

**CALIFORNIA PUBLIC UTILITIES
COMMISSION
DIVISION OF WATER AND
AUDITS
Advice Letter Cover Sheet**

(Date Filed / Received Stamp by CPUC)

AL # 200-W	Date Mailed to Service List: June 2, 2015	Requested Effective Date: July 2, 2015	Requested Tier: <input type="checkbox"/> Tier 1 <input checked="" type="checkbox"/> Tier 2 <input type="checkbox"/> Tier 3
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Replacing AL#:	Authorization for Filing:	Compliance Filing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Rate	\$	N/A
			Impact	%	N/A

The public has 20 days from Date Mailed (above) to protest this advice letter. If you chose to protest or respond to the advice letter, send Protest and/or Correspondence within 20 days to:

Director
Division of Water and Audits
505 Van Ness Ave.
San Francisco, CA 94102

and if you have email capability, also email to: water_division@cpuc.ca.gov

Your protest also must be served on the Utility (see attached advice letter for more information and grounds for protest)

Company Name: Apple Valley Ranchos Water Company	CPUC Utility Number: WTA <u>U-346-W</u>
Address: 21760 Ottawa Road, P.O. Box 7005	WTB _____
City, State, Zip: Apple Valley, CA 92307-7005	WTC _____
	WTD _____
	SWR _____

	Contact Name:	Phone No.	Fax No.	Email Address:
Filer	Edward N. Jackson	562.923.0711	562.861.5902	ed.jackson@parkwater.com
Alternate	Ellen M. Zimbalist	562.923.0711	562.861.5902	ezimbalist@parkwater.com

Description: AVR submits this advice letter to revise and delete a condition on the Contract Deviation tariff. The tariffs affected are 819-W, and 820-W.

(FOR CPUC USE ONLY)

WTS Budget/Activity/Type _____/_____/_____	Process as: <input type="checkbox"/> Tier 1 <input type="checkbox"/> Tier 2 <input type="checkbox"/> Tier 3
Project Manager:	20th Day _____ 30th Day _____
Analyst:	Suspended on: _____
Due Date:	Extended on: _____
Completion Date:	Resolution No.: _____
	AL/Tariff Effective Date: _____

APPLE VALLEY RANCHOS WATER COMPANY™

Advice Letter No. 200 -W

June 2, 2015

TO THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Apple Valley Ranchos Water Company (AVR) (U 346 W) hereby transmits for filing revised copies of the following tariff schedules.

Calif. P.U.C. <u>Sheet No.</u>	<u>Title of Sheet</u>	Schedule <u>No.</u>	Canceling <u>Sheet No.</u>
819-W	List of Contracts and Deviations		812-W
820-W	Table of Contents		818-W

Summary

The purpose of this filing is to request that the California Public Utilities Commission (“Commission”) approve the termination of the tariff deviation agreement (“Agreement”) between Apple Valley Ranchos Water Company (“AVR”) and the Town of Apple Valley (“Town”) for water service to the James Woody Park (“Park”) recreational area. Upon approval of this advice letter, the Agreement would terminate, and AVR would continue to provide water service to the Park under Schedule No. 3-Non-Residential General Metered Service. This advice letter is submitted pursuant to Resolution W-4499, which approved the Agreement between Town and AVR. Section 3.(b) of the agreement states:

“If Ranchos, or the Town, determines in good faith that any or all of the Deviations are no longer in the best interests of Ranchos and/or its other ratepayers, or of the Town, because of a change in circumstances, Ranchos, or the Town may request that the Commission modify or eliminate any or all Deviations in this Agreement, including termination of this Agreement.” (emphasis added)

AVR began providing water service to the Town under the Agreement on May 13, 2004 after receiving a credible threat of bypass by the Town. The purpose of the Agreement was to remove the financial incentive for the Town to construct a new well and therefore bypass AVR’s system, and also to provide a benefit to AVR’s ratepayers in the form of the retention of revenues from the Town exceeding the incremental cost to AVR of providing service at the Park.

P.O. Box 7005
21760 Ottawa Road
Apple Valley, CA 92308
760.247.6484

However, circumstances have changed since this Tariff Deviation Agreement was entered into by AVR and approved by the Commission in 2004. For the reasons explained below, AVR does not believe that there currently exists a credible threat of bypass by the Town for irrigation service at James Woody Park. For this reason, among others, AVR has determined that the subsidy set forth by the Agreement is no longer warranted.

AVR is also concerned about providing discounts for irrigation service in the current drought emergency. On April 1, 2015, Governor Edmund Brown Jr. issued Executive Order (B-29-15) (EO) directing the California Public Utilities Commission (Commission) and the State Water Resources Control Board (Water Board) to: (1) impose restrictions to achieve a statewide 25% reduction in potable urban water usage, as compared with the amount used in 2013, through February 28, 2016. AVR's conservation target for reduction in use has been set at 28%. Pursuant to Resolution W-5034, ordering compliance with the requirements of the Water Board, AVR has filed for Commission approval to add to its tariffs Schedule 14.1, which contains the Staged Mandatory Reductions, Mandatory Restrictions, and Drought Surcharges associated with its Water Shortage Contingency Plan. Additionally, AVR requested Commission authorization to activate Stage 2 of the proposed Schedule 14.1, which will implement drought surcharges. Providing a discounted rate for water consumption when AVR has been ordered to impose restrictions to achieve a 28% reduction in use is inconsistent and does not provide the appropriate message to AVR's customers, especially when other customers are subject to drought surcharges. Especially under these circumstances, AVR does not believe that it is appropriate to continue with a deviation from tariff for water service at a discounted rate, and exemption from drought surcharges, at any specific location, to the Town or anyone else, unless there is a clear benefit to AVR's ratepayer from continuing to do so. In this case, AVR does not believe that benefit exists.

Background

Historically, AVR provided service to the Town for the irrigation of its Park, a recreational area covering approximately twenty-two acres located within the Town, at rates and under conditions prescribed by AVR Schedule No. 1, General Metered Service. At that time, the Town determined that it was not economical to continue to receive water service from AVR at the rates effective at that time for the irrigation of the Park. The Town therefore made plans to design and construct an irrigation well at the Park. The Town's plan to construct a well in close proximity to an existing AVR well led to discussions between the Town and AVR. As a result of these discussions, AVR and the Town developed a tariff deviation agreement to allow AVR to continue to provide service to the Town at the Park. Approval of the tariff deviation agreement, allowed the Town to cancel its plans to construct the irrigation well at the Park.

Under the terms of the tariff deviation agreement, AVR continued to provide general metered water service to the Town for the irrigation of the Park with the following deviations:

- a) The commodity rate began at \$0.45 per Ccf and was subject to future pro rata increases to Schedule No. 1.
- b) As a condition to service, the Town agreed to lease AVR the amount of water rights used to irrigate the Park at no charge to AVR.

AVR believed that providing service to the Town at the revised rates and under the specific conditions of the tariff deviation agreement was beneficial to AVR's customers. If the Town constructed its own well and bypassed the AVR water system, the portion of AVR's fixed costs currently recovered from the sales to the Park would need to be recovered from AVR's remaining customer base.

On September 23, 2004 the CPUC approved the Agreement for service to the Town for the irrigation of its Park in Resolution No. W-4499. Copies of Resolution No. W-4499 and the Agreement have been provided to Commission Staff.

However, circumstances has changed since this tariff Deviation Agreement was entered into by AVR and approved by the Commission.

The costs associated with drilling, constructing, and operating a new well have increased significantly since the Agreement was executed in 2004. By simply applying the industry standard escalation factors derived from the Construction Cost Index, AVR has determined that the up-front cost of constructing a well has increased by roughly 40% since 2004.¹ Additionally, there has been a major jump in the cost of drilling new wells in recent years due to the drought. Agricultural farmers in Central California have begun constructing their own wells to help offset the cost of the drought. As a result, this surge in demand has driven construction companies to increase their prices by another 40% for well drilling. After considering the Construction Cost Index escalation and the jump in well drilling for the drought, AVR estimates that the total cost of constructing a new irrigation well has increased by approximately 75% since 2004.

The operational costs of maintaining a well have also increased. For instance, electrical costs associated with pumping for a Southern California Edison customer have increased by over 350% since 2004. Furthermore, when the Agreement was drafted, the Mojave Water Agency was in the process of ramping down the Free Production Allowance, further limiting the percentage of Base Annual Production that can be pumped, due to the adjudication of the

¹ 2014 Engineering News Record Construction Cost Index History

Mojave Basin. At the time, the ramp-down had not yet lowered the Free Production Allowance to the level of 60% of Base Annual Production. Since then, the Mojave Water Basin has endured several dry years with the onset of the drought. Due to these factors, the water table is likely lower now than it was in 2004. This would result in increased costs for drilling a deeper well and increased O&M costs for pumping water from greater depths.

For all the above reasons, the costs for the Town to construct a well at James Woody Park have increased substantially since 2004 and would now likely cost \$1 million or more; operating costs for such a well have also increased substantially. Additionally, the Town should be reducing its consumption in response to the severe drought, which further diminishes any cost benefits of bypass to the Town.

The Town has also shown significant interest in pursuing condemnation of AVR's water system. Although no formal paperwork has been filed, the Town has made it clear that this is a serious consideration. On May 26, 2015 the Town Council passed a resolution to initiate an environmental impact report on a takeover of AVR's water system by the Town. AVR has been informed that in that same meeting, in closed session, the Town Council voted to make a formal offer for AVR. If the Town intends to acquire AVR, it would not make sense for the Town to spend \$1 million to construct a new well at the Park in order to bypass AVR's system, only to then purchase the entire system and render that new well unnecessary.

Over the last few years the Town has spent, and continues to spend, substantial amounts on legal and consulting expenses in connection with its efforts to acquire AVR. Since AVR has repeatedly told the Town that AVR, on a stand-alone basis, is not for sale, any acquisition would only be accomplished through a long and costly condemnation process, which will consume significantly more of the Town's available resources in condemnation expenses. Further, Town must reserve the ability to pay the fair market price for the system that would eventually be determined by the court, should the Town be successful in its effort.

In December of 2003, the Town established a credible threat of bypass for irrigation service to James Woody Park by informing AVR that the Town was preparing to award a contract for the design and engineering of a well at that location and that Community Development Block Grant Funds had been made available to fund the costs of construction of a new well at James Woody Park. However, at this time, AVR has no indication that grant funds are available for the Town to construct a new well.

Given all the circumstances described above, AVR does not find it credible that the Town will spend the additional money necessary to construct and operate a well at James Woody Park at this time and does not believe there is a credible threat of bypass.

In April of 2015, AVR sent a letter to the Town, stating its belief that the Town's actions constituted a change in circumstances and offering the Town the opportunity to discuss its tariff deviation agreements with AVR. AVR followed this letter with an email on April 22 stating its desire to meet with the Town to discuss the tariff deviation agreement for James Woody Park. AVR did not receive any response to this email.

Request

For the reasons described above, AVR does not believe there is a credible threat of bypass by the Town for service to the Park. It is not in the best interest for AVR's ratepayers to continue subsidizing the cost of serving water to the Park as described in the Agreement. AVR requests that the Agreement be terminated. Upon approval of this advice letter, AVR would terminate the Agreement and continue to provide water service to the Park under Schedule No. 3-Non-Residential General Metered Service.

Tier Designation

Pursuant to D.07-01-024, this advice letter is submitted with Tier 2 designation.

Requested Effective Date

Pursuant to General Order 96-B, and General Rule 7.3.1, AVR requests this filing become effective on July 2, 2015.

Notice and Service

In accordance with General Order 96-B, General Rules 4.3 and 7.2 and Water Industry Rule 4.1, a copy of this advice letter will be mailed or electronically transmitted on June 2, 2015 to competing and adjacent utilities and other utilities or interested parties having requested such notification.

Response or Protest

Anyone may respond to or protest this advice letter. A response supports the filing and may contain information that proves useful to the Commission in evaluating the advice letter. A protest objects to the advice letter in whole or in part and must set forth the specific grounds on which it is based. These grounds are:

- (1) The utility did not properly serve or give notice of the advice letter;
- (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data in the advice letter contain material error or omissions;

- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding; or
- (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
- (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory (provided that such a protest may not be made where it would require re-litigating a prior order of the Commission).

A protest shall provide citations or proofs where available to allow staff to properly consider the protest.

A response or protest must be made in writing or by electronic mail and must be received by the Water Division within 20 days of the date this advice letter is filed. The address for mailing or delivering a protest is:

Tariff Unit, Water Division, 3rd floor
California Public Utilities Commission,
505 Van Ness Avenue
San Francisco, CA 94102
Email: water_division@cpuc.ca.gov

On the same date the response or protest is submitted to the Water Division, the respondent or protestant shall send a copy by mail (or e-mail) to us, addressed to:

Edward N. Jackson, Representative
Director of Revenue Requirements
Park Water Company
9750 Washburn Road, P. O. Box 7002
Downey, CA 90241
Phone: (562) 923.0711, ext. 1212
Fax: (562) 861-5902
E-Mail: regulatoryaffairs@parkwater.com

Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform the Water Division within the 20-day protest period so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

If you have not received a reply to your protest within 10 business days, contact Edward Jackson at (562) 923-0711, ext. 1212.

Very truly yours,

APPLE VALLEY RANCHOS WATER COMPANY

/s/ Edward N. Jackson

EDWARD N. JACKSON

Representative

Director of Revenue Requirements

Park Water Company

P.O. Box 7002

Downey, CA 90241

regulatoryaffairs@parkwater.com

ENJ/emz

LIST OF CONTRACTS AND DEVIATIONS

(D)

Name & Location Of Customer	Type or Class Of Service	Execution & Expiration	Commission Authorization	Most Comparable Schedule No.	Regular Tariff Contract
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Advice No. AL 200-W

LEIGH K. JORDAN

Date Filed _____

Name

Decision No. _____

EXECUTIVE VICE PRESIDENT

Effective _____

Title

Resolution No. _____

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(continued)

(To be inserted by utility)

Issued By:

(To be inserted by Cal. P.U.C.)

Advice No. 200-W

LEIGH K. JORDAN

Date Filed

Decision No.

Name
 EXECUTIVE VICE PRESIDENT
 Title

Effective

Resolution No.

APPLE VALLEY RANCHOS WATER COMPANY

**ADVICE LETTER 200-W
DISTRIBUTION LIST**

Jim Hansen
Navajo Mutual Water Company
P. O. Box 392
Apple Valley, CA 92307
jhansenjr@email.com

Town of Apple Valley
Attention: Dennis Cron
14955 Dale Evans Parkway
Apple Valley, CA 92307
dcron@applevalley.org

Manuel Benitez
County of San Bernardino
Special Districts Department
Water and Sanitation Division
12402 Industrial Blvd.
Bldg. D, Ste. 6
Victorville, CA 92392

California Public Utilities Commission
Attention Ting-Pong Yuen
Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102
tpy@cpuc.ca.gov

Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission
175 West Fifth St., Second Floor
San Bernardino, CA 92415-0490
lafco@lafco.sbcounty.gov

Paeter Garcia, Esq.
Best Best & Krieger
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Riverside, CA 92502
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Perry Dahlstrom
District Manager
Mountain Desert
Golden State Water Company
13608 Hitt Road
Apple Valley, CA 92308
Perry.Dahlstrom@gswater.com

Ronald Moore
Senior Regulatory Analyst
Golden State Water Company
630 East Foothill Blvd
San Dimas, California 91773
rkmoore@gswater.com

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3288

July 2, 2015

**Dennis Cron, Assistant Town Manager
Town of Apple Valley
Apple Valley, CA 92307****RE: Disposition of Apple Valley Ranchos Water Company's Advice Letter 200-W**

Dear Mr. Cron:

Please be advised that the Division of Water and Audits, pursuant to General Order 96-B, Water Industry Rules 7.3.2(2) and 8.3, is rejecting the Town of Apple Valley's (Town) protest to Apple Valley Ranchos Water Company's (AVR) Advice Letter 200-W filed on June 2, 2015. AVR requests approval for termination of the Tariff Deviation Agreement (Agreement) between AVR and Town for water service to the James Woody Park recreational area (Advice Letter 200-W at p.1). The 2004 Agreement was approved by the Commission in Resolution W-4499.

The Agreement was approved as justified and the resulting rates were just and reasonable in light of the credible and imminent threat of bypass of AVR's water system by the Town's construction of its own well to serve James Woody Park. The Agreement is only beneficial to ratepayers if the bypass threat is credible. (Res. W-4499 at p. 3) The Division of Water and Audits concurs with AVR's statement that "[w]ithout the credible threat of bypass there is no basis for providing the Town a discounted rate which provides a lesser benefit to AVR's remaining ratepayers" compared to the Town paying the regular Commission-approved tariff rate. (AVR Reply at 7.)

The question posed by Advice Letter 200-W is whether circumstances have changed to call into question the credibility of the threat of bypass of AVR's water system. If yes, Advice Letter 200-W should be approved and the Town's protest rejected. If no, Advice Letter 200-W should be rejected and the Town's protest granted.

Advice Letter 200-W presents three reasons in support of the argument that the Town's bypass threat is no longer credible: 1) the costs of constructing and operating the Town's bypass well have increased substantially; 2) given the Town's pursuit in acquiring AVR and the financial implications thereof, the Town's financial capability to move forward with a bypass well is "very unlikely;" and 3) the Town's plan to acquire AVR would make a bypass well redundant, thereby stranding the bypass well's capital costs. (AVR Reply at p.2.)

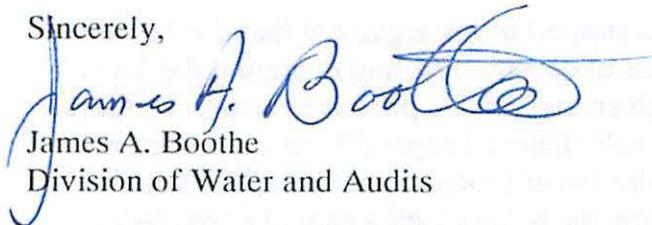
The Town makes four arguments for denial of Advice Letter 200-W. First, Advice Letter 200-W violates Res. W-4499. Second, the analysis and calculations materially omit ratepayer benefits associated with the Agreement. Third, the relief requested requires consideration in a formal hearing. Fourth, the relief requested is unjust, unreasonable and discriminatory.

The Agreement approved by the Commission in Res. W-4499 provides at Section 3(b) that if either party to the Agreement determines that any or all of the deviations specified in Section 1 of the Agreement are no longer in its interest because of a change in circumstances, either party may request that the Commission modify or eliminate any or all deviations in the Agreement. As such Advice Letter W-200 does not violate Res. W-4499. A disposition of Advice Letter 200-W does not require a consideration of the costs and benefits to ratepayers. A determination of the threshold question of whether, based on current conditions, a credible and eminent threat of bypass exists is sufficient to dispose of this filing. General Order 96-B, Water Industry Rule 8.3, provides for staff disposition (Tier 2 advice letter) of contract or other deviations.

The Town does not dispute nor refute the statements in Advice Letter 200-W in support of AVR's claim that the Town lacks a credible bypass threat for service to James Woody Park. On balance, based on its review of Advice Letter 200-W, the Town's protest, and AVR's reply, the Division of Water and Audits finds that circumstances have changed so that today there is an absence of a credible bypass threat for service to James Woody Park. Without a credible bypass threat, there are no ratepayer benefits to continuing with the Agreement. As such, Advice Letter 200-W is approved and the Town's protest is denied.

Finally, AVR shall segregate and separately account for the incremental revenues associated with service to James Woody Park under Schedule No. 3 – Non-Residential General Metered Service with the termination of the Agreement. The segregated incremental revenues shall be tracked in AVR's Commission-authorized Water Revenue Adjustment Mechanism until such time as this disposition is final and unappealable.

Sincerely,



James A. Boothe
Division of Water and Audits

Cc: Leigh Jordan, Apple Valley Ranchos Water Company

AVR Response to Town Protest to Advice Letter 200-W

Attachment 1

**APPLE VALLEY RANCHOS
WATER CO.**

P.O. BOX 7005
21760 OTTAWA ROAD
APPLE VALLEY, CA 92307
(760) 247-6484 • FAX (760) 247-1654



February 3, 2004

Dennis Cron
Public Works Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Dear Mr. Cron,

This letter will memorialize our conversation of yesterday during our videoconference with Jack Clarke.

It is the intent of Apple Valley Ranchos Water Company (Ranchos), subject to the approval of the California Public Utilities Commission (CPUC), to enter into a contract to provide service to the Town of Apple Valley (Town) for the irrigation of James Woody Park under rates or conditions deviating from Ranchos' tariffs. The general provisions of the contract would be as follows:

- 1) The rates for the service would consist of a monthly service charge equal to that set forth in Ranchos' Schedule No.1 – General Metered Service, the schedule under which service is currently provided to the park, and a commodity rate of \$0.45 per Ccf, subject to change on a percentage basis according to future changes approved by the CPUC for the Schedule No. 1 – General Metered Service commodity rate.
- 2) The condition for receipt of service at the above rate would be that the Town provides to Ranchos, at no charge (Ranchos retains responsibility to pay whatever pump fees, make-up assessments, etc. are charged by the Mojave Water Agency for pumping the water rights), sufficient water rights to provide the service to James Woody Park.

There are some details that will need to be worked out for the actual contract, especially, given the timing of water rights transfers, the mechanism to ensure the availability of sufficient water rights to serve the park. However, as we discussed, there seem to be workable solutions.

As we also discussed, Ranchos is not in a position, at this time to reach any similar arrangement in regard to service provided to all of the Town's parks. The imminent threat of bypass, which serves as the basis for our request to the CPUC to approve a deviation from tariff, does not apply on a global basis. However, Ranchos will commit to including the proposal of a special arrangement (either through contract or a special tariff applicable to irrigation service at Town's parks), at the request of the Town,

June 30, 2015

Rami Kahlon, Director
Division of Water and Audits
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: Response to June 23, 2015 Protest by the Town of Apple Valley to Apple Valley Ranchos Water Company's Advice Letter 200-W Requesting Termination of the Tariff Deviation Agreement for Provision of Irrigation Service to James Woody Park

Dear Mr. Kahlon:

This response is filed pursuant to the rules adopted by Decision 05-01-032, Third Interim Opinion Adopting Certain Requirements Regarding Advice Letter Filing, Service, Suspension, and Disposition. Apple Valley Ranchos Water Company (AVR) respectfully submits this reply to the "Town of Apple Valley Protest to Apple Valley Ranchos Water Company's Advice Letter 200-W Requesting Termination of the Tariff Deviation Agreement Authorized by Resolution No. W-4499" (Protest) filed by the Town of Apple Valley (Town) on June 23, 2015.

AVR notes that Advice Letter 200-W was filed with the Commission's Division of Water and Audits and served on the Town by electronic mail on June 2, 2015. In accordance with General Order 96-B, and as stated in the advice letter, a response or protest must be made in writing or by electronic mail and must be received by the Water Division within 20 days of the date the advice letter is filed. On the same date the response or protest is submitted to the Water Division, the respondent or protestant shall send a copy by mail (or e-mail) to AVR. The deadline for protests to this advice letter was June 22, 2015. Therefore Town's protest is not timely. Nonetheless, AVR provides this response.

P.O. Box 7005
21760 Ottawa Road
Apple Valley, CA 92308
760.247.6484

I. Introduction

In Advice Letter 200-W (Advice Letter) AVR requests approval to terminate a tariff deviation agreement (Agreement) for provision of irrigation service to the Town at James Woody Park which was authorized by Resolution W-4499, issued on September 23, 2004 in response to AVR's Advice Letter 126-W. The Town protests the Advice letter on the grounds that the Town claims that the relief requested would violate the Commission's Order; that AVR's purported cost-benefit analysis contains material errors and omissions as to costs to AVR and benefits to ratepayers; that the terms of the Agreement invoke a balancing of equities that is not amenable to advice letter treatment and must be considered in a GRC; and that the relief requested is a "punitive and retaliatory response to the Town" rendering it unjust, unreasonable and discriminatory. These claims are incorrect and unfounded. AVR's request is entirely consistent with the terms of the Agreement approved by the Commission in Resolution W-4499, which allows AVR to request termination of the Agreement based on changed circumstances. In its protest the Town makes a number of statements about the basis for the Agreement, the provisions of the Agreement with respect to water rights, the basis for AVR's current request, and benefits to AVR's ratepayers that are also incorrect and do not support the Town's protest.

The Agreement for irrigation service to the Town at James Woody Park (Park) is a "bypass avoidance" agreement, entered into and approved by the Commission because it provides a net benefit to ratepayers as compared to bypass. As noted in Resolution W-4499 (page3) "If the Town constructs its own well and bypasses the AVRW water system, the portion of AVRW's fixed costs recovered from the sales to the Park must be recovered from AVR's remaining customers." The resolution then provides a table of comparative savings to the Town and revenue loss to AVR and goes on to state "The above table shows that the tariff deviation Agreement scenario provides a greater benefit for the Town and a lesser loss for AVRW." The benefits to ratepayers in terms of fixed cost recovery provided by the discounted rate are less than the benefits resulting from payment by the Town of the regular tariff rate. Such agreements are approved, on the premise that some ratepayer benefit is better than none, in cases where there is a credible threat of bypass and the provision of a discounted rate that provides a subsidy to the customer threatening bypass is a means of removing that threat.

In the Advice Letter AVR proposes that the Agreement be terminated because circumstances have changed since the Agreement was signed in that: 1) the cost to the Town of constructing a well have increased substantially; 2) the Town has substantial current and future demands upon its available capital resources, resulting from its decision to pursue acquisition of AVR, which make its financial capability to undertake bypass very unlikely; and 3) the Town's plan to acquire AVR would render a new well redundant and therefore further reduces the likelihood of its construction. AVR concludes "Given all the circumstances described above,

AVR does not find it credible that the Town will spend the additional money necessary to construct and operate a well at James Woody Park at this time and does not believe there is a credible threat of bypass." (AL 200-W, page 4). Absent a credible and imminent threat of bypass, which is a basic prerequisite, there is not a reasonable basis for providing the Town a discounted rate which results in a lesser benefit to the rest of AVR's ratepayers.

The Town states vociferously and repeatedly that the requirement for a credible threat of bypass is "ginned-up", "ad hoc", and "recently concocted". The Town also repeatedly misstates the benefits of the Agreement to AVR's ratepayers, incorrectly claiming that they receive the benefit of an additional 10% of water rights at no cost. Both of these statements are incorrect. The Town then makes a number of arguments which also contain incorrect statements, unfounded and unsupported allegations, and mischaracterizations. None of these arguments changes the fact that circumstances have changed such that the Town does not meet the requirements established by Commission policy for a deviation from tariff at the Park and none of these arguments provide a basis for the Town's request that the Advice Letter be denied. ,

II. The Town's Protest Contains Repeated Incorrect Statements of Basic Facts.

1) The Town's Claim That Credible Threat of Bypass is a Newly-Invented Requirement by AVR is Incorrect; It is Based on Commission Policy and was Communicated to the Town Prior to the Agreement.

AVR proposes termination of the Agreement because there is not a credible threat of bypass by the Town for service to the Park. The Town describes the requirement for a credible threat of bypass is "ginned-up", "ad hoc", and "recently concocted" and "devoid of evidence in both the Agreement and the Resolution".

Resolution W-4499, while not using the precise term "credible threat of bypass", describes the act of Town in constructing a well and providing its own service to the Park as "bypassing" (page 3) and, prior to approving the Agreement, takes note that the Town had actually made plans to design and construct a well at the Park (page 2).

The requirement for a credible and imminent threat of bypass is clearly stated in the Commission's Decision 05-12-020, in Application 05-02-005 (for AVR's Test Year 2006 GRC) in which the Commission declined to continue a lower rate for the Jess Ranch Golf Course as a customer on AVR's gravity irrigation system:

"The Commission has a long-standing practice for energy utilities that allows a special contract rate for customers where there is an immediate threat of bypass, i.e., to leave the utility system. For the energy companies, a series of decisions granted special contract rates subject to certain limitations. In D.92-11-052 the Commission adopted an expedited review

process to consider approval for special deals that would allow the utility an opportunity to retain a customer who may otherwise depart the system and leave the utility with stranded facilities.

The following criteria were established:

1. Bypass should be prevented if it is uneconomic, that is, if the customer's cost to bypass is more than the marginal cost of utility service.
2. Where uneconomic bypass is threatened, it should be possible to offer utility service at a negotiated rate that still contributes to the utility's fixed costs.
3. The utility's marginal cost to serve a customer is the appropriate standard to differentiate economic from uneconomic by pass.
4. The use of LRMCs [long-run marginal cost] as floor rates should ensure that long-term contracts generate a positive contribution to the utility's fixed costs.

Apple Valley failed to meet its burden of proof for gravity-fed rates. It made no evidentiary showing to **substantiate a credible threat of bypass**. It also failed to substantiate that the existing rate of \$0. 575/Ccf is a reasonable antibypass rate (**assuming a credible threat exists**) that would meet any bypass avoidance criteria such as those in D.92-11-052 above.

Apple Valley may subsequently file a separate application if it can demonstrate that a **credible uneconomic bypass threat exists** and the bypass avoidance rate covers Apple Valley's marginal costs to serve the customer. The Commission has also spoken on the appropriate standard for review.

Apple Valley must show:

1. **Imminent customer bypass** (customer's sworn affidavit)
2. Bypass would be uneconomic (criterion 3 above)
3. The avoidance rate is reasonable (criteria 2 and 4 above)"
(D. 05-12-020, Pages 40-42, emphasis added)

The discussion in D.05-12-020 clearly shows that a credible imminent, immediate, threat of bypass is a prerequisite for the Commission to approve a tariff deviation which effectively allows for one customer to be subsidized by the remaining customers because it is the lesser of two evils compared to bypass.

Further, AVR made this requirement clear to the Town when AVR and the Town were initially discussing the Agreement. The Town initially requested that AVR consider a similar arrangement for discounted rates for service at all of the Town's parks. AVR informed the Town, "As we also discussed, Ranchos is not in a position, at this time to reach any similar arrangement in regard to service provided to all of the Town's parks. **The imminent threat of bypass, which serves as the basis for our request to the CPUC to approve a deviation from tariff**, does not apply on a global basis." (emphasis added) (see February 3, 2004 letter to Dennis Cron, Assistant Town Manager (then Public Works Manager), from Leigh Jordan, Executive VP of AVR, attached as Attachment 1.)

The Town's claims that the requirement of a credible threat of bypass is a newly concocted theory by AVR with no evidentiary support are incorrect.

2) **The Town's Description of the Water Rights Provided Under the Agreement and the Town's Claim of Benefit to AVR's Ratepayers from Additional Water Rights is Incorrect**

The Town states (page 3) "For example on[e] ratepayer benefit under the Agreement is that AVR receives 110 acre-feet of water for each 100 acre-feet it serves to the Town. However, AVR makes no effort to quantify the value of that free water." This statement is incorrect; under the Agreement the Town does not provide AVR 10% more water than is necessary to provide irrigation service to the Park for free – AVR pays the Town for any water beyond the amount necessary to serve the Park...

Section 2 of the Agreement states that the Town will lease to AVR "one-hundred ten percent (110%) of the average annual irrigation water use at James Woody Park for the prior ten (10) years, as determined by Ranchos' billings for water service ("Annual Lease Amount"), subject to the following conditions:" (emphasis added). Among those conditions are:

d. Any portion of the Annual Lease Amount used to irrigate James Woody Park shall be leased at no charge to Ranchos.

e. On October 1st of each year that this Agreement is in effect, or upon termination of this Agreement, Ranchos shall pay Town, at the prevailing price for leased water, as determined by the average of lease prices recorded by the Watermaster over the prior six months, for any portion of the Annual Lease Amount not used to irrigate James Woody Park; and

Therefore, the Annual Lease Amount set at 110% of estimated annual usage serves only as a mechanism to help ensure that the Town makes sufficient water rights available for provision of irrigation service to the Park. The only water rights that the Town provides at no cost are the water rights actually necessary to produce the water actually used to provide irrigation service to the Park. If the Annual Lease Amount exceeds the amount actually used to provide service to the Park, AVR pays the Town for the lease of those excess water rights. Town's claim that AVR ends up with an additional 10% of water rights provided at no cost by the Town, providing a benefit to AVR's ratepayers, is simply incorrect.

The provision of water rights necessary to provide service to the Park at no charge is a condition of the heavily –discounted commodity rate, a commodity rate that the Town notes in its Protest (Section B.4.) is about 1/3 the regular tariff rate. The provision of the water rights necessary to provide service was included in the cost-benefit analysis of the Agreement and is effectively an offset against the low commodity rate charged under the tariff deviation – absent that provision of water rights at no costs, the Town would have to pay a higher rate. The only

marginal benefit that AVR's ratepayers receive from the Town's provision of water rights is an assured source of supply. However, AVR has not had difficulty leasing water rights from others in recent years.

III. The Town's Arguments Also Contain Numerous Incorrect Statements and Do Not Support its Protest

In Section B of its Protest, the Town makes a number of allegation and arguments attempting to support its protest. These allegations and arguments are based on numerous incorrect statements and/or mischaracterizations and are without merit:

1) The Town asserts that AVR's request is in violation of Resolution W-4499.

The Town asserts that the termination of the Agreement would violate Resolution W-4499. This assertion is incorrect. The Agreement authorized by Resolution W-4499 specifically contemplated that circumstances might change, warranting termination of the Agreement. AVR is simply exercising its rights, under Section 3(b) of the Agreement authorized by resolution W-4499, to request a termination of the Agreement if AVR determines in good faith that any or all of the deviations are no longer in its best interest of AVR and/or its ratepayers because of a change in circumstances.

There has been a change in circumstances since the Agreement was entered into in 2004. As explained on page 4 of the Advice Letter, not only has the cost of constructing a well increased significantly since that time, but the Town is now actively pursuing acquisition of AVR's system. This decision by the Town has required, and will continue to require, a substantial commitment of the Town's financial resources both to pursue acquisition and, if ultimately successful, to purchase the system leaving the Town little if any financial capacity for constructing a well at the Park. Further, the Town's plan to acquire AVR's system would render the construction of an additional well at the Park redundant. Given those changed circumstances, AVR does not believe that there is a credible imminent threat of bypass which, as explained above, is a prerequisite for the Agreement.

The Town asserts that the Agreement remains justified and the resulting rates just and reasonable as much as it was in 2004. The Town offers no proof of this statement. The instructions for protesting an advice letter state "A protest shall provide citations or proofs where available to allow staff to properly consider the protest." The Town provides no such proof.

The Town argues that: the Agreement provides benefits of fixed cost recovery to in terms of that AVR would not receive if Town constructed its own well and that those benefits continue today; that Resolution W-4499 concluded that the Agreement provides a benefit to Town while allowing a much more significant recovery for AVR; and that the Resolution states that the lost

revenue under the Agreement was only .17% of AVR's total revenues. The Town ignores the fact that this "much more significant recovery" is only the case as compared to the scenario of bypass. Resolution W-4499 (page 3) shows that for irrigation service to the Park, recovery under the Agreement is only about half the amount that AVR and its ratepayers would recover if Town were paying the regular tariff rate. The Town ignores the fact that the benefit to ratepayers is premised on the credible imminent threat of bypass. Without the credible imminent threat of bypass there is no basis for providing the Town a discounted rate which provides a lesser benefit to AVR's remaining ratepayers.

2) The Town asserts that the Advice Letter should be denied because its analysis and calculations materially omit ratepayer benefits associated with the Agreement

The Town asserts that the Advice Letter should be denied because its analysis and calculations materially omit ratepayer benefits associated with the Agreement. The only benefit that the Town specifically points to is the alleged benefit of an additional 10% of free water that AVR receives from the Town. As explained in Section II.2. above, this claimed benefit does not exist.

The Town takes issue with what it describes as an "awkward cost benefit analysis" which "materially omit ratepayer benefits associated with the Agreement". The Town completely mischaracterizes AVR's presentation in the Advice Letter. AVR is not presenting a cost/benefit analysis. AVR is presenting a case for the absence of a credible and imminent threat of bypass by the Town. There is no reason to perform a cost/benefit analysis to determine the point of uneconomic bypass or the appropriate rate for bypass prevention if there is no credible threat of bypass.

The Town states that the Advice Letter is premised on the absence of a credible threat of bypass "due to current well construction costs" which Town argues does not constitute a change in circumstances. This is incorrect. The Town ignores the fact that, as explained above, AVR presents the increase in construction costs as just one contributory and exacerbating factor to the changed circumstances listed by AVR in the Advice Letter that result in the absence of a credible threat of bypass. .

3) The Town's claims that the Advice Letter should be denied because the relief requested requires a formal hearing have no basis.

The Town claims that terminating the Agreement would have a "dramatic financial impact on the Town and its residents" and that the Town must be provided with an opportunity to dispute the issue. This argument is completely inconsistent with the position took with respect to the impact on AVR's ratepayers in connection with the exact same revenue difference. There the Town argued that the impact was negligible, representing only a .17% loss in revenue. The Total Budget of the Town for fiscal year 2015-16, at over \$103 million, is roughly five times the total revenue requirement of AVR, so any amount that is negligible for AVR must be more

negligible for the Town. Yet somehow when it is the Town that must pay that same amount of revenue difference, the impact has become dramatic.

The Town also points to 1) its contention that the requirement for a credible threat of bypass is a recent invention by AVR; and 2) the explicit references to condemnation in the Advice Letter. The Town asserts that these bring AVR's motivation into question and require that the Town be allowed "the opportunity to cross-examine and otherwise bring into question AVR's motivation."

As explained above, the requirement for a credible threat of bypass is a long-standing Commission policy which the Town was informed of prior to entering into this Agreement.

The Town alleges (section B, page 2) that AVR's motivation to request termination of the Agreement is that "AVR is retaliating because Town expressed interest in condemning the AVR system." and describes it as "punitive" (page 1). The Town claims that AVR is discriminating against the Town because "it is exercising its legal right to examine potential condemnation of the system." (Section B.4.)

The Town's claim that references to the Town's intent to acquire AVR's system in the Advice Letter indicate that AVR is motivated by retaliation is unfounded. The Advice Letter refers to the Town's stated intent to acquire AVR and the potential of condemnation action because it is a changed circumstance that has a significant bearing on whether there is a credible and imminent threat of bypass. The fact is that the Town has done substantially more than "express interest" or "examine potential". As stated in the Advice Letter, the Town passed a resolution to make a formal offer to acquire AVR's system pursuant to Government Code section 7267.2 (a)(2), which is the initial step in the eminent domain process. AVR does not dispute the Town the exercise of its legal rights. However, the Town cannot pretend that the financial impacts and other consequences of its decision do not exist. As stated in the Advice Letter (page 4), the Town has chosen to embark on an acquisition effort that has and will consume its financial resources and, if successful, would render a new well at the Park redundant. This changed circumstance, exacerbated by the increased cost of construction, makes the threat of imminent bypass by the Town less than credible.

The Town does not dispute any of these assertions regarding the Town's financial capacity or willingness to construct a well under the current circumstances. Most tellingly, while the Town presents any manner of other arguments, focusing primarily on the position that no credible threat of bypass is required and that AVR's request is retaliatory, it never once asserts that there is a credible and imminent threat of bypass, that the Town actually stands ready to construct a well at the Park under the current circumstances.

The Town's claim that hearings are necessary to examine AVR's motivation is unfounded. AVR's motivation is to maximize the benefit to its ratepayers consistent with Commission policy. Hearings are not necessary because there are no disputed issues of fact; a credible and imminent threat of bypass is a prerequisite of a tariff deviation agreement as a

matter of established Commission policy and the Town does not dispute the absence of such a threat.

4) The Town claims that the relief requested in the Advice Letter is unjust, unreasonable and discriminatory.

In Section B.4 the Town makes a number of claims that claims that AVR's request is unjust, unreasonable and discriminatory, primarily based on the same arguments it raises in other portions of its protest which have already been discussed above.

The Town also claims that AVR's request to terminate the Agreement is unjust because "it completely ignores the fact that the Town chose to forgo accepting Community Development Block Grant Funds in reliance on water service pursuant to the Agreement." The Town makes this claim without any substantiation or support, again ignoring the instructions for protesting an advice letter which state "A protest shall provide citations or proofs where available to allow staff to properly consider the protest." If the Town had chosen to forgo accepting Community Development Block Grant (CDBG) Funds, surely the Town would have some record of that decision.

AVR's understanding, based on conversations between the Town and AVR personnel at the time the Agreement was being developed, was that the Town had the ability to re-purpose CDBG funds into other projects and would simply spend the grant money on other projects if the well was not constructed. The website of the US Department of Housing and Urban Development ([www.HUD Exchange.info](http://www.HUDExchange.info)) shows that the CDBG program provides annual grants based on an allocation formula and that use of the grants is fairly flexible within a number of eligible activities. The website also shows that the Town received CDBG awards consistently over the timeframe that the Agreement was developed and the time that the Town would otherwise have drilled a well at the Park; \$759,000 in 2003, \$747,000 in 2004, and \$711,384 in 2005. (See Attachment 2) This does not support the Town's contention that it chose to "forgo accepting CDBG funds".

AVR's request is not discriminatory against the Town – as illustrated above in the excerpt from D.05-12-020, it applies the same criteria applied in the case of another AVR customer which was denied a lower rate by the Commission.

In fact, allowing the Town to pay a different and lower rate than all other customers is, by definition, discriminatory in favor of the Town and is not allowed by Commission rules unless it is justified.

VI. Conclusion

For all of the reasons set forth above, AVR requests that the Division of Water and Audits dismiss and reject the recommendations contained in the Town's protest to Advice Letter

200-W. The Town's objections to Advice Letter 200-W stem from incorrect statements and mischaracterizations of AVR's request, the Agreement, Commission policy, and Resolution W-4499. The Town's request to continue receiving a discounted rate in the absence of meeting the established Commission criteria is not in the best interests of AVR's ratepayers.

If you have any questions regarding this response, please contact me.

Sincerely,

APPLE VALLEY RANCHOS WATER COMPANY

/s/ Leigh K. Jordan

LEIGH K. JORDAN

Executive Vice President

Apple Valley Ranchos Water Company

C/O Park Water Company

9750 Washburn Road

Downey, CA 90241

562.299.5107

leigh@parkwater.com

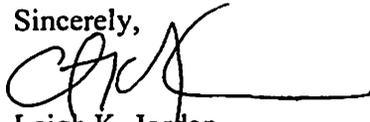
cc: James Boothe, DWA, james.boothe@cpuc.ca.gov
Ting Yuen, DRA-Water, ting-pong.yuen@cpuc.ca.gov
Dennis Cron, Town of Apple Valley, dcron@applevalley.org

~~AVR Response to Town Protest to Advice Letter 200-W~~

Attachment 2

commit to including the proposal of a special arrangement (either through contract or a special tariff applicable to irrigation service at Town's parks), at the request of the Town, in Ranchos next General Rate Increase application to the CPUC which is scheduled to be filed in January of 2005.

Sincerely,



Leigh K. Jordan
Executive Vice President



Town of Apple Valley

June 23, 2015

Tariff Unit, Water Division, 3rd Floor
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Town of Apple Valley Protest to Apple Valley Ranchos Water Company's Advice Letter No. 200-W Requesting Termination of the Tariff Deviation Agreement Authorized by Resolution No. W-4499

Dear Mr. Kahlon:

Pursuant to General Order 96-B, General Rule 7.4, the Town of Apple Valley (the "Town") respectfully submits this protest to Apple Valley Ranchos Water Company's ("AVR") Advice Letter No. 200-W requesting termination of the Tariff Deviation Agreement (the "Agreement") authorized by Resolution No. W-4499 (the "Resolution"). Today, the Town served a copy of this protest on AVR.

James Woody Park receives its water from AVR pursuant to the Agreement. It is the largest park in the Town and it plays host to the local Little League, as well as many other important community events. The Commission should deny Advice Letter No. 200-W and suspend consideration of terminating the Agreement until the next General Rate Case ("GRC"). AVR has not established in good faith and with reasonable certainty that the Agreement is no longer in ratepayers' best interest and, as such, AVR must continue to supply water to the Town for irrigation at the Park under the terms of the Agreement. The Commission should deny Advice Letter No. 200-W because: (1) terminating the Agreement would violate the Commission's Resolution finding the Agreement just and reasonable; (2) AVR's purported cost-benefit analysis contains material errors and omissions as to costs to AVR and benefits to ratepayers; (3) the terms of the Agreement necessarily invoke a balancing of equities that is not amenable to advice letter treatment and must be considered at the next GRC; and (4) the relief requested is a punitive and retaliatory response to the Town, rendering it unjust, unreasonable and discriminatory.

A. Background

In a patent abuse of power, AVR is attempting to use false pretenses to push through the termination of an agreement that the Commission found to unequivocally provide ratepayer benefits. Advice Letter No. 200-W states that in 2004 the parties entered into the Agreement to remove the financial incentive for the Town to construct a new well and that the Agreement must

be terminated because the threat of bypass is no longer credible due to the current cost of well construction. Even if removing the threat of bypass was the only reason for entering the Agreement –which it was not– AVR neglects to inform the Commission that the Town agreed to forego Community Development Block Grant Funds in reliance on the Agreement. AVR also fails to inform the Commission that the Water Division performed a 20-year cost-benefit analysis that concluded that the tariff deviation agreement scenario provides greater benefit for the Town and lesser loss for AVR than a bypass scenario – a fact that remains true today. Finally, AVR fails to advise the Commission that under the Agreement and in exchange for each 100 acre-feet of water AVR serves the Town at the Park, the Town provides AVR with 110 acre-feet of water pursuant to the Town’s existing water rights. All of these benefits continue to accrue to AVR’s ratepayers.

AVR’s motivation to terminate the Agreement is clear from Advice Letter No. 200-W: AVR is retaliating because the Town expressed interest in condemning the AVR system. AVR’s motivation clearly ignores the explicit good faith provisions included in the Agreement. As set forth below, AVR does not have a valid reason for terminating the Agreement and AVR’s ratepayers will be harmed if Advice Letter No. 200-W is granted.

B. Discussion

1. Advice Letter No. 200-W should be denied because the remedy it seeks violates Commission Resolution W-4499.

As evidenced in the Resolution, AVR contended that the Agreement provided benefits to both AVR and its ratepayers. Those benefits included fixed cost recovery that AVR would not receive if the Town constructed its own well. These benefits continue today, as they have since the Commission approved the Agreement. In fact, the Water Division independently quantified ratepayer benefits over a 20-year period, comparing savings to the Town and revenue loss to AVR under two scenarios: (1) allowing the Town to bypass AVR’s system; and (2) approving the Agreement. The Water Division concluded that the tariff deviation agreement scenario provides a benefit for the Town while allowing a much more significant revenue recovery for AVR. Furthermore, in analyzing the impacts to ratepayers, the Resolution concluded that lost revenue under the Agreement was negligible, representing a 0.17% loss in revenue. The Resolution describes the lost revenue as *de minimus*.

AVR offers no evidence to counter the ratepayer-benefit bases underpinning the Resolution. Indeed, it offers no analysis of the revenue lost pursuant to the agreement, as a percentage of its adopted revenue requirement. Instead, AVR relies on a ginned-up, *post hoc* reason for terminating the Agreement, namely, the absence of a credible threat to bypass the AVR system. This “purpose” of the Agreement is notably absent from both the Resolution and the Agreement, and it should be rejected. Advice Letter No. 200-W should be denied because today the Agreement remains “justified and the resulting rates are just and reasonable,” as much as it was in 2004 and to terminate the Agreement would violate the Resolution.

2. Advice Letter No. 200-W should be denied because its analysis and calculations materially omit ratepayer benefits associated with the Agreement.

AVR asserts that it entered the Agreement to avoid a credible threat of bypass, and it premises Advice Letter No. 200-W on the absence of the credible threat due to current well construction costs. The credible threat theory is recently concocted and devoid of evidence

supporting both the Agreement and the Resolution. Moreover, the Town strongly contests the notion that an increase in the cost of well construction and operation could ever constitute a “change in circumstances” justifying termination of the Agreement under any scenario. But even if the Commission were to consider AVR’s contention, Advice Letter No. 200-W should be denied because its analysis and calculations materially omit ratepayer benefits associated with the Agreement.

For example, on ratepayer benefit under the Agreement is that AVR receives 110 acre-feet of water for each 100 acre-feet it serves to the Town. However, AVR makes no effort to quantify the value of that free water. Instead, AVR relies on an awkward cost-benefit analysis where it asserts that the purported cost of constructing a well has gone up, so it should be granted the benefit of terminating the Agreement. But the purported costs of constructing and operating a well are not adequately supported by any meaningful record. As an example, AVR asserts that well construction and operation today would be more expensive because “the water table is likely lower now than it was in 2004.” AVR provides no comparison on water table levels. Advice Letter No. 200-W should be denied because its analysis and calculations materially omit ratepayer benefits associated with the Agreement.

3. Advice Letter No. 200-W should be denied because the relief requested requires consideration in a formal hearing.

Granting Advice Letter No. 200-W and terminating the Agreement would have a dramatic financial impact on the Town and its residents by more than tripling the cost of water service at James Woody Park. Addressing the termination through advice letter treatment does not provide the Town with an adequate opportunity to dispute the issue. Every contract invokes an implied covenant of good faith and fair dealing, and the Agreement goes one step further by incorporating express good faith obligations relative to the Agreement’s termination provision. The absence of credible threat of bypass language in the Resolution and Agreement, coupled with Advice Letter No. 200-W’s explicit references to the Town’s consideration of condemnation, bring into question AVR’s motivation for terminating the Agreement. The Town must be given the opportunity to investigate, cross-examine and otherwise bring into question AVR’s motivation. The Commission also has an interest in knowing whether an entity it regulates is acting in good faith with respect to its ratepayers. Advice Letter 200-W should be denied and if AVR wishes to terminate the Agreement, it should be required to request termination in a General Rate Case.

4. Advice Letter No. 200-W should be denied because the relief requested is unjust, unreasonable and discriminatory.

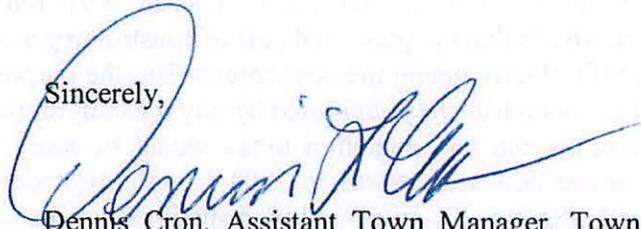
As referenced above, the plain language of Advice Letter No. 200-W suggests that AVR is discriminating against the Town because it is exercising its legal right to examine potential condemnation of the system. And despite a host of ratepayer benefits associated with the Agreement, AVR is asking the Commission to unreasonably triple the Town’s rates for service at James Woody Park, even though the revenue gained from the rate increase would be *de minimus*, in light of AVR’s revenue requirement. What is perhaps most unjust about the request is that it completely ignores the fact that the Town chose to forego accepting Community Development Block Grant Funds in reliance on water service pursuant to the Agreement. AVR is ignoring its good faith obligations under the Agreement. Termination of the Agreement would be unjust, unreasonable and discriminatory, and if the Commission considers granting Advice Letter No.

200-W, then it should condition approval on the Town first securing grants to pay for the construction of a new well at James Woody Park.

C. Conclusion

For the above-stated reasons, the Town respectfully requests the Commission deny Advice Letter No. 200-W. The Town of Apple Valley thanks you in advance for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dennis Cron", written over a large, loopy blue oval.

Dennis Cron, Assistant Town Manager, Town of Apple Valley

cc Mayor and Town Council
Town Manager