

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.

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- 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.

7-30

- 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.

7-31

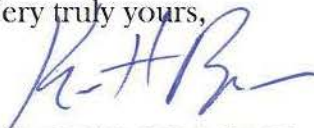
The Town, in AVRWC's current CPUC rate case proceeding, objected to AVRWC's conservation rate structure which includes multi-tiered rates. The DEIR does not include any study on how rates might be structured and the resultant impact on water demand. The Town has not performed a rate design study to even 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.

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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.

7-33

Very truly yours,



KEVIN H. BROGAN

OF

HILL, FARRER & BURRILL LLP

HFB 1582291.5 W4302061

Letter.7

**COMMENTER:** Kevin H. Brogan, Hill, Farrer & Burrill

**DATE:** November 2, 2015

**RESPONSE:**

Response 7.1

This comment is an introductory statement in which the commenter frames the nature of the comment letter as a whole, primarily focusing on purported deficiencies in the project description and the analysis of alternative and also expressing concern regarding the Town's actions as both the Project proponent and Lead Agency. Because these statements are general in nature and are included in greater detail at later points in this comment letter, no further response is required to this portion of the comment. (See *Browning-Ferris Indus. v. City of San Jose* (1986) 181 Cal.App.3d 852 [where a general comment is made, a general response is sufficient].) Specific concerns detailed in this letter are addressed in the following responses.

Response 7.2

The commenter claims that the project description has been manipulated to limit the scope of the environmental analysis by narrowing the project description. The comment later explains that the primary concern regarding the project description is purported deficiencies in the description regarding operation of the AVR System following the Town's acquisition of the system; however, it does not explain what details the commenter feels are missing from the description. Contrary to Commenter's allegations, the project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project.

The cases that Commenter cites are inapposite. For example, in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199, the court invalidated the EIR because, among other reasons, the project description shifted throughout the EIR and was inconsistently described in various parts of the document. (Id. at 197-198.) Here, the project description is consistent throughout the Draft EIR. The project description outlined in Section 2.0 of the Draft EIR explains the underlying purpose of the proposed Project - acquisition of the AVR System - and identifies certain factual assumptions that were made about the acquisition. Those assumptions are carried forward in each environmental impact section of the Draft EIR. For example, see the methodology discussion for each of the resource areas (i.e., Sections 4.1.2, 4.2.2, 4.3.2, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 4.4.6, and 4.4.7), where the methodology section explains the scope of the proposed Project and how Project impacts were evaluated for specific environmental factors. Each of these sections relate to the proposed Project as it is described in Section 2.0, and are consistent with each other in terms of Project details. Therefore, the project description does not shift, it is not curtailed, and it is stable. Contrarily, the document considered in *County of Inyo v. City of Los Angeles* (1977) was found to have, "incessant shifts among different project descriptions," which were found to, "vitiating the city's EIR process as a vehicle for intelligent public participation".



As explained by the court in *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909, in upholding an EIR despite claims that the project description was incomplete, CEQA “does not require analysis in the EIR of each and every activity carried out in conjunction with a Project.” Thus, the commenter’s suggestions that the Town needs to identify specific details regarding how it would manage the AVR System is contrary to existing law. Additionally, the court in *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28 explained that the minimum requirements of CEQA demand “a ‘general description’ of a Project’s technical characteristics.” The project description clearly comports with this concept and includes the relevant details regarding the elements of system operation that may potentially result in impacts to the environment (e.g., how many employees would travel to and from the O&M facility).

Indeed, lead agencies need not undertake a premature or speculative evaluation of the environmental consequences of undefined future projects. (*Id.*; see also *Friends of the Sierra RR v. Tuolumne Park Rec Dist.* (2007) 147 Cal.App.4th 643, 657 [finding there was no project to analyze under CEQA, even though it was probably that lands transferred to a Native American tribe would be developed in the future, because there were “no specific plans on the table”].) Instead, the scope of an EIR is guided by standards of reasonableness and practicality. (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.

For these reasons, the project description is accurate, stable and finite, and describes the entire Project, including all reasonably foreseeable Project elements and activities. As such, it is different from the faulty project descriptions in the cases cited by the commenter.

The commenter next incorrectly alleges that the EIR does not fully address operation of the system following the acquisition. However, the EIR includes both discussion of how the Town would be reviewed for its technical proficiency in operating the system, as well as any elements with the potential to result in environmental effects. Section 1.6, Lead, Responsible, and Trustee Agencies, addresses how the Town would be reviewed to ensure it is capable of managing the system. As discussed on page 21 of the EIR, the Town would have to, “demonstrate to the SWRCB that it possesses adequate technical, managerial, and financial capability to assure the delivery of pure, wholesome and potable drinking water,” before it would be approved for a permit to operate the AVR System.

In terms of environmental effects related to management of the system, there would be little to no change in environmental effects because there would be little to no change in how the system is managed. The Town intends to continue operation of the system in much the same manner as it is currently operated by Apple Valley Ranchos Water Company. Ultimately, and because the Town already provides management functions for other utilities (sewer) and because Apple Valley Ranchos Water Company already provides management functions that are proposed to be undertaken by the Town, no changes in any environmental impacts (if any) associated with provision of those management functions are reasonably foreseeable, nor does the commenter identify any specific impacts that he believes are not accounted for. Ultimately, the commenter seems to be asserting that at some unknown future time, the Town will propose as-yet-unknown changes in water operations, which will allegedly result in unidentified environmental impacts. Such speculation on potential future activities and impacts –

particularly when, as here, no such activities are proposed and none is reasonably foreseeable – is not required by CEQA. (State CEQA Guidelines, §15145.) See also Global Response #2.

### Response 7.3

The commenter claims that the project description in the Initial Study is uncertain and, therefore, unstable. Through the EIR process there has been one refinement to the project description that occurred following publication of the original Initial Study; the refined project description included in the Amended Initial Study and the Draft EIR is accurate, stable, and finite, as discussed in Response 7.2 above.

Based on initial comments received during the scoping process for the Draft EIR, the project description was refined to more clearly define what entity would manage the AVR System after the Town’s acquisition of the system. The project description in the original Initial Study included a range of management options, including management by the Town or through a qualified private contractor or public agency. Based on comments received, in which commenters requested a more specific project description, the Project was refined to include only management by the Town, and the options to manage the system through qualified public agencies were included as alternatives to the proposed Project that were analyzed in the Draft EIR. (See Section 6.0, Alternatives, of the Draft EIR). Following this change the scoping process was extended for an additional 30-day period and an amended Notice of Preparation and Initial Study was sent to all agencies, organizations, and individuals included on the distribution list.

This refinement in the project description allowed for more targeted environmental analysis that addresses the specific potential environmental concerns associated with the proposed Project, including the Town’s management of the AVR System following the acquisition. Additionally, each of the alternatives specifically addressed potential effects of system management by the entity defined for each alternative. As such, the refined project description used in the Amended Initial Study and the Draft EIR was clear and consistent, and allowed for robust environmental analysis based on the specific management options.

### Response 7.4

This comment relates to the refined project description included in the Amended Initial Study and the Draft EIR. The commenter alleges that the project description was refined in order to minimize the impacts that would be identified in the EIR, and claims that the project description may not include the most likely scenario that would occur after certification of the EIR.

As discussed in Response 7.3 above, the project description was refined to provide more specific information about the proposed Project and allow for robust environmental analysis based on the specific management options. This was done in response to comments received in the initial stages of the Draft EIR scoping process and also to ensure that a complete description of all aspects of the Project were identified consistent with CEQA’s informational disclosure requirements.

In terms of system operation, the Town proposes to manage and operate the system following the acquisition. In the event of unforeseen circumstances that result in the Town being unable to



operate the system themselves, and alternate operator may be selected. In this case, the Town would perform all necessary related review under CEQA. See also Global Response #2.

#### Response 7.5

The commenter again accuses the Town of narrowing the project description to avoid analysis and defer operational decisions to a later date. This assertion is untrue. As discussed in Response 7.3 above, in response to comments received in the initial stages of the Draft EIR scoping process, the project description was refined to provide more specific information about the proposed Project and allow for robust environmental analysis based on the specific management options. Additionally, as discussed in Response 7.2, the project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project. Further, the description regarding operation of the AVR System is sufficiently detailed to allow for full analysis of any potential environmental effects related to these activities. Finally, the commenter does not identify any impacts that it believes may occur as a result of the Town's operation of the system. Instead, the commenter's statements are flat conclusions unsupported by substantial evidence. (See State CEQA Guidelines, § 15384 [substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative].)

The comment also restates the commenter's allegation that the Town can administratively change operators and avoid the environmental analysis of that change altogether. Again, this assertion is untrue, as any discretionary approval to approve a change in operator (such an operations agreement) that may result in environmental effects would be subject to CEQA, as discussed in Response 7.4 above. The Town would perform environmental review under CEQA, as required, for any changes that are proposed to management of the system. See also Global Response #2.

#### Response 7.6

The commenter again claims that the project description is insufficient in its description of the Town's operation of the system following acquisition, indicating that this results in unidentified deficiencies in the associated environmental analysis. This general accusation regarding sufficiency of the project description is addressed in Response 7.2 above, which explains how the project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project.

In this comment, the commenter states that examples of the operational factors that should be considered are provided subsequently in the letter. These examples have been addressed individually below.

#### Response 7.7

The commenter claims that Apple Valley Ranchos Water Company's existing operation of the system includes employees that are located offsite who handle regulatory compliance reporting requirements and perform billing, accounting, engineering, and water quality services; however, these additional employees were not accounted for in the Draft EIR. Additionally, the

commenter goes on to enquire where any new staff required to operate and maintain the AVR System would work, inaccurately claiming that this is not discussed in the Draft EIR.

Schedule C-3 on page 46 of the appendices for the annual report for Apple Valley Ranchos Water Company indicates that the company's current operation is supported by 20 office and 19 maintenance employees. The report does not identify any other employee positions related to this operation (Apple Valley Ranchos Water Company 2015a). Accordingly, the EIR is fully supported by substantial evidence. Furthermore, as discussed on page 52 of this EIR, the AVR System would maintain its existing size and capacity, and would continue to be operated and maintained in a manner similar to existing operations. Moreover, the Town already has administrative staff and provide billing and administrative support services for its existing sewer utility services within the Town. For these reasons, this EIR assumes that approximately the same overall number and level of staff would be required to support operation and maintenance of the system following acquisition.

Additionally, as discussed in Section 2.0, Project Description, the Town would operate and maintain the system out of Apple Valley Ranchos Water Company's existing operations and maintenance facility, which is located at 21760 Ottawa Road, approximately half a mile south of Highway 18 and 300 feet east of the intersection of Navajo Road and Ottawa Road. Therefore, any staff required to operate and maintain the AVR System would continue to work at this location.

Ultimately, the commenter's statements are not related to environmental impacts, but to policy-type decisions which are outside the scope of the EIR and are left to the decision-makers as part of overall consideration of the Project.

#### Response 7.8

The commenter claims that it is speculative to believe the Town has the ability to obtain a permit to operate the system from the SWRCB. Section 1.6, Lead, Responsible, and Trustee Agencies, addresses the proposed change in terms of management of the system, including the SWRCB's role in evaluating the proposed change of ownership. As stated on page 21 of the EIR, the Town would have to, "demonstrate to the SWRCB that it possesses adequate technical, managerial, and financial capability to assure the delivery of pure, wholesome and potable drinking water," before it would be approved for a permit to operate the AVR System. Thus, no further response is required. (State CEQA Guidelines, § 15088 [responses are required only for comments raising environmental issues].) Finally, the Town already successfully provides management functions for other utilities (sewer).

#### Response 7.9

The commenter notes that the hours of operation for most Town offices is different from those proposed for the AVR System staff, and questions whether this is accurate and, if not, how this would impact customer service. As stated in the EIR on page 36, the regular business hours of the facility would continue as under existing operations, from Monday through Friday from 7:30 AM to 5:30 PM. Therefore, there would be no change in hours of operation and no resulting environmental effect. In the event that the hours of operation were to change, potentially affecting customer service, this change would not affect the physical environment and therefore

is exempt from analysis under CEQA (State CEQA Guidelines, § 15131; § 15088 [responses are only required to comments raising environmental issues]). This comment has been passed to Town decision-makers for consideration as part of the wider Project review process.

#### Response 7.10

The commenter claims that the Town lacks understanding of the components of a water utility based on its “abbreviated” list of existing system assets, including staff. The Draft EIR provides an overview of the primary AVR System components in order to inform the environmental analyses; this is not indicative of the Town’s level of understanding regarding water supply systems. The project description fully complies with the requirements of CEQA (Pub. Res. Code § 21000 et seq) and the State CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.). The State CEQA Guidelines specifically provide that the “degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” (State CEQA Guidelines, § 15146.)

Here, the degree of specificity in the Draft EIR corresponds to the degree of specificity involved in the underlying action. As explained in the Draft EIR, the underlying purpose of the proposed Project is for the Town to acquire, operate, and maintain the AVR System. CEQA does not require that the Town provide an exhaustive list of the specific assets that the Town would acquire from Apple Valley Ranchos Water Company. (See State CEQA Guidelines, §15151 [“evaluation of environmental effects of a propose Project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible”]).

With respect to operations, the Draft EIR explains that the Town intends to continue operations substantially in their current form and no expansion of operations would occur with the proposed Project. Moreover, the Draft EIR clearly states that no new facilities are proposed by the Project and it is thus assumed that the system would require the same number of employees to operate and maintain it as under existing conditions. Thus, the Town has made all reasonable assumptions predicated on facts with respect to the number of employees that would be needed to operate and maintain the system. (State CEQA Guidelines, § 15384.)

Notwithstanding, the Town did identify system components that it assumed (for purposes of environmental analysis) would be acquired. Specifically, on page 31, the EIR identifies approximately 469 miles of pipeline, 22,431 active service connections, 11.7 million gallons of storage provided in 11 storage tanks, and 8 booster sites/pump stations that comprise the AVR System.

The commenter also points out a discrepancy in the reported staffing levels for Apple Valley Ranchos Water Company on page 35 of the Draft EIR. In response to this comment, the discrepancy has been corrected on page 36 of the Final EIR and now reflects the correct number of 39 total employees, as reflected throughout the rest of the EIR.

#### Response 7.11

The commenter claims that the Town does not have the necessary experience to operate a water system and goes on to question how the Town would manage the system. As described in Response 7.10 above, the degree of specificity in the Draft EIR corresponds to the degree of





specificity involved in the underlying action. As explained in the Draft EIR, the underlying purpose of the proposed Project is for the Town to acquire, operate, and maintain the AVR System. CEQA does not require that the Town provide an exhaustive description of the operational regime for the system. (See State CEQA Guidelines, §15151 [“evaluation of environmental effects of a propose Project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible”]). With respect to operations, the Draft EIR explains that the Town intends to continue operations substantially in their current form and no expansion of operations would occur with the proposed Project. Thus, the Town has made all reasonable assumptions predicated on facts with respect to the number of employees that would be needed to operate and maintain the system. (State CEQA Guidelines, § 15384.). As noted in Section 1.6, Lead, Responsible, and Trustee Agencies, on page 21 of the EIR the Town would have to, “demonstrate to the SWRCB that it possesses adequate technical, managerial, and financial capability to assure the delivery of pure, wholesome and potable drinking water,” before it would be approved for a permit to operate the AVR System.

Finally, the quotation provided by the commenter and the reference to the Financial Feasibility Analysis confirm that any impacts resulting from the Town’s operation of the water system would be *economic* – not environmental. Such economic issues are not relevant for CEQA purposes. See Global Response #1. Nonetheless, these comments will be passed on to the decision-makers for consideration.

#### Response 7.12

The commenter asserts that the Town does not have an infrastructure replacement plan in place. The commenter also correctly notes that the EIR does not address what it would cost to acquire the system and thus the EIR does not provide information on reserve funds that would be available to replace aging infrastructure. The commenter is correct that the EIR does not detail the approximate cost or “cash-flow” that the Town may have available as a result of operation of the system. It is not the role of CEQA to perform analysis regarding the economic aspects of a project, but rather to provide a robust and transparent review of the potential environmental effects that could occur if the project were to proceed. Therefore, economic issues are not within the scope of CEQA, and thus not included in this EIR (State CEQA Guidelines, § 15002 and § 15131). See also Global Response #1. Regardless, this comment has been passed to Town decision-makers for consideration as part of the wider project review process.

#### Response 7.13

The commenter references the Project objectives of increasing customer service and reliability but questions how they would be achieved. He goes on to speculate that for these to occur more maintenance, complaint responsiveness, long range planning, personnel and training would be required, and that these would have increased physical and/or operating cost implications. The commenter does not provide any evidence that the stated improvements would be required or that they would result in physical effects to the environment. As discussed under Response 4.6, the purpose of an EIR is to evaluate a project for its potential effects to the physical environment. The Town’s objective regarding increasing customer service and reliability does not relate to potential effects to the physical environment nor does the commenter identify how he believes it may, and therefore is not within the scope of CEQA and is not included in the



analysis contained in the EIR (State CEQA Guidelines, § 15131). In addition, it is not the role of CEQA to perform analysis regarding the economic aspects of a project, but rather to provide a robust and transparent review of the potential environmental effects that could occur if the project were to proceed. Therefore, economic issues are not within the scope of CEQA, and thus not included in this EIR (State CEQA Guidelines, § 15002 and § 15131). See also Global Response #1.

#### Response 7.14

The commenter correctly asserts that the under the proposed Project examined in the EIR, the Town proposes to manage and operate the system in the same manner as currently following the acquisition. The commenter goes on to state that the EIR shows it is not aware of how Apple Valley Ranchos Water Company operates but does not provide any evidence to support this statement. Because these statements are general in nature and because the statements do not raise specific environmental concerns about the Draft EIR or the Project, no further response is required to this portion of the comment. (See *Browning-Ferris Indus. v. City of San Jose* (1986) 181 Cal.App.3d 852 [where a general comment is made, a general response is sufficient].)

In addition, the commenter asserts that rate increases for the Town operated sewer system have outpaced those by Apple Valley Ranchos Water Company, and the Town has diverted enterprise funds from the sewer system to the general fund. Presumably the former part of this comment is referring to water rate increases charged by Apple Valley Ranchos Water Company, for which the commenter provides no evidence in support of this assertion. Further, and in response to this comment, it is worth noting that sewer rate increases occurring as a result of “pass-thru rates” and charges that the Town must pay to the Regional Treatment Authority are not the same as the Town increasing rates for operation of its own system. These types of increased rates are necessary, and are accordingly passed on to Town sewer customers, to generate the necessary revenue to pay these pass-thru payments.

Similarly, the commenter provides no evidence in support of the assertion in the latter part of this comment. In both cases, these comments are focused on the ability of the Town to operate the system rather than on the physical effects to the environment and as such are outside of the scope of CEQA and are not included in the analysis contained in the EIR (State CEQA Guidelines, § 15131).

#### Response 7.15

The commenter erroneously states that the description of the proposed Project ignores severance of the Yermo System. The commenter goes on to state that Apple Valley Ranchos Water Company includes both services in the Bellview Heights area of Victorville and in Yermo. The commenter is correct that Figure 2-1 in the EIR does not show the Yermo system as part of the proposed Project. The commenter does not make clear what they mean by Bellview system, but it appears to be a reference to that portion of the Project located outside the Town’s boundaries and within the City of Victorville nearby Bellview Heights. The Bellview Heights Well is shown on Figure 2-3 as numbered item 16. In addition, the scale of Figure 2-4 has been amended to reduce the scale of the map to ensure that the Bellview Heights Well, which is included as Well 7 in the legend in the Draft EIR, appears within the map view. The well is located in in Pressure Zone Z as indicated in the legend in the Draft EIR. Therefore, the portion



of the AVR System is considered in the EIR as requested by the commenter. The amended map is included at the end of Section 8.0, Responses to Comments, and in Section 2.0, Project Description See also Table 1-1 on page 10 of the EIR for a response to the LAFCO letter received in response to the Notice of Preparation.

The commenter also opines that it is contradictory that the Town has chosen to include the Bellview well and not Yermo in the acquisition and goes on to correctly quote the EIR, which states that:

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.

The commenter does not provide any further evidence as to why this decision is contradictory beyond quoting the rationale for not including the Yermo system from the EIR. Thus, no further response can be provided or is necessary.

The commenter also states that since Yermo is part of the Apple Valley Ranchos Water Company, the EIR should include the severance of Yermo in the project description and assess the potential environmental effects associated with severance of the system. As noted above, the Yermo system was only recently acquired. The CPUC only authorized Apple Valley Ranchos Water Company to proceed with requested acquisition in August of 2014 via Resolution W-4998, at which point Apple Valley Ranchos Water Company sought to formally acquire Yermo through a receivership proceeding pending in San Bernardino Superior Court. The formal approval of that acquisition, however, just occurred this past summer, after the Town's CEQA process for the Project was well-underway. Up until that point, Yermo was a stand-alone water system that already had administrative offices in Yermo, CA to allow for its management. Further, the entirety of the Yermo Water Company system includes only 250 service connections. Accordingly, and contrary to the commenter's statements, it is reasonable to conclude that any severance of Yermo Water Company from the remainder of the Apple Valley Ranchos Water Company would not create a need to build new facilities in the Yermo area that may result in any new significant impacts.

#### Response 7.16

The commenter expresses the opinion that the EIR fails to disclose changes to the regulatory structure that would result from the proposed Project. The commenter is correct that under the Town's ownership, similar to every other municipally-operated water system in the State, the AVR System would no longer be regulated by the CPUC. Text has been added to page 21 of the EIR, to clarify this point in response to this comment as follows:



Once acquired, the regulatory responsibility of the CPUC over the AVR System would cease.

The commenter goes on to speculate that property owners could in future use Proposition 218 to halt rate increases, which in turn could affect the Town's ability to maintain system infrastructure. It is correct that, similar to every other municipally-operated utility in the State, the Proposition 218 process would be the regulating mechanism under which future rate increases would be approved. However, the commenter's claims as to whether approval or not of potential future rate increases needed to maintain the system would result in impacts are entirely speculative, and the commenter again does not provide any supportive evidence, much less substantial evidence contradicting the Town's good-faith analysis. See also Global Response 2. Thus, the potential indirect impacts that this comment attempts to establish are highly speculative and unsubstantiated conjecture (State CEQA Guidelines, § 15384 [substantial evidence does not include unsubstantiated opinion or speculation]) and this scenario need not be analyzed in detail in the EIR. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1178 [CEQA does not require speculation]; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 [EIR upheld – despite claims that project description was incomplete – because operation of plant beyond stated 20-year life was speculative].) With regards to the comment about the preparation of an operations plan, see Response 7.8.

With regards to the commenter's recap of the CPUC process on rate setting, this information is noted though it should be noted that currently some of the rate decisions made by the CPUC occur at behind-closed-door sessions that are not accessible to the public. Under the Town's control, operation decisions and rate setting would be subject to California's open public meeting and disclosure requirements, including the Brown Act and the Public Records Act. Apple Valley Ranchos Water Company is not subject to these public access and disclosure requirements. Further, and as noted by the commenter, under the Town's ownership the AVR System would be subject to the rate setting process under Proposition 218 rather than the CPUC process; therefore, the "protections" provided by the CPUC process would, as correctly noted by the commenter, apply since the CPUC would no longer regulate the system. The Proposition 218 process includes numerous, rigorous steps to ensure public transparency and accountability in the rate setting process, with evidence required to demonstrate how those rates would be spent in the long term best interests of customers, which includes maintaining safe and reliable service.

The commenter's final statement references the proposed Project objective, which indicates that the Town intends to pursue grant funding uniquely available to public agencies to provide additional funds to be used for infrastructure improvements, thereby reducing costs to rate payers. To be clear, the Town is not suggesting that private companies are necessarily forbidden from doing advanced funding planning based on grant opportunities. However, private companies have more limited options with regard to funding operation and maintenance of public utilities, and they respond to different financial pressures (such as guaranteeing a rate of return to investors) than exist for public agencies. Regardless, this comment has been passed to Town decision-makers for consideration as part of the wider project review process.



Response 7.17

The commenter alleges that the Town may favor lower rates over spending on maintenance and infrastructure improvements and erroneously states that the EIR indicates that the Town would not invest in the water system in the foreseeable future. No evidence is provided to support these statements in the comment. Because these statements are general in nature and because the statements do not raise specific environmental concerns about the Draft EIR or the Project, no further response is required to this portion of the comment. (See *Browning-Ferris Indus. v. City of San Jose* (1986) 181 Cal.App.3d 852 [where a general comment is made, a general response is sufficient].) Further, it is correct that, as discussed on page 35 of the EIR, under the proposed Project the Town would acquire the AVR System in its existing condition and no system upgrades are proposed at this time that would require review under CEQA. However, the Town would maintain the system with the degree of prudence and caution required of a municipal operator of a water system. Furthermore, construction improvements and future system needs, such as infrastructure replacements and upgrades, would remain the same as those currently required for the AVR System, regardless of who owns the system. Therefore, there would be little to no change to the physical environmental setting in terms of the needs of the system. While at this time, any future upgrades of the system are not reasonably foreseeable, future upgrades (if any) would be proposed and analyzed as required by CEQA and would require associated environmental review and documentation. The EIR has been updated in Section 4.0, Environmental Impact Analysis, on page 44 to include this explanation regarding potential construction improvements and future system needs. Also, see Response 7.16 for a response to comments regarding Proposition 218.

Response 7.18

The commenter claims that the Apple Valley Ranchos Water Company's O&M facility is too small for existing operations and does not meet current seismic codes or comply with ADA requirements, and goes on to claim that the EIR needs to consider potential replacement of this facility. The commenter correctly states that, as stated on page 36 of the EIR, the Town intends to operate the system out of the current location and existing O&M facility. Replacement of the existing facility is not proposed as part of the Project. However, in the event that the building is found to be in need of upgrades that have not yet been performed by Apple Valley Ranchos Water Company, the Town would evaluate the needs of the facility and any necessary improvements. At that time, the Town would perform any additional CEQA analysis required to support the selected course of action. Furthermore, the Town already provides administrative and billing services for its existing wastewater utility services. Such administrative support could also be used in connection with the Apple Valley Rancho system, thus easing any perceived burden on the existing operational facilities.

If, as the commenter alleges, the building is currently in need of construction improvements, these improvements would remain the same as those currently required to meet seismic codes, accommodate existing staffing levels, or comply with ADA requirements, regardless of who owns the system. Therefore, there would be little to no change to the physical environmental setting in terms of the needs of the O&M facility. While at this time, any future building upgrades are not reasonably foreseeable, future upgrades (if any) would be proposed and analyzed as required by CEQA and would require associated environmental review and



documentation. The EIR has been updated in Section 4.0, Environmental Impact Analysis, on page 44 to include this explanation regarding potential construction improvements.

Response 7.19

In this comment, the commenter correctly notes that under the proposed Project as defined, the Town would acquire the AVR System in its existing condition; no system upgrades are proposed at this time that would require review under CEQA. If, as the commenter alleges, the Apple Valley Ranchos Water Company has system improvements planned over the next 5 years as part of its capital improvement plan, these improvements would remain the same as those currently required to maintain reliability, regardless of who owns the system including Apple Valley Ranchos. Therefore, there would be little to no change to the physical environmental setting in terms of the needs of the system upgrades, including future main replacements. If acquired, the Town would maintain the system with the degree of prudence and caution required of a municipal operator of a water system, and the Town would be able to conduct its own site-specific analysis of the System to confirm if the capital improvement plan currently in place for Apple Valley Ranchos Water Company is appropriate or necessary under Town ownership. While at this time, any future upgrades are not reasonably foreseeable, future upgrades (as required) would be proposed by the Town and analyzed as required by CEQA and would require associated environmental review and documentation. The EIR has been updated in Section 4.0, Environmental Impact Analysis, on page 44 to include this explanation regarding potential construction improvements.

The commenter also alleges that the Town has appeared at the CPUC and argued against infrastructure improvements. The Town's comments in those proceedings primarily related to the potential need and cost of such improvements - costs which the Town sought to curtail in order to prevent the imposition of further rate-increases by Apple Valley Ranchos Water Company through the CPUC process. One of the purposes behind the proposed Project is to allow Town ownership in order to stabilize those very same water rates. In that regard, the Town's prior concerns regarding (unnecessary and unjustified) costs is entirely consistent with the Project proposed here.

With regards to the commenter's remarks on the project description, see Response 7.2 and Response 7.5.

Response 7.20

The commenter again alleges that the project description is deficient, claiming that it does not qualify as accurate, stable, and finite, and goes on to state that the Draft EIR should be recirculated. As discussed in Response 7.2, the project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project. The analysis and conclusions of the Draft EIR are based on this fully CEQA-compliant project description, and therefore accurately describe potential impacts of the Project as a whole. Thus, there are no changes to the findings of the EIR and no need to recirculate the Draft EIR.



### Response 7.21

The commenter again claims that the Town does not have full understanding of the water supply system and does not have the expertise to operate it. As discussed in Response 7.8, Section 1.6, Lead, Responsible, and Trustee Agencies, addresses the proposed change in terms of management of the system, including the SWRCB's role in evaluating the proposed change of ownership. As stated on page 21 of the EIR, the Town would have to, "demonstrate to the SWRCB that it possesses adequate technical, managerial, and financial capability to assure the delivery of pure, wholesome and potable drinking water," before it would be approved for a permit to operate the AVR System. Thus, no further response is required. (State CEQA Guidelines, § 15088 [responses are required only for comments raising environmental issues].) Finally, the Town already successfully provides management functions for other utilities (sewer).

The commenter also again alleges that the project is being segmented to avoid evaluation of the project as a whole. As discussed in Response 7.2, the project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project. As such, the analysis contained in the Draft EIR properly evaluates the proposed Project as a whole and is in full compliance with CEQA.

### Response 7.22

The commenter states that the Draft EIR does not address whether or not the Town would continue existing programs for needy individuals and seniors, and goes on to claim that removal of these programs would result in potential population shifts and impacts to social services. He further claims that Proposition 218 does not allow the Town to institute such programs. First, the commenter does not identify any specific environmental impacts that he believes will occur, but instead refers to economic and social impacts. Although the commenter does reference "population shifts," it is unclear why the commenter believes that such shifts will occur. The commenter fails to identify how many rate-payers in the Town currently receive discount program rates, how much that discount actually equates to, or why the commenter believes that incremental differences between discounted and standard rates would lead to impacts. Accordingly, no further response can be provided to this general comment. See Global Response #1. Finally, it is correct that discounted rates cannot be funded with water service fees under Proposition 218. However, it should also be noted that municipalities have other options for subsidizing water rates, provided that such subsidies are taken from unrestricted revenue sources.

### Response 7.23

The commenter claims that the discussion of alternatives is inadequate based on his claims that the project description is inadequate and that there is no substantial evidence that operation of the system by Victorville or Hesperia is feasible. First, as discussed in Response 7.2, the project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project. Therefore, the commenter's claim of an inadequate project description is invalid.



Further, the two alternatives alluded to above (operation of the system by the City of Victorville or City of Hesperia) were proposed in order to provide a range of alternatives that allow for in-depth analysis of potential environmental impacts, evaluating the possibility of reducing potential effects through selection of one of these alternatives. In the event that either of these alternatives was selected, additional analysis if required by CEQA would be performed. However, given that these two alternatives were found to have slightly higher impacts to the environment, neither of them was selected as the environmentally superior alternative. Please see Section 6.5, Environmentally Superior Alternative, for a discussion of the various alternatives and selection of the proposed Project as being environmentally preferable to the alternatives evaluated in the EIR.

#### Response 7.24

In this comment, the commenter claims that Town is unable to act as an unbiased Lead Agency, citing the Town's advocacy for the project and commenter's previous claim that the city narrowed the project description. As quoted by the commenter, "agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives of mitigation measures that would ordinarily be part of CEQA review of that public project.'" The Town has, indeed provided information to the public through their website and by other means to inform them about potential acquisition of the water supply system by the Town. However, in no way has this action led to foreclosed Project alternatives or mitigation measures. It has not resulted in any changes to the physical environment or effected potential alternatives or mitigation measures that could be implemented. To the contrary, the Town has merely been diligent in disclosing all the information it can to the public, and has brought forward its planning and environmental review process concurrently to the fullest extent possible, as encouraged by CEQA. (State CEQA Guidelines, § 15004.) The commenter does not elaborate on how the Town's purported advocacy of the project has allegedly led to any of these effects. As to the commenter's claim that the Town intentionally narrowed the project description, this concern is addressed in Response 7.2, which explains that project description in the Draft EIR is accurate, stable and finite; describes the entire project; and includes all relevant aspects of the Project, including reasonably foreseeable future activities that are part of the Project. As such, the review contained in the Draft EIR properly evaluates the proposed Project as a whole and is in full compliance with CEQA, and the Lead Agency has considered all evidence of significant environmental impacts prior to certification of the EIR.

#### Response 7.25

The commenter refers to his previous erroneous statement in Comment 7-17, again implying that the Town would not continue to maintain the system and the associated infrastructure in a responsible manner, which in turn would result in leaks and pipe failures and associated water losses. As discussed in Response 7.17, the Town would acquire the AVR System in its existing condition. While no system upgrades are proposed at this time that would require review under CEQA, the Town would maintain the system with the degree of prudence and caution required of a municipal operator of a water system. Furthermore, construction improvements and future system needs, such as pipeline replacements and upgrades, would remain the same as those currently required for the AVR System, regardless of who owns the system. Future upgrades (as identified when needed) would be proposed and analyzed as required by CEQA and would





require associated environmental review and documentation. As such, the speculative impacts to water losses and the need to pump additional groundwater raised by the commenter would not occur and no further response is required to this comment.

The commenter also expresses confusion regarding the discussion under Impact WAT-1. The commenter suggests that reliability of groundwater is not the appropriate measure for that impact, but rather increased use of groundwater is a significant impact. As described on pages 72 and 73 of the EIR, the proposed Project would alter the entity that operates the existing AVR System, which could potentially alter the rate structure and fee charged for water service; if a reduction in pricing occurs, water use in the area could potentially increase because water use is linked to cost. However, the operator of the system would be required to comply with the water use reduction strategies and goals contained within the California Water Conservation Act of 2009, which requires specific reductions in urban water consumption by the year 2020. As a result, water use rates would continue to decline on a per capita basis regardless of potential changes in the system operator or water rate structures. Since 1990, per capita water use rates in California and throughout the U.S. have been declining (Donnelly and Cooley 2015; Hanak et al 2011); there is nothing to indicate that alteration of the entity that owns the AVR System would deviate from this national trend. Therefore, although water pricing may change, either as a slowing in rate increases or in the more unlikely scenario of rate decreases, as a result of water system ownership changes included under the proposed Project, compliance with the existing Adjudication Judgment and other laws and regulations as well as evidence based on national trends in water use, indicate that the proposed Project would not result in significant adverse impacts to groundwater supply reliability, which is the correct measure of significance for this impact.

#### Response 7.26

The commenter correctly states that - as with any other legal or regulatory requirements - the regulatory regime around water quality may be subject to change in the future. The commenter goes on to describe the methods that Apple Valley Ranchos Water Company uses to comply with current water quality monitoring and reporting requirements. The commenter states that the Draft EIR does not explain how the Town intends to continue tracking changes in water quality regulations as they occur in future. These comments are focused on the ability of the Town to operate the system rather than on the physical effects to the environment and as such are outside of the scope of CEQA and are not included in the analysis contained in the EIR (State CEQA Guidelines, § 15131). Nonetheless, and in response to this comment, the following clarification is provided.

As stated previously, the Town would have to, “demonstrate to the SWRCB that it possesses adequate technical, managerial, and financial capability to assure the delivery of pure, wholesome and potable drinking water,” before it would be approved for a permit to operate the AVR System. This includes demonstrating the requisite ability to monitor and react to future, and currently unforeseeable, changes in the water quality regulatory regime. It is worth noting that the Town already provides management functions for other utilities (sewer) and also monitors and complies with regulatory requirements with regards to those as well as in numerous other areas. In this case the operator does not provide any evidence that in the case of



the AVR System the Town would not maintain and operate the system with the degree of prudence and caution required of a municipal operator of a water system.

Response 7.27

The commenter cites a study that compared government-owned and operated water systems to privately-owned systems with regards to compliance with the Safe Drinking Water Act (SDWA). The study cited by the commenter was not provided with the comment letter, but it bears mentioning that the study is not specific to the Project or to the Town, and thus it does not alter or affect the conclusions set forth in the Draft EIR. The commenter goes on to correctly quote the EIR, which says that the AVR System must comply with the SDWA and that it has done so under Apple Valley Ranchos Water Company ownership. This citation and summary of the EIR are noted.

The commenter also states that there is no discussion of the SDWA or water quality in Section 4.3, Hydrology and Water Quality. The commenter is directed to the detailed description of the SDWA provided in Section 2.3.1 of the EIR on page 25. Section 4.3.1(c) directs the reader to the information contained in Section 2.3.1. The potential for the proposed Project to result in impacts to water quality was previously addressed in the Amended Initial Study (included as Appendix A of this EIR). As described there, the proposed Project would result in no impact to water quality and as such this issue was scoped out of the EIR. The commenter goes on to query how the Town plans to maintain the existing level of compliance with the SDWA in future. As noted in Response 7.17, the Town would maintain the system with the degree of prudence and caution required of a municipal operator of a water system. This includes maintaining compliance with the SDWA. Further speculation on potential future changes in the concentration of constituents in the groundwater as well future changes to the regulatory regime are outside the scope of the CEQA and are not considered in this EIR (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1178 [CEQA does not require speculation]).

The commenter also states that the EIR did not utilize any of the Annual Reports produced by Apple Valley Ranchos Water Company for reporting to CPUC. In response to this comment, additional information from the two most recent Annual Reports (2013/2014 and 2014/2015) has been added to Section 2.4.3 on page 34 of the EIR. These changes do not introduce new information or otherwise affect the analysis or conclusions of the EIR and thus do not require recirculation under State CEQA Guidelines § 15088.5.

Response 7.28

The commenter provides information about AVR System wells' compliance with water quality standards and provides background information on water quality issues in the Alto sub-basin. The commenter goes on to describe the process for well site planning in the AVR System service area. The commenter remarks that the EIR does not address impacts from future well site planning activities and states that the EIR evaluated conditions in 2010 only.

The commenter is correct that the EIR does not address impacts associated with future well site planning, because none is proposed or reasonably foreseeable at this time. As described in Response 7.17, the Town would acquire the AVR System in its existing condition. Furthermore,



future system needs, such as well site planning, would remain the same as those currently required for the AVR System, regardless of who owns the system. Therefore, there would be little to no change to the physical environmental setting in terms of the needs of the system. While at this time, any future system upgrades or additional wells are not reasonably foreseeable, future upgrades (including well site planning if needed) would be proposed and analyzed as required by CEQA and would require associated environmental review and documentation. Finally, it is unclear what "conditions in 2010" the commenter is referring to in the last sentence of this comment. As per State CEQA Guidelines Section 15125(a), the physical environmental conditions upon which the analysis is based are those that existing at the time the Notice of Preparation was published. As such the best available information at that time was used to characterize existing baseline environmental conditions, as they relate to the proposed Project, which were in turn used to determine if impacts were significant.

Response 7.29

The commenter refers to his previous erroneous statement in Comment 7-17, again implying that the Town would not continue to maintain the system and the associated infrastructure in a responsible manner, which in turn would result in leaks and pipe failures and associated safety issues with regards to transportation and traffic. As discussed in Response 7.17, that the Town would acquire the AVR System in its existing condition. While no system upgrades are proposed at this time that would require review under CEQA, the Town would maintain the system with the degree of prudence and caution required of a municipal operator of a water system. Furthermore, any construction improvements and future system needs, such as pipeline replacements and upgrades, would remain the same as those currently required for the AVR System, regardless of who owns the system. Future upgrades (if any) would be proposed and analyzed as required by CEQA and would require associated environmental review and documentation. As such, the speculative impacts to transportation and traffic raised by the commenter would not occur and no further response is required.

Response 7.30

In this comment, the commenter suggests that Section 4.7.1(c) of the EIR should reference the Class V injection wells operated by the Town for stormwater management. In response to this comment the following text has been added to page 104 of the EIR:

Class V injections wells (often called "shallow disposal wells") are typically shallow disposal systems used to place a variety of fluids below the ground surface. To protect underground sources of drinking water, these wells are regulated by the U.S. EPA's Underground Injection Control (UIC) Program. U.S. EPA is directly responsible for regulating Class V wells in California under authority of Part C of the Safe Drinking Water Act.

Within the Lahontan Regional Water Quality Control Board area, several municipalities are using dry-well systems for residential stormwater and nuisance water runoff collection and disposal, including Apple Valley. As part of operation of these wells, monitoring and reporting criteria and other necessary information are required to be provided by the Town to the Regional Board on an annual basis to ensure groundwater quality. Finally, the Town's ongoing use of such dry wells to manage stormwater flows



would continue regardless of the Project, such the wells' operation is not an impact caused by the Project.

The commenter goes on to assert that the discussion of stormwater conveyance should discuss the relationship between the Town's operation of Class V injection wells and its potential ownership of the AVR System, speculating that Town ownership of both systems could result in a higher risk of contamination. As described above, Class V injection wells are regulated under the Safe Drinking Water Act. The Town would continue to be required to comply with all requirements of the Act with regard to its Class V wells and these requirements would not change as a result of the proposed Project. Finally, the Town's maintenance activities are also reported to the RWQCB annually as required under the permits.

#### Response 7.31

The commenter claims that the Draft EIR fails to discuss potential growth inducing impacts of Town ownership of the water system in relation to the Town's General Plan forecasts. Specifically, the commenter expresses concern that the water supply system would be expanded to meet growing needs of the Town or that lower water rates under Town management could lead to increased water use.

Section 4.3, Hydrology and Water Quality, and Section 2.3, Regulatory Setting, of the Draft EIR already describe the existing regulatory requirements regarding water conservation applicable to the proposed Project. These include the requirement for the operator of the AVR System, whether it be Apple Valley Ranchos Water Company or the Town, to comply with the Water Conservation Act of 2009 (often referred to as SBX7-7), which requires increased emphasis on water demand management and requires the state to achieve a 20 percent reduction in urban per capita water use by December 31, 2020.

As described in Impact WAT-1 on page 72 of the EIR, any operator of the system would be required to comply with the water use reduction strategies and goals contained within the California Water Conservation Act of 2009. If the Town acquires the AVR System, it would be required to prepare a UWMP to support long-term resource planning and ensure that reliable and adequate water supplies are available to meet existing and future water demands over a 20-year planning horizon during normal, single-dry, and multiple-dry year periods, including through identification of water conservation measures. In addition, the EIR explains that the Town intends to continue operations substantially in their current form and no expansion of operations would occur with the proposed Project. Moreover, as discussed in Section 5.0, Growth Inducement and Other CEQA Issues, of this EIR, the proposed Project would not induce substantial population growth, including in the unlikely event of a reduction in water rates, in that it would not alter any existing land use designations or zoning nor would it result in a significant number of new employees to the community. Additionally, it would not result in any significant effect resulting from removing obstacles to growth. As a result, the proposed Project would not result in an increase in water use and opportunities to introduce water conservation measures as a result of the Town's operation of the system would be identified as part of the water supply planning process.



Response 7.32

The commenter discusses various rate structures and questions how the Town's management of the system, specifically related rate structures, would affect water demand and use. He goes on to express concern regarding potential disproportionate cost impacts to low-income customers and seniors. As discussed under Response 7.31 above, water demand would be driven by compliance with existing laws that call for a reduction in water use, and therefore would not increase. Additionally, as discussed in Response 7.22 above, municipalities do have other options for subsidizing water rates. Ultimately, the commenter's statements relate to economic and social impacts that are outside the scope of environmental analysis under CEQA. Please see Global Response #1.

Response 7.33

The final comment is a conclusory statement regarding the commenter's opinion that recirculation of the Draft EIR is required, based on his previous comments. See Response 7.1 through Response 7.32 for responses to the referenced comments. The commenter's opinion that the Draft EIR should be recirculated has been passed to Town decision-makers for consideration as part of the wider Project review process.

