition to the proposal is received before the conclusion of the Commission's proceedings on the proposal, LAFCO will waive the conducting authority (protest) proceedings; (2) the notice discloses that SSWD may extend or continue any previously authorized charge, fee, assessment, or tax in the affected territory; and (3) no landowners or registered voters within the affected territory file written opposition to the proposal before LAFCO concludes its proceedings on the proposal (which LAFCO EO Henriquez said he would ensure), then this step also can be eliminated for the annexation portion, thus eliminating the conducting authority step altogether.

- Assuming LAFCO approves DPMWD's and SSWD's application, one of the following occurs:
 - If LAFCO approves the application without conditions, it will record a Certificate of Completion and the consolidation or reorganization will be completed.
 - If LAFCO approves with conditions, DPMWD and SSWD must satisfy those conditions and then LAFCO will record the Certificate of Completion. DPMWD and SSWD would have one year to satisfy any conditions imposed by LAFCO.

**Group 6 – Post-Consolidation Actions to Implement Reorganized Agency
(Complete as soon as possible after LAFCO records Certificate of Completion)**

- Initial meeting of reorganized agency's board – actions to continue or adopt amended or new ordinances, resolutions, and policies, elect board officers and appoint secretary, treasurer, auditor, and legal counsel.
- Roster of Public Agencies filings with the Secretary of State for new agency and DPMWD and SSWD.
- Complete Group 3 actions as appropriate.
- If the Boards agree with the plan to form an assessment district within the existing DPMWD service area, the reorganized board (with assistance from the advisory board) must initiate a Proposition 218 proceeding to form the new assessment district and levy and collect any assessment approved by the voters.
 - Formation by reorganization would avoid a Proposition 218 proceeding because the surviving district's rates and charges would remain in effect and extend to the annexed area of the dissolved district.

- The same would apply to connection/capacity fees.
- Record notice of transfer of real property interests, if deemed appropriate by management and counsel.