

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA, 37TH FLOOR
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

HILL, FARRER & BURRILL LLP

Kevin H. Brogan (Bar No. 089427)

KBrogan@hillfarrer.com

Dean E. Dennis (Bar No. 112616)

DDennis@hillfarrer.com

One California Plaza, 37th Floor

300 South Grand Avenue

Los Angeles, CA 90071-3147

Telephone: (213) 620-0460

Fax: (213) 624-4840

Attorneys for Petitioner

APPLE VALLEY RANCHOS WATER
COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

APPLE VALLEY RANCHOS WATER
COMPANY, a California Corporation,

Petitioner,

vs.

TOWN OF APPLE VALLEY, a California
municipal Corporation, and DOES 1-10,

Respondents and Real
Parties in Interest.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

DEC 16 2015

BY Manuel Henry Andriano
MANUEL HENRY ANDRIANO, DEPUTY

CASE NO.

CIVDS1517935

PETITION FOR WRIT OF MANDATE

[CCP §1094.5 and California Environmental
Quality Act, Pub. Res. C. §§ 21167, 21168,
21168.5]

I.

INTRODUCTION

1. On November 17, 2015, the Town of Apple Valley ("Town") adopted, what it calls, the Apple Valley Ranchos Water System Acquisition Project ("Project") to acquire by eminent domain the private property of the Apple Valley Ranchos Water Company ("AVRWC"). The Town seeks to acquire a portion of AVRWC's water system, serving properties both within the Town and outside it, in areas having over 20,000 active service connections, providing water to 65,000 people. In its Resolutions of Necessity initiating the eminent domain process, the Town made findings that the public use and necessity require the acquisition of AVRWC's property and that operation of the system by the Town is a "more necessary public use" than operation of the system by AVRWC. As required by the California Environmental Quality Act ("CEQA"), the Town engaged in an environmental review process for the Project, including the preparation and adoption of an environmental impact report ("EIR") that purported to cover both the acquisition and the subsequent operation of the water system. But because the Town did not perform an operational study to assess whether it was qualified to operate the system, or whether it would have to use a private operator, or whether it might even have to contract with a neighboring public entity to operate the system, the EIR had to make certain assumptions "*for the purpose of the technical analyses in this EIR.*" Those assumptions impermissibly truncated some of the CEQA analysis, while impermissibly deferring other portions, such that the resulting EIR was incomplete and misleading and needs to be set aside, rewritten and recirculated to the public for its review and comment. Without an operational plan, the Town instead decided to assume, for "the technical analyses" in its CEQA review, that it would operate the system itself and do everything operationally *exactly the same as AVRWC has done*. In that way, the Town could avoid any meaningful assessment of its Project since (based on the assumption that it would do everything the same as is currently being done) there would be no environmental impacts because the Project would be a mere change in ownership. This assumption, based on no substantial evidence that it could be reasonably achieved, was nothing more than a ruse to permit the Town

1 to be able to quickly check off the environmental review and move to the acquisition phase for a
2 Project to which it had already committed and decided to adopt.

3 II.

4 PARTIES

5
6 2. Incorporated in 1947, Petitioner AVRWC is a privately held, investor owned
7 public utility company, organized and operating under the laws of California, and engaged in the
8 collection, storage, distribution, and sale of water. AVRWC's operations are regulated by the
9 State of California Public Utilities Commission ("CPUC").

10 3. Petitioner is informed and believes and, on that basis, alleges that Respondent
11 Town is a general-law city that has political boundaries concurrent with a portion of the AVRWC
12 System. The Town does not have regulatory authority over the AVRWC System.

13 4. Petitioner is currently unaware of the true names and capacities of DOES 1
14 through 10, inclusive, and therefore sues those parties by such fictitious names. DOES 1 through
15 10, inclusive, are persons or entities presently unknown to Petitioner who have or claim some
16 legal or equitable interest or other responsibility in or for the Project. Petitioner will amend this
17 Petition to identify the name and capacity of each of these DOES when Petitioner becomes aware
18 of them.

19 5. Petitioner is directly or beneficially interested in the Town's decisions with respect
20 to the Project.

21
22 III.

23 HISTORY OF PROJECT AND PUBLIC PROCESS

24
25 6. Petitioner is informed and believes and, on that basis, alleges, that on or about June
26 24, 2015, the Town published a "Notice of Preparation of an Environmental Impact Report,"
27 ("NOP") which described the project as the "acquisition" of the Apple Valley Ranchos Water
28 System and "the Town's subsequent operation of the AVR System *either internally by the Town*

1 *or through a qualified private contractor or public agency.”* (Emphasis added.)

2 7. Petitioner is informed and believes and, on that basis, alleges, that on or about July
3 16, 2015, three weeks after issuing the original Notice of Preparation, the Town published an
4 “Amended Notice of Preparation of An Environmental Impact Report” (“Amended NOP”), which
5 limited the project description to the acquisition of the Apple Valley Ranchos Water System *and*
6 “the Town’s subsequent operation of the AVR System, although alternatives to the Town’s direct
7 operation of the system would be evaluated in the EIR....The Town would operate and maintain
8 the system out of AVR’s existing operations and maintenance facility.” (Emphasis added.)

9 8. Petitioner is informed and believes and, on that basis, alleges that on or about
10 September 17, 2015, the Town published and circulated a Draft Environmental Impact Report
11 (“DEIR”) for the project. The Amended NOP project description was then carried over from the
12 Amended NOP to the DEIR itself:

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

27 9. Petitioner is informed and believes and, on that basis, alleges that the public was
28 given until November 2, 2015, to comment on the DEIR. During that time period, AVRWC filed
a letter brief outlining its comments on and objections to the DEIR. Other members of the public
also filed comments on the DEIR.

10 10. Petitioner is informed and believes and, on that basis, alleges that on or about
11 November 9, 2015, the Town published its Final Environmental Impact Report (“EIR”), including
12 its Responses to Comments of Petitioner and others.

11. Petitioner is informed and believes and, on that basis, alleges that on or about November 17, 2015, the Town conducted a public hearing on the EIR, and, at that hearing, certified the EIR. Also at that public meeting, the Town conducted a public hearing and adopted Resolutions of Necessity authorizing the acquisition of the Apple Valley Ranchos Water System by eminent domain. The resolutions included findings that the public use and necessity require the taking of AVRWC's private property and that operation of the water system by the Town, rather than AVRWC, was a "more necessary public use."

12. Petitioner is informed and believes and, on that basis, alleges that a Notice of Determination for the November 17, 2015 approvals was filed with the San Bernardino County Clerk on November 18, 2015 and posted as required by law on that date.

13. On or about December 16, 2015, Petitioner mailed its Notice of Intention to Commence CEQA Action under Pub. Res. C. § 21167.5. A copy, along with a proof of service is attached hereto as Exhibit A.

14. On or about December 16, 2015, Petitioner notified Respondent of Petitioner's Election to Prepare the Record of Proceedings for the Project under Pub. Res. C. § 21176.6(b)(2). A copy, along with a proof of service, is attached hereto as Exhibit B.

15. Petitioner is informed and believes and, on that basis, alleges that throughout 2015 and well before the Town initiated its NOP in June 2015, the Town has maintained an advocacy website labeled "H2OURS" the purpose of which is to advocate and disseminate the Town's position in favor of acquisition of the Apple Valley Ranchos Water System. Petitioner is further informed and believes and, on that basis, alleges that throughout 2015 and well before the Town initiated its NOP in June 2015, the Town has also sponsored and paid for overt advocacy in favor of the Town's acquisition of the Apple Valley Ranchos Water System, including radio advertising, newspaper advertising, cable television advertising, and digital advertising, as well as maintaining and advocating on Facebook and Twitter accounts.

16. Petitioner exhausted its administrative remedies, both orally and in writing. As a result of Respondent's approvals, Petitioner will suffer great and irreparable harm as alleged herein. Petitioner has no adequate remedy at law for this irreparable harm.

17. This action is brought to enforce important public policies with respect to protection of the environment under CEQA and will confer a substantial benefit on the public by protecting the public from environmental harm. Petitioner acts as a private attorney general to enforce these public policies and prevent such harm.

IV.

FIRST CAUSE OF ACTION

(Failure to Comply with CEQA)

18. Petitioner realleges and incorporates Paragraphs 1 through 17.

19. The Town's certification of the EIR and approval of the project violated CEQA in at least the following ways:

A. Inadequate Project Description and Analysis -- No Operational Plan.

20. When the Town published its NOP, it contained a project description that acknowledged the Town did not know what entity would manage the system after acquisition and included the possibility that operations could be managed "either internally by the Town or through a qualified private contractor or public agency." Then, three weeks later, the Town issued an Amended NOP indicating that the Town alone would operate the system "in the same manner" as AVRWC. Between those two dates, or at any time since, the Town did not and has not performed a study or provided an operational plan to demonstrate that the Town has the qualifications and capability to operate the system. "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* (1977) 71 Cal. App.3d 185, 199. "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Id.* at p. 198) 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

1 recommending an Operations Plan specifying just how the post-acquisition water system would
2 be operated so that the impacts of that operation could be identified and evaluated. At places, the
3 EIR simply assumes that the Town is capable of operating the system; at other places it argues
4 that in the future, it will have to obtain a permit from the State Water Resources Control Board
5 wherein it will have to prove it is qualified to operate the system. The project description stating
6 that the Town "will operate the system in the same manner as AVRWC" is supported by no
7 substantial evidence that the Town is capable or qualified to operate the system. Without an
8 expert opinion or study of whether the Town has the capability to operate a water system, with
9 which it has no experience, the project description is fatally flawed.

11 B. Inadequate Project Description and Analysis -- Improper Segmentation and
12 Deferral of CEQA Analysis.

13 21. Related, is the Town's effort to impermissibly narrow the project description by
14 amending the NOP to eliminate the possibility that a private contractor or public agency other
15 than the Town would operate the system. Responsibility for a project cannot be avoided by
16 limiting the title or description of the project. *Rural Land Owners Association v. Lodi City*
17 *Council* (1983) 143 Cal.App.3d 1013, 1025. The EIR states that "any [future] discretionary
18 approval to approve a change in operator (such as an operations agreement) that may result in
19 environmental effects would be subject to CEQA...The Town would perform environmental
20 review under CEQA, as required, for any changes that are proposed to management of the
21 system." (p. 228) But the Town has acknowledged by its NOP that it does not presently know
22 who will manage the system because it has not done any study of that fact. So the proposition
23 that it will determine the operator in the future is improper segmentation of the Project and
24 deferral of the CEQA analysis. A single project may not be divided into smaller individual
25 projects in order to avoid the lead agency's responsibility to consider the environmental impacts
26 of the project as a whole. *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145,
27 1171. To comply with CEQA, the Town must study the operations, come up with a plan, and
28 make a finite project description that includes an operator that, substantial evidence shows, is

capable and qualified for the job.

C. Inadequate Project Description -- No Description of the Severance of Yermo.

22. The AVRWC's service area includes the Yermo water system near Barstow. At one point, the EIR 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 Company and its facilities, the proposed Project does not include acquisition of the Yermo Water System, which is located east of the City of Barstow. This is because the Yermo Water Company facilities are located approximately 45 miles from the Town; Yermo Water Company does not provide any water services to the Town's residents, businesses, or other uses; and the Yermo Water Company'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." (EIR, p.1)

23. Since Yermo is a part of AVRWC, it is not enough for the EIR 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 EIR will assess the potential environmental implications that may flow from the severance. 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* (19889) 214 Cal.App.3d 1438, 1454 ("[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...").) 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 EIR. The EIR (p. 232) justifies not including Yermo because

1 the final approval of the purchase was not until Summer 2015. -- after the Town's EIR process
2 had begun. And since Yermo was a stand-alone system until that acquisition, the EIR finds it
3 reasonable to assume that the system would be stand-alone after the taking, with no resulting
4 impacts. But the Town's acquisition, even if successful, may take several years to complete, and
5 the Apple Valley system and the Yermo system will be intertwined by then. The EIR must
6 consider environmental impacts that are reasonably foreseeable. A project description must
7 include all relevant aspects of a project, including reasonably foreseeable future activities that are
8 part of the project. *Laurel Heights Improvement Assn. v. Regents of the University of California*
9 (*Laurel Heights I*) (1988) 47 Cal.3d 376. The acquisition of Yermo and its incorporation into the
10 operational structure of AVRWC was certainly foreseeable when the Town began its EIR scoping
11 process. The planned combination of the two systems was contemplated throughout the EIR
12 process. If the Town had no intention of acquiring the Yermo portion of AVRWC, the severance
13 of the Yermo system should have been included as part of the project description.

14
15 D. Inadequate Project Description -- No Disclosure of Impacts from Regulatory
16 Changes.

17 24. The Project Description should have described that the acquisition of AVRWC's
18 system in the Town will result in a shift from a public utility regulated by the California Public
19 Utilities Commission ("CPUC"), to a municipal utility without CPUC oversight. Under a
20 municipal structure, property owners would be permitted to invoke the Proposition 218 process to
21 stop rate increases, which may affect the Town's ability to maintain the system's infrastructure
22 and thus a reliable system. AVRWC is subject to certain customer service response requirements
23 and other service requirements under CPUC General Order 103-A; a municipal utility is not
24 subject to that order. General Order 103-A also requires AVRWC to have a Summary Operations
25 and Maintenance Plan which is updated every 5 years. The Town has not prepared an
26 Operational Plan, and the potential environmental impacts of the Town's proposed operation of
27 AVRWC's system cannot be evaluated without one. The CPUC regulates the rate setting process
28 and rate increases for the benefit of customers of AVRWC in ways a municipal utility does not,

1 which raises reliability questions. Under private ownership, shareholders generally want a return
2 on their investment which provides incentive for the company to achieve savings in between rate
3 cases but which the CPUC requires to be passed on to ratepayers in each succeeding rate case.
4 This promotes efficiency and incentive for the company to address replacement of aging
5 infrastructure so that service quality and reliability are maintained.

6 25. The CPUC process provides public meetings at which customers can express their
7 desires for lower rates, and the Office of Ratepayer Advocates represents customers in the CPUC
8 proceedings. Its statutory mission is "to obtain the lowest possible rate for service consistent with
9 reliable and safe service levels." The CPUC, through an adversarial process that includes
10 testimony, hearings and briefs, weighs all evidence and points of view and makes a rate-setting
11 determination based on the expenses and capital projects reasonably necessary for the long term
12 best interests of customers, while maintaining safe and reliable service. None of those protections
13 exist with a municipal system. The CPUC forward-looking rate case process requires advanced
14 planning of investment in infrastructure as evidenced by AVRWC's annual capital budgets and 5-
15 year capital budgets. The EIR states that the project would allow the Town to pursue grant
16 funding, but does not disclose the fact that private companies are also eligible for grant funding
17 and that the CPUC does allow private companies to pursue grant projects; a private company just
18 cannot include those projects in its rate base, which is an advantage to the rate payers. AVRWC,
19 and its parent, Park Water Company, have pursued grant funding, and Park has received \$2.5
20 million in grant funding. Under municipal ownership, the Town council is subject to the political
21 process and may tend to favor lower rates over spending the money necessary to keep the system
22 maintained and the infrastructure timely replaced. Several comments in the EIR suggest that the
23 Town has no intention of investing capital in the water system in the foreseeable future. And, as
24 noted above, even if the Town acts responsibly, its decision making is subject to second guessing
25 of the public under the Proposition 218 process. To the extent infrastructure reliability and
26 maintenance may reasonably be negatively affected by the proposed project, resulting in potential
27 significant environmental impacts, these issues should be disclosed and discussed in the EIR.

E. Inadequate Project Description -- Future Construction of a New O&M Facility in Apple Valley and Planned System Upgrades.

26. The EIR 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 Amended Initial Study prepared for the proposed Project and included in Appendix A." (EIR p. 37) 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 EIR as the change in ownership will trigger requirements to comply with current building codes.

27. In addition, the EIR 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." (EIR p. 52) 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 EIR 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.

28. 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 EIR 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,

1 there may be environmental impacts that are not included or discussed in the EIR.

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

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

21
22 F. Inadequate Discussion of Alternatives.

23 31. The requirement that EIRs identify and discuss alternatives to the project stems
24 from the fundamental statutory policy that public agencies should require the implementation of
25 feasible alternatives to reduce a project's significant environmental impacts. (*Citizens of Goleta*
26 *Valley v. Board of Supervisors* 52 Cal.3d 553, 564 (1990); Public Resources Code Section
27 21002.) The alternatives presented in an EIR must be potentially feasible. (*City of Long Beach v.*
28 *Los Angeles Unified Sch. Dist.* 176 Cal.App.4th 889, 920 (2009); 14 Cal. Code Regs. Section

1 15126.6(a).) As discussed above, for a number of reasons, the EIR does not contain an adequate
2 Project Description. Absent an adequate description, it is impossible to know whether there are
3 potentially significant environmental impacts. And without that information, it is impossible to
4 select a meaningful range of alternatives designed to avoid or substantially lessen the Project's
5 impacts. Nor is there any substantial evidence in the EIR that operation of the AVRWC system
6 by either the City of Victorville or City of Hesperia is practical, feasible, economic, or that it
7 would fulfill any of the Project objectives. This is again because the Town has not done an
8 Operations Study that would address these issues prior to conducting this EIR process. Nor did
9 the Town even speak to Victorville or Hesperia to see if their participation is feasible. Instead,
10 the Town merely shifted the question of potential operation by these neighboring communities
11 from the Project Description to the Alternatives section in order to streamline the analysis and
12 avoid having to discuss the potential impacts of the alternatives in detail. 14 Cal. Code Regs.
13 Section 15126.6(d).

14
15 G. Bias in Precommitment to the Town's Own Project.

16 32. The Town violated CEQA's prohibitions against precommitment to its Project
17 before all the evidence is considered by giving "impetus to a planned or foreseeable project in a
18 manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA
19 review of that public project." Cal. Code Regs., tit. 14, §15004. By precommitting to its own
20 Project before the evidence was complete, the Town committed a prejudicial abuse of discretion
21 for which the Project approvals must be set aside. *Bozung v. Local Agency Formation*
22 *Commission of Ventura County* (1995) 13 Cal.3d 263, 268 ["At the very least, however, the
23 People have a right to expect that those who must decide will approach their task neutrally, with
24 no parochial interest at stake"]; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 132.

25 33. Under CEQA, the Lead Agency has an obligation to consider all evidence of
26 significant environmental impacts prior to certification of the EIR and must avoid predisposition
27 or prejudging the evidence to favor a project during the CEQA process. This is especially true
28 when the Lead Agency is also the Project applicant and is defining the Project in such a way that

1 it could have no impacts, selecting and retaining the Project's environmental consultants, defining
2 the scope of the CEQA inquiry, certifying the EIR and ultimately voting on its own Project. The
3 Town's actions to narrow the Project Description and "propose" that the Town operate the system
4 "in the same manner" as AVRWC "for the purpose of the technical analyses in this EIR" were
5 designed to quickly advance the Project and foreclose or at least truncate, the environmental
6 review. This is because the Town had already committed itself to the Project before the review
7 process even began. Substantial evidence exists that the Town has operated as a biased advocate
8 in anticipation of the CEQA process and is unable to act as an open-minded Lead Agency as
9 contemplated by CEQA. This evidence includes a Town sponsored advocacy website called
10 "H2Ours" or www.avh2ours.com, supporting the Town's acquisition of AVRWC. The Town's
11 overt advocacy in favor of acquisition has also included radio advertising, newspaper advertising,
12 cable television advertising and digital advertising, including on the Town's official Facebook
13 page.

14
15 H. Inadequate Hydrology and Water Quality Analysis.

16 34. As discussed above, if the Town does not continue AVRWC's Main Replacement
17 Program, as the EIR and prior Town comments in the rate case suggest, there will be an increase
18 in the rate of leaks and potential for pipe failures. Because of soil conditions in Apple Valley and
19 because many of the mains are located in public rights of way, water lost due to leaks and pipe
20 failures tends to surface, cause erosion, disrupt traffic, and be lost to evaporation or be lost down
21 storm drains, rather than return to the groundwater aquifer. To meet the same demand, more
22 water will need to be pumped from the ground which will contribute to over-drafting the
23 groundwater basin.

24 35. In addition, the EPA and State Board DDW are continually evaluating and
25 proposing Maximum Contaminant Levels (MCL) for new constituents to be monitored, as well as
26 revising existing MCLs. The exact same concentrations of constituents that are now acceptable
27 could result in a degradation of water quality, with respect to what is allowed for potable water,
28 due to changed water quality regulations. AVRWC's personnel take water samples, deliver them

1 to a lab, and handle routine reporting. However AVRWC's primary water quality expertise comes
2 through administrative support from its parent, Park Water. The functions of tracking ongoing
3 changes in water quality regulations and conducting planning to meet them, is accomplished at
4 Park. The EIR does not explain how the Town will replace this function or what impact the loss
5 of this function will have on the Town's ability to ensure future compliance with water quality
6 standards. The EIR notes that the system must comply with the Safe Drinking Water Act
7 (SDWA) requirements and states that AVRWC has done so under its ownership. The EIR states
8 that based on AVRWC's 2009/10 Consumer Confidence and Water Quality Report (CCR), there
9 have been no contaminants detected that exceed primary or secondary standards. In section 4.3,
10 purportedly addressing water quality, there is no discussion of the SDWA or water quality and no
11 discussion of how the Town plans to maintain AVRWC's level of compliance with the SDWA in
12 an ever-changing water quality landscape when the concentration of constituents in the
13 groundwater can change (especially if the groundwater basin is receiving less recharge in drought
14 conditions) and the regulations and maximum contaminant levels are also changing.

15 36. The EIR assumes that compliance with SDWA will be maintained without any
16 explanation of how this will be done or with what effects. While none of AVRWC's active wells
17 currently exceed water quality standards, this is a result of AVRWC's active management and
18 planning – not because the groundwater in the Alto sub-basin meets water quality standards.
19 There are water quality issues in the Alto sub-basin (from which AVRWC's groundwater is
20 pumped), including arsenic and fluoride, which can affect the groundwater in AVRWC's area.
21 AVRWC has had to remove one of its wells from active status due to high arsenic levels, and
22 other systems nearby have fluoride issues. AVRWC has analyzed the groundwater basin and
23 determined the best sites to drill new wells for both optimal water quantity and quality. The best
24 sites are in the southwest part of AVRWC's service area, so well-site planning has to be done in
25 coordination with operational planning; if well sites are concentrated in one area of the system,
26 then the transmission capacity of the system must be up-graded to get the water to other parts of
27 the system. Maintenance of water quality requires an active effort and long-term awareness of
28 the groundwater basin, developments in water quality regulations, and coordination with

1 engineering and operations.
2

3 I. Failure to Discuss the Main Replacement Program Has Transportation, Traffic and
4 Public Safety Impacts.

5 37. As discussed above, if the Town does not continue AVRWC's Main Replacement
6 Program as the EIR indicates, there will be an increase in the rate of leaks and potential for pipe
7 failures. Leaks, and especially pipe failures, because many of the mains are in public rights of
8 way in streets, can cause safety problems by flooding roads and intersections and causing
9 erosional damage. This is especially a problem at night when it is hard to see and more so in the
10 winter when it can freeze and result in icy road conditions. The Town's position on a main
11 replacement program will have impacts on transportation and traffic and public safety and should
12 be analyzed in the EIR.
13

14 J. Loss of the Current System's Check and Balance Approach to Stormwater
15 Conveyance.

16 38. Discussion of stormwater conveyance in the EIR mentions the Town's numerous
17 Class V injection wells spread throughout the community and used for stormwater mitigation.
18 (EIR p. 104) These wells also provide a potential contamination route to the aquifer. Joint
19 ownership by the Town of both the Class V injection wells and the water system will remove the
20 existing check and balance with regard to this potential contamination route and could result in a
21 higher risk of contamination. This impact should have been discussed and evaluated in the EIR.
22

23 K. Inadequate Discussion of Potential Growth Inducing Impacts of Town
24 Ownership.

25 39. The EIR states that the proposed project does not include expansion of the delivery
26 capacity of the water system but that implementation of the Town's General Plan could result in
27 an increase of population by 114,462 persons, or an increment on the order of 150 percent of the
28 current population. The EIR fails to discuss how that growth could be accomplished without

1 expansion of the delivery capacity of the system or physical upgrades to the system. This is an
2 average annual growth rate of over 8 percent and will require a significantly increased production,
3 treatment and conveyance of water. The EIR suggests that lower rates may ensue after adoption
4 of the project (or perhaps elimination of the tiered rate structure) which can have a growth
5 inducing impact. Whether the acquisition is designed to encourage growth consistent with the
6 General Plan should be evaluated. The Town, in AVRWC's current CPUC rate case proceeding,
7 objected to AVRWC's conservation rate structure which includes multi-tiered rates. The EIR
8 does not include any study on how rates might be structured and the resultant impact on water
9 demand. The Town has not performed a rate design study to even determine whether, under
10 Proposition 218, the Town can legally have tiered rates. Were the Town to move to a single-tier
11 rate structure, that would be a significant change in operations and would likely promote
12 increased demand which will have environmental and operational impacts which should be
13 evaluated.

14 Wherefore, Petitioner prays for relief as follows:

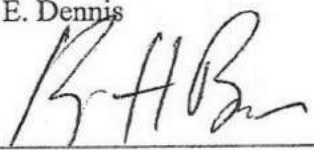
- 15
16 1. For a peremptory writ of mandate commanding Town:
 - 17 A. To vacate and set aside its decisions (1) certifying the Final EIR for the
18 Project, (2) approving the Project, and (3) approving other related
19 environmental documents;
 - 20 B. To comply with CEQA prior to any future approvals of the Project;
- 21 2. For a stay, temporary restraining order, preliminary injunction and permanent
22 injunction suspending and prohibiting any action by Town on furtherance of the Project until
23 Town complies with all requirements of CEQA;
- 24 3. That this Court retain jurisdiction until the writ of mandate has been fully
25 complied with and such compliance has been approved by the Court;
- 26 4. For costs of suit;
- 27 5. For attorneys' fees and other litigation expenses under C.C.P. §1021.5 or other
28 applicable law; and

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA, 37TH FLOOR
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

1 6. For such other and further relief as the court may deem just and proper.

2
3 DATED: December 16, 2015

HILL, FARRER & BURRILL LLP
Kevin H. Brogan
Dean E. Dennis

4
5
6 By: 
7 Kevin H. Brogan
8 Attorneys for Petitioner
9 Apple Valley Ranchos Water Company, a
10 California Corporation

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VERIFICATION

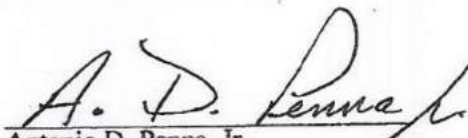
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am the Vice President/General Manager for Petitioner Apple Valley Ranchos Water Company, and am authorized to make this verification for and on its behalf. I have read the Petition for Writ of Mandate and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true and correct.

Executed in San Bernardino County, California on December 16, 2015.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Antonio D. Penna, Jr.
Vice President/General Manager
Apple Valley Ranchos Water Company

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