M E M O R A N D U M

DATE: March 20, 2023

TO: Board of Directors, Raisin City Water District

FROM: John Kinsey & Nicolas Cardella, Wanger Jones Helsley PC

RE: Potential Annexation of Additional Lands into Raisin City Water District

I. INTRODUCTION

The McMullin Area Groundwater Sustainability Agency ("MAGSA") includes lands within the jurisdiction of Raisin City Water District ("RCWD" or the "District") and Mid-Valley Water District ("Mid-Valley"), as well as undistricted lands ("White Areas") within the sphere of influence of the two districts. The White Areas are represented on the MAGSA Board by the County of Fresno and are located within the sphere of influence of both the District and Mid-Valley. We understand RCWD and Mid-Valley are contemplating the annexation of the White Area lands to help fund infrastructure projects to help augment groundwater supplies and comply with the California Sustainable Groundwater Management Act ("SGMA").

RCWD's Board of Directors has asked our firm to prepare a neutral analysis of the potential advantages and disadvantages associated with a proposed annexation of certain White Areas (the "Proposed Annexation") into RCWD, and more specifically the following questions:

- Generally, what are the potential benefits and disadvantages associated with annexation of lands into the District?
- Could the District charge fees to the annexed lands to offset the cost of annexation?
- Could the District charge fees to the annexed lands to make up for taxes that have not been paid into the District?
- What obligation does the District have to provide water to the annexed lands?
- What liabilities does the District take on in terms of SGMA (i.e. groundwater overdraft mitigation, water quality management, James wellfield, & Raisin City oilfield)?
- What changes should we anticipate being needed to the JPA?
- Can the District have a general election of the landowners to determine if the SOI will be annexed?
- What affects are there if the white area forms their own district?

Each of these issues is addressed in more detail below.

II. DISCUSSION

A. The District's Obligations to the Annexed Lands

Pursuant to section 57325 of the Government Code, upon and after the effective date of an annexation, the territory annexed, all inhabitants of that territory, and all persons entitled to vote by reason of residing or owning land within that territory, "***shall have the same rights and duties as if the territory had been a part of the [] district upon its original incorporation or formation***." Thus, once the Proposed Annexation is complete, the annexed lands will be entitled to the same rights, and will be subject to the same duties, as all other lands existing in the District prior to annexation. Consequently, the District's obligations vis-à-vis the annexed lands will be identical to its obligations to its existing landowners.

Notwithstanding the above, the Local Agency Formation Commission ("LAFCO") is authorized to attach terms and conditions to the Proposed Annexation, including water use priorities. (See Govt. Code, § 56886, subd. (j); 50 Years of LAFCOs: A Guide to LAFCOs, California's Local Agency Formation Commissions, 3d ed. (Dec. 2013), p. 6.) As the court explained in *Voices for Rural Living v. El Dorado Irrigation Dist.* (2012) 209 Cal.App.4th 1096, 1116, "[t]he Legislature has vested LAFCOs with the sole and exclusive authority to approve annexations of territory into special districts." This "authority includes the power to impose conditions of approval on an annexation" and such "conditions are enforceable against any public agency designated in the condition." (*Id.*) Therefore, the District may be required to treat annexed lands different from other District lands if necessary to comply with a condition of approval imposed by LAFCO in connection with the Proposed Annexation.

1. Water Deliveries

With respect to water deliveries, absent a LAFCO condition of approval providing otherwise, the District would be required to provide water to the annexed lands on the same terms and conditions as it does to its current landowners. (See Govt. Code, § 57325.) Thus, the District may decline to provide water to annexed lands if those lands are in violation of the District's rules or regulations or have a delinquent assessment. (See Wat. Code, § 35423.) However, the District could not decline to provide water to annexed lands simply because those lands are newly annexed. Additionally, the District's rules and regulations must be "equitable." (*Id.*) As such, it would be unlawful for the District to adopt new rules and regulations targeting the annexed lands for differential treatment solely on the basis of their status as newly annexed lands.

Notably, however, Government Code section 56886, subdivision (j) provides that any change of organization may provide for, or be made subject to, certain terms and conditions, including "[t]he ***fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities*** or any other property, real or personal." (Emphasis added.) Thus, LAFCO may impose a condition of approval requiring the annexed lands to have different priorities or use rights than other lands in the District. If that were to occur, then the District would be permitted—and indeed required—to comply with LAFCO's

conditions. (See *Voices for Rural Living*, *supra*, 209 Cal.App.4th at 1116–17 [holding that irrigation district exceeded its jurisdiction by executing memorandum of understanding providing for the delivery of water to annexed land in excess of the amounts authorized by the LAFCO].)[1]

2. SGMA

For purposes of SGMA, the White Areas and the District are both subject to the Authority's jurisdiction as the GSA for the McMullin Area. As such, the Proposed Annexation should not materially alter the Authority's management of groundwater resources, as the same measures should be necessary to achieve sustainability regardless of whether the White Areas are under the District's jurisdiction or the County's. However, by annexing the White Areas, the District would become responsible for managing those lands consistent with the applicable groundwater sustainability plan ("GSP") whereas presently that duty falls on the County.

Absent LAFCO conditions to the contrary, the District would be required pursuant to section 57325 of the Government Code to recognize the same rights and duties in the annexed land as other District lands. However, this does not mean that all land within the District must be treated uniformly. If the White Areas are distinguishable from other lands with respect to considerations relevant to sustainable groundwater management, for instance, then differential treatment may be appropriate. To illustrate, if some or all landowners in the White Areas are extracting groundwater in significantly greater quantities than other lands within the GSA, then the Authority could regulate individual groundwater wells within the White Area lands. (See Wat. Code, § 10726.4, subd. (a)(2) ["A groundwater sustainability agency shall have the following additional authority . . . [t]o control groundwater extractions by regulating, limiting, or suspending extractions from ***individual groundwater wells*** or extractions from groundwater ***wells in the aggregate***] [emphasis added].) Similarly, if the District has rules relating to groundwater use, and White Area lands were in violation of those rules, then the District could take appropriate enforcement action against those lands. (See Wat. Code, § 35413.) However, the District must not single out White Areas for reasons wholly unrelated to legitimate District objectives, whether for enforcement purposes or in imposing assessments (See *Choudhry v. Free* (1976) 17 Cal.3d 660, 664 [except where fundamental rights are at stake, a "classification does not deny equal protection if any set of facts may reasonably be conceived in its justification"]; *Simms v. Los Angeles County* (1950) 35 Cal.2d 303, 310 ["Assessments will be invalidated by the courts if the taxing authorities resort to arbitrary methods carrying from those employed in assessing other property of like character and situation, and resulting in the imposition designedly of an unequal burden on the property of the complainant."].)

The Proposed Annexation would, however, increase the District's financial contribution to the Authority. Pursuant to Section 4.03 of the JPA, the Authority's members are subject to a

[1] Notably, LAFCO may not modify water rights or priorities that have been established by a court or an order of the State Water Resources Control Board. (Govt. Code, § 56886, subd. (j).) Nor may it "directly regulate land use, property development, or subdivision requirements." (Govt. Code, § 56886.)

cost share based on the relative size of each member's service area. Currently, the District has 51,719 acres, or 42.87% of the total land in the GSA, while the County has 55,238 acres, or 45.79% of the total land in the GSA. (See JPA, Exhibit B.) Mid-Valley, on the other hand, has 13,678 acres, or 11.34% of the total land within the GSA. Consequently, if the District were to annex all the White Areas, the District's service area would consist of 106,957 acres, or 88.66% of the total land within the GSA. As a result, the District's cost share under the JPA would be doubled.

B. Financial Authority for Annexed Lands

1. District Indebtedness

Pursuant to Government Code section 57328, any territory annexed to a district shall be liable for payments that become due on account of the district's outstanding bonds, contracts, or other obligations, including any taxes, assessments, charges, or rates levied to provide for such payments. As the court explained in *Metropolitan Water District v. Dorff* (1979) 98 Cal.App.3d 109, 113, "in the absence of statute or constitutional provision to the contrary, territory annexed to a . . . district is liable to pay its proportionate share of the existing indebtedness of the . . . district to which it is annexed." However, annexed lands are not liable for obligations of any improvement district within the annexing district. (Govt. Code, § 57328; see also *Dickson v. City of Carlsbad* (1953) 119 Cal.App.2d 809.)

2. Previously Authorized District Levies

Pursuant to Government Code section 57330, any territory annexed to a district shall be subject to the levying or fixing and collection of any taxes, benefit assessments, fees, or charges previously authorized by the annexing district. (See *Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission* (2012) 209 Cal.App.4th 1182, 1186.) Additionally, while owners of the annexed territory may be entitled to vote on the proposed annexation, they are not entitled to a separate vote on previously-authorized levies, even if those levies would otherwise be subject to Proposition 218's procedural requirements. (*Id.* [holding that owners of annexed land were obligated to pay special taxes previously approved by annexing municipality, even though annexed lands had not specifically approved the taxes]; see also 82 Ops.Cal.Atty.Gen. 180.)[2]

Additionally, pursuant to section 36590 of the Water Code, if any land subject to an assessment is not charged with its portion of the assessment, then at any subsequent assessment hearing such land may be assessed (1) the then-current assessment, and (2) the former assessment based on the assessed valuation of the land at the time the former assessment was levied.

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[2] LAFCO may even condition its approval of an annexation on a requirement that the annexing district levy or collect previously authorized taxes, assessments, fees, or charges on the annexed territory. (See Proprosition 218 Implementation Guide, 2007 Ed., p. 30) Similarly, LAFCO may condition its approval of an annexation on a requirement that the annexing district levy or collect ***new*** taxes, assessments, fees, or charges. (See *Citizens Association of Sunset Beach*, *supra*, 2009 Cal.App.4th at 1199–1200.)

3. Recovery of Annexation Costs

Administrative and professional costs associated with an annexation can be significant. Therefore, many agencies require landowners to pay the agency's costs before they will process a request for annexation. (See, e.g., City of Clovis, Annexation Application Processing Fee Schedule[3] [$20,550, plus $75 per acre]; Colfax Municipal Code, § 3.28.010[4] [actual costs, plus $1,445 deposit]; Vallecitos Water District, Ordinance No. 200[5] [actual costs, plus deposit depending on number of acres to be annexed].) However, each of these examples involves a ***landowner requesting*** annexation to a district or municipality. In such circumstances, the fee is charged as a result of a landowner's voluntary act of requesting annexation. Therefore, it is not imposed as an incident of property ownership. (See *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 426.) Consequently, it is not a property-related fee or charge, and not subject to Proposition 218. (See Govt. Code, § 53755.5.) Similarly, it is common for an annexing agency to include cost recovery provisions in an annexation agreement with the affected territories.[6]

However, if the District were to require payment for annexation costs from landowners who had ***not*** voluntarily requested annexation, then such a fee would probably be imposed as an incident of property ownership, which means it would be a property-related fee subject to the procedural requirements of Proposition 218. (See *Richmond*, *supra*, 32 Cal.4th at 427.) Moreover, the District could not impose a property-related fee on newly annexed territory until ***after*** the annexation was completed, as prior to annexation the District would lack jurisdiction over the annexed territory and could not comply with Proposition 218's procedural requirements. (See Cal. Const., art. 13D, sec. 6.) This would also be the case if cost recovery was sought by means of an assessment against the newly annexed territory. (See *id*. at sec. 4.) As a result, whether a property-related fee or an assessment, the measure could be defeated if a majority of the annexed territory's landowners protested its imposition. (See Govt. Code, §§ 53755, subd. (b), 53753, subd. (d).) A property-related fee would also need to be submitted to landowners affected by the fee and approved by a majority of voters. (See Govt. Code, § 53755.5.)

On the other hand, the District may have authority to impose a special tax requiring newly annexed territory to pay a proportionate share of the District's costs in affecting the annexation. Unlike fees and assessments, which are subject to majority protest by ***affected*** landowners, special taxes may be imposed if "submitted to the electorate of the local government . . . and approved by a two-thirds vote of the voters voting in [the] election." (Govt. Code, §53722.) Thus, the District could impose a special tax applicable to newly annexed territory prior to annexation, and that tax would be applicable to annexed territory following annexation, even though it was only voted on by the District's current landowners. (See Govt. Code, §

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[3] Available at https://cityofclovis.com/wp-content/uploads/2018/09/Annexation-Fee-Schedule.pdf

[4] Available at https://library.municode.com/ca/colfax/codes/code_of_ordinances?nodeId=TIT3REFI_CH3.28ANFE

[5] Available at https://www.vwd.org/home/showpublisheddocument/350/637775723857730000

[6] See, e.g., Agreement for Annexation and a Secondary Water Supply, sec. 3, subd. (a), available at https://www.oawd.org/files/4508a150b/Annexation+and+Class+II+Water+Supply+Agreement+CEQA+%26+SOI+Sample.pdf

57330; *Citizens Association of Sunset Beach*, *supra*, 209 Cal.App.4th at 1186.) However, this would require the election to be consolidated with a statewide primary election, a statewide general election, or a regularly scheduled local election. (Govt. Code, § 53724, subd. (c).) Alternatively, the District could hold the election at a different time, so long as the date is otherwise permitted by law and the District bears the costs of the election. (*Id.* at subd. (d).)

4. Other Levies

Section 57327 of the Government Code provides that annexed lands may not be required to pay for the use, or right of use, of the annexing district's ***existing property***. However, some districts appear to require newly annexed territory to pay an annexation fee based on the value of the district's assets, even where the landowner has not requested annexation.[7] (See, e.g., Ordinance No. 200, *supra*, § 2.11.)

For instance, Vallecitos Water District's Ordinance No. 200 requires "a landowner whose land is being annexed [to] pay a fair and equitable share of the value of the District . . . to which the land is being annexed." This "annexation fee" is calculated by dividing the total value of the district's net assets, as stated in its most recent audited Annual Financial Report, by the total number of acres within the district. Similarly, Metropolitan Water District imposes an "annexation charge" calculated by adding the estimated replacement cost of (1) Metropolitan's facilities, (2) the unamortized participation rights in the State Water Project, and (3) other non-Metropolitan-owned projects in which Metropolitan participates. Metropolitan's outstanding bonded indebtedness and the accumulated depreciation of facilities are then subtracted from this total. Finally, the resulting net replacement cost is divided by the total acreage within the district's service area as of the end of the recently completed fiscal year.

Although some districts have imposed fees and charges based on the value of their assets, it is unclear how such fees and charges can be reconciled with section 57327 of the Government Code given that they are based on the value of the districts' existing property.

With respect to new levies, the District must take care to treat White Areas similarly to other lands within the District.

5. Comparison with Existing Financial Authority

In evaluating the Proposed Annexation's benefits with respect to financial authority, it is helpful to compare the existing processes with those that would be available following annexation.

For instance, under the current paradigm, the District has no direct authority to impose levies on the White Areas. That can only be done by the County or MAGSA. However, the District has no control over the County's decisionmaking processes. And, while the District does have some control over MAGSA's decisionmaking processes by virtue of its two board seats, the

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[7] Unlike a levy to recover the costs associated with annexation, such a fee or charge could fairly be characterized as a fee or charge for "water services." As such, it would be exempt from Proposition 218's vo

JPA requires a ***unanimous*** vote for "***[a]ny assessment or fee*** levied or imposed by the GSA." (JPA, § 3.04, Table 2, No. 7.) In effect, this gives MAGSA's White Area board member veto authority over any proposed levy or assessment on White Area lands. This could interfere with MAGSA's ability to raise revenue for SGMA compliance activities from White Area landowners, thereby placing a disproportionate financial burden on other lands within the MAGSA, including the District's current landowners. On the other hand, if the White Areas were annexed to the District, then the District's board could directly impose levies on them just as it would for other land within the District's jurisdiction. While White Area landowners could of course seek election to the District's board of directors, the District would not be subject to the JPA's unanimous vote requirement in deciding whether to impose levies on land within its boundaries, including the White Areas.

Similarly, the JPA requires a unanimous vote of the board in order for the MAGSA to incur debts, liabilities, or other obligations and to allocate budget among its members. (JPA, § 3.04, Table 2, Nos. 2, 8.) Just as with the imposition of assessments and fees, the JPA's unanimous vote requirement effectively grants the MAGSA's White Area board member veto authority over these subjects. Consequently, if incurring debt is necessary to finance new or improved facilities to facilitate SGMA compliance, and the White Area board member refuses to support the proposal, then the MAGSA will be unable to incur the debt. Likewise, the White Area board member could refuse to support the MAGSA's budget allocation decisions, thereby depriving the MAGSA of the funds needed to implement SGMA initiatives. On the other hand, if the White Areas were annexed to the District, the District could incur debts to finance new facilities without the JPA's unanimous vote requirement and would have greater resources and authority to implement its own SGMA initiatives if the MAGSA board is unable to do so for any reason.

Additionally, even if the County could be relied upon to impose levies on White Area lands, in many cases that would require the County to impose ***new*** financial obligations, which would necessitate a Proposition 218 election or the formation of a community facilities district—both of which could introduce significant delay and uncertainty. The District, in contrast, would be able to immediately impose its ***existing*** financial obligations on the White Areas following annexation without the need to hold a Proposition 218 election. (See *supra* at II.B.2.)

C. JPA Amendments

Upon annexation of any White Areas, amendments would be necessary to Exhibit B of the JPA, which establishes financial contribution requirements based on the size of the Members' respective service areas. (See JPA, Exhibit B.) Aside from this, no other changes would be needed so long as some White Areas remain post-annexation.

However, if no White Areas remain, then additional changes would be needed. Section 3.01 reserves a board seat for a "'White Area' landowner appointed by the County of Fresno." (JPA, § 3.01.) However, if no White Areas remain, then a White Area landowner cannot be appointed to the board.

Additionally, if no White Areas remain after the Proposed Annexation, this would raise issues concerning the County's participation. With no White Areas to manage, the County may

decide to withdraw from the Authority. Section 5.03, subdivision (A) authorizes any Member to "withdraw from this Agreement by giving sixty (60) days written notice of its election to do so. . ." If the County were to withdraw, then the Authority would need to designate a new agency for purposes of Government Code section 6509. Section 6509 provides that a joint powers authority's powers shall be subject to the limitations imposed on one of its members and that such member shall be identified in the agreement. (See *Zack v. Marin Emergency Radio Authority* (2004) 118 Cal.App.4th 617, 638.) Section 2.01, subdivision (B) of the JPA designates the County for this purpose. Consequently, if the County were to withdraw, then section 2.01, subdivision (B) would need to be amended to replace the County with the District or Mid-Valley.[8]

D. Election to Decide Whether to Proceed with Annexation

The District may hold an election in accordance with the Uniform District Election Law, Elections Code section 10500 et seq, to determine whether to pursue annexation proceedings. (See Wat. Code, § 35100.) However, the District's landowners do not have an absolute right to veto an annexation that has been approved by LAFCO. (See *L.I.F.E. Committee v. City of Lodi* (1989) 213 Cal.App.3d 1139, 1145–46.)

E. Consequences if White Areas Form New Special District

As an initial matter, the Fresno County LAFCO would be unlikely to approve a petition by White Area landowners to form their own special district. Section 101.04 of the Fresno County LAFCO's Policies, Standards, and Procedures Manual provides that "[i]n order to reduce and minimize the number of agencies providing services, ***proposals for formation of new agencies shall be discouraged unless*** there is evidenced a clear need for the agency's services from the landowners and/or residents; ***there are no other existing agencies that are able to annex and provide similar services***; and there is an ability of the new agency to provide for and finance the needed new services." (Emphasis added.) In this case, there is ***not*** a "clear need" for a new special district in the White Areas, and there ***are*** two existing agencies able to annex and provide similar services: the District and Mid-Valley. Therefore, the Fresno County LAFCO would be unlikely to permit the White Areas to form a new special district.

Even if the White Areas could form their own special district, however, it would be unlikely to impact SGMA compliance. The JPA establishes the Authority as the GSA for the "McMullin Area," which includes the White Areas. (JPA, § 2.02, Exhibit A.) As such, SGMA requires that the Authority be presumed the exclusive GSA within the McMullin Area. (Wat. Code, § 10723.8, subds. (c)–(d).) Therefore, while the White Area's new district would be authorized to exercise the powers granted pursuant to its enabling legislation, it would not be entitled to exercise a GSA's authorities pursuant to SGMA. Additionally, the new district would

[8] Notably, Section 5.03, subdivision (A) contains an important limitation—namely, that the withdrawal "does not in any way impair any contracts, resolutions, indentures, or other obligations of the Authority then in effect." Depending on the circumstances, this clause could prevent the County from withdrawing from the Authority until the necessary revisions are made to the JPA Agreement.

remain subject to the Authority's groundwater sustainability plan because it would be located in the McMullin Area.

Also, if a new district were formed, the County could attempt to assign its rights and duties under the JPA Agreement to the new district. However, section 7.03 provides that "the rights and duties of the Members to this Agreement may not be assigned or delegated without the approval of the Board of Directors" and, pursuant to section 3.04, assignment would require a majority vote of the Authority's board. Therefore, assuming the County and the appointed White Area landowner both voted in favor of assignment, one of the District's two seats, or Mid-Valley's seat, would also need to vote in favor of assignment. Otherwise, the County would be unable to assign its membership to a newly formed district.

III. CONCLUSION

The Proposed Annexation would provide several potential benefits to the District. In particular, adding the White Areas to the District's tax base as a condition of annexation would ***increase revenues that could be used for any purpose***, including, but not limited to, projects to comply with SGMA. Additionally, incorporating a greater share of MAGSA land under the District's jurisdiction would ***increase the District's control over SGMA compliance activities***. This would promote efficient SGMA compliance by overcoming MAGSA's inherent limitations, such as the unanimous vote requirement on the imposition of new fees and levies, and by effectively leveraging the District's existing levies and assessments, which could be applied to the White Areas following annexation without the need to hold a Proposition 218 election.

To summarize, the Proposed Annexation would allow the District to:

- Impose financial obligations on the White Areas, including general obligation bonds, (Wat. Code, § 36150, *et seq.*), revenue bonds, (Wat. Code, § 36300 et seq.), warrants, (Wat. Code, § 36380, *et seq.*), charges, (Wat. Code, § 35470, *et seq.*), and assessments. (Wat. Code, § 36550, *et seq.*) Currently, the District has no such powers with respect to the White Areas, except as may be authorized by MAGSA.

- Enforce its rules, regulations, and ordinances on White Areas and their landowners, and petition the courts for injunctions to correct violations, (Wat. Code, § 35413, subd. (a)). Currently, only MAGSA and the County have legal jurisdiction over these lands.

- Enter White Area land to investigate possible violations of rules, regulations, and ordinances, (Wat. Code, § 35413, subd. (b). Again, only MAGSA and the County of Fresno have legal jurisdiction over these lands at present.

As you can see, annexation would increase the District's ability to raise revenue for various purposes, including capital improvement projects, surface water rights, and SGMA projects. It would also facilitate sustainable groundwater management, as the District would have the authority to directly enforce its rules, regulations, and ordinances against White Areas.

The primary disadvantages relate to increased costs and a responsibility to seek sustainability for the lands within the District's jurisdiction. Moreover, there are costs associated with pursuing annexation and, unless White Area landowners voluntarily assumed them, those costs would fall on the District in the first instance. Additionally, the District would be required to extend its services to the White Areas, which would likely increase operational and maintenance costs. The District's financial contribution under the JPA would also be increased. However, most, if not all, of these costs could be offset by the District's ability to impose financial obligations on the White Areas.

Another potential disadvantage is that the District's existing surface water supplies would have to be shared among a larger group of landowners. As a result, current landowners might have reduced opportunity to purchase and use the District's existing surface water supplies. However, this problem could be offset to the extent the District is able to leverage its increased financial authorities to secure more surface water supplies.

In short, annexation of the White Areas would increase the District's general purpose revenue and its control over SGMA compliance activities. While this may come at the price of increased management obligations, increased long-term O&M costs, and upfront administrative costs associated with the annexation itself, effective use of the additional revenue generated from White Areas would largely offset those consequences.