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August 30, 2023

Via Electronic Mail

(For convenience, paper copy to follow via Federal Express)

Stephen Dopudja, P.E.
President Dopudja & Wells Consulting
6789 Quail Hill Parkway, #421
Irvine, California 92603

Re: Imperial Irrigation District's Comments on the *Alternative Governance and Electricity Services Study-Imperial Irrigation District* (the "Study")

Dear Mr. Dopudja,

The Imperial Irrigation District ("IID") appreciates the efforts of the Riverside and Imperial County Local Agency Formation Commissions to explore options for alternative governance structures to address the concerns of its Coachella Valley electrical customers and other stakeholders. IID is proud of its history of providing its customers with reliable electrical service while emphasizing environmentally friendly operations and maintaining some of the lowest electric rates in California. Consideration of potential alternative governance structures should be predicated on maintaining these standards. By these comments, IID seeks to clarify the record with respect to the 1934 Agreement of Compromise between IID and the Coachella Valley Water District (the "1934 Compromise Agreement") and provide additional context against which stakeholders should evaluate the proposed alternatives.

I. In Evaluating Potential Changes to the Status Quo, Customer Satisfaction Should Be The Top Priority.

In all of its operations, IID puts customers first. The Study identifies several concerns voiced by Coachella Valley energy stakeholders but does not attempt to correlate these concerns with day-to-day customer satisfaction. For example, when evaluating IID's performance from an industry perspective, in terms of sustained interruptions, frequency of sustained interruptions, and average durations of interruptions, the data show that IID consistently outperforms similarly situated utilities. Since 2018, IID has evaluated and tracked (by random sampling) customer satisfaction with regard to trouble calls that ask, among other things, the customer's overall experience, the courtesy

and professionalism of staff, the resolution of the issue, and whether the job was completed in the appropriate time frame. IID received an overall rating of “Outstanding” in those four categories. IID provides excellent service to customers at low cost, in comparison to investor-owned utilities and other publicly-owned utilities of similar scale confronted with weather-imposed challenges and rapidly growing demand coupled with material seasonal demand fluctuations.

IID has taken significant steps toward addressing the concerns identified in the Study while maintaining excellent customer service and low rates. IID is capitalizing on new technologies, securing affordable energy resources, expanding our capacity for local generation, and strengthening our power delivery system, all the while keeping the rates to customers low. Since the establishment of the Coachella Valley Energy Commission (“CVEC”) in 2021, IID has been committed to working with the diverse stakeholders in the eastern Coachella Valley within the IID electrical service area. IID, alongside diverse municipal, county, tribal, and public stakeholders, has worked to ensure the CVEC is focused on developing an effective long-term strategic plan for continued energy service to the Coachella Valley following the expiration of the 99-year lease provision of the 1934 Compromise Agreement.

IID’s willingness and ability to respond to the divergent needs of specific communities within the current legal framework is reflected in the voluntary, cooperation-based joint exercise of powers agreement recently approved by IID and the City of Indio which will facilitate the accelerated expansion and enhancement of electrical service within Indio.

II. The 1934 Agreement of Compromise Does Not Expire in 2033 and None of the Alternatives Will Terminate the 1934 Agreement of Compromise.

The Study states that the 1934 Compromise Agreement “expires” in 2033 and that some of the alternatives would result in the “termination” of the 1934 Compromise Agreement. Both assertions are wrong. The 1934 Compromise Agreement contains several provisions regarding Colorado River matters, IID water entitlement priority ahead of the Coachella Valley Water District (“CVWD”), and related issues that will continue in perpetuity unless changes are mutually agreed to by IID and CVWD. Only one provision – Section 17, Lease of Power Rights – has a termination date (January 1, 2033.) On that date, IID’s exclusive right to the sale, use and control of power rights (as defined in the agreement) based on the All-American Canal system in exchange for its obligation to pay CVWD 8% of net proceeds will end. All other provisions of the 1934 Compromise Agreement will remain in force.¹

¹ Under the terms of the 1934 Compromise Agreement, upon the expiration of the Lease of Power Rights, “. . .the rights and privileges of the parties thereto shall be segregated and/or adjusted as may be equitable and just, having in view the business, interests and investments of the parties and their respective

The 1934 Compromise Agreement is a contract between IID and CVWD that third parties cannot “terminate” without IID and CVWD’s consent. As noted in the Study, unless IID and/or CVWD consent to an alternative that impacts the terms of the 1934 Compromise Agreement, protracted litigation could ensue. Each of the proposed alternatives that purport to “terminate” the 1934 Compromise Agreement (alternatives 1.C and all Option 2 alternatives) could result in potential claims by IID and/or CVWD against a new entity. Thus, stakeholders need to consider the rights of IID and CVWD in evaluating each alternative.

III. Several of the Alternatives Are Not Legally Viable.

The Study provides a thorough survey of possible alternative governance structures. However, some of the proposed alternatives would face legal and/or practical hurdles that render them not viable. For instance, Option 1.B proposes annexation of the Coachella Valley electrical service area (the “Coachella Valley Service Area”) into the IID. Existing law does not permit this approach absent an extension of water service to the Coachella Valley Service Area. Because IID already provides electrical service to the Coachella Valley Service Area, annexation of this area into IID requires an extension of service as a matter of law. Absent the extension of services in addition to retail electric service (such as water service) into the Coachella Valley Service Area, no legal grounds for annexation exist. Given IID’s water entitlement priority, it is unrealistic to assume any extension of water service in support of annexation.

This option has a practical impediment as well. The population differences between the Coachella Valley Service Area and the IID jurisdictional boundary would likely allow the Coachella area voters to elect a significant majority of a single governing board. The Study suggests that under Option 1.B, Coachella area directors will recuse themselves on water matters. But with a majority of the board having to recuse themselves when that board acts on water matters, the board will likely fail to have a quorum, preventing any decisions from being made. In addition, closed session discussions on water matters by the IID area elected directors would be more difficult or impossible unless there is a separate general manager and general counsel, and even perhaps a chief financial officer, for water services in order to protect confidential water-related discussions.

Option 1.C is also legally problematic. A new “sub-Board of Directors” is proposed to govern all matters related to the new jurisdictional area encompassing the Coachella Valley Service Area, while the existing Board would continue to govern matters related to IID’s jurisdictional boundary. Such an approach is without legal support. Irrigation district boards are not authorized to delegate board responsibility to a sub-board or to anyone else.

legal and equitable rights in said power rights, works and facilities on or in connection with the All-American Canal.”

IV. The Most Viable and Preferred Alternative is the Utilization of the JPA Structure to Accomplish the Various Goals of Different Coachella Valley Interests.

Option 1-D – Coachella Valley Parties Establish a Joint Powers Authority with IID – is the most legally viable alternative discussed in the Study. All entities described in the Study have the authority to coordinate with one another to form a JPA. The powers that each is allowed to exercise differ, which creates limitations on which entities could participate in forming a JPA whose purpose will be to provide electricity services to Coachella Valley customers, but there are practical workarounds to those obstacles.

JPAs can only exercise whatever powers are common to all the entities that formed it. This is the “common powers rule.” For purposes of providing electricity services, this means that all entities that form the new JPA must each have the independent authority to provide electricity services. IID, the cities, and the Tribes clearly have that authority. The Government Code endows counties with the power to construct, acquire, and develop works for the generation of hydroelectric or wind power and to operate and maintain such works, but it does not confer authority to provide electricity services. Thus, Riverside and Imperial counties could not participate *directly* in the formation of a JPA because they do not have the independent authority to provide electricity.

However, in order to provide representation to customers living in unincorporated areas of the counties, Riverside and Imperial counties could participate in a JPA with IID through the creation of Public Utility Districts within their territories outside of incorporated areas. As discussed in the Study, PUDs can be utilized to enable counties to provide electricity service in unincorporated areas, and thus participate in a JPA to do so. JPAs have additional benefits. They can be tailored to the specific goals of the members, be governed by the existing governance of the members, and be modified over time for purpose and powers by agreement among the members. They thus appear to be more suitable as a tool to adapt and evolve the present setting to a changing energy future in the Coachella Valley, and would allow participation and representation of unincorporated areas in a JPA structure as a member agency.

In addition to the benefits of JPAs described in the Study, the JPA approach has the additional benefit of having already been implemented, albeit on a smaller and limited scale, between IID and the City of Indio. The IID/Indio JPA could serve as a blueprint for future JPAs between IID and the Coachella Valley parties.

V. Further Study Should Include The Comparative Costs of Each Alternative.

While a comparative cost analysis was beyond the scope of the Study, as the range of possible alternatives is reduced, the costs associated with those alternatives needs to be closely examined. Change will come with a price, and future analysis should clearly indicate how each alternative will impact rates, so that stakeholders can fairly weigh the benefits of a proposed alternative against the costs of change.

Although costs and revenue information about IID service to the Coachella Valley is useful, those factors do not provide much guidance about the new cost consequences of changing from IID provision of full service to any other alternative, or the portion of costs associated with different aspects of energy service and the corresponding benefits of different alternatives. IID remains committed to working with Coachella Valley parties to define a consensus-based alternative and conducting appropriate financial analyses of such a defined consensus-based alternative.

VI. Conclusion

The Imperial Irrigation District Board of Directors and staff appreciate the opportunity to participate in this Study process and will continue to foster and participate in collaborative efforts with our partners, stakeholders, and customers in the eastern Coachella Valley long after the completion of the Study process. We look forward to ensuring that the positive efforts between IID and Coachella Valley parties over the last two years continue and will yield durable, adaptable, and effective solutions for the next century of service in the Coachella Valley and beyond.

Sincerely,



Alex Cardenas, President



JB Hamby Vice President



Gina Dockstader, Director



Karin Eugenio, Director



Javier Gonzalez, Director

August 30, 2023

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cc: Imperial County LAFCO
Riverside County LAFCO
Augustine Band of Cahuilla Indians
Cabazon Band of Cahuilla Indians
City of Coachella
City of Indio
City of La Quinta
Coachella Valley Association of Governments
Coachella Valley Water District
County of Imperial
County of Riverside
Cove Communities Services Commission
Torres Martinez Desert Cahuilla Indians
Twenty-Nine Palms Band of Mission Indians