

October 6, 2014

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Via Facsimile and U.S. Mail

John E. Brown
Best Best & Krieger LLP
2855 E. Guasti Road
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Ontario CA, 91761

Re: Town of Apple Valley: Service Duplication

Dear Mr. Brown:

We are responding to your letter of September 9, 2014. I apologize for the delay, but I was out of the country when your letter was received by our office. We will try to address the points you raise succinctly and in order:

1. On behalf of my client, I want to be abundantly clear that Apple Valley Ranchos Water Company (AVR) is fully supportive of the development and use of recycled water in the Town of Apple Valley (Town). AVR desires to be the retailer of the recycled water. As the primary provider of retail water service in the Town and with its existing resources and experience, AVR is in a unique position to work constructively with the Town in making best use of this important resource and doing so in a manner that does not impose a burden to AVR customers. In Southern California, AVR's parent Park Water Company is a retailer of recycled water purchased from a wholesaler, Central Basin Municipal Water District (CBMWD), and has a contract with CBMWD for the operations and maintenance of CBMWD's recycled system.

Your letter of September 9th incorrectly states "Moreover, AVR now seeks to inappropriately invoke the California Service Duplication Statute in an attempt to prevent construction of the Subregional Plant." What AVR actually objected to in my letter of July 11, 2014 is Town "proposing a project to supply reclaimed water within Apple Valley Ranchos' service territory which would constitute a duplication of service." Nowhere in my letter was there any statement that AVR opposed the construction of the Sub-Regional Plant.

Just to be clear, we strongly object to your mischaracterization that AVR is trying to stop the construction of the Town's recycled water plant. AVR has no desire to stop the project or block recycled water projects. AVR does however object to the Town's plans to unlawfully serve recycled water in AVR's service area. In doing so the Town will deprive AVR of its right to be the retailer of the recycled water and harm our customers.

2. Your letter of September 9th incorrectly states that AVR "asserts that the Sub-Regional Plant will somehow harm AVR and the residents of the Town." What AVR actually asserted, in my letter of July 11, 2014, was that Town's unlawful refusal to allow AVR to be the retailer of the Recycled water produced from the Sub-Regional Plant would harm AVR and its customers. Your letter did not provide any explanation of how depriving AVR of its current customers for irrigation service, and leaving AVR with a system designed to serve—but unable to serve those customers—forcing AVR and its remaining customers to cover the resultant shortfall in fixed cost recovery, will not harm AVR and its customers.

3. You argue, for several pages, that the Service Duplication Law is unconstitutional. This argument has already been considered, and rejected, by California courts. *Cucamonga County Water Dist. v. Southwest Water Co.* (1971) 22 Cal. App. 3d 245; *San Gabriel Valley Water Co. v. City of Montebello* (1971) 84 Cal. App. 3d 757.

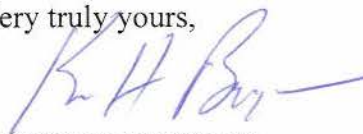
4. As stated in my letter of July 11, 2014, should the Town continue with its plan to deprive AVR of its right to serve recycled water, it would be violating Section 1501 of the Public Utilities Code and Section 13580.5(b) of the Water Code, as well as the Town's contract with AVR. That contract, the Agreement of Purchase and Sale of Jess Ranch Wastewater System and Assessment District No. 86-1 Water System Improvements 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..." The proposed project falls clearly within the terms of the contract the Town signed with AVR, and if the Town proceeds with its plan of depriving AVR the contractual and regulatory right to retail the recycled water, it would be breaching that contract. Interestingly, your letter fails to even mention either Section 13580.5(b) of the Water Code, or any of the Code Sections (13575-13583) which constitute the Water Recycling Act of 1991, or the Town's contract with AVR.

AVR has access to water and wastewater experts and to new technologies that could benefit the Town in its efforts to address the recycled water. Rather than expend our time and money on potential litigation, might it be better for all parties to honor the contracts and work together to arrive at a mutually beneficial solution to benefit all the citizens of Apple Valley.

John Brown
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We continue to welcome the opportunity to meet with the Town to identify a resolution to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "K H Brogan", with a horizontal line extending to the right.

KEVIN H. BROGAN
OF
HILL, FARRER & BURRILL LLP

CC: Piero Dallarda, Esq.

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