

November 2, 2015

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

Dear Ms. Lamson:

This letter is written on behalf of Apple Valley Ranchos Water Company ("AVRWC") and responds to the call for comments on the Draft Environmental Impact Report ("DEIR") for the Town of Apple Valley's "Apple Valley Ranchos Water System Acquisition Project" ("Project"). The Town of Apple Valley ("Town") proposes to take AVRWC's system by eminent domain and operate the system itself supposedly without changes in the way AVRWC operates the system.

As described below, the DEIR is inadequate for a number of reasons, including (1) the Project Description fails to identify the whole of the Project with sufficient clarity and specificity, and omits so many important and relevant factors, that a meaningful analysis of any potential significant environmental impacts cannot be made; (2) the discussion of Alternatives is inadequate since the Project Description is unstable, and there is no evidence the Alternatives proposed are even feasible; (3) the Town has impermissibly acted as advocate for its own Project in advance of the CEQA analysis and cannot now continue as an unbiased Lead Agency; (4) various substantive analyses, including sections on hydrology and water quality, transportation, traffic and public safety, stormwater conveyance, and growth inducing impacts, omit important information critical to the analysis.

At this stage, the Project is inadequately defined and the environmental analysis is premature such that the DEIR violates CEQA's informational mandates and must be revised and recirculated. (*Laurel Heights Improvement Association v. Regents of the University of California* 6 Cal.4th 1112, 1130 (1993); Pub. Res. C. section 21092.1; 14 Cal. Code Regs. Section 15088.5.)

- A. The DEIR's project description has been improperly manipulated to limit the scope of environmental review by artificially narrowing the project description, thus minimizing the potential project impacts and undercutting public review.

An EIR is "an informational document," and "the purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized, and to indicate the alternatives to such a project." (*Laurel Heights Improvement Assn. v. Regents of the University of California* 47 Cal.App.3d 376, 390 (1988); Public Resources Code Section 21061.)

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* 71 Cal. App.3d 185, 199 (1977).) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Id.* at p. 198)

Absent a project description that describes the entire project, the public and decision makers will not be adequately informed about the full scope and magnitude of the Project. (*City of Santee v. County of San Diego* 214 Cal.App.3d 1438, 1454 (1989) ("[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives...").)

Importantly, a project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. (*Laurel Heights Improvement Assn. v. Regents of the University of California (Laurel Heights I)* 47 Cal.3d 376 (1988).) Responsibility for a project cannot be avoided by limiting the title or description of the project. (*Rural Land Owners Association v. Lodi City Council* 143 Cal.App.3d 1013, 1025 (1983).) Moreover, a single project may not be divided into smaller individual projects in order to avoid the lead agency's responsibility to consider the environmental impacts of the project as a whole. This is impermissible project segmenting or piecemealing. (*Orinda Assn. v. Board of Supervisors* 182 Cal.App.3d 1145, 1171 (1986).)

According to the DEIR, “the acquisition *and subsequent operation* of this water supply system by the Town represents the proposed Project.” (DEIR, p. 1; emphasis added.) Although the project is denominated the “Apple Valley Ranchos Water System Acquisition Project,” the “acquisition” portion of the Project merely represents a legal change in ownership with little or no environmental implications. The essence of the Project, from a CEQA standpoint, is the “subsequent operation,” but the DEIR contains so little information about this aspect of the Project, and the information that has been provided has been intentionally manipulated to minimize potential Project impacts, as to make the DEIR of little value in assessing the Project’s potential impacts.

1. The Initial Study Project Description is uncertain and, therefore, unstable.

According to the June 24, 2015, “Project Description” in the Town’s “Notice of Preparation of an Environmental Impact Report,” the proposed Project includes “the Town’s subsequent operation of the AVR System, either internally by the Town or through a qualified private contractor or public agency.” As of that date, the Project included possible operation by (1) the Town, or (2) some unspecified private contractor, or (3) some unspecified public agency other than the Town. As of that date, the Project Description was so indefinite and vague as to make any assessment of the environmental impacts of the “subsequent operation” meaningless. Potential environmental impacts, as compared with current operations, could vary greatly depending on whether the Town, a private contractor or another public agency would be the operator. And the degree of specificity required by CEQA would not be achieved until a study was conducted recommending an Operations Plan specifying just how the post-acquisition water system would be operated so that the impacts of that operation could be identified and evaluated.

Instead of performing an operations study or developing and adopting an Operational Plan to provide the specificity to allow for a meaningful analysis, the Town instead impermissibly narrowed the Project Description to avoid systematic analysis altogether. On July 16, 2015, three weeks after issuing the original Notice of Preparation, the Town issued an “Amended Notice of Preparation of An Environmental Impact Report.” Instead of describing operations to be provided by the Town or a private contractor or a public agency, as was the case in the June 24 NOP, the Amended Notice states only: “The proposed Project includes the Town’s subsequent operation of the AVR System, although alternatives to the Town’s direct operation of the system would be evaluated in the EIR...The Town would operate and maintain the system out of AVR’s existing operations and maintenance facility.”

2. The DEIR Project Description is uncertain and, therefore, unstable.

The Amended NOP Project Description was then carried over from the Amended NOP to the DEIR itself:

“For the purpose of the technical analyses in this EIR, it is proposed that O&M activities would be managed from the same location from which they are currently performed: 21760 Ottawa Road. Additionally, it is proposed that AVR System infrastructure, including supply pipelines and storage tanks, would remain at existing locations within the existing AVR System service area. (Figure 2-3 and Figure 2-4) Finally, it is proposed that the Town of Apple Valley would operate the AVR System and exercise the associated water rights in the same manner as Apple Valley Ranchos Water Company has done. Other potential operational scenarios for the system, including other public agencies and private contractors, are considered in Section 6.0, Alternatives, of this document as required under CEQA.” (DEIR, p. 35; emphasis added.)

Beginning the Project Description with the caveat, *“For the purpose of the technical analyses in this EIR it is proposed,”* demonstrates that the selection of the Town as the sole operator was the result of an effort to minimize impacts in the EIR – not the result of any operational study –and may not represent the most likely operational scenario once the EIR is certified. “Proposing” the Town as operator for purposes of the “technical analyses” and the assertion that, after acquisition, the Town would operate the system “in the same manner” as AVRWC, was merely the path of least resistance to getting past the EIR requirement with the least amount of analysis required – a strategy that does not comply with CEQA’s informational goals.

3. The Town has no Operations Plan.

Rather than studying the operation issues at the outset and making them a part of the Project Description, the Town impermissibly narrowed the Project Description to avoid that analysis and deferred any decision about operations to some future date. Instead of deciding on a finite project, and deciding whether a private operator or other public operator would be selected, so that the Project Description would be finite and the impacts of each of those possibilities could be evaluated, the Town moved any discussion of operators– other than the Town– to the Alternatives Section in the DEIR where the

impacts analysis is much less rigorous. Instead of creating an Operations Plan, or at least a specific proposal after an operational study, so that any environmental impacts could be meaningfully assessed, the Town concluded that (for now) it would “propose” to operate the system itself in exactly the same way AVRWC privately operates the system so that there would be no impacts. This narrowing strategy deserves special scrutiny since, under the proposed project, the Town, which is the Lead Agency in charge of both drafting and approving the EIR, can “propose” itself as the operator for purposes of the “technical analysis” and then, once the EIR is certified and the project adopted, the Town can administratively change operators and avoid the environmental analysis of that change altogether.

The DEIR’s factual description of the Town’s “subsequent operation,” and particularly what it omits, exemplifies the Town’s lack of knowledge of both the existing water system and what it would require were the Town to acquire it without having an Operations Plan prior to circulating the draft. Operational problems can lead to system reliability problems which can have significant environmental consequences. But by asserting that the Town would operate the system “in the same manner” as AVRWC, the Town attempts to avoid that analysis. Examples of operational aspects that are not considered in DEIR include:

- Many of AVRWC’s current functions are not handled in Apple Valley but are performed by Park Water Company at its Downey location. These include all billing services, accounting services, engineering services, regulatory compliance reporting requirements, and water quality services. The DEIR is silent on how or where these operations would be handled if the Town were to operate the system.
- The DEIR is silent on whether Town staff and other Town Departments will be called upon to assist in running the water system. Will the Town be able to operate the system without hiring additional personnel? If additional staff is required, in what facility will they work? Will the Town need to secure additional facilities? Are the Town Departments equipped to handle the water system, both from a personnel and expertise standpoint? Will using Town Departments place a strain on other essential Town services? None of these is discussed in the DEIR.
- In the DEIR, the State Water Resources Control Board states that the Town would need to apply for and obtain a public water system permit, which requires the applicant to demonstrate its capability to manage the system. While the DEIR acknowledges that the Town would have to demonstrate “adequate technical, managerial and financial capability to assure the delivery

of pure, wholesome and potable drinking water,” the Town’s ability to make that showing is pure speculation in the absence of an Operations Plan.

- Although the DEIR states that the Town will continue operation of the existing O&M Facility during regular business hours (M-F 7:30-5:30)[DEIR p. 35], existing Town departments at the Town office currently work nine out of ten working days and are closed every other Friday. If Town staff at the Town office is used to perform functions currently done at Park Water, the DEIR is silent on whether they would work only nine out of ten days and how this would impact customer service (the improvement of which is one of the stated goals of the Project).
- The DEIR evidences the Town’s lack of understanding of the components of a water utility based on its abbreviated list of AVRWC assets (pages 1 and 34) or the types of personnel required to operate a water utility (Table 2-5, page 33). Many categories of the AVRWC plant are not identified, such as hydrants, meters, valves, pressure reduction stations, pumping structures, SCADA equipment, communications equipment and computer equipment. On staffing, the DEIR lists “plumbing system staff” which do not exist and only lists one employee as “water treatment staff” without regard to the number of employees holding Water Treatment Operator certifications or Water Distribution Operator certifications. The DEIR does not address what the appropriate or necessary number or grade of certifications is required for staffing a water utility the size of AVRWC. On p. 35, the DEIR uses different staffing numbers for AVRWC. -- first 39, then 48.
- The Town does not have experience operating a water system. According to the Town’s 2014 “Financial Feasibility Analysis for the Acquisition of the Apple Valley Ranchos Water System:”

“RISK FACTORS OF THE AVR ACQUISITION

There are a wide range of uncertainties and risk factors associated with the potential AVR acquisition. The Town would begin a new relatively complicated enterprise involving employees and a large customer base, but the Town has no actual experience operating a water system. While the Town currently owns a wastewater enterprise, acquisition of the water system would add numerous new responsibilities

including supplying water, maintaining facilities, and billing and accounting for customers. Future operating costs may be higher than anticipated under this analysis because of the Town's lack of experience in running the system. Also, operations costs could increase due to rising electricity, chemical, or commodity costs over which the Town has no control." (Financial Feasibility Analysis, p. 41)

What water losses or impacts on the reliability of the system should be expected as the Town moves up the learning curve? Will hiring new staff be conducted? Will current AVRWC staff be recruited to work directly for the Town? Will the Town need to hire consultants for training inexperienced staff? Could operating cost issues affect Town delivery of other services such as police or fire, as well as water quality in the system? These issues should be evaluated.

- In addition to having no Operations Plan, the Town provides no infrastructure replacement plan. The Town does not address what it would cost to acquire the system and, therefore, does not know what cash-flow it would have available to replace aging infrastructure, and it will have no reserves for that purpose. (Financial Feasibility Analysis, p. 34)
- The DEIR claims that increased customer service and reliability are project objectives but does not address how these would be achieved. Ordinarily such improvements would require more attention throughout the system, whether in the form of added maintenance, more complaint responsiveness, more long range planning, more personnel, better training for new or existing personnel, any and all of which have increased physical and/or operating cost implications. These must be discussed, understood and disclosed.
- The DEIR asserts that everything will remain unchanged under Town ownership without explaining how the Town will accomplish that. The Town is not proposing any changes to operations, but the DEIR shows it is not aware of how AVRWC operates. Rate increases for the Town operated sewer system have outpaced those by AVRWC, and the Town has diverted enterprise funds from the sewer system to the Town's general fund, indicating poor management.

4. The Project Description ignores severance of the Yermo System.

AVRWC's service area includes both services in the Bellview Heights area of Victorville and the Yermo system near Barstow. The map of AVRWC's service area in Figure 2.1 of the DEIR does not show these service areas outside the Town's jurisdictional boundaries and is not accurate. This is in direct contradiction of the letter included in the DEIR from LAFCO in which LAFCO specifically asked for a new map including Bellview and Yermo.

With respect to Bellview, it is contradictory that that the Town has chosen to include the Bellview system (in the City of Victorville) and not Yermo in the acquisition, even though both systems are outside the Town's political subdivision.

The DEIR acknowledges that AVRWC's service area includes a water system and service in both the Town and the Yermo Water District near Barstow:

"Although Park Water Company/Apple Valley Ranchos Water Company recently acquired the Yermo Water District and its facilities, the proposed project does not include acquisition of the Yermo Water System, which is located east of the City of Barstow and is currently undergoing a transfer from its current owner to Apple Valley Ranchos Water Company. This is because the Yermo Water District facilities are located approximately 45 miles from the Town; Yermo Water District does not provide any water services to the Town's residents, businesses, or other uses; and the Yermo Water District's facilities do not provide any other benefit to the Town's residents. Furthermore, the Yermo system is an entirely separate and distinct system that is not integrated into the AVR System."

Since Yermo is a part of AVRWC, it is not enough for the DEIR to indicate that it will not be acquiring the Yermo portion. Severance of the Yermo system from AVRWC must be made part of the Project Description so that the DEIR will assess the potential environmental implications that may flow from the severance. For example, AVRWC personnel work on the Yermo system from the AVRWC facility in the Town, and if they cannot do so, AVRWC will have to establish a facility in the Yermo service area - a base of operations with a yard, staging area, materials inventory for repairs, etc. The impacts of constructing that facility, if necessary, and operating it must be disclosed.

Severance of Yermo must be part of the Project Description, and the logical and foreseeable environmental consequences of that severance must be evaluated in the DEIR.

5. The Project Description fails to disclose and discuss changes in the regulatory structure that would result from the proposed acquisition.

The Project Description should also recognize that the acquisition of AVRWC's system in the Town will result in a shift from a public utility regulated by the California Public Utilities Commission ("CPUC"), to a municipal utility without CPUC oversight. Under a municipal structure, property owners would also be permitted to invoke the Proposition 218 process to stop rate increases, which may affect the Town's ability to maintain the system's infrastructure and thus a reliable system. In addition, AVRWC is subject to certain customer service response requirements and other service requirements under CPUC General Order 103-A; a municipal utility is not subject to that order. General Order 103-A also requires AVRWC to have a Summary Operations and Maintenance Plan which is updated every 5 years. As noted above, the Town has not prepared an Operational Plan and the potential environmental impacts of the Town's proposed operation of AVRWC's system cannot be evaluated without one.

The CPUC also regulates the rate setting process and rate increases for the benefit of customers of AVRWC in ways a municipal utility does not, which, again, raises reliability questions. Under private ownership, shareholders generally want a return on their investment which provides incentive for the company to achieve savings in between rate cases but which the CPUC requires to be passed on to ratepayers in each succeeding rate case. This promotes efficiency and incentive for the company to address replacement of aging infrastructure so that service quality and reliability are maintained.

The CPUC process provides public meetings at which customers can express their desires for lower rates, and the Office of Ratepayer Advocates represents customers in the CPUC proceedings. Its statutory mission is "to obtain the lowest possible rate for service consistent with reliable and safe service levels." The CPUC, through an adversarial process that includes testimony, hearings and briefs, weighs all evidence and points of view and makes a rate-setting determination based on the expenses and capital projects reasonably necessary for the long term best interests of customers, while maintaining safe and reliable service. None of those protections exist with a municipal system.

The CPUC forward-looking rate case process requires advanced planning of investment in infrastructure as evidenced by AVRWC's annual capital budgets and 5-year capital budgets. The DEIR states that the project would allow the Town to pursue grant funding, but does not disclose the fact that private companies are also eligible for grant funding and that the CPUC does allow private companies to pursue grant projects; a

private company just cannot include those projects in its rate base, which is an advantage to the rate payers. AVRWC, and its parent Park Water Company, have pursued grant funding and Park has received \$2.5 million in grant funding.

Under municipal ownership, the Town council is subject to the political process and may tend to favor lower rates over spending the money necessary to keep the system maintained and the infrastructure timely replaced. Several comments in the DEIR suggest that the Town has no intention of investing capital in the water system in the foreseeable future. And, as noted above, even if the Town council acts responsibly, its decision making is subject to second guessing of the public under the Proposition 218 process. To the extent infrastructure reliability and maintenance may reasonably be negatively affected by the proposed project, resulting in potential significant environmental impacts, these issues should be disclosed and discussed in the DEIR.

6. The Project Description must describe the reasonably foreseeable future construction of a new O&M facility in Apple Valley and planned system upgrades.

The DEIR states:

“The existing buildings at the site would be maintained at their current locations and continue to house their current O&M functions...Given that the existing O&M facility has sufficient existing space and facilities to support current O&M staff and activities, the proposed Project would not involve construction of new facilities, as identified in the Initial Study prepared for the proposed Project and included in Appendix A.” (DEIR pp. 35-36)

As the Town is well aware from its participation in the latest rate case, the existing AVRWC Operation and Maintenance building in the Town is too small for existing operations, does not meet current seismic codes or comply with ADA requirements, and is planned to be replaced. This new construction needs to be addressed in the DEIR as the change in ownership will trigger requirements to comply with current building codes.

In addition, the DEIR states that “the proposed Project does not include any expansion in the delivery capacity of the AVR System nor does it contemplate any physical upgrades to any of the AVR System facilities.” (DEIR p. 50) AVRWC has reasonably foreseeable system improvements planned over the next 5 years to upgrade the system as part of its capital plan. These improvements should be evaluated in the DEIR or, if the

Town does not plan to do any of these projects, the potential, significant environmental consequences of that decision, including degradation of water quality, reduced system pressure, reduced ability to provide fire flows and public fire protection, increases in lost water, and reductions in pump efficiency, should be evaluated and disclosed.

AVRWC also has a Main Replacement Program that was developed by an outside consultant Asset Management Study on Mains (with Kanew analysis) and is designed to avoid catastrophic failures of aging mains and to achieve the AWWA standards for leak rates. Again, this should have been disclosed as a reasonably foreseeable future project, and the lack of any reference in the DEIR to the Main Replacement Program causes serious environmental concerns. By not replacing and upgrading mains that have reached or exceeded the end of their useful life, there will be environmental impacts that are not included or discussed in the EIR.

The Town, in AVRWC's current CPUC rate case proceeding, advocated for substantial reduction in the level of main replacements, a level that would result in a replacement period of about 200 years and would increase leak rates and the potential for pipe failures. The Town maintained this advocacy even after review of additional testimony resulted in AVRWC and ORA reaching a settlement on the issues that included a rate of replacement substantially closer to that initially recommended by AVRWC. The Town did not address any of the engineering studies that were the basis of the main replacement program and introduced no independent analysis, but simply argued that mains should not be replaced because rates were too high. The Town's position on main replacements, were the Project to be approved, would result in a significant "change in operation" compared to the reasonably foreseeable project planning by AVRWC.

In its Application for Rehearing on CPUC Resolution W-4998, the Town also argued that the replacement and upgrade of system infrastructure that has exceeded its useful life is part of the "whole of the action" and that not including the impact of those replacements and upgrades of infrastructure exceeding its useful life in the CEQA review constitutes improper piecemealing of the project. By its own arguments to the CPUC, the absence of any analysis in the DEIR of the impacts of the office building project, the main replacement program, and other projects that are necessary to upkeep AVRWC's system, constitutes improper piecemealing of the Town's proposed "Project."

7. The DEIR has numerous deficiencies and needs to be revised and expanded; the analysis sections should be revised based on an updated Project Description and the DEIR recirculated.

The Project Description in the DEIR is anything but an accurate, stable and finite project description as required for an informative and legally sufficient EIR. (*County*

of *Inyo v. City of Los Angeles* 71 Cal. App.3d 185, 199 (1977).) It is, in fact, a curtailed, enigmatic and unstable project description. *Id.* at 198. Instead of studying the operations issue, the Town has impermissibly narrowed the description (system to be operated “in the same manner” as the current private operator) so there would be no impacts; and, true to form, the DEIR finds no significant environmental impacts.

The Town is itself unsure how it will operate the system upon acquisition. The Town does not know the scope of the project or all its facets since it has not studied how the system will be operated or whether it has the expertise to do so. These issues have not been studied and do have environmental implications. The DEIR is therefore premature and merely a sham to get beyond the environmental review stage and deal with the operational aspects later. This is impermissible project segmenting where a single project is divided into smaller individual projects to avoid consideration of environmental impacts of the project as a whole. (*Orinda Assn. v. Board of Supervisors*, 182 Cal.App.3d 1145, 1171 (1986).) And where the DEIR project description omits critical aspects of the Project, it results in an understated and inadequate analysis of the Project’s impacts. (See e.g., *San Joaquin Raptor Wildlife Rescue Center v. Arambel and Rose Development, Inc.* 27 Cal.App.4th 713, 722-735 (1994)). A clear and definite project needs to be defined in the Project Description and then analyzed in the DEIR after preparation of a comprehensive operations plan so that operational aspects of the Project are not impermissibly deferred, piecemealed or otherwise ignored.

The DEIR fails to address whether the Town would continue AVRWC’s low-income discount program to needy individuals and seniors. Under Proposition 218, the Town is prohibited from instituting such a program. The lack of a low-income discount program will have a significant impact on citizens in need, leading to potential population shifts and impacts on social services.

- B. The discussion of alternatives is inadequate since the Project Description is unstable and there is no substantial evidence that operation of the system by Victorville or Hesperia is feasible.

The requirement that EIRs identify and discuss alternatives to the project stems from the fundamental statutory policy that public agencies should require the implementation of feasible alternatives to reduce a project’s significant environmental impacts. (*Citizens of Goleta Valley v. Board of Supervisors* 52 Cal.3d 553, 564 (1990); Public Resources Code Section 21002.) The alternatives presented in an EIR must be potentially feasible. (*City of Long Beach v. Los Angeles Unified Sch. Dist.* 176 Cal.App.4th 889, 920 (2009); 14 Cal. Code Regs. Section 15126.6(a).)

As discussed above, for a number of reasons, the DEIR does not contain an adequate Project Description. Absent an adequate description, it is impossible to know whether there are potentially significant environmental impacts. And without that information, it is impossible to select a meaningful range of alternatives designed to avoid or substantially lessen the Project's impacts. Nor is there any substantial evidence in the DEIR that operation of the AVRWC system by either the City of Victorville or City of Hesperia is practical, feasible, economic, or that it would fulfill any of the Project objectives. This is again because the Town has done no Operations Study that would address these issues prior to conducting this EIR process. Instead, the Town merely shifted the question of potential operation by these neighboring communities from the Project Description to the Alternatives section in order to streamline the analysis and avoid having to discuss the potential impacts of the alternatives in detail. 14 Cal. Code Regs. Section 15126.6(d).

- C. The Town's advocacy of the project during the EIR process demonstrates its predisposition on the project outcome and inability to act as an unbiased Lead Agency.

Save Tara v. City of West Hollywood 45 Cal.4th 116, 139 (2008) explains the general principle that before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.' ” *Id.* The critical question based upon all the surrounding circumstances is “whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures, that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. *Id.* Under CEQA, the Lead Agency has an obligation to consider all evidence of significant environmental impacts prior to certification of the EIR and must avoid predisposition or prejudging the evidence to favor a project during the CEQA process. This is especially true when the Lead Agency is also the project applicant and is defining the project in such a way that it could have no impacts, selecting and retaining the project's environmental consultants, defining the scope of the CEQA inquiry, certifying the EIR and ultimately voting on its own project.

The Town's actions to narrow the Project Description and “propose” that the Town operate the system “in the same manner” as AVRWC “for the purpose of the technical analyses in this EIR” were designed to further the Project and foreclose or at least truncate, the environmental review. This is because the Town had already committed itself to the Project before the review process even began. Substantial evidence exists that the Town has operated as a biased advocate in anticipation of the CEQA process and is unable to act as an open-minded Lead Agency as contemplated by CEQA. This evidence

includes a Town sponsored advocacy website called "H2Ours" or www.avh2ours.com, supporting the Town's acquisition of AVRWC. The Town's overt advocacy in favor of acquisition has also included radio advertising, newspaper advertising, cable television advertising and digital advertising, including on the Town's official Facebook page.

D. The DEIR's Hydrology and Water Quality analysis is legally inadequate.

As discussed above, if the Town does not continue AVRWC's Main Replacement Program, as the DEIR and prior Town comments in the rate case suggest, there will be an increase in the rate of leaks and potential for pipe failures. Because of soil conditions in Apple Valley and because many of the mains are located in public rights of way, water lost due to leaks and pipe failures tends to surface, cause erosion, disrupt traffic, and be lost to evaporation or be lost down storm drains, rather than return to the groundwater aquifer. To meet the same demand, more water will need to be pumped from the ground which will contribute to over-drafting the groundwater basin. In addition, the DEIR's discussion of the relationship between potential increased water use in response to "water pricing" that may be reduced, or not increased is unclear. (DEIR, pp. 69-70) The DEIR's conclusion is that rates will not impact "groundwater supply reliability." But "reliability" of the ground water supply is not the appropriate measure. Increased use of ground water is a significant potential impact that will require more ground water replenishment likely using imported State Water Project (SWP) water. The associated impacts should be discussed in the DEIR.

In addition, the EPA and State Board DDW are continually evaluating and proposing Maximum Contaminant Levels (MCL) for new constituents to be monitored, as well as revising existing MCLs. The exact same concentrations of constituents that are now acceptable could result in a degradation of water quality, with respect to what is allowed for potable water, due to changed water quality regulations. AVRWC's personnel take water samples, deliver them to a lab, and handle routine reporting. However AVRWC's primary water quality expertise comes through administrative support from Park Water. The functions of tracking ongoing changes in water quality regulations and conducting planning to meet them, is accomplished at Park. The DEIR does not explain how the Town will replace this function or what impact the loss of this function will have on the Town's ability to ensure future compliance with water quality standards.

An academic study recently performed found that government-owned and operated water systems have a worse record than privately-owned water systems when it comes to compliance with the Safe Drinking Water Act (SDWA).¹ The DEIR notes that the system must comply with SDWA requirements and states that AVRWC has done so

¹ Konisky and Teodoro, "When Governments Regulate Governments," (2015) pp. 1, 22.

under its ownership. (DEIR p. 33) The DEIR states that based on AVRWC's 2009/10 Consumer Confidence and Water Quality Report (CCR), there have been no contaminants detected that exceed primary or secondary standards. In section 4.3, purportedly addressing water quality, there is no discussion of the SDWA or water quality and no discussion of how the Town plans to maintain AVRWC's level of compliance with the SDWA in an ever-changing water quality landscape when the concentration of constituents in the groundwater can change (especially if the groundwater basin is receiving less recharge) and the regulations and maximum contaminant levels are also changing. (DEIR pp. 64-71)

The DEIR assumes that compliance with SDWA will be maintained without any explanation of how this will be done or with what effects. The DEIR, refers to AVRWC's 2009/10 CCR but did not reference any of the subsequent annual reports in the last 5 years.

While none of AVRWC's active wells currently exceed water quality standards, this is a result of AVRWC's active management and planning – not because the groundwater in the Alto sub-basin meets water quality standards. There are water quality issues in the Alto sub-basin, including arsenic and fluoride, which can affect the groundwater in AVRWC's area. AVRWC has had to remove one of its wells from active status due to high arsenic levels, and other systems nearby have fluoride issues. AVRWC has analyzed the groundwater basin and determined the best sites to drill new wells for both optimal water quantity and quality. The best sites are in the southwest part of AVRWC's service area, so well-site planning has to be done in coordination with operational planning; if well sites are concentrated in one area of the system, then the transmission capacity of the system must be up-graded to get the water to other parts of the system. The DEIR fails to discuss the potential impacts of any of these factors. Maintenance of water quality requires an active effort and long-term awareness of the groundwater basin, developments in water quality regulations, and coordination with engineering and operations. The DEIR evaluated conditions in 2010 and went no further with the analysis.

- E. The DEIR's failure to include discussion of the Main Replacement Program has impacts on transportation and traffic and public safety.

As discussed above, if the Town does not continue AVRWC's Main Replacement Program as the DEIR indicates, there will be an increase in the rate of leaks and potential for pipe failures. Leaks, and especially pipe failures, because many of the mains are in public rights of way in streets, can cause safety problems by flooding roads and intersections and causing erosional damage. This is especially a problem at night when it is hard to see and more so in the winter when it can freeze and result in icy road conditions.

The DEIR's statements regarding a main replacement program will have impacts on transportation and traffic and public safety and should be analyzed in the DEIR.

- F. The DEIR's discussion of stormwater conveyance fails to discuss the loss of the current system's check and balance approach.

The DEIR discussion of stormwater conveyance does not mention Town's numerous Class V injection wells spread throughout the community and used for stormwater mitigation. (DEIR p. 100) These wells also provide a potential contamination route to the aquifer. Joint ownership by the Town of both the Class V injection wells and the water system will remove the existing check and balance with regard to this potential contamination route and could result in a higher risk of contamination. This impact should have been discussed and evaluated.

- G. The DEIR fails to discuss the potential growth inducing impacts of Town ownership of the water system and the relation to Town General Plan forecasts.

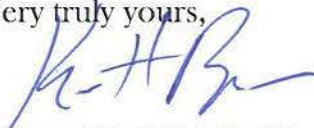
The DEIR states that the proposed project does not include expansion of the delivery capacity of the water system but that implementation of the Town's General Plan could result in an increase of population by 114,462 persons, or an increment on the order of 150 percent of the current population. (DEIR pp. 39-40, 50) The DEIR fails to discuss how that growth could be accomplished without expansion of the delivery capacity of the system or physical upgrades to the system. This is an average annual growth rate of over 8 percent and will require a significantly increased production, treatment and conveyance of water. The DEIR suggests that lower rates may ensue after adoption of the project (or perhaps elimination of the tiered rate structure) which can have a growth inducing impact. Whether the acquisition is designed to encourage growth consistent with the General Plan should be evaluated.

The Town, in AVRWC's current CPUC rate case proceeding, objected to AVRWC's conservation rate structure which includes multi-tiered rates. The DEIR does not include any study on how rates might be structured and the resultant impact on water demand. The Town has not performed a rate design study to even determine whether, under Proposition 218, the Town can legally have tiered rates. Were the Town to move to a single-tier rate structure, that would be a significant change in operations and would likely promote increased demand which will have environmental and operational impacts which should be evaluated. In addition, the effect of a single-tier rate would be to increase charges for water service to customers using average or less than average water consumption. This would tend to disproportionately impact low-income customers and seniors, exacerbating the issue pointed out above in Section A.7.

Lori Lamson
November 2, 2015
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On the basis of all of the foregoing, recirculation of a new DEIR is the only reasonable course of action and is legally compelled to satisfy CEQA's informational goals.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'K. H. Brogan', is written over the typed name.

KEVIN H. BROGAN

OF

HILL, FARRER & BURRILL LLP

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