

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'S BLUE RIBBON WATER COMMITTEE 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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October 20, 2011

**COMMENTS OF THE TOWN OF APPLE VALLEY'S BLUE RIBBON WATER
COMMITTEE 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 additional comments based on the Blue Ribbon Water Committee's suggested conditions 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 filed comments on the Settlement Agreement on July 21, 2011.

In an effort to assist the Town in understanding and considering the ramifications of the proposed merger at issue in this proceeding, the Town established a Blue Ribbon Water Committee ("BRWC"), which first met on April 14, 2011. The BRWC has held periodic meetings to consider all aspects of the proposed merger and to examine the Town's options with regard to its water service providers. The Town recently met to consider the Settlement Agreement, review the information they have gathered throughout the course of the BRWC's existence and to issue a report on those findings. The very nature of municipal function, with periodic meetings and the need for consensus before action necessarily means that it was very difficult for the BRWC to proffer its comments any sooner than now.

Since the Settlement Agreement was filed and the Town submitted its comments, the BRWC has issued its Report to the Town on Supplemental Water Acquisition Fees and Supply Facility Fees Charged by the Apple Valley Ranchos Water Company ("Report"). This Report contained a number of concerns the BRWC saw with the proposed merger and with the proposed Settlement Agreement. The BRWC included several suggested conditions to be attached to the finalized Settlement Agreement.

The Town and the BRWC understand that the Settling Parties submitted their proposed

Settlement Agreement a few months ago and that Settlement Agreement is currently pending before the Commission for approval pursuant to Scoping Memo and Ruling issued by Commissioner Michael R. Peevey on September 19, 2011. However, as the Commission makes its final decision on the Settlement Agreement in this proceeding and ultimately on whether to approve the merger proposed by the Settling Parties, the Town and the BRWC believe that they have an obligation to make the Commission aware of the concerns of the BRWC in the event they can assist the Commission in reaching its final decisions.

II. The BRWC Report

The BRWC's Report focused on "supplemental fees" that it discovered as a result of its review of the proposed Settlement Agreement. Because of the nature of the BRWC as a temporary and special committee of the Town, it did not have the opportunity to review the Settlement Agreement and discuss the Settlement Agreement at a convened meeting until after the Settlement Agreement had been submitted.¹ Since that meeting, the BRWC has reviewed AVR's financial records rather extensively and discovered what it believes to be an issue of the utmost importance. After its comprehensive review, the BRWC concluded that AVR has levied increased connection fees on development projects that lead to significant cash flow for AVR. However, despite those extra fees, the BRWC found a disconnect between the generation of this cash flow and AVR's position with regard to water rights, as these fees are not actually used to purchase additional water rights.

The thrust of the BRWC's concerns are that the funds collected from these supplemental fees will not be used to purchase water rights or invest in the fundamental infrastructure of AVR. The BRWC is also concerned that these additional funds could be diverted to investors of the Carlyle Group's Infrastructure Fund either by way of dividends or by loans made by AVR to the Carlyle Group. Finally, the BRWC is concerned that the Carlyle Group will burden AVR with a high level of debt, as many investment banks and hedge funds have done in recent years. In light of these concerns, the BRWC has put forward seven recommended conditions that it believes should be added to the Settlement Agreement in order to more fully protect customers who are dependent on water service from AVR and who deserve to be treated fairly and be protected

¹ Again, given the nature of how a municipal committee functions, comments could not be submitted in the official time frame set for comments in this proceeding.

from corporate interests that are extensively represented in this proceeding.

III. The BRWC's Recommendations

The BRWC's recommendations are as follows:

- Within one year after the cash is received by AVR from the collection of Supplemental Water Acquisition Fees and Facility Fees, those fees must be used to purchase water rights or invest in backbone level plant and equipment. Such acquisitions should not add to the rate base of AVR; however, the repayment of fees to customers would add to the rate base of AVR.
- AVR shall determine the amount of previously collected Supplemental Water Acquisition Fees and Supplies Facilities Fees were invested in Water Rights and plant and equipment that were not included in the AVR rate base at the time of acquisition. To the extent were not invested in such assets, AVR shall invest such funds within the first year after the merger is effectuated. If AVR used the previously collected cash for other purposes, it shall raise additional cash from Carlyle Group's Infrastructure Fund to replace the funds that have been used for other purposes. The Carlyle Group shall have one year from the effective date of the merger to replace the funds that have been diverted.
- Any water rights that are purchased with Supplemental Water Acquisition Fees or any of the water rights currently owned by AVR shall not be sold or used as collateral for any loan of AVR, the Carlyle Group's Infrastructure Fund or any affiliate of these entities. Should AVR or its successors file for bankruptcy, such water rights shall be assigned to the Town for a stipulated value of one dollar (\$1.00) and shall not be an asset to be distributed in the course of the bankruptcy proceeding. In the event that such a scenario is found to violate the laws of bankruptcy, the Town shall be granted the first right of refusal to purchase any water rights for a cost that shall be agreed upon in the course of any bankruptcy proceeding.

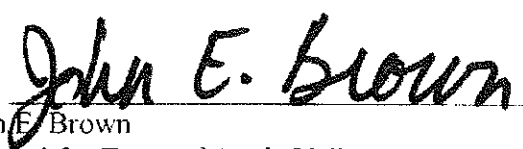
- AVR or its successor shall not be able to lease water rights from an affiliate of AVR or the Carlyle Group, the Carlyle Group's Infrastructure Fund or any successor to such fund.
- The ratio of debt to total asset value of AVR shall not exceed 0.60 at any time after the merger. The advanced credits and any other deferred credits shall be treated as debts for the purposes of this calculation.
- AVR or its successor shall not guarantee or be a borrower on any loan that involves entities other than AVR.
- In the event that AVR or the Carlyle Group or the Carlyle Group Infrastructure Fund or any successor to any of these entities should decide to sell or otherwise divest itself fully of AVR, the Town of Apple Valley shall be granted the option of first refusal to purchase AVR for a fair market value.

IV. Conclusion

For the reasons stated above, we strongly urge the Commission to require the aforementioned Conditions recommended by the Town of Apple Valley's Blue Ribbon Water Committee to be added to the Settlement Agreement before it considers approval of the Settlement Agreement.

DATED: October 20, 2011.

Respectfully submitted,
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