

---

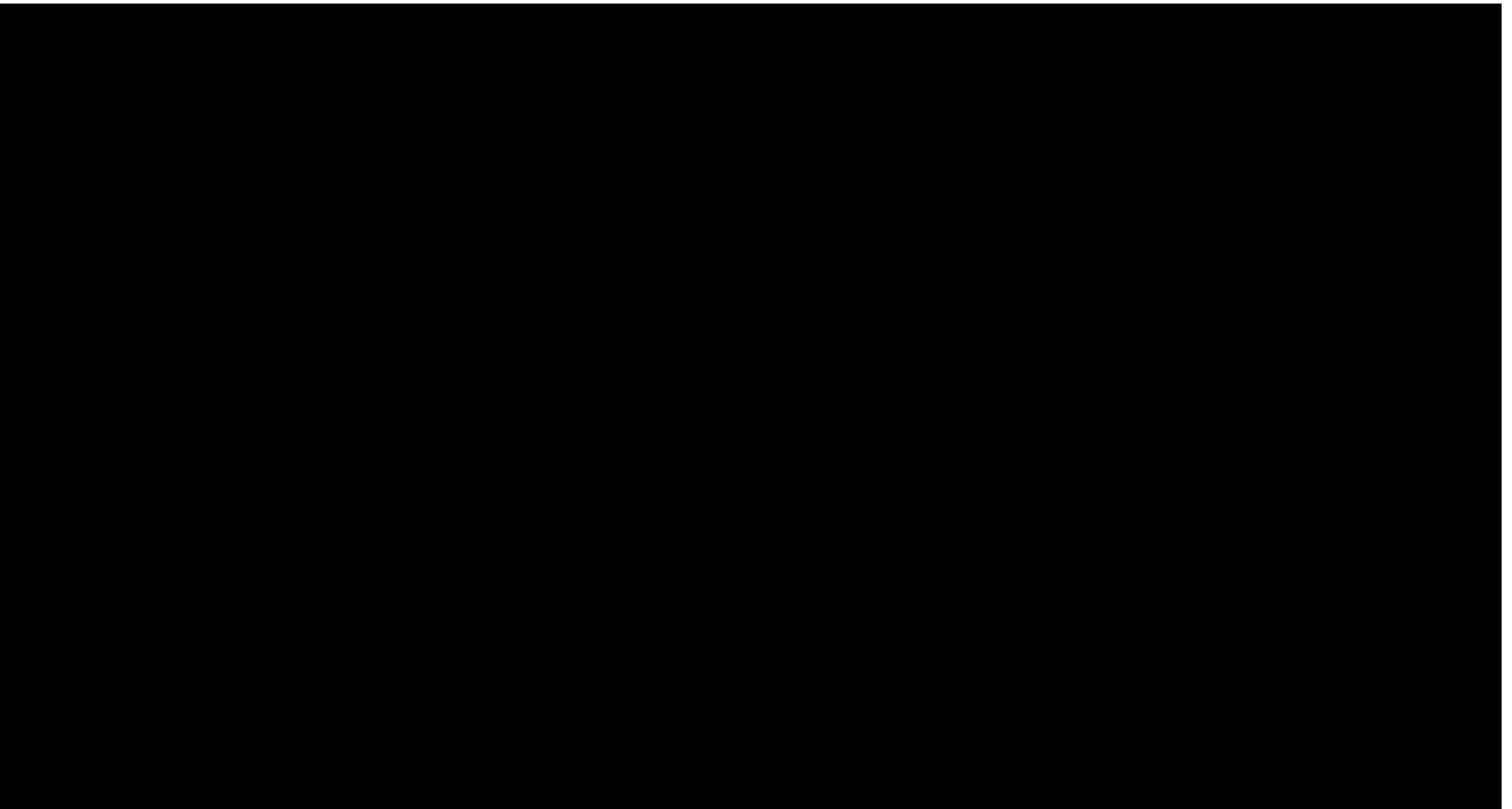
**From:** Dennis Cron  
**Sent:** Thursday, February 24, 2011 10:04 AM  
**To:** Tina Kuhns  
**Subject:** FW: A. 11-01-019 Protest of the Town of Apple Valley  
**Attachments:** Apple Valley Protest to Western Water AVR Merger Application.pdf; Apple Valley\_Carlyle\_AVR Merger A-11-01-019 Addendum to Protest with Proposed Schedule.doc

FYI

---

**From:** Frank Robinson  
**Sent:** Thursday, February 24, 2011 9:06 AM  
**To:** Scott Nassif-Personal; Barbara Stanton-Personal; Rick Roelle-Personal; Ginger Coleman-Personal; Curt Emick ([curt.emick@gmail.com](mailto:curt.emick@gmail.com))  
**Cc:** John Brown; Piero Dallarda; Linda Mayfield; Dennis Cron; Kenneth Henderson; Marc Puckett; Kathie Martin  
**Subject:** FW: A. 11-01-019 Protest of the Town of Apple Valley

Mayor and Council:



Frank

Frank W. Robinson  
Town Manager  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Office - (760) 240-7000 Ext. 7051  
FAX - (760) 961-6242

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U 134 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.

APPLICATION 11-01-019

(Filed January 21, 2011)

**PROTEST OF THE TOWN OF APPLE VALLEY TO WESTERN WATER HOLDINGS, LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY'S APPLICATION**

**John E. Brown  
Piero Dallarda  
Charity Schiller  
BEST BEST & KRIEGER, LLP  
for Town of Apple Valley  
3750 University Avenue  
Riverside, CA 92502-1028  
Telephone: (951) 686-1450  
Facsimile: (951) 686-3083  
John.Brown@bbklaw.com  
Piero.Dallarda@bbklaw.com  
Charity.Schiller@bbklaw.com**

February 23, 2011

**PROTEST OF THE TOWN OF APPLE VALLEY TO WESTERN WATER HOLDINGS, LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY'S APPLICATION**

**I. Introduction**

Pursuant to Rules 1.4 and 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission, the Town of Apple Valley ("the Town") hereby files this protest to Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company and Apple Valley Ranchos Water Company's Joint Application ("Joint Application") 11-01-19 filed on January 21, 2011, notice of which was published in the Commission's Daily Calendar on January 26, 2011.

The Town was founded in the late 18th century by Spanish missionaries. The Town finally incorporated in 1988. The Town is located in the heart of the Victor Valley of San Bernardino County, within the treasured Mojave River Basin in the region known as the "High Desert." The Town has an incorporated boundary consisting of 78 square miles and a current population of approximately 71,985 residents. Apple Valley's official motto is: "A Better Way of Life." The Town is home to several historic points of interest that are enjoyed by its residents and area visitors, including, without limitation, the Apple Valley Airport, the Lewis Center for Academic Excellence, the Sunset Hills Memorial Park (Gravesite for Roy Rogers and Dale Evans), the Victor Valley Museum and Art Gallery, the Historic Apple Valley Inn along U.S. Highway 18, and the Apple Valley Country Club. San Bernardino County, and the Town itself, have been among some of the hardest hit areas during the latest recession, with residents losing jobs and homes. Those who have not lost homes are suffering from declining home values with an average home value on the \$150,000s.

Water is the key to life and economic development in the high desert. The Town sits in the Mojave Water Basin, which is an adjudicated water basin. In an adjudicated basin, the rights of the water users to draw water from the Basin's supply have been allotted and limited. In the Mojave Basin, this allocation was made final in 1996 in the case *City of Barstow, et al. v. City of Adelanto, et al.* (Riverside County Superior Court Case No. 208568). Since 1996, those rights have been subject to ramp downs, which render the value of water all the more expensive, especially if a party desires to use water beyond its adjudicated rights.

AVR was founded in 1945 by individuals who were partially responsible for development of large portions of the Town and who reserved some of the water rights. AVR's association with the Town and its citizens has been contentious from the start. In the Mojave Adjudication, AVR was awarded a base annual production of over 13,000 acre feet, while the Town itself was awarded less than 300 acre feet. (Mojave Basin Judgment, Exhibit B at p. 7.) Since that time, the Town has attempted to work with AVR to ensure that it is providing the most reliable, safe, and cost effective water to its customers, but without much success.

Despite the current economic downturn, the Town is striving to promote and bring businesses and jobs to the Town, with several retail projects, infrastructure projects, park projects and public facility projects on its radar screen. A reliable, efficient, cost effective water supply is an essential part of making those projects a reality. To that end, the Town has made significant efforts to develop a recycled water supply in order to reduce total consumption and costs of water to its residents. AVR has opposed those efforts by the Town. Additionally, the Town has actively explored other ways to lower water rates for its citizens, including acquiring AVR and replacing the privately owned and operated supply system with a municipally owned operated water supply. Neither of these efforts have been successful, with AVR always impeding progress.

The current Joint Application and past efforts by AVR fly in the face of the Town efforts and overall goals of providing water service at a cost that is in line with the communities around it and that its residents can afford. Indeed, most neighboring communities, served by municipally owned and operated entities, pay substantially less for their water. While the Town is seeking to ease the burdens on its residents, as private companies owned by investors who seek to maximize profits, Western Water and the Carlyle Group aim at squeezing every possible revenue off of those who can least afford it. Residents of the Town have been active in voicing their concerns, as they see their water rates rise year after year, while they see their private water supplier protected from any of the financial hardships they themselves are facing. Curiously, even though AVR knew full well of the Town's interest in acquiring AVR, AVR never communicated its intent to sell to the Town. In fact, the Town learned about the sale as a result

of CPUC proceedings.

It is against this backdrop that the Town brings its Protest to the Joint Application. The Town has a duty to its citizens to protect them from the utter unfairness that ripples through the private water supply process that the Town and its residents are subject to. Water is a necessity of life, and the Town and its residents do not deserve to be bled dry over it.

## **II. Protest**

The Town protests the Joint Application because it believes that it will result in unjust and unreasonable economic consequences for the Town and its ratepayers. Furthermore, the Town also believes that the planned merger between the companies is premature in that it does not account for the transfer of water rights from Park Water Company (“Park”) and Apple Valley Ranchos Water Company (“AVR”) to Western Water Holdings, LLC (“Western Water”). Depending on their status, these rights could be worth several million dollars, but the merger documents lodged in these proceedings are completely silent as to their destiny. Any such transfer, if one were to occur, would have to be approved by the Mojave Water Agency and the Watermaster. The Town is not aware of any pending application for transfer of those rights. The Town has consistently been involved in AVR applications and advice letters before the Commission over the past three years. AVR is the primary water purveyor in the Town. The Town contains businesses and residents, many of which are dependent upon AVR for water service. The Town itself as a municipality is a substantial ratepayer and customer of AVR. The water supplied by AVR to the Town is not just important for the residents that are currently ratepayers, but for the growth and development of commerce and industry in the Town and the region.

### **1. AVR Application to Raise Rates A-11-01-001**

As an initial matter, the Town urges the Commission to take note of Proceeding A-11-01-001, “In the Matter of the Application of the Apple Valley Ranchos Water Company (U-346-W) for Authority to Increase Rates Charged for Water Service by \$3,896,586 or 20.0% in 2010, \$547,241 or 2.35% in 2013, and \$786,254 or 3.32% in 2014.” The Town filed a Protest to that Application on February 2, 2011 due to the large increase in rates sought. Surveys of water rates

in the area historically demonstrate that AVR has among the highest water rates compared to other water purveyors in the general area adjoining the Town. Given the economic pressures faced by the AVR ratepayers, these rates present a serious and unjust hardship for many of the residents of the Town and the Town itself. The Town strongly believes that the merger proposed in the current Joint Application cannot be wholly separated from the Application of AVR to increase its rates.

## 2. Previous Attempts of the Town to Acquire AVR

The Town also believes that it is relevant to this proceeding that in the past, the Town has actively pursued acquiring AVR, either by condemnation or through a consenting and open transaction between AVR and the Town. The Town has gone through the process of hiring experts and consultants to conduct feasibility and valuation studies in order for the Town to acquire AVR and implement a municipally run water supply operation to Town residents. The Town believes that this would substantially lessen water rates for its residents and current AVR customers. Inasmuch, the Town protests the Joint Application because it does believe that the Joint Application will ultimately result in unjust and unreasonable rates for current AVR customers, as they will still be served by a private water company.

## 3. Unaccounted Transfer of Water Rights

The Town also protests the Joint Application because it does not include any reference to the transfer of water rights that must necessarily accompany any corporate structure change in ownership between Western Water and Park/AVR. Currently, Park/AVR holds an adjudicated base annual production (“BAP”) right of just over 13,000 acre feet per year, which are managed in an adjudicated water basin by the Mojave Water Agency and a Watermaster that was appointed by the Court in 1996 in the *City of Barstow v. City of Adelanto*, case cited above. These rights are used to serve the Town and ratepayers located in the Town, as water cannot be exported out of the Basin. (Mojave Basin Judgment, Exhibit B at p. 7.) Because of declining water supplies, BAPs have been ramped down in the years since that Judgment. In fact, the Watermaster determines every year what the Free Production Allowance (“FPA”) would be for BAPs holders, meaning the amount of water that can be used without having to pay very stiff penalties. Currently in the Alto Subarea of the Mojave Basin Judgment, which is where AVR’s

rights are located in, the FPA is approximately 80% of BAP for agricultural uses and 60% of BAP for municipal and industrial uses. (See, Sixteenth Annual Report of the Mojave Basin Area Watermaster, Water Year 2008-2009, p. 31-32 (2010).) Accordingly AVR currently holds FPA rights in the amount of approximately 8,500 acre feet per year. (Watermaster Report at p. 31-32; AVR 2005 Urban Water Management Plan, Table 7, page 15.) By AVR's own admission, a considerable portion of its water supply relies on the adjudicated rights.<sup>1</sup> (*Ibid.*)

Beyond the Agency and Watermaster approvals that would be necessary to actually transfer the water rights between the two companies, the Joint Application does not speak to the valuation of these water rights, which are estimated to be in the range of \$24 -\$25 million for an inside transfer, and up to \$75 million if purchased on the open market. Without those rights, AVR or its successor company would be forced to purchase the water in the open market at a much higher price, which will certainly impact rates charged.

#### 4. Request for Community/Public Participation Meetings and Evidentiary Hearings

The Town makes a specific request for community/public participation meetings to be held in the Town and for evidentiary hearings on this Joint Application. The Town finds it both remarkable and disturbing that the applicants attempt to push their Joint Application through the regulatory approval process "consistent with [their] interest in closing their Transaction without unnecessary delay" without involving the general public they are supposed to serve. Fully involving the ratepayers who will be affected by the merger is not "unnecessary delay" by any stretch of the imagination. To allow this Joint Application to proceed without the opportunity for full participation by the Town and its ratepayers would be unjust and unreasonable. The Town therefore believes that the proposed schedule included in the Joint Application should not be adopted by the Commission and that in its place an extended schedule, which includes public participation meetings and evidentiary hearings, be put into place.

---

<sup>1</sup> This figure takes into account AVR's projected 2010 purchases of water from other sources totaling approximately 20,000 acre feet, thus it is not fully known whether these figures are entirely accurate. While the current data available is from their 2005 UWMP, it should be noted that AVR will be required to adopt a new UWMP update by July 1, 2011.


### III. Conclusion

The Town finds that the application should be categorized a rate setting proceeding. As noted above, the Town requests public participation hearings and evidentiary hearings. It specifically requests that public participation hearings be held within the Town of Apple Valley. It requests that the evidentiary hearings be held in the CPUC offices in Los Angeles.

For the reasons stated above, we strongly urge the California Public Utilities Commission to deny the Joint Applications and the merger transaction proposed in it. The Town and its residents will not be benefitted from such transaction and the Joint Application is incomplete with regard to disclosing the full impact of the transaction proposed.

DATED: February 23, 2011.

Respectfully submitted,  
BEST BEST & KRIEGER LLP

By:   
\_\_\_\_\_  
Charity Schiller  
Counsel for Town of Apple Valley



PROOF OF SERVICE VIA FIRST CLASS MAIL AND EMAIL

I the undersigned declare that I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 3750 University Avenue, Suite 400, Riverside, CA 92501. On February 23, 2011, I served the within document:

**PROTEST OF THE TOWN OF APPLE VALLEY TO WESTERN WATER HOLDINGS, LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY'S APPLICATION**

I hereby Certify that on February 23, 2011, I served a copy of the above documents on all known parties to Proceeding A.11-01-019

- by placing the document(s) listed above in a sealed envelope with postage hereon fully prepaid, in the United States mail at Riverside, California addressed set forth in the attached service list.
- by causing electronic delivery of the document(s) listed above to the person(s) at the email addresses on the attached service list.

Copies were sent to the following:

David A. Ebershoff  
Fulbright & Jaworski, LLP  
555 So. Flower St., 41st Floor  
Los Angeles, CA 90071  
For: Park Water Company and Apple Valley  
Ranchos Water Company

Martin A. Mattes  
Nossaman, LLP  
50 California St., 34th Floor  
San Francisco, CA 94111-4799  
For: Western Water Holdings, LLC and PWC  
Merger Sub, Inc.

Barbara Hall  
Clark Fork Coalition  
EMAIL ONLY

George Butts  
Utility Rate Institute  
EMAIL ONLY

Brian D. Lin  
The Carlyle Group  
520 Madison Avenue, 41st Floor  
New York, NY 10022  
For: Western Water Holdings, LLC and PWC  
Merger Sub, Inc.

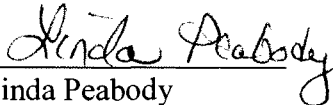
Leigh K. Jordan  
Park Water Company  
9750 Washburn Rd/PO Box 7002  
Downey, CA 90241-7002  
For: Park Water Company and Apple Valley  
Ranchos Water Company

Reed V. Schmidt  
Bartle Wells Associates  
1889 Alcatraz Avenue  
Berkeley, CA 94703-2714

Douglas M. Long  
California Public Utilities Commission  
Division of Administrative Law Judges  
Room 5023  
505 Van Ness Avenue  
San Francisco, CA 94102-3214

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with UPS Express Overnight Mail on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 23, 2011, at Riverside, California.

  
Linda Peabody

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U 134 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.

APPLICATION 11-01-019

(Filed January 21, 2011)

**ADDENDUM TO PROTEST OF THE TOWN OF APPLE VALLEY TO WESTERN  
WATER HOLDINGS, LLC, PWC MERGER SUB, INC., PARK WATER COMPANY  
AND APPLE VALLEY RANCHOS WATER COMPANY'S APPLICATION  
INCLUDING ALTERNATE PROPOSED SCHEDULE**

**John E. Brown  
Piero Dallarda  
Charity Schiller  
BEST BEST & KRIEGER, LLP  
for Town of Apple Valley  
3750 University Avenue  
Riverside, CA 92502-1028  
Telephone: (951) 686-1450  
Facsimile: (951) 686-3083  
John.Brown@bbklaw.com  
Piero.Dallarda@bbklaw.com  
Charity.Schiller@bbklaw.com**

February \_\_, 2011

**ADDENDUM TO PROTEST OF THE TOWN OF APPLE VALLEY TO WESTERN WATER HOLDINGS, LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY'S APPLICATION INCLUDING ALTERNATE PROPOSED SCHEDULE**

**I. Introduction**

Pursuant to a request from Administrative Law Judge Douglas M. Long asking for more information regarding an extended schedule for the above proceeding, the Town of Apple Valley (“the Town”) hereby files this Addendum to its previously filed Protest to Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company and Apple Valley Ranchos Water Company’s Joint Application (“Joint Application”) 11-01-19. The Town’s original Protest was filed with the Commission and served on all parties of record on February 23, 2011.

In the Town’s Protest, it noted the Joint Applicants’ attempt to push the Joint Application through the regulatory approval process without allowing time for evidentiary or public participation hearings or any briefing on the merits of the Joint Application. The Town made a specific request for such public participation hearings to be held in the Town and for evidentiary hearings to be held at the Commission offices in Los Angeles.

Pursuant to ALJ Long’s request, the Town hereby proposes the following schedule:

<u>Activity</u>	<u>Town of Apple Valley Proposed Date</u>	<u>Joint Applicants’ Proposed Date</u>
Application Filed	-----	January 21, 2011
Notice of Application on Daily Calendar	-----	January 26, 2011
Due Date for Protests	February 25, 2011	February 25, 2011
Due Date for Applicants’ Reply to Protests	March 7, 2011	March 7, 2011
Prehearing Conference <sup>1</sup>	March 14, 2011	-----

<sup>1</sup> The Town is aware that a Prehearing Conference has been scheduled for March 3, 2011, and does not specifically object to that Prehearing Conference.

Status Conference	-----	March 14, 2011
Public Participation Hearings	March 14, 2011 – April 31, 2011	-----
Testimony	April 13, 2011	-----
Rebuttal Testimony	April 27, 2011	-----
Formal Settlement Negotiations	May 11, 2011	-----
Evidentiary Hearings	June 6, 2011 – June 10, 2011	-----
Initial Briefs Filed & Served	July 11, 2011	-----
Reply Briefs Filed & Served	July 18, 2011	-----
ALJ Memo to Water Division	July 25, 2011	-----
ALJ's Proposed Decision Mailed	August 24, 2011	April 19, 2011
Comments on Proposed Decision	September 7, 2011	-----
Reply Comments	September, 14 2011	-----
Commission Meeting & Final Decision Issued	September 28, 2011	May 19, 2011

As one can see from the above Proposed Schedule, when compared side by side with the Joint Applicants' Proposed Schedule, the Town is requesting a much more thorough process for the Commission to consider the Joint Application. The Town does not believe that its Proposed Schedule, which is approximately four months longer than that proposed in the Joint Application, will be unduly burdensome for the Joint Applicants in the grand scheme of their complex corporate transaction. On the contrary, not to allow any public participation or evidentiary hearings and/or written testimony would be patently unjust to the current ratepayers of AVR who will surely be affected by the proposed transaction and are eager to voice their

opinions in this proceeding. The Town absolutely believes that this Joint Application deserves the fullest consideration by the Commission, and the above schedule allows for all of the elements that are routinely involved in a ratesetting proceeding , most of which the Joint Applicants attempt to avoid.

## **II. Conclusion**

The Town thanks ALJ Long for allowing this Addendum to propose an alternate and more comprehensive schedule for the Joint Application. As noted above, the Town specifically and vehemently requests public participation hearings and evidentiary hearings. It specifically requests that public participation hearings be held within the Town of Apple Valley. The Town is willing to provide its facilities in order to accommodate what it anticipates will be very well attended public participation hearings. It requests that the evidentiary hearings be held in the CPUC offices in Los Angeles.

For the reasons stated above, we strongly urge the California Public Utilities Commission to adopt the Town's Proposed Schedule, or in the very least, to reject the Joint Applicants' artificially and prejudicially shortened proposed schedule. Ultimately, the Town believes that it and its residents will not be benefitted from the merger transaction proposed in the Joint Application, and believes that a full and transparent process is essential to protect the Town and its residents' interests.

DATED: February \_\_\_, 2011.

Respectfully submitted,  
BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
Charity Schiller  
Counsel for Town of Apple Valley