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Decision 11-12-007 December 1, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) 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)

**DECISION CONDITIONALLY APPROVING THE APPLICATION
FOR AUTHORITY FOR WESTERN WATER HOLDINGS, LLC, CARLYLE
INFRASTRUCTURE PARTNERS WESTERN WATER L.P., AND CARLYLE
INFRASTRUCTURE PARTNERS L.P. TO ACQUIRE AND CONTROL PARK
WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY**

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ATTACHMENT A

DECISION CONDITIONALLY APPROVING THE APPLICATION FOR AUTHORITY FOR WESTERN WATER HOLDINGS, LLC, CARLYLE INFRASTRUCTURE PARTNERS WESTERN WATER L.P., AND CARLYLE INFRASTRUCTURE PARTNERS L.P. TO ACQUIRE AND CONTROL PARK WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY

1. Summary

Today's decision conditionally approves the transfer of control of Park Water Company (Park) and Apple Valley Ranchos Water Company (Ranchos) to Western Water Holdings LLC. The latter is wholly-owned by Carlyle Infrastructure Partners Western Water L.P., which in turn is wholly-owned by Carlyle Infrastructure Partners L.P. The decision adopts a proposed settlement between all the applicants and the Division of Ratepayer Advocates; we incorporate the proposed terms and conditions of the proposed settlement after we clarify that none of the conditions may be viewed as limiting the Commission's future discretion. We expand upon the requirement in the proposed settlement imposing a clarified condition that Western Water Holdings LLC must preserve and maintain certain water rights held by Ranchos based upon our clear record concerning those rights. Finally, we also require as a condition of approval that Carlyle Infrastructure Partners L.P., a limited life entity, must file an application with a specific plan for the future disposition of Park and Ranchos no later than 18 months before Carlyle Infrastructure Partners L.P. is dissolved, or otherwise terminated, or modified.

This decision changes no rates or charges and the proceeding is closed.

2. Background

Park Water Company (Park) wholly-owns and operates Apple Valley Ranchos Water Company (Ranchos). Both are Class A water utilities regulated by the California Public Utilities Commission. Western Water Holdings LLC,

PWC Merger Sub, Inc. (Merger Sub), Park and Ranchos (collectively Applicants) filed this joint application seeking Commission authorization for Merger Sub to merge with and into Park, and for Western Water Holdings LLC to thereby acquire and control, directly or indirectly, Park and Ranchos (the Transaction). Both Merger Sub and Western Water Holdings LLC are wholly-owned subsidiaries of Carlyle Infrastructure Partners Western Water L.P. (CIP Western Water), which is wholly-owned by a group of investment fund vehicles associated with Carlyle Infrastructure Partners L.P. (collectively Carlyle Infrastructure). (Application at 1.)¹ Park will be the surviving entity post-merger as a wholly-owned subsidiary of Western Water Holdings LLC, which will own 100% of the outstanding stock of Park. Park will continue to own Ranchos. (Application 2, 10.) As further explained in the application, this transfer is intended to provide an orderly transition from the close control of Park by an individual, Mr. Henry Wheeler, to a new owner, Western Water Holdings LLC. As used in this decision, these various related acquiring entities are referred to collectively as "Carlyle."

As discussed further in today's decision, the Commission's Division of Ratepayer Advocates (DRA) reviewed the transaction and entered into a proposed settlement with the Applicants. There is no other testimony, evidence, or filing offered by DRA except for the proposed settlement and DRA's initial protest.

¹ The application further says that Carlyle Infrastructure Partners, L.P., "and the associated investment fund vehicles that together comprise Carlyle Infrastructure [are all] privately held Delaware limited partnerships." (Application at 6.)

The Town of Apple Valley (Town) also protested the application and filed comments on the proposed settlement. As a result, we investigated whether the proposed transfer of Ranchos, which serves Town, would place at risk of impairment or loss valuable water rights held by Ranchos. The security and preservation of those rights is discussed further, below. Town also expressed concern whether Carlyle, as the new owner, would provide adequate infrastructure investment for Ranchos to provide safe and reliable service. We discuss this concern below.

Several additional entities filed protests and were consequently granted party status. They did not participate in the settlement conference required by our rules when Applicants and DRA noticed a proposed settlement and did not file comments on the motion for the adoption of the settlement although they remain on the service list as parties.

3. Standards of Review

In this proceeding, there are two relevant standards of review. The primary standard concerns the requested relief. Applicants bear the burden of proof to show that the regulatory relief they request is just and reasonable. In order to authorize the proposed transfer of control over Park and Ranchos the Commission must find that the transaction satisfies the standard of review applicable to transfers, which we describe in section 3.1 below.

The second standard of review, which we describe in section 3.2 below, concerns the settlement between Applicants and DRA. In general, a settlement should help the Commission to determine whether the requested relief is justified. Thus, a settlement may propose responses intended to satisfy objections to the requested relief. Here, the settlement provides various conditions and commitments to which Applicants agree, and which attempt to

address objections raised in protests by DRA, Town, and others. In essence, the Commission will find that the settlement should be approved to the extent we are satisfied it fairly resolves those objections.

3.1. Standard of Review for a Transfer of Control by Acquisition

We begin our analysis by summarizing the statutes with most direct bearing on whether this merger and transfer of control is consistent with the law and in the public interest. Pub. Util. Code § 851, in relevant part, requires Commission approval before a public utility may sell the whole or any part of its system and § 852 requires a public utility to secure Commission authority before acquiring any capital stock of any other public utility; § 854(a) requires Commission authorization before any person or corporation may acquire or merge with any public utility. These two sections apply if the acquiring entity is already a utility and are therefore relevant to other comparable recent examples of transfers of control discussed below. However, clearly applicable here as well as in the recent comparable transfers, § 854(d) requires the Commission to consider reasonable “options” to the applicants’ proposal recommended by other parties, in order to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal. The Commission has long interpreted the above code sections to prohibit acquisitions, mergers, and transfers of control unless the Commission finds the proposed transaction to be in the public interest.

In order to determine whether the proposed transaction is in the public interest, we note that the Commission has used both the “ratepayer indifference standard” (i.e., a showing that no negative effects result from the change of

control), and a net benefit standard (i.e., a showing that the transaction offers ratepayers some equitable share of the benefits the transaction will generate). (*Compare* D.00-05-047, 2000 Cal.PUC LEXIS 314, concerning California Water Services Company's purchase of Dominguez Water Company, et al. (CWS/Dominguez) *with* D.01-09-057, 2001 Cal. PUC LEXIS 826, concerning California American Water Company's acquisition of the water utility operations of Citizens Utilities (CalAm/Citizens).)

In D.00-05-047, the Commission approved the purchase under the ratepayer indifference standard.² The dissent stated that approvals for transfers of utility property under § 851 et seq. should include a finding of ratepayer benefit. (*See* D.00-05-047, 2000 Cal. PUC LEXIS 314 **60-61.) The dissent also stated that while it was not necessary to address the public interest considerations listed in Pub. Util. Code § 854(b) and § 854(c), since these sections do not apply by their terms to water utilities, this itemization of issues may inform the Commission's deliberations on how to strike the public interest balance. (*Id.* at note 2.)

In the Cal-Am/Citizens matter, the Commission concluded that, for an acquisition subject to § 2720³ to be in the public interest under § 851 and § 854(a), it must offer ratepayers an equitable share of the benefits the transaction will

² Decision (D.) 00-09-042, which denied rehearing of D.00-05-047, concluded that D.00-05-047, although expressly relying only on ratepayer indifference, also satisfied the more stringent ratepayer benefit standard by finding definite, quantifiable benefits flowing from the purchase.

³ Section 2720 is part of the Public Water Systems Investment and Consolidation Act of 1997 (Pub. Util. Code § 2718 et seq.), which sets out a procedure for establishing rates at fair market value following the completion and approval of an acquisition of a public water system by a regulated water utility.

generate. (See D.01-09-057, 2001 Cal. PUC LEXIS 826, * 107, Conclusion of Law 8). The Commission also concluded that while § 854(b) and § 854(c) do not by their terms apply to water utilities, the Commission may, but need not, consider the extent to which the factors set forth in those sections bear on the public interest. (*Id.* at Conclusion of Law 9.) Section 2720 does not apply to the proposed transfer of control because Carlyle is not a water corporation. Accordingly, here we will apply the ratepayer indifference standard.

3.1.1. Analysis

Both Cal-Am/Citizens and CWS/Dominguez differ from this proceeding in one important respect. The Cal-Am/Citizens and CWS/Dominguez transactions involved the merger of California water utilities, and the applicants in those proceedings projected operational and administrative synergies from the merger of the affected entities. In this proceeding, applicants are not merging California water utilities; rather, this transaction involves an acquisition at a holding company level by Carlyle. For that reason, applicants cannot demonstrate that the transaction will eliminate redundancies; rather, they project Park and Ranchos will operate in a business-as-usual fashion and current senior management remains in place. The primary benefit of this transfer is to provide a new stable ownership group to replace the principal owner, a person over 80 years old who wishes to relinquish control of the utilities.

Pub. Util. Code § 854(b) and (c) are applicable to certain mergers, acquisitions, or changes in control involving electric, gas or telephone utilities and are not by their terms applicable to this proceeding involving a water utility. However, as stated above, the Commission occasionally considers factors mentioned in those statutes even when, strictly speaking, the statutes do not apply, to determine if a proposed transaction is in the public interest.

Accordingly, Applicants were directed by the Judge at the prehearing conference to demonstrate whether this transaction could satisfy the public interest test of § 854(c).

Applicants filed Supplementary Information on March 11, 2011 (Supplement 1) responding to the applicability of eight criteria enumerated in § 854(c).

- (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 states.

Applicants' response is persuasive that an orderly transfer from Henry Wheeler to Carlyle, and retaining existing managers and staff, will provide stability, expertise, and access to the capital markets, so that Park and Ranchos should remain financially healthy and provide reliable service. (Supplement 1 at 3 - 5.) Therefore we find no adverse consequences under these provisions of § 854.

- (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.

Applicants argue persuasively that the non-union employees all remain employed as before and executives are to be retained so that no jobs will be lost and the stable ownership allows employees to expect secure employment. (Supplement 1 at 5.) Therefore we find no adverse consequences under this provision of § 854.

- (5) Be fair and reasonable to the majority of all affected public utility shareholders.

Henry Wheeler's family is the beneficial owner⁴ of all but a small minority of the stock held by the University of California. No one objected to the proposed transfer and all shares will receive the same price. The current stock is otherwise illiquid, with no market for the stock to trade. Therefore applicants are persuasive that the proposed transfer is reasonable to current shareholders. (Supplement 1 at 6.) Therefore we find no adverse consequences under this provision of § 854.

- (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.

Applicants argue persuasively that the local community will be well served by the continued operation of Park and Ranchos by the same managers and employees. The new owners bring a strong financial basis to the operation and the utilities will therefore continue to serve the local communities. (Supplement 1 at 6-7.) Therefore we find no adverse consequences under this provision of § 854(c).

- (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.

Applicants argue that there will be no change and we agree: nothing about this approval in any way alters, limits, or changes the Commission's authority to regulate Park and Ranchos. As noted elsewhere in this decision, nothing in the settlement conditions proposed by Applicants and DRA can in

⁴ Application at 2.

anyway be construed in the future to have limited or preapproved any action by the Commission. Therefore we find no adverse consequences under this provision of § 854(c).

- (8) Provide mitigation measures to prevent significant adverse consequences which may result.

No one has identified any adverse consequences except for Town's concern over the integrity of water rights held by Ranchos. As we find elsewhere, those water rights are unharmed by the transfer and the new owner of Ranchos, Carlyle, is not able to alter, transfer, or encumber those rights without Commission authority. Therefore we find no adverse consequences under this provision of § 854(c).

3.2. Standard of Review for a Proposed Settlement

The Commission's Rules of Practice and Procedure (Rules) specifically address the requirements for adoption of proposed settlements. The relevant rules are Rule 12.1 *Proposal of Settlements*, and Rule 12.5 *Adoption Binding, Not Precedential*.⁵ Specifically, Rule 12.1 states in part:

- (a) Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant and, in complaints, by the complainant and defendant.

The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope

⁵ http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138-11.htm#P623_143939.

of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

(d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

3.2.1. Analysis

Based upon the record of this proceeding we find the settling parties complied with Rule 12.1(a) by making the appropriate filings and noticing a settlement conference. Based upon our review of the settlement documents we find that they contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds for its adoption; that the settlement was limited to the issues in this proceeding; therefore we are able to find that the settlement complies with

Rule 12.1(a), and is reasonable in light of the whole record, consistent with law, and in the public interest.

Based upon our review of the settlement document we find, pursuant to Rule 12.5, that the proposed settlement would not unreasonably bind or otherwise impose a precedent in this or any future proceeding. We wish to emphasize that none of the conditions agreed to by applicants as a part of the settlement prejudice or limit the Commission's discretion in the future regulation of Park or Ranchos.

We do adopt an additional requirement that Carlyle Infrastructure Partners L.P., a limited life entity, must file an application with a specific plan for the future disposition of Park and Ranchos no later than 18 months before Western Water Holdings LLC is dissolved, or otherwise terminated, or modified. This application also applies to any transfer of Western Water Holdings LLC assets to any other Carlyle entity. With this additional requirement we find that we may adopt the terms and conditions of the proposed settlement and grant the transfer of control.

4. Who Are the Applicants

4.1. Park and Ranchos

Rancho is a wholly-owned subsidiary of Park. Both are Class A water utilities subject to the Commission's jurisdiction. Park is owned and controlled by Henry Wheeler. According to the application, he is in his eighties and now wishes to ensure an orderly and expeditious transfer of the companies to a new owner. Under the proposed agreement, Wheeler will be retained as a consultant and will be allowed to participate in lending to Park and Ranchos. These actions are addressed in the proposed settlement conditions and as found below we can adopt the settlement's conditions as reasonable and in the public interest.

4.2. Carlyle

This proposed transfer is unusual in that the proposed buyers of Park are not individuals, an existing utility, or any publicly traded company; also, the proposed buyers are, apart from this proceeding, otherwise previously unknown to the Commission. We therefore have an affirmative obligation to understand who the principal entities are, namely, Western Water Holdings, LLC, CIP Western Water, and Carlyle Infrastructure proposing to acquire Park and Ranchos, and to determine whether they are appropriate entities to control a public utility.

Carlyle Infrastructure Partners, L.P., “and the associated investment fund vehicles that together comprise Carlyle Infrastructure [are all] privately held Delaware limited partnerships.” (Application at 6.) In two additional Supplementary Responses dated April 28, 2011 (one public - Supplement 3 - and the other confidential - Supplement 4). Applicants provided a detailed description of the organization of the Carlyle entities associated with this acquisition, including Holdings, Merger Sub, CIP Western, and Carlyle Infrastructure Partners L.P. The confidential materials include organizational information, the detailed partnership agreements and much other data which demonstrate the organizational nature of the entities. We agree with Carlyle’s request that this information remain confidential.

We find based on our review of the filed materials that Carlyle is composed of properly organized legal entities that have the resources necessary to act as the 100% owner of two regulated utilities, Park and Ranchos. No one has shown any cause in this proceeding why we should not find the underlying entities suitable to own and operate utilities to provide safe and reliable service.

5. Proposed Settlement Terms

Applicants and DRA proposed that the Commission approve the transaction and, as a part of that proposal, offer specific conditions intended to protect the public interest. We find these terms reasonable and adopt the settlement.

5.1. Proposed Settlement's Conditions

A review of the terms of the proposed settlement (Attachment A) indicates that DRA was concerned with preserving regulatory oversight, avoiding any additional costs accruing to customers because of the merger, and the ongoing reasonable operation of both Park and Ranchos. The proposed settlement, which we adopt, is attached to this decision.

The proposed settlement, among other issues, addresses preserving or protecting for the ratepayers' benefit the water rights held by Ranchos. We discuss water rights elsewhere in greater detail where we independently emphasize in our order that those rights are unaffected by the transfer of control and that we retain and will exercise our full jurisdiction over those water rights. The proposed settlement also addresses the continued application of the Commission's existing affiliate rules, and other regulatory policy matters which will continue to apply to Park, Ranchos, and the proposed owner, Carlyle. We emphasize that nothing about the proposed settlement in any way limits the applicability of our previously adopted regulatory policies or reduces our oversight or our ability to adopt new or revised policies for any of these matters.

The settlement arguably imposes no new obligation or duty on Park or Ranchos and therefore we need not recite the various terms in this order or discuss them further. It does however demonstrate Carlyle is fully aware of and acknowledges the ongoing applicability of the regulatory practices and policies

alluded to in the settlement. We find the terms reasonable and in the public interest. We find that nothing in the terms restricts this Commission's ongoing oversight or authority.

Nothing requested in this application, or contained in the settlement, will increase rates to customers. Both Park and Ranchos will continue to provide service under the terms and conditions of their existing tariffs. Rates for Park and Ranchos will only change pursuant to the Commission's review of subsequent rate applications and advice letters.

5.2. Necessary Additional Conditions to Approval

Beyond the undertakings of the application and the settlement, we find that it is necessary in light of the controversy described below, to add as a condition of approval that Carlyle cannot encumber, diminish, or cause a loss of Ranchos' existing water rights in the Mojave Basin without specific authority from this Commission.

5.3. Ranchos' Water Rights

Ranchos holds water rights in the Mojave basin, subject to a water master and court adjudication. Specifically, the Mojave Water Agency is a water agency created by California statute (the Mojave Water Agency Act) and has been appointed Watermaster by the Riverside Superior Court to "administer and enforce" an amended Judgment in the Mojave Basin Adjudication (City of Barstow v. City of Adelanto, Riverside Superior Court Case No. 208568). Town argues the rights may be either lost due to the transfer under the terms of the controlling court order, or that Carlyle might try to sell the rights and then charge customers for higher cost replacement water.

Town is concerned that the water rights held by Ranchos could be legally at risk because of the complex settlement applicable to water rights in the Mojave

basin. Loss or impairment of the rights would inevitably lead to significantly higher costs for replacement water or even a permanent loss in available water. Applicants counter that there is no reasonable likelihood that the transfer of control, where the utility would continue in uninterrupted operation, would impair or result in the forfeiture of the water rights.

By ruling dated March 24, 2011, the Judge directed the applicants to contact the legal counsel to the Mojave Water Agency to seek an opinion letter. The intent of the ruling was to have the opinion of Mojave Water Agency's legal counsel on the following questions:

1. Is there any provision in the Judgment or the Mojave Water Agency Act by which the Transaction will constitute a transfer of Ranchos' water rights?
2. Is there any provision in the Judgment or the Mojave Water Agency Act, or any other reason, that would require approval by the Mojave Water Agency for the Transaction to be effective?
3. Is there any provision in the Judgment or the Mojave Water Agency Act by which the Transaction will encumber, diminish, or cause a loss of Ranchos' water rights in the Mojave Basin? (Ruling at 3.)

Applicants provided an opinion letter dated April 27, 2011 from counsel to the Mojave Water Agency, William J. Brunick, Esq., with the firm Brunick, McElhaney & Beckett, in San Bernardino, Ca. In that opinion counsel affirmed that the proposed Transaction would not constitute a transfer of the water right (question 1); would not require approval by the Mojave Water Agency (question

2); and would not encumber, diminish, or cause a loss of Ranchos' rights (question 3).⁶

We find this opinion letter to be sufficient and persuasive that the transfer to Carlyle will not harm Ranchos' access to water, and therefore find that we can approve the transfer of control without concern that the transfer in itself might encumber, diminish, or cause a loss of Ranchos' existing water rights in the Mojave Basin.

Town also expressed a fear that the new controlling interests had no local ties and would consider the water rights to be a fungible commodity to potentially be sold. However, Applicants clearly acknowledge in the record that the water rights are held to serve Ranchos' customers. Further, Ranchos (regardless of who owns or controls the company) cannot dispose of the water rights or transfer the water rights without the approval of this Commission. We therefore clarify in this decision that Ranchos (or its proposed new owner Carlyle) cannot encumber, diminish, or transfer the water rights in the Mojave basin without an order of this Commission.

5.4. Limited Life of Carlyle Infrastructure Partners L.P.

In the supplemental filings by Applicants (Supplements 3 and 4), it was disclosed and explained in detail that the relevant Carlyle entity to this transaction, Carlyle Infrastructure Partners L.P. , will dissolve no later than September 28, 2021, and the assets must either be disposed of or some other as yet unformed Carlyle investment fund may acquire the assets. (Supplement 3 at 3.)

⁶ The full response and opinion letter: <http://docs.cpuc.ca.gov/efile/RESP/134587.pdf>.

Faced with a certain termination of ownership by the proposed transferees, we must ensure there will be a timely and orderly subsequent transfer of control over Park and Ranchos when Carlyle Infrastructure Partners L.P. dissolves. When any utility files for a transfer of control, as did Park and Ranchos, the Commission must take whatever time is necessary to review the transaction and may even refuse the authority. Therefore we find that it is in the public interest to require Carlyle, as a condition to approval of the transfer, to file an application with a specific plan for the future disposition of Park and Ranchos. We are not concerned with whether the plan is to sell Park and Ranchos to a new owner or owners or to a new Carlyle investment vehicle: rather, we are concerned that we have sufficient time to review and approve the proposal.

We select 18 months as a reasonable period to process such an application. It is the time limit generally imposed by statute to complete a ratesetting application. It is also long enough, we believe, that the Commission may examine any proposal, and if necessary, make modifications to the plan to protect the public interest. Without this requirement the Commission could find itself forced into a hasty review or risk the uncertainty and chaos that would likely surround Park and Ranchos by the dissolution of Carlyle while a transfer of control was pending.

6. California Environmental Quality Act

The only remaining issue is whether, as the applicants assert, the proposed transfer qualifies for an exemption from the California Environmental Quality Act (CEQA). Under CEQA and Rule 2.4, we are required to consider the environmental consequences of projects that are subject to our discretionary approval. (*See*, Public Resources Code § 21080.)

We acknowledge that in some cases, it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, the Application demonstrated that Park and Ranchos will continue to operate as they did before the transfer of control.

We conclude that under these circumstances, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines, inasmuch as it can be seen with certainty that the project will have no significant impact upon the environment. Accordingly, the Commission does not have to perform further environmental review of this application.

7. Procedural History

There were no evidentiary hearings in this proceeding. The record is the Applicants' initial filings, protests, the supplementary information filed in response to specific rulings by the Administrative Law Judge (ALJ) and the terms of the proposed settlement agreement. And all other filed and served documents.

Timely protests were filed by DRA, Town, Apple Valley Unified School District, and several private individuals: Peter W. Allan, Angelo Santo Cici, William Elbridge McDaniel Jr., and Christine Smith and James Smith. Only Town and DRA actively participated throughout the proceeding.

On July 22, 2011, DRA and applicants filed a joint motion for the adoption of a settlement after a duly noticed settlement conference. No timely comments were filed.

On October 24, 2011, Town filed out of time comments on the settlement which were rejected. We affirm that rejection.

The application appeared on the Commission's daily calendar; there was a duly noticed prehearing conference; and a duly noticed settlement conference. Only Town filed comments on the proposed settlement, addressing water rights and the standards of review.

8. Categorization and Need for Hearings

In Resolution ALJ 176-3268 dated January 27, 2011, the Commission preliminary categorized this application as Ratesetting and preliminarily determined that hearings were necessary, however, based upon the detailed settlement, a public hearing is not necessary.

9. Comments on Proposed Decision

The proposed decision of ALJ Long in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 21, 2011 by DRA jointly with the Applicants. Minor clarifications and corrections have been made without changing the overall outcome of approving the settlement and authorizing the transfer of control as described herein. Town also filed comments on November 21, 2011 which repeat the Town's litigation position opposing the transfer of Ranchos. In addition, Town proposes new conditions not included in the record. Therefore, to the extent that town repeats its litigation position or proposes new terms outside the record of this proceeding, we accord their comments no weight. As discussed in the decision we have considered Town's timely raised concerns and have determined that, as adopted herein, the settlement with DRA and the transfer of control are reasonable. Only the Applicants filed timely reply comments on November 28, 2011.

10. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. There is an adequate record composed of all filed and served documents.
2. The record was expanded by supplementary information filed in response to rulings addressing issues raised by the application and by parties.
3. The proposed settlement ensures the continued operation of Park and Ranchos will be in the public interest.
4. The Mojave basin water rights held by Ranchos are subject to the Commission's jurisdiction.
5. The Mojave Basin water rights cannot be encumbered, diminished, or transferred without a Commission order.
6. Carlyle Infrastructure Partners L.P. will dissolve no later than September 28, 2021.
7. The transfer of control will not change the operations of Park or Ranchos and therefore is not a project as defined by CEQA.
8. The terms of the proposed settlement are in the public interest.
9. The proposed transfer of control will have no significant effect upon the environment, because Park and Ranchos will continue to operate as they did before the transfer of control.

Conclusions of Law

1. Applicants bear the burden of proof to show that the request is reasonable.
2. The Mojave Basin water rights are subject to the jurisdiction of this Commission and cannot be transferred without an order of this Commission.

3. The proposed settlement is reasonable in light of the whole record, consistent with law, and in the public interest, therefore the Commission may adopt it.

4. The proposed transfer of control, with additional conditions adopted in this decision, is consistent with the law and in the public interest and therefore the Commission may approve it.

5. It is in the public interest to require Carlyle to file an application with a proposed plan for an orderly transition of Park and Ranchos before Carlyle Infrastructure Partners L.P. is dissolved on or before September 28, 2021. Eighteen months before the date of dissolution is a reasonable timeframe for reviewing and authorizing a plan.

6. The proposed settlement is reasonable because its terms are consistent with our regulatory policy and will tend to ensure Park and Ranchos are operated in a professional manner.

7. The Commission has the discretion and authority to resolve issues which were not addressed in the settlement, including the limited life of Carlyle Infrastructure Partners L.P.

8. Water rights held by Ranchos in the Mojave Basin are subject to an amended Judgment in the Mojave Basin Adjudication (City of Barstow v. City of Adelanto, Riverside Superior Court Case No. 208568).

9. Water rights cannot be encumbered, diminished, or transferred by Ranchos without a specific order by this Commission.

10. The proposed transfer qualifies for an exemption from CEQA pursuant to CEQA Guidelines § 15061(b)(3), so additional environmental review is not required.

11. This decision should be effective today.

12. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The proposed settlement of the Division of Ratepayer Advocates with Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company, and Apple Valley Ranchos Water Company, is adopted.
2. Pursuant to Public Utilities Code Sections 851, 852, and 854, the transfer of control of Park Water Company and Apple Valley Ranchos Water Company to Western Water Holdings LLC., which is a wholly-owned subsidiary of Carlyle Infrastructure Partners Western Water L.P., which in turn is wholly-owned by Carlyle Infrastructure Partners, L.P., is approved effective as of the date of today's decision.
3. Water rights held by Apple Valley Ranchos Water Company (Ranchos) in the Mojave Basin are subject to an amended Judgment in the Mojave Basin Adjudication (City of Barstow v. City of Adelanto, Riverside Superior Court Case No. 208568). These water rights cannot be encumbered, diminished, or transferred by Ranchos, Western Water Holdings LLC, Carlyle Infrastructure Partners Western Water L.P., or Carlyle Infrastructure Partners, L.P., without a specific order by this Commission.
4. Western Water Holdings LLC., Carlyle Infrastructure Partners Western Water L.P., and Carlyle Infrastructure Partners, L.P., as the owners of Park Water Company (Park) and Apple Valley Ranchos Water Company (Ranchos) must file an application with a proposed plan for an orderly transition of Park and Ranchos no later than 18 months before September 28, 2021.

5. Hearings are not necessary.
6. Application 11-01-019 is closed.

This decision is effective today.

Dated December 1, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT A

**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 of
Park Water Company and Apple Valley
Ranchos Water Company.

Application 11-01-019
(Filed January 21, 2011)

**SETTLEMENT AGREEMENT AMONG THE DIVISION OF
RATEPAYER ADVOCATES, WESTERN WATER HOLDINGS, LLC,
PWC MERGER SUB, INC., PARK WATER COMPANY (U 314 W),
AND APPLE VALLEY RANCHOS WATER COMPANY (U-346-W)**

DIVISION OF RATEPAYER ADVOCATES

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HOLDINGS, LLC and PWC MERGER SUB,
INC.

July 1, 2011

**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 of
Park Water Company and Apple Valley
Ranchos Water Company.

Application 11-01-019
(Filed January 21, 2011)

**SETTLEMENT AGREEMENT AMONG THE DIVISION OF
RATEPAYER ADVOCATES, WESTERN WATER HOLDINGS, LLC,
PWC MERGER SUB, INC., PARK WATER COMPANY (U 314 W),
AND APPLE VALLEY RANCHOS WATER COMPANY (U-346-W)**

1. GENERAL

1.1 Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Western Water Holdings, LLC ("Western Water"), PWC Merger Sub, Inc. ("Merger Sub"), Park Water Company ("Park Water"), and Apple Valley Ranchos Water Company ("AVR") (collectively, "Joint Applicants") and the Division of Ratepayer Advocates ("DRA") (collectively, the "Parties") have agreed on the terms of this Settlement Agreement which they now submit for approval. This Settlement Agreement addresses the Joint Application of Western Water, Merger Sub, Park Water, and AVR for authority for Western Water to Acquire and Control Park Water and AVR ("Application"). The Parties respectfully request that the Commission grant such authorization, subject to the terms and conditions of this Settlement Agreement.

1.2 Since this Settlement Agreement represents a compromise by each of them, the Parties have entered into each stipulation contained in the Settlement Agreement on the basis

that its approval by the Commission should not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding. Furthermore, the Parties intend that the approval of this Settlement Agreement by the Commission not be construed as a precedent or statement of policy of any kind for or against any Party in any current or future proceeding (Rule 12.5, Commission's Rules on Practice and Procedure).

1.3 The Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of their agreement. All rights and remedies of the Parties are limited to those available before the Commission.

1.4 The Parties agree that this Settlement Agreement is an integrated agreement, so that if the Commission rejects any portion of this Settlement Agreement, each Party has the right to withdraw. Furthermore, the Settlement Agreement is being presented as an integrated package such that Parties are agreeing to the Settlement as a whole rather than agreeing to specific elements of the Settlement.

1.5 This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument.

1.6 No Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representatives.

1.7 This Settlement constitutes and represents the entire agreement among the Parties and supersedes all prior and contemporaneous agreements, negotiations,

representations, warranties and understandings of the Parties with respect to the subject matter set forth herein.

2. BACKGROUND

2.1 On December 21, 2010, Western Water, Merger Sub, and Park Water entered into an Agreement and Plan of Merger ("Merger Agreement") for Western Water's acquisition of 100% of the outstanding capital stock of Park Water for up to \$102 million in cash, or \$4,177.65 per share. The Merger Agreement requires the present shareholders to place \$10 million of the purchase price in escrow to secure their indemnification obligations under the Agreement. Park Water's existing third party debt, which as of December 31, 2010 amounted to \$54.5 million, will remain outstanding following the closing of the Transaction.

2.2 On January 21, 2011, the Joint Applicants filed the Application, A.11-01-019, to request Commission authorization of the direct acquisition and control of Park Water and the indirect control of AVR resulting from Western Water's purchase of Park Water's capital stock.

2.3 On April 13, 2011, counsel for Western Water and Merger Sub sent to the service list in this proceeding a notice that a settlement conference would be held in San Francisco on May 6, 2011.

2.4 On May 6, 2011, the noticed settlement conference was held at the Commission's offices at 505 Van Ness Avenue in San Francisco. Representatives of the Joint Applicants and DRA attended the settlement conference. The Town of Apple Valley's counsel and Mr. James Smith, an Intervenor, participated in the settlement conference by telephone. An initial draft of this settlement agreement was considered and further issues were discussed.

2.5 A revised draft settlement agreement, reflecting discussion at the May 6 conference, was circulated and further discussions occurred among participants in that conference, resulting in the present Settlement Agreement.

3. CONDITIONS OF APPROVAL OF THE PROPOSED TRANSACTION

3.1 The Parties agree to 28 specific conditions that will govern certain aspects of the relationship between Park Water and AVR and Park Water's parent company, Western Water. A copy of the conditions is attached hereto as Appendix A.

3.2 The Joint Applicants agree to follow all of these conditions upon the Commission's approval of the Application and the completion of the proposed transaction.

4. AFFILIATE TRANSACTION RULES

The Parties understand and agree that the water industry-wide affiliate transaction rules developed in Rulemaking 09-04-012 and adopted by Decision 10-10-019 in that rulemaking apply to both Park Water and Apple Valley and will continue to apply to Park Water and Apple Valley after the acquisition by Western Water of ownership and control.

Respectfully submitted,

DIVISION OF RATEPAYER ADVOCATES

By: _____

Joseph P. Como

Its: _____

Acting Director

WESTERN WATER HOLDINGS, LLC

By: _____

Robert Dove

Its: _____

President

PARK WATER COMPANY

By: 
Christopher Schilling

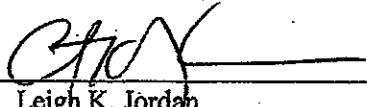
Its: Co- Chief Executive Officer

PWC MERGER SUB, INC.

By: 
Robert Dove

Its: President

APPLE VALLEY RANCHOS WATER COMPANY

By: 
Leigh K. Jordan

Its: Executive Vice President

APPENDIX A

Conditions of Approval of the Proposed Transaction

1. The proposed transaction shall have no effect on the Commission's authority over the provision of public utility service to the public by Park Water Company ("Park Water") and Apple Valley Ranchos Water Company ("AVR").
2. Park Water and AVR shall comply with all applicable California and federal laws and administrative regulations.
3. Western Water Holdings, LLC ("Western Water") shall ensure that Park Water and AVR have adequate capital to fulfill all of their public utility service obligations. The term "capital" encompasses "money and property with which a company carries on its corporate business; a company's assets, regardless of source, utilized for the conduct of the corporate business and for the purpose of deriving gains and profits; and a company's working capital," and is not limited to mean only "equity capital, infrastructure investment, or any other term that does not include, simply, money or working cash." (Decision 02-01-039, Findings of Fact 5 and 6, 2002 Cal. PUC LEXIS 5 *57.) Western Water acknowledges Park Water's and AVR's need for significant amounts of capital to invest in their water supply and delivery infrastructure and commits to meeting all of Park Water's and AVR's capital needs that the Commission has deemed necessary.
4. For financial purposes, Park Water shall maintain an equity percentage of at least 45%, on a Park-and-subsidiaries-consolidated basis (consistent with the capital structure used for ratemaking purposes), except to the extent the Commission imputes a lower equity percentage for ratemaking purposes.

5. Park Water and AVR will notify the Commission of any dividends and distributions to Western Water or other Affiliates in their Annual Reports to the Commission (filed on or about March 31 of each year).

6. Park Water and AVR will notify DRA and the Commission in writing of any change in corporate dividend policy within 30 days of the effective date of the adoption of such change.

7. Rate recovery of direct charges from Western Water or any other unregulated affiliates, as defined in the Affiliate Transaction Rules adopted by Decision 10-10-019 or any amendments or modifications thereto ("Affiliates") to Park Water or AVR shall be prohibited without the Commission's authorization. All such direct charges shall be specifically identified in general rate cases or advice letter filings.

8. Neither Park Water nor AVR shall issue long-term debt or guarantee any debt of any of their Affiliates without prior approval by the Commission.

9. Neither Park Water nor AVR shall sell, transfer, or encumber any utility assets necessary or useful to provide utility service, including water rights, without prior approval by the Commission.

10. Park Water and AVR shall continue to maintain their books and records in accordance with all Commission rules. Park Water's and AVR's books and records shall be maintained and be available in California.

11. The transfer of ownership and control will not adversely affect Park Water's or AVR's policies with respect to service to customers, employees, operations, financing,

accounting, capitalization, rates, depreciation, maintenance, or other matters relating to the public interest or utility operations.

12. Customer service to Park Water's and AVR's customers will not be affected by the transaction. Western Water shall maintain Park Water's and AVR's commitment to high quality public utility water service and community involvement.

13. Park Water and AVR shall maintain their business headquarters in California together with fully operational local offices as appropriate to maintain the high quality of customer service and community involvement. Park Water and AVR shall not close any of its offices as a result of this transaction.

14. No additional layer of management overhead may be allocated to Park Water or AVR as a result of the transaction.

15. The proposed transaction shall not adversely affect any of the outstanding debt owed and recorded as liabilities on the regulated books of Park Water and AVR. There shall be no increase in Park Water's or AVR's cost of service or reduction in quality of service due to effects of the proposed transaction on the income statement, balance sheet or financial position of Park Water or AVR.

16. The ratepayers of Park Water and AVR shall not incur, directly or indirectly, any transaction costs or other liabilities or obligations arising from the proposed transaction. In particular, any expenses incurred by Park Water or AVR due to the proposed transaction or the related Commission proceeding, A.11-01-019 (such as outside legal expense and travel costs) shall be accounted for as non-utility expense and shall not be included in the recorded base of any account included in the calculation of revenue requirement for future rate cases.

17. The payroll and active-employee payroll-related costs associated with the President (Henry H. Wheeler, Jr.) and the Assistant Corporate Secretary (Chayre M. Wheeler), who will retire as a result of completion of the transaction, will not be included in the ratemaking expenses for Park Water's General Office nor will any direct charges or allocations of those costs be included in the ratemaking expenses of Park Water's operating divisions or utility subsidiaries, including AVR. The payroll-related costs to be excluded are workers' compensation insurance, payroll taxes, and associated active-employee benefits. (As neither Mr. nor Ms. Wheeler is eligible for Pension benefits or has ever participated in the 401(k) plan, there are no costs for these categories; as Mr. and Ms. Wheeler are fully vested in Park Water's Post-retirement Benefits Other than Pension ("PBOP") plan, their retirement does not affect Park Water's PBOP cost.)

18. The amount of Board of Director Fees to be recognized as utility expense in calculating revenue requirement for ratemaking purposes will be set at \$100,000 (in 2012 dollars) per year for the period 2012-2014. This amount will be included in the Park Water General Office expenses, which are allocated to Park Water's operating divisions and utility subsidiaries, including AVR.

19. Consulting fees incurred by Park Water under any consulting agreement or arrangement with Henry H. Wheeler, Jr. will be recognized as utility expense in calculating revenue requirement for ratemaking purposes in the amount of \$63,000 (in 2012 dollars) for 2012 and 2013 and zero in 2014. Specifically, \$63,000 will be added to the expenses otherwise estimated in the Park Water General Office "Outside Services Expense" category for test year 2012, prior to allocation to AVR. In 2014, \$63,000 (in 2012 dollars) will be deducted from the

adopted 2013 Outside Services expense prior to applying the appropriate escalation factor to arrive at the 2014 expense in the escalation year filing.

20. In future General Rate Increase applications for Park Water or AVR, those companies agree to specifically identify any consulting fees contained in the historic expenses incurred under any consulting agreement or arrangement with Henry H. Wheeler, Jr. so that DRA will have the information to propose any adjustment it may consider appropriate.

21. As part of this proceeding, the ratepayers of Park Water and AVR shall not incur financial obligations due to any premium paid by the purchasing Applicants for the acquisition of Park Water or AVR.

22. Park Water and AVR shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the proposed transaction.

23. Affiliates of Park Water shall take no actions that would impair Park Water's or AVR's ability to fulfill their public utility obligations to serve and to operate in a prudent and efficient manner.

24. Any activities or actions directed at enhancing or increasing Western Water's investment in Park Water will require Commission approval for reflection of such investment in rates.

25. Any loans made to Park Water by Mr. Henry H. Wheeler, Jr. will be at prevailing market rates or lower and will be subject to prior Commission approval.

26. Affiliates of Park Water, including Western Water, shall not require Park Water or AVR to take any action inconsistent with AVR's rights under the terms of the Mojave Basin Adjudication (*City of Barstow v. City of Adelanto*, Riverside Superior Court Case No. 208568)

and the Judgment After Trial, entered January 10, 1996, as amended December 5, 2002, in that case.

27. Park Water and AVR, and Western Water as the parent of Park Water, shall comply with the Affiliate Transaction Rules adopted by the Commission in Rulemaking 09-04-012, the Commission Rulemaking to develop standard rules for affiliate transactions and the use of regulated assets for non-tariffed services of water utilities

28. The Joint Applicants shall each file written notice with the Commission of their agreement, evidenced by a duly authenticated resolution of their respective Boards of Directors, Board of Managers or the equivalent authority, to the Conditions of Approval of the Proposed Transaction set forth in this Appendix A.

-- End of Appendix A --

(END OF ATTACHMENT A)