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Lori Lamson, Assistant Town Manager  
Town of Apple Valley  
14955 Dale Evans Parkway  
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Re: Initial Study - Apple Valley Ranchos Water System Acquisition Project

Comments:

1. **Inadequate “Project” Description:**

Deficient “Project Description” – In General

“A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.” (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

“The initial study must include a description of the project.” (*City of Redlands, supra*, 96 Cal.App.4th at pp. 405–406).

An accurate and complete project description is necessary to fully evaluate the project’s potential environmental effects (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597).

The failure of the Initial Study to provide an accurate, complete, and coherent description of the “Project” is a fundamental deficiency, which permeates the entire document. The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the Town or by other agencies in response to or associated with the proposal, or to address the cumulative impacts of this proposed Project in light of other related actions and plans, as acknowledged in the Town’s own press release dated July 1, 2015, and attached hereto, related to the commonly referred to “Yermo” water system, which is an integral part of the AVR system.

The Town, by their own admissions through CPUC filings, is in fact attempting to dismantle in piecemeal fashion an existing utility and gut it of all viable resources and support function abilities by segregating a defenseless segment of the population. The Town seeks to, after their other failed attempts to defeat, over-ride past CPUC and San Bernardino County Superior Court Conservatorship decisions.

The Initial Study, in no less than six (6) times (Pages 3, 5, 15, 21, 28 and 34), makes the definitive statement on their lack of any “plan” for the operations, but states with indecision their intent to operate, or a another private or public entity to operate, the system intended for acquisition, and is mere speculation as to the operation.

CEQA which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR 14 CCR 15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq.*)

It is anticipated that the proposed Project will have substantial impacts on other communities served by AVR and it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project.

The distinct jurisdictional, legal, administrative, due process and procedural issues posed, as well as its semantic ambiguities, add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the Initial Study.

“The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not.” (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves “consultation directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project” in hopes of “solving many potential problems that would arise in more serious forms later in the review process.” (Guidelines, §15083.)”

“The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR “is required to make an in-depth discussion of those alternatives identified as at least potentially feasible.” (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)” (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

“A lead agency must give reasons for rejecting an alternative as ‘infeasible’ during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy, supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)” (*South County*, p. 328.)”

The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the Town’s proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to

erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. It is important to consider the impacts of the proposed Project on the important missions, facilities, and **operations**

For the multiple reasons summarized above, and noted below, it is essential that the Notice of Preparation and Initial Study be withdrawn and further revised and corrected in order to properly fulfill the Town's role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project to be more accurate, complete, and to be CEQA compliant.

2. Further, a Recirculated Initial Study should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised Notice of Preparation and Initial Study, unlike the existing circulation that began on June 26, 2015, but was not noticed to the public until July 3, 2015, and prohibited public access, due to the holiday weekend and closure of Town Hall, to the Initial Study until the morning of July 7, 2015, the day of the Scoping Meeting. Which goes directly to the issue of the Town's lack of transparency, accountability, customer service, reliability and responsiveness to Apple Valley citizens.

**It is therefore respectfully urged that the Initial Study (and the related Notice of Participation), be recalled, corrected, and be recirculated for public review and comment as corrected before the Town proceeds with any further action in connection with the proposed Project.**

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed project and its alternatives." (Guidelines, § 15125, subd. (a).) That description should place "special emphasis on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. ©.)

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, *emph. in original.*). The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R. §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and **operation** must be considered in the initial study of the project." Since the Project also contemplates the possibility of future discretionary actions and measures which may in themselves have additional, not-yet-identified

environmental impacts, the Initial Study should call for the scope of the environmental assessment to be expanded to include such issues.

I hereby request to be included on the list of interested persons to be notified of, and receive the recirculated Notice of Preparation and Initial Study, as well as all future notices and correspondence related to this project.

Leane Lee