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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 314 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)

**MOTION OF PARK WATER COMPANY AND APPLE VALLEY RANCHOS
WATER COMPANY FOR THE COMMISSION TO REJECT THE COMMENTS OF
THE TOWN OF APPLE VALLEY'S BLUE RIBBON WATER COMMITTEE TO
THE MOTION OF THE DIVISION OF RATEPAYER ADVOCATES, 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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October 24, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION
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TO THE MOTION OF THE DIVISION OF RATEPAYER ADVOCATES,
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 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), Park Water Company (Park) and Apple Valley Ranchos Water Company (AVR) hereby respectfully move that the Commission reject the Comments of the Town of Apple Valley's Blue Ribbon Water Committee to the Motion of the Division of Ratepayer Advocates, Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company and Apple Valley Ranchos Water Company for Approval of Settlement Agreement (Comments) filed by the Town of Apple Valley (Town) on October 20, 2011. Town's filing is procedurally incorrect and its content is factually baseless and completely without merit. Although it is likely that the Commission will not accept Town's Comments due to the procedural deficiencies described below, in view of the unfounded allegations contained in the Town's

comments, Park and AVR are compelled to respond to Town's inaccurate and incorrect statements.

II. Procedural Deficiencies

The Town's Comments have serious procedural deficiencies. The Comments filed by Town are labeled as comments of the Town's Blue Ribbon Water Committee (BRWC). The BRWC is a special committee of the Town. It is not a party to this proceeding in its own right and has no standing to file comments. In the introduction to its Comments, however, Town admits that its comments are, in fact, simply additional comments filed by Town. Town further admits that it has already filed comments on the Motion for Approval of Settlement on July 21, 2011. Town states that, pursuant to Rule 12.2, it is filing comments on the Motion for Approval of Settlement which was filed in this proceeding on July 1, 2011. Under Rule 12.2, comments on that Motion for Approval of Settlement were required to be filed within 30 days, by July 31, 2011. For all these reasons Town's Comments should be rejected for non-compliance with the Rules of Practice and Procedure.

Town attempts to justify filing additional untimely comments by referring to a "Report to the Town on Supplemental Water Acquisition Fees and Supply Facilities Fees Charged by Apple Valley Ranchos Water Company" (Report) issued by its BRWC. Town claims that "the very nature of municipal function" prevented BRWC from "proffering" its comments before now. The Town established the BRWC in March of 2011 "to assist the Apple Valley Town Council in evaluating all feasible alternatives with respect to public ownership and control of the privately owned water companies presently selling water to the citizens and taxpayers of the Town of Apple Valley." AVR has attended all meetings of the BRWC. While the BRWC initially met once or twice a month, it has met only twice in the last several months, on June 13, 2011 and August 18, 2011. Other scheduled meetings were cancelled or postponed. The BRWC was routinely provided copies of filings made in this proceeding and in AVR's GRC. The BRWC had very opportunity to meet on a timely basis to consider the Motion for Approval of Settlement and provide input to Town for timely comments. The BRWC's failure to meet does not justify Town's filing of additional untimely comments.

Further, at the August 18th meeting the BRWC discussed a study it had received from a consultant, Bartle Wells, on the feasibility of the Town acquiring AVR's system. The BRWC described the study as deficient, some members calling it "shoddy", and expressed concern about whether the information in that study was sufficient to allow the BRWC to make any recommendations to the Town Council regarding Town's acquisition of AVR's system. AVR has reviewed that study. The study deals with possible acquisition costs of the water system and how they might be financed by the town. It does not raise any issue regarding AVR's Supplemental Water Acquisition Fees or Supply Facilities Fees (collectively "AVR's Fees"). There has not been any discussion at any BRWC meeting regarding any Report on AVR's Fees or supporting any of the statements made in Town's comments. AVR does not see how the Report on AVR's Fees referred to by Town could have been issued by the BRWC when the BRWC has not met since August 18th. AVR has found no evidence of any such Report on the Town's website nor is AVR aware of any such Report or recommendations of the BRWC being publicly presented to the Town Council.

Town has participated in this proceeding from the outset, protesting the application, attending the PHC, conducting discovery, and attending the settlement conference and has been represented by counsel throughout. Town has also participated in AVR's concurrent GRC proceeding and has had copies of AVR's GRC application, exhibits and workpapers since April, which it promptly provided to its consultant. Town's claim (page 3) that, due to the fact that the BRWC did not meet until after the Motion for Approval of Settlement had been submitted, Town has somehow been prevented from reviewing records and presenting its concerns in a timely manner is simply nonsensical. Moreover, these concerns which Town states that it feels obligated to make the Commission aware of are factually baseless and completely without merit.

III. Town's Comments Lack Any Merit

Town claims (page 3) that it has discovered an issue of importance in that AVR has "levied increased connection fees on development projects that lead to significant cash flow for AVR" and that "these fees are not actually used to purchase additional water rights". Town uses this claim as its pretext for submitting a number of

conditions which it contends should be added to the conditions for approval of the transaction contained in the Settlement between Applicants and the Division of Ratepayer Advocates (DRA), even though a number of those conditions have nothing to do with Fees or water rights and could easily have been included in Town's prior comments.

Town's claims regarding AVR's Fees are simply incorrect. AVR's Supplemental Water Acquisition Fees and Supply Facilities Fees are not "connection fees"; they are fees charged as Advances to developers under AVR's Rule 15 (Main extension Rule) and have been approved by the Commission as part of AVR's tariffs. The Supply Facilities Fees were approved in D.05-12-020 and the Supplemental Water Acquisition Fees were approved in Resolution No. W-4655, dated August 23, 2007.

The stated purpose of the Supplemental Water Acquisition Fees in AVR's tariff is "to fund AVR's pre-purchase of Replacement Water from the Mojave Water Agency (MWA), or for AVR to acquire water rights should they become readily available." (AVR's Tariff Rule 15, Section C.1.f). The purpose for these fees was intentionally set up in this manner with the knowledge that water rights are not always readily available for purchase. While AVR has been able to acquire a small amount of water rights with the fees, the majority has been spent on Replacement Water from MWA. Of the approximately \$2.7 million AVR has received in these Fees since inception, well over \$2.6 million has been spent on Replacement Water or water rights. MWA only makes Replacement Water available for purchase at certain times and, at those times, all money collected by AVR from those fees since the last purchase, less whatever amount may have been spent to purchase water rights if readily available, is spent to pre-purchase Replacement Water from MWA. Because of this timing AVR typically has some small amount of money from these fees which has been collected and AVR has not yet been able to spend for its intended purpose, currently about \$50,000, which will be spent at the next available opportunity. There is no significant generation of cash-flow for AVR resulting from not purchasing water rights, and what little cash-flow impact results from the timing of the purchase of Replacement Water is taken into account for ratemaking (see discussion on GRCs below). The fact that the money from these fees has not all been spent to purchase water rights is completely in accordance with AVR's tariffs and the expectations of the use of the fees. It does not justify any

concern or require any additional conditions for approval of the purchase of Park's stock by Carlyle (the Carlyle Transaction).

The Supply Facilities Fees are charged to all developers, in lieu of special facilities fees, to fund water supply facilities (wells) (AVR Tariff Rule 15, Section C.1.e). These fees are booked as Advances at the close of each developer-funded project, thereby reducing AVR's rate base, and are assumed to be applied to whichever of AVR's wells have any portion of the cost initially funded by AVR (D. 08-09-026, pages 5&6). Since the establishment of the Supply Facilities Fees in 2006, AVR has spent over \$1.9 million on new supply facilities (wells) and has received just over \$700,000 in fees. All these fees have been spent and the associated net cash-flow for AVR has been negative \$1.2 million.

The amount of both of these Fees are reviewed in AVR's GRCs, and typically increased by the Commission in each GRC to keep pace with the cost of Replacement Water and the construction cost of wells. All appropriate ratemaking treatments associated with the Fees are incorporated in AVR's GRCs and are reviewed by DRA in each GRC. AVR's Leased Water Rights expense is calculated to reflect lower leased amounts due to AVR's purchase of Replacement Water or water rights with the Fees. AVR's rate base is calculated to incorporate the Fees in the balance of Advances to reflect the offset to rate base of the plant associated with the facilities and Replacement Water, or water rights, purchased with the Fees. Specifically, in reference to Town's expressed concern, the cash flow impacts of the timing of receipt and expenditure of the Fees are incorporated in the Working Cash calculations in the determination of AVR's rate base. The concerns that Town raises with respect to these Fees are completely without merit.

The additional conditions which Town proposes to be adopted as conditions for approval of the Carlyle Transaction (Section III of Comments "The BRWC Recommendations") are universally redundant or unnecessary in light of existing Commission rules and procedures and/or the conditions in the Settlement Agreement between Applicants and DRA, inapplicable, outside the power of the Commission to require, or not in the best interests of ratepayers; or sometimes all of the above.

Bullets 1 and 2, requiring that AVR's Fees be used to purchase water rights, are inappropriate, contrary to AVR's Tariff Rule 15, and unnecessary as explained above.

Bullet 4, precluding AVR from leasing water rights from an affiliate is unnecessary in light of the Commission's Affiliate Transaction Rules and Condition Number 7 in the Settlement between Applicants and DRA.

Bullet 5, which would set a limit of debt, and Advances (and any other deferred credits), at 60% of total asset value, is redundant in light of Condition Number 4 on capital structure in the Settlement with DRA and existing Commission Rules on limitation of Advances, unnecessary since AVR has no debt and would require Commission review and approval of any debt issuance, and inappropriate since it attempts to commingle limitations on debt and Advances (and other deferred credits).

Bullet 6, stating that AVR "shall not guarantee or be a borrower on any loan that involves entities other than AVR" simply makes no sense because any such transaction must have another entity involved, the lender, is redundant to Condition Number 8 in the Settlement with DRA in respect to entities which are affiliates, and is unnecessary because any such transaction would be subject to Commission approval.

Bullet 3, which requires that AVR's water rights be assigned to Town for \$1.00 in the event of a bankruptcy and Bullet 7, requiring that Town be granted the option of first refusal to purchase AVR in the event that a sale of AVR is contemplated, are outside the power of the Commission to require. While any proposed sale or encumbrance of AVR or its utility assets is subject to Commission approval, the Commission does not have the power to require AVR to sell its assets to a specific party or to set the price for the sale to a specific party. Further, if the Commission had that power, the Commission should reject Town's requests in Bullets 3 and 7 because they would be bad ideas for AVR's ratepayers. It would not be in the best interests of AVR's ratepayers for AVR's water rights to be "given away" for \$1 to the Town, or anyone else, bankruptcy or not, and it would not be in the best interests of AVR's ratepayers for the Town to acquire AVR's system for a number of reasons, as AVR is prepared to demonstrate in court, the appropriate venue for determining that issue.

Throughout this proceeding Town has attempted to make this a proceeding about public ownership of AVR's system. It is not; Town's ability to pursue public

ownership of AVR's system is unaffected by this proceeding. Town's untimely Comments, with their baseless concerns and unnecessary and inappropriate proposed conditions, is a last ditch desperate eleventh hour attempt to delay the process which is consistent with Town's prior behavior.

IV. Conclusion

For all the above reasons Park and AVR request that the Commission reject the Comments of the Town of Apple Valley's Blue Ribbon Water Committee to the Motion of the Division of Ratepayer Advocates, Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company and Apple Valley Ranchos Water Company for Approval of Settlement Agreement filed by the Town on October 20, 2011. The Town's Comments should be rejected both due to serious procedural deficiencies and the lack of any merit or factual basis whatsoever. Accordingly, the Town's untimely filing should not delay the matters currently pending in this proceeding, including the issuance of the Proposed Decision.

Respectfully submitted,

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