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**From:** Dennis Cron  
**Sent:** Tuesday, January 03, 2012 3:32 PM  
**To:** Debra Thomas  
**Cc:** Tina Kuhns  
**Subject:** FW: A.11-01-019 Comment of the Blue Ribbon Water Committee on Settlement Agreement  
**Attachments:** Town of Apple Valley Official Service List A1101019 PDFa.pdf; Town of Apple Valley Comments on Settlement PDFa.pdf

Debra,

These comments were also sent by BB&K, although the previously sent set was the actual copy submitted and filed with the CPUC.

Dennis

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**From:** Kelly Cwiertny [<mailto:Kelly.Cwiertny@bbklaw.com>]  
**Sent:** Thursday, October 20, 2011 11:43 AM  
**To:** 'debershoff@fulbright.com'; 'mmattes@nossaman.com'; 'PeterAllanEsq@gmail.com'; 'scici@aol.com'; 'chucksmith13@verizon.net'; 'tom\_hoegerman@avusd.org'; 'bill@lomac.com'; Charity Schiller; 'sel@cpuc.ca.gov'; Piero Dallarda; John Brown; 'barbara@clarkfork.org'; 'george.b21@verizon.net'; 'bryan.lin@carlyle.com'; 'leigh@parkwater.com'; 'dougpluta@saeinc.org'; 'wilson.so@saeinc.org'; 'rschmidt@bartlewells.com'; 'jrc@cpuc.ca.gov'; 'lwa@cpuc.ca.gov'; 'dug@cpuc.ca.gov'  
**Cc:** Krysten Steele; Dennis Cron; Frank Robinson; Arlene Cabang; Cheryl Seaman  
**Subject:** A.11-01-019 Comment of the Blue Ribbon Water Committee on Settlement Agreement

All,

Attached please find the Comments of the Town of Apple Valley's Blue Ribbon Water Committee on the proposed settlement agreement in this proceeding, filed today with the Commission.

If you have any trouble with the attachments, please let me know.

Kelly Cwiertny  
Best, Best & Krieger LLP  
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PROOF OF SERVICE VIA 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 July 22, 2011, I served the within document:

**COMMENTS OF THE TOWN OF APPLE VALLEY TO THE MOTION OF THE  
DIVISION OF RATEPAYER ADVOCATES AND WESTERN WATER HOLDINGS,  
LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY  
RANCHOS WATER COMPANY FOR APPROVAL OF SETTLEMENT AGREEMENT**

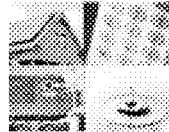
I hereby Certify that on July 22, 2011, I served a copy of the above documents on all known parties to Proceeding A.11-01-019 by e-mailing a copy to each and every party named in the official service list for this proceeding at the following email addresses:

debershoff@fulbright.com; mmattes@nossaman.com; PeterAllanEsq@gmail.com;  
scici@aol.com; chucksmith13@verizon.net; tom\_hoegerman@avusd.org; bill@lomac.com;  
charity.schiller@bbklaw.com; sel@cpuc.ca.gov; piero.dallarda@bbklaw.com;  
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rschmidt@bartlewells.com; jrc@cpuc.ca.gov; lwa@cpuc.ca.gov; dug@cpuc.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing, as well as the practice of processing email correspondence.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 22, 2011, at Riverside, California.

  
Kelly Cwierny



California Public  
Utilities Commission

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## CALIFORNIA PUBLIC UTILITIES COMMISSION

### Service Lists

PROCEEDING: A1101019 - WESTERN WATER HOLDIN  
FILER: APPLE VALLEY RANCHOS WATER COMPANY  
LIST NAME: LIST  
LAST CHANGED: APRIL 13, 2011

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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)

**COMMENTS OF THE TOWN OF APPLE VALLEY TO THE MOTION OF THE  
DIVISION OF RATEPAYER ADVOCATES AND WESTERN WATER HOLDINGS,  
LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY  
RANCHOS WATER COMPANY FOR APPROVAL OF SETTLEMENT AGREEMENT**

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July 22, 2011

**COMMENTS OF THE TOWN OF APPLE VALLEY TO THE MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND WESTERN WATER HOLDINGS, LLC, PWC MERGER SUB, INC., PARK WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY FOR APPROVAL OF SETTLEMENT AGREEMENT**

**I. Introduction**

Pursuant to Rule 12.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Town of Apple Valley (“the Town”) hereby files these Comments to the Division of Ratepayer Advocates, Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company and Apple Valley Ranchos Water Company’s (“Settling Parties”) Joint Motion for Approval of Settlement Agreement, filed on July 1, 2011. The Town has been an active participant in this proceeding since the Town filed its Protest on February 25, 2011 and has been active in settlement discussions. However, the Town only very recently had the opportunity to review all of the information that is at issue in this proceeding due to discovery and data production disputes and confidentiality concerns by the Applicants. These disruptions precluded the Town from continuing to meaningfully participate in settlement discussions between Applicants and DRA following the Settlement Conference held on May 6, 2011, which the Town participated in via teleconference. The Town appreciates Applicants’ and DRA’s efforts to keep the Town involved and apprised of developments, and appreciates all parties’ efforts to come to a Settlement Agreement in this proceeding.

The Town has now been able to review and consider the information exchanged and produced by Applicants in this proceeding (as a result of several data requests and requests for information made directly by the Commission directly). Accordingly, the Town raises the following issues concerning the terms of the Settlement Agreement and the Conditions attached thereto. On the whole, the Town does not believe that the Settlement Agreement, in its current form, meets the “public interest” standard that is required for mergers, as set forth in California Public Utilities Code Section 854(c). In light of the Settlement Agreement reached between DRA and Applicants after consideration of all the issues and in a spirit of compromise, the Town focuses its comments on the issues that remain in Settlement Agreement and the Conditions thereto, as they are currently before the Commission.

## II. Public Interest Standard and *Qwest* Factors

The overarching requirement under Section 854(c) that the Commission must measure the proposed merger against is whether the transaction is in the public interest. The Town continues to believe that the proposed merger, if approved under the current terms and conditions of the Settlement Agreement, is not in the public interest and that the transaction is not merely a neutral change in corporate status, but a change that is adverse to the public. This becomes clear when one views the proposed merger against the eight criteria enumerated in Section 854(c) and discussed in Commission Decision D.00-06-079, *In the Matter of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc. and US West Long Distance, Inc., and US West Interprise America, Inc.*, which the Commission issued on June 22, 2000 (“*Qwest*”). Under Section 854(c), in making a decision, the Commission is to look at whether the proposed Merger would:

- (1) Maintain or improve the financial condition of the resulting public utility doing business in the state.
- (2) Maintain or improve the quality of service to public utility ratepayers in the state.
- (3) Maintain or improve the quality of management of the resulting public utility doing business in the state.
- (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.
- (5) Be fair and reasonable to the majority of all affected public utility shareholders.
- (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.
- (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
- (8) Provide mitigation measures to prevent significant adverse consequences which may result.

Of primary concern are *Qwest* factors two and six, those relating to impacts to the actual ratepayers and the local communities generally, which the Settlement Agreement simply does not satisfy. Those factors are of such great importance to the public interest inquiry that the failure to meet them should preclude the Commission from blessing the Settlement Agreement in its current form. Water rights and infrastructure investment are sensitive issues that require



serious consideration and the Settlement Agreement's treatment of those issues does not demonstrate that these issues have been given the consideration they require. The Town therefore asks that the Commission require that the parties modify the Conditions in accordance with the information set forth below.

The public interest balancing of Section 854(c)'s factors is qualitative, not quantitative, and therefore, even if the Commission finds that some of the factors weigh in favor of the public interest, the Commission can still find that the negative aspects of the proposed merger outweigh the positive aspects, and deny the Application. (*In re Southern California Edison Company and San Diego Gas & Electric Company for Authority to Merge San Diego Gas & Electric Company into Southern California Edison Company*, D.91-05-028, 40 CPUC.2d 159, 263 (May 18, 1991).) For the foregoing reasons, the Town believes that the proposed merger is not in the public interest within the meaning of Section 854(c).

### **III. Protection of Water Rights**

Since the outset of this proceeding, the Town has been concerned that the proposed merger has the potential to negatively impact the water rights held by AVR, which AVR relies on to produce and serve water to its customer base (i.e., the Town's residents). Although Western Water has argued again and again that AVR's corporate structure will remain unchanged, and therefore no impact on AVR operations or assets will occur, this argument is suspect. Indeed, this transaction contemplates a change of ownership of AVR's parent company and thus a change in the de facto control of the water rights and the manner in which water will be served. Clearly, the water rights are assets that have been key to the valuation of AVR. For a multinational asset management and investment company, the water rights are in large part what makes this transaction an attractive investment opportunity.

For the Town and its residents—the customers of AVR, these so-called “assets” are their lifeblood. They represent the right to water, not some fungible good to be casually traded from one private investor to another in deference solely to some future rate of return. As the Town has expressed since the start of this proceeding, the risk in passing control of a town's water system to a multi-billion dollar investment company, whose single concern is the profit generated for its shareholders, is in taking a precious resource, water, and making it a

commodity. According to Carlyle Infrastructure Partner's ("CIP") itself, as has been revealed in this proceeding, this transaction is merely an opportunity to sell the company for a profit of nearly 10 times its original investment. With return expectations like that, the Town's concerns are justified—an "asset" as valuable as AVR's water rights stands to be sold some years after ownership has changed hands and there is no protection in the current Settlement Agreement and Conditions place to adequately ensure that water remains available and affordable for the public.

While the language of Conditions 9 and 26 appear to cover the protection of system assets, which presumably include water rights, the Town believes that the language does not go far enough to truly protect these water rights from potential future transactions. In particular, the Town believes that the Conditions must include more information regarding the Mojave Basin Adjudication and the details of how water rights are managed under that Final Decision. The Town also believes that the Conditions must make explicit that the water rights held by AVR are being held in trust for the public and are dedicated to public use and for the public good. The Town would like to see a stand alone condition that specifically states as much. The Town is willing to provide supplemental briefing on this matter to more fully explain how the Conditions should be structured to ensure adequate protection for the Town.

The Town has made its desire for more explicit language known throughout the Settlement Conference. The Town faced substantial resistance from Applicants when it suggested that more thorough and clearer language protecting AVR's current water rights be included in any settlement agreement. It is suspect that Applicants are not amenable to including language that would ensure the protection of the Town's water in absolutely crystal clear terms. If Applicants truly had no intention of piecemealing AVR's water rights and selling them to the highest bidder, solely for profit sake, the Town cannot see why Applicants would resist language consistent with the Town's concerns. Applicants seem intent on recouping as much profit from this investment as the market allows, and thus this lucrative – but vital – asset must be protected to the fullest extent. The Town looks to the Commission to assist in this important cause.

As it stands, given that Applicants would not agree to more concise Conditions, which expressly allow for, in some form, the protection of the water rights, as explained above, the Town does not believe that the proposed merger is in the public interest. Under the second and

sixth factors enumerated in *Qwest*, even the slightest possibility of a divestiture of the water rights places in jeopardy the water system that services the Town. Such a result is clearly not aligned with the interest of the ratepaying public. Rather, the transaction is designed solely to appease profit-seeking investors. The water supplied by AVR is not merely essential to the Town's current residents, but is critical to the anticipated growth and development of commerce and industry in the Town and the region.

The Town therefore maintains that the Settlement Agreement should not and cannot be accepted in its current form by the Commission and that the proposed merger must be denied until such time when the Conditions are appropriately modified to protect the water rights and insulate the potential degradation of the Town's water system.

#### **IV. Maintenance of and Investment in Infrastructure**

While it is true that certain Conditions, including 11, 12 and 23, to the Settlement Agreement ensure that water delivery and customer service under any new ownership will not deteriorate, the Conditions do not sufficiently guarantee that proper investment into the aging infrastructure will be made if the proposed merger is approved. The Town is not interested in merely seeing the status quo maintained. Rather, if this merger is to be considered in the public interest, then the status quo must be improved upon. Condition number 12 to the Settlement Agreement speaks to the "high quality" service, which the Town esteems an overstatement of the current operation.

Here, again, the second factor in *Qwest* is not satisfied by Conditions that simply call for no adverse impact on AVR customers. The proposed merger, if approved, would cause the water system to be controlled by an entity with no experience in the water industry or any other utility, a prospect that seriously worries the Town. The Town respectfully asks that the Commission require more stringent obligations, namely that the company be required to act as stewards for its customers by, for example, investing in and improving the aging infrastructure which will help that company high quality service to its customers.

The Commission should not allow a private equity company to casually buy and sell a water system given the enormous consequences that a mismanaged water utility will have on the

public at large. The concern that CIP's investment is not long-term, but a short-term opportunity to turn a profit for its shareholder investors, engenders concern that it will not make the necessary investments needed for the ailing infrastructure. The Town is concerned that CIP will subordinate the public welfare to the company's bottom line and make few if any decisions wholly designed to keep the water system reliable, safe and efficient. The water industry is a different type of industry than CIP typically invests in and the Commission must ensure that the service aspect of our water system is not abandoned.

For the Commission to ensure that this transaction truly benefits the Town ratepayers and residents, it must ensure that CIP is committed to making the necessary investment in updating the infrastructure as is needed. The Town therefore asks that conditions providing for infrastructure improvements be included as terms in the Settlement Agreement before the settlement can be approved. Such conditions would include, for example, a percentage of profit required to be invested back into the water system and/or an identification of the repairs/improvements required and a timeline indicating when such repairs/improvements will be made. The Town believes that a commitment to doing so and to making necessary system improvements and investments and maintaining facilities and infrastructure in line with the state of the industry must be mandated before the Settlement Agreement can be approved by the Commission.

## **V. Conclusion**

For the reasons stated above, we strongly urge the Commission to require the aforementioned Conditions to be added to the Settlement Agreement before it considers approval of the Settlement Agreement. Only with these Conditions will the proposed merger meet the public interest factors outlined by the Qwest decision and found in Public Utilities Code Section 854(c).

DATED: July 22, 2011.

Sincerely,

A handwritten signature in cursive script that reads "Charity B. Schiller". The signature is written in black ink and is positioned above the typed name.

Charity B. Schiller  
of BEST BEST & KRIEGER LLP