

July 11, 2014

Via Facsimile and U.S. Mail

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Re: **Town of Apple Valley: Service Duplication**

Dear Mr. Brown:

As you are aware, Apple Valley Ranchos Water Company contends that the Town of Apple Valley, together with the Victor Valley Wastewater Reclamation Authority (VWVRA), are proposing a project to supply reclaimed water within Apple Valley Ranchos' service territory which would constitute a duplication of service, thus triggering the Town's liability under Section 1501 of the Public Utilities Code. Both Apple Valley Ranchos and its customers will be harmed by the proposed project.

Section 1501 of the Public Utilities Code protects privately owned public utilities which provide water service from what VWVRA, through the Town of Apple Valley, is proposing here. The law, called the service duplication law, holds that where a public agency or city, such as VWVRA, constructs or operates facilities in the service area of an existing private utility, such as Apple Valley Ranchos, the public agency or city must compensate the privately owned utility for damages caused by the duplication of service that the privately owned utility provides.

That compensation includes the privately-owned utility's right to recover damages caused by the duplication and for its attorney's and expert fees incurred in the litigation. There are several trial court and Court of Appeal decisions enforcing the service duplication law, including *San Gabriel Valley Water Company v. City of Montebello* (1978) 84 Cal.App.3d 757. In the *Montebello* case, the court awarded the private water company not only substantial damages but attorney's and expert fees for the City's duplication of service.

We have previously stated that the proposal by VWVRA and the Town for this project would constitute a duplication of service because Apple Valley Ranchos already serves the area where VWVRA, through the Town, proposes to provide reclaimed water. This is not a new issue. In December 2010, Apple Valley Ranchos raised the issue of duplication of service in its comments to the draft EIR prepared for this project. VWVRA responded by saying, without any supporting authority or law, that WRPs would not duplicate service but would implement regional water plans. There is no law that supports VWVRA's position on this, and when we

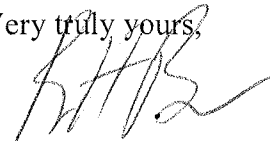
have asked VVWRA for law that supports or justifies its position, it refused to provide that support or justification. Further, Apple Valley Ranchos, the Town and their attorneys met in October, 2013 in which Apple Valley Ranchos clearly presented its view on the matter.

The Water Code also precludes what VVWRA and the Town are proposing. Section 13580.5(b) of the Water Code provides that a customer may not obtain recycled water from a recycled water producer, wholesaler or provider that is not a retailer without the agreement of the retailer. Apple Valley Ranchos is the retailer, and has not agreed to the proposal of VVWRA and the Town. Moreover, the Water Code expressly states, in Section 13582(a), that any rights that may exist under the Water Recycling Act of 1991 do not alter the Service Duplication Law.

In addition, the Agreement of Purchase and Sale of Jess Ranch Wastewater System and Assessment District No. 86-1 Water System Improvements (the Agreement of Purchase and Sale) provides, at paragraph 14.c.(2), that the Town will operate the Wastewater System as the “wholesaler” and that Apple Valley Ranchos has the “exclusive right and obligation under the Water Company’s C.P.U.C. Certificate to sell and deliver reclaimed water within Water Company’s current and future sales areas within the current and future territorial limits and boundaries of the Town...” Any attempt by VVWRA and the Town to circumvent this would constitute a breach of that Agreement.

We welcome the opportunity to meet with the Town to identify a resolution to this matter. In the absence of a resolution between the parties, if VVWRA and the Town proceed with this plan, they will violate the Water Code, the Service Duplication Law and the Agreement of Purchase and Sale and be subject to substantial liability, including payment of Apple Valley Ranchos’ attorney’s and expert fees, if Apple Valley Ranchos is forced to litigate the issue, which it hopes it will not have to do.

Very truly yours,



KEVIN H. BROGAN

OF

HILL, FARRER & BURRILL LLP

CC: Piero Dallarda, Esq.

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