



October 12, 2023

*Via Email*

Gary Thompson  
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Dear Mr. Thompson,

The City of Coachella (“City”) provides the following comments on the joint Imperial County and Riverside County LAFCOs draft *Alternative Governance and Electricity Services Study – Imperial Irrigation District,*” dated March 2023 (“Study”). The City appreciates the joint LAFCOs issuing the draft Study and providing an opportunity for stakeholders to comment on alternative governance options to the existing electrical service provided by the Imperial Irrigation District (“IID”) in the Coachella Valley. The City is providing constructive feedback on the various governance options in hopes that the Study will provide the stakeholders with a tool to have a meaningful discussion on the path forward to long-term electrical service in the valley. The Coachella Valley is at a critical juncture to evaluate all the available options for energy and implement a long-term solution given the growing concerns with existing IID service.

The City does not believe that the Study should be finalized at this time and that more work is needed. While it provides useful information on the background of electrical service, the stakeholders, and issues of concern with current IID service, more clarification and legal analysis is needed on the various governance options and financial and other economic data is needed to provide a complete Study. The City provides the following comments on critical areas in the Study, and also includes more specific comments in the attached spreadsheet. We welcome setting up a meeting with the joint LAFCOS and its consultants to clarify these comments and answer questions.

**I. The Study Should Clarify That the CPUC Is Also Not a Governance Option, and That Coachella Valley Ratepayers Are Affected by the Lack of Representation**

The Study should clarify that the current lack of representation on electrical service affects the stakeholders by not having representation on the IID Board, but also affects ratepayers. There is no recourse or other mechanism to participate in IID policies and terms of service or address customer issues and grievances. Because IID is a publicly owned utility, the California Public Utilities Commission does not regulate it as investor-owned utilities (“IOU”) are like Southern California Edison. Customers of an IOU and other interested parties can participate in CPUC



rulemaking, rate setting, and adjudicatory processes, and address any grievances or disputes through the CPUC enforcement division and bring complaints against the IOUs. IID does not have any established processes in place to address grievances and complaints by Coachella Valley customers, other than general public comment at IID Board meetings in Imperial County. Because the Coachella Valley is served outside IID's political boundaries, there is a complete void of governance and representation. This impacts all of the Study stakeholders, and, more importantly, the ratepayers served by IID and those commercial and industrial customers that are in need of expanded IID infrastructure to serve growth in the valley. There is simply nowhere for a customer to go.

In its comment letter, dated August 30, 2023, IID states that there is considerable customer satisfaction, which has been tracked and evaluated through random sampling. The City is unaware of any reports IID has issued on customer satisfaction or other statistics demonstrate that customers in the Coachella Valley are receiving high levels of service. To the contrary, the City is aware of numerous examples throughout the Coachella Valley where prospective developments and current and future ratepayers are unable to obtain service for their projects, including a refusal by IID to provide service. This has not only affected commercial and industrial growth in the valley but also interferes with state and local policies on the development of affordable housing. This is untenable.

## **II. The Study Must Analyze the Financial and Economic Data Regarding IID's Service in the Coachella Valley in Order for the Stakeholders to Provide Meaningful Comments on the Study and Base a Governance Decision On**

The Study lacks the necessary financial, economic and cost data that is needed to conduct an informed discussion on the proposed governance options. Studies that have been done throughout California and other parts of the U.S. on alternative mechanisms to incumbent utility service include both a governance analysis and feasibility analysis setting forth the costs of the alternative service and the options to fund or finance it. While the City recognizes that the joint LAFCOs Study does not perform a full feasibility analysis of each option, and that such studies will need to be done prior to implementing the preferred governance option, the Study in its current draft does not contain any financial information whatsoever on IID's existing service to the Coachella Valley, what specific improvements are needed, and what will generally be needed to implement any of the options therein.

At the April 2023 CVEC meeting, it was stated by Riverside LAFCO that IID did not provide financial information requested by the Study's consultants and that financial analysis would not be included in the Study. This statement was alarming in that the requested data is crucial to finalizing the study, is required under the terms and conditions of the State Water Board



grant, and is, most assuredly, a public record under the California Public Records Act. At the July 2023 CVEC meeting, it was then stated that financial reports by IID were now available, but that it was too late to be included in the Study. We believe that this has since been corrected. While the City understands that obtaining this data is outside of the Joint LAFCOs control to some degree, IID should provide all publicly available data requested by the consultants. The LAFCOs should request, and Coachella Valley Energy Commission (“CVEC”) should ensure, that IID staff, which staff is supporting CVEC, provide the necessary data for the study.

There are numerous places throughout the Study where such financial and economic data is needed to fill in the analysis. For instance, and without limitation, IID has publicly identified \$500 million in necessary infrastructure upgrades and \$300 million in generation upgrades for the period between 2023-2029. This information, and a breakdown of this data, is not included in the Study. Other relevant data is also missing. Table 4-3 in the Study states that the Coachella Valley is 61 percent of IID customers. Table 4.3 shows IID's total energy department budget, which includes the Coachella Valley and Imperial County, and not budget numbers for the Coachella Valley. Additional tables should be added showing the 2022 Project Actual, 2023 Budget, and 2024 Budget for the 61 percent of Coachella Valley customers only. This is necessary so Coachella Valley stakeholders can determine how much revenue and funding is coming from Coachella Valley ratepayers as compared with Imperial County customers. Table 4.3 should also include Expenditures for Coachella Valley ratepayers, so the public can determine what the projected revenue and expenditures would be for the Coachella Valley.

Financial data is needed to make a sound business and governance decision as part of any study. Stakeholders must determine the costs of serving the Coachella Valley under each governance option and utilize such information in future feasibility determinations.

### **III. Municipalization Must Be Provided and Analyzed as a Standalone Governance Option**

Although there is a general reference to municipal utilities in Section 7 and possibly in Governance Option 2.C “special districts” run by stakeholders, the Study does not appear to include a city’s ability to form a municipal utility. One of the most common forms of governance in California for electric service is a city municipal utility. There are numerous examples of municipal electric utilities throughout the state, including several longstanding utilities in Riverside County and the surrounding counties, such as Banning, Colton and Riverside, and several that more recently formed in Western Riverside County in the Cities of Corona and Moreno Valley. There are also dozens of examples of municipal utilities in the water and wastewater areas. Formation of a municipal utility is a strong economic and legally viable option to IID service. A municipal utility option addresses the Study’s foundational objectives as well as the existing stakeholder concerns with IID. In the June 2023 presentation to CVEC by the Joint LAFCOs’



consultant, the consultant stated that municipalization was an option identified in Options 2.B and 2.C (Special District, Municipal Utility District); however, it is not really discussed in these options. Furthermore, a city municipal utility is not a “special district” or “municipal utility district” under the law and should not be labeled as such. Doing so only confuses reviewers of the Study on the various legal structures.

Under the California Constitution and applicable law, cities have the right to form an electric utility and can do so within the territory served of an IOU, and in this case, IID. In fact, in November 2019, the Coachella City Council adopted a resolution forming a municipal utility with a proposed service territory of all undeveloped and under-served areas within the City’s territorial limits. Likewise, cities within Western Riverside County have formed so-called municipal utilities within their territorial limits.

The City requests that municipal utilities be added to the Study as a standalone governance option along with discussion and analysis of the legal and governance basis for them and how such formation occurred in Western Riverside County. The addition of a municipal utility option would provide all the stakeholders with a more complete understanding of their options.

#### **IV. The Study Over-Emphasizes the 1934 Compromise Agreement as the Basis for IID’s Service in the Coachella Valley**

The 1934 Compromise Agreement between IID, CVWD and the federal government is a 99-year contract settling water rights. As a condition to prioritizing certain rights to the All American Canal, the agreement also addresses energy rights along the canal. The agreement does not necessarily establish IID’s right to provide electricity to the Coachella Valley and does not preclude the stakeholders from establishing alternative electric service options prior to its expiration in 2033. In fact, and is indicated in part in the Study, IID acquired the California Electric Power Company in the 1940s, which acquisition is the primary basis for its service. IID service is being provided outside IID’s territorial jurisdiction with no other approval or agreement. Therefore, the municipalities in this region have the right to form other electric service options now. The Study should eliminate the frequent reference to the 1934 Compromise Agreement as the basis for IID service, acknowledge that cities can provide service in lieu of IID, and not suggest that the timing on implementing an alternative governance structure is tied to the 1934 Compromise Agreement.

#### **V. The Study Needs Additional Review of the Governance Options**

The City reiterates that the Study provides invaluable information on the background of IID’s service to the Coachella Valley. There are numerous places, however, where certain conclusions are inaccurate or there are errors in the governance options. This suggests that there is



a lack of experience in California energy and public agency governance. The City believes that many of the governance options should be re-reviewed for completeness and legal accuracy in the statements and conclusions, particularly the laws regarding governance options and interpretations of the 1934 Compromise Agreement. In addition, specific examples should be provided to inform the stakeholders of the relevant options that can be modeled. For instance, the Metropolitan Water District is provided as an example, but MWD is a water agency, and there are numerous examples of municipal utilities, public utility districts and JPAs specific to California electricity.

## **VI. City Comments on Governance Options**

The City provides the following comments on the specific governance options discussed in the Study.

### *A. Governance Option 1.A – Maintain Status Quo*

The City appreciates the Study providing the pros and cons of IID continuing to provide service and keeping the current governance as status quo. This is useful. We agree with other commenters, though, that this option should ultimately be rejected, as it does not address the concerns of the stakeholders or the foundational objectives of the Study. This option will only lead to more uncertainty in electric service and concerns by stakeholders due to the lack of representation and the current provision of IID service. CVEC would remain in place under this option, but the commission is only an advisory body to the IID Board with no independent staff or decisionary role in Coachella Valley electric service. Cities would still need to finance all the improvements in their respective jurisdictions, as would be the case under any of the standalone governance options. This is also contrary to an IOU service model. Therefore, the City does not support this option.

### *B. Governance Option 1.B – Annex the Coachella Valley into IID*

There has been significant discussion regarding annexing the Coachella Valley into IID and it has been largely rejected by IID and Coachella Valley stakeholders. As the Study notes, new legislation would be needed for IID to have exclusive jurisdiction over water rights while IID would continue to have management over Coachella Valley electric concerns. Given the significant hurdles of this option and the fact that it has been proposed previously, the City does not believe this is a viable or realistic option. It is also not supported by IID.

### *C. Governance Option 1.C – Creation of Sub-Board of Directors*

The creation of a sub-board of directors to IID on energy issues would address the lack of representation in some respects. Given the administrative and governance complexities, however,



this is also not a viable option. A sub-board would still be beholden to the IID board and would result in unclear roles and responsibilities, including jurisdiction, funding, and staffing. It is also unclear how a sub-board would address the concerns raised by the stakeholders as to rates, infrastructure needed to fund future development, and other issues. The City is also unaware of an example of a sub-board in California public agencies. If one exists, the Study should identify it and provide more analysis.

D. *Governance Option 1.D – Joint Powers Authority with IID*

This section of the Study needs the greatest review and revision. Joint powers authorities are agencies formed to exercise a common power of the members. They are commonly formed to issue debt or provide a service that a member would not provide itself, while minimizing liability to the member agency's general fund. The JPA is a contract between the members specifying the purpose of the JPA and the powers it is exercising. The Study places great emphasis on use of a JPA as a governance option in that it would have "direct control and obtain representation on electrical service provisions for Coachella Valley." A JPA would not necessarily do this, however, because it is entirely dependent on what the JPA is established for and how the governing body is comprised. The Study needs to clarify how a JPA would provide for representation on electrical service provisions and cite examples the stakeholders can review.

The only example provided is the IID-Indio JPA, which was finalized by those agencies in July 2023. The JPA allows the City of Indio to finance new electrical infrastructure within and upgrades to IID's current service to the city. Under this model, the Indio City Council sits as the JPA board of directors and establishes a surcharge that will be collected by IID and used to pay for the upgrades requested by the JPA on behalf of the city. IID is not obligated to verify the legality of the surcharge or if the calculation is correct. Indio and IID then enter into an installment agreement for the construction of the improvement, and installment payments are paid for by the surcharge. The financing proceeds are fully collected and used to pay for the IID improvements, with such payments assigned to a trustee to secure financing. IID ratepayers outside of Indio's city limits do not pay for the surcharge or any of the improvements. Projects are owned by the JPA and given to IID if the JPA is terminated or the debt service paid off, assuming IID is still providing service at the time of termination.

If further analyzed in the Study, this example is strictly a financing JPA. While it allows the member some self-determination over infrastructure upgrades, it does not provide a full governance option. There is no additional authority given to the JPA over and above the surcharge determination. *Importantly, the JPA agreement expressly states that the JPA cannot be used to provide electricity.* Also, in theory, IID will continue to own and operate improvements, which would extend beyond the term of the 1934 Compromise Agreement (assuming that it controls IID service), and the JPA would have no other "governance" authority beyond the construction of the



improvements. There is no scope of authority over service to the region, budget, capital improvement plan prioritization, net metering, distributed generation, power supply composition, and customer service, among other issues of concern. This option may be fine for some stakeholders, but the stakeholders should understand the totality of this option as it is referenced throughout the Study.

Not surprisingly, this is the only option supported by IID because it ensures the Coachella Valley stakeholders finance and pay for the much needed improvements to the system without any existing funding support from IID, and presumably, the ratepayers that have been funding the system. In addition, due the financing and funding, that is needed given the current growth, and the timelines for development and construction, this option preserves the status quo by ensuring that IID remains the sole provider of electrical service in the Coachella Valley forever.

E. *Governance Option 2.A – Dissolution and Merger with an IOU*

The Study outlines a governance option for the “dissolution and merger” with an IOU for service in the Coachella Valley where an electrical corporation like SCE would take over IID service. Such an option would contemplate a transaction between IID and the IOU as a willing buyer and seller and include negotiation of a purchase price for those portions of the IID system within the Coachella Valley. The governance option is really a sale of the IID system or acquisition and should be renamed as such since IID would not be dissolving as an entity or merging with the seller. The acquisition would need to be approved by the CPUC since it has jurisdiction over IOU acquisitions.

This option does not provide an adequate level of governance to the stakeholders since the system would be owned and operated by an IOU. It would, however, allow the stakeholders to participate in IOU general rate cases and other proceedings and ratepayers would have an ability to directly petition the CPUC with grievances or disputes. The City does not see this as a realistic option, though, since, again, it involves a willing buyer and seller to negotiate an extensive purchase of the system and IID would be unlikely to do so given that the Coachella Valley is 61 percent of revenues into its system.

F. *Governance Options 2.B and 2.C – Form Public Utility District or Special District*

Sections 7 and 9 of the Study are unclear on the types of districts that are being analyzed and recommended. Section 7 is labeled “municipal utilities” and “public utility districts” (and electrical cooperatives). Section 7.2 and 7.3 briefly outlines public utility districts and makes some reference to special districts with no discussion about municipal utilities. Section 9.2 then conflates the various special district and public utility district options that may be available, and again, does not discuss municipal utilities. Special districts can be created under a number of



California statutes with a public utilities district serving as one type of special district. If the Study is analyzing or recommending other types of special districts, then it should clarify what they are. Alternatively, to keep it simple, the Study should analyze public utilities districts and municipal utilities and dispense with using special district (which term is more used with water districts).

It is also unclear what the difference is between Option 2.B and 2.C. Option 2.B appears to address formation of a public utilities district or special district. Option 2.C then states that a “public utilities district” or “special district” would be formed by each stakeholder, suggesting that option is discussing municipal utilities. Option 2.C notes that the public agency would have oversight over generation, distribution, and transmission, which a public utilities district would also oversee under Option 2.B. In addition, there are very distinct formation differences between a public utilities district and a municipal utility that should be broken out in the Study.

#### G. *Governance Option 2.D – Community Choice Aggregator*

The Study contains some inaccuracies regarding formation of a community choice aggregator (“CCA”) that should be reviewed and corrected. It states that a CCA can only form in the territory of an IOU and that service in the Coachella Valley would need to be transferred from IID. This statement does not recognize that IID provides service outside of its political boundaries and that Public Utilities Code section 331.1 may allow a CCA to form. In addition, other agencies have obtained special legislation to allow formation, such as a water district and conservation district and a stakeholder may be able to form in the same manner. There are also statements regarding the challenge in obtaining financing for start-up costs and that the long-term financial impact is uncertain. There is no financial information in the Study, though, and nothing that supports these conclusions. For instance, a number of banks have lent considerable funding to CCAs at start-up and offered revolving credit lines. A number of CCAs have achieved investment credit ratings in a few short years and have \$50 million or more in reserves in that same time period. There is also a considerable amount of local control over programs, rates, rate stabilization and other issues important to the stakeholders. This option needs to be significantly reworked.

## VII. IID Comments on Study

Although the City stresses the need for the Study to improve its analysis on the municipal utility option, it recognizes that each of the options may be legally viable or that legislation may be needed to make them so. IID’s comments, however, suggest that only the JPA option is viable and the rest of the options are not supported. IID goes so far as to state that it and CVWD may have “claims” against any city or group of stakeholders that seeks to implement any of the options on the grounds that the 1934 Compromise Agreement exclusively controls service in the Coachella Valley. The City fails to see how a contract between two entities controls all service in the region where there is no such construct anywhere in the law in any other part of the state. Not only is this





## CITY OF COACHELLA

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legally unsupportable, but more importantly, it shows an unwillingness to engage in a truly collaborative, stakeholder-driven process to obtain the best governance information for the governing bodies, residents and businesses of the Coachella Valley.

In conclusion, the City appreciates the opportunity to provide comments on the Study and respectfully requests the joint LAFCOs make the changes we discuss herein. If you have any questions or desire to setup a meeting to discuss these comments, please do not hesitate to reach out to the undersigned at any time.

Sincerely yours,

Dr. Gabriel Martin  
City Manager  
City of Coachella