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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 28 2016

BY Norma Magana
NORMA MAGANA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHRISTINA LOPEZ-BURTON,

Petitioner and Plaintiff,

v.

TOWN OF APPLE VALLEY, a general law
city; and DOES 1-10,

Respondents and Defendants.

Case No.:

CIVDS1604968

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

By Fax

Petitioner and Plaintiff Christina Lopez-Burton ("Petitioner") alleges as follows:

INTRODUCTION

1. Petitioner brings this action to compel the Town of Apple Valley ("Town" or "Respondent") to comply with its obligations under Proposition 218 (Cal. Cont. art. XIII D, § 6 ("Section 6"), subds. (a) and (b)) with respect to the monthly wastewater (i.e. sewer) fees and charges it imposes on its wastewater customers. As discussed more fully herein, the Town imposes fees and charges that exceed the cost of providing wastewater service, are not proportionate amongst customers, fund expenses previously incurred, and support general governmental services,

1 each of which violates Section 6 subdivision (b). It also failed to give proper written notice of its
2 rate increases in violation of Section 6 subdivision (a). Petitioner seeks a writ of mandate and/or
3 judicial declaration that orders the Town to comply with these constitutional mandates before it
4 imposes any further wastewater fees or charges.

5 **PARTIES**

6 **A. Petitioner/Plaintiff**

7 2. Petitioner and Plaintiff Christina Lopez-Burton has been a resident of the Town of
8 Apple Valley for approximately 13 years and has been paying the wastewater fees and charges at
9 issue herein since that time.

10 **B. Respondents/Defendants**

11 3. Respondent and Defendant Town of Apple Valley ("Town") is a municipal
12 corporation and general law city located in the County of San Bernardino, California. It is an
13 "agency" subject to Proposition 218. (See Cal. Const. art. XIII C, § 1, subd. (b) & (c); art. XIII D,
14 § 2, subd. (a).)

15 4. Petitioner is unaware of the true names and capacities of Respondents/Defendants
16 sued as DOES 1 through 10, and therefore sues them by such fictitious names. Petitioner is
17 informed and believes and thereon alleges, that each DOE Respondent/Defendant is responsible for
18 the acts, violations and injuries alleged herein. Petitioner will amend this petition and complaint to
19 allege the true names and capacities of the DOE Respondents/Defendants when their identities are
20 ascertained.

21 5. Petitioner is informed and believes and thereon alleges, that at all times, each of
22 DOE Respondents/Defendants was the agent, employee, representative, partner, joint venturer,
23 and/or alter ego of each other Respondent/Defendant and, in doing the things alleged herein, was
24 acting within the course and scope of such agency, employment and representation on behalf of
25 such partnership or joint venture, and/or as such alter ego, with the authority, permission, consent,
26 and/or ratification of each other Respondent/Defendant.

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GENERAL ALLEGATIONS

6. The Town operates a wastewater (sewer) system which is comprised of 140 miles of collector sewers, trunk lines, interceptors, and nine sewer lift (pump) stations. The Town does not treat its wastewater; instead, treatment is performed by the Victor Valley Wastewater Reclamation Authority ("VWVRA"). The VWVRA operates as a Joint Powers Authority, is a public agency of the state of California and serves four member agencies, including the Town. It charges its member agencies for sewer treatment and treatment-related expenses (such as capital improvement projects.) The Town provides wastewater service to approximately 22,000 of its residents. The service is a property-related service because it is a public service having a direct relationship to property ownership. (See Cal. Const. art. XIII D, § 2, subd. (h).)

7. The Town charges its wastewater customers fees and charges for wastewater service. The Town imposes water fees and charges on properties as an incident of property ownership, including Petitioner's real property located at 12624 Remington Road, Apple Valley, CA 92308. (See Cal. Const., art. XIII D, § 2, subd. (e).). These fees and charges are for a property related service. (*Id.*)

FLAWED RATE INCREASES

8. The Town has not, for at least the past two decades, conducted a rate study, cost of service study, or an internal analysis in an effort to ensure that it complies with article XIII D, section 6, subd. (b)(1) or (3). Instead, over the past 20 years it has periodically imposed increases on an "original sewer rate" which was set at \$8 per equivalent dwelling unit ("EDU") for single family residential customers in 1980 – years prior to the passage of Proposition 218. The original sewer rates would not have been Prop. 218 compliant because, *inter alia*, the Town set the rates higher than necessary in order to subsidize other Town funds.

9. As of March 12, 2013, the per EDU rate was \$24.46. In 2013 and 2014, the Town adopted rate increases purportedly based on a need to pass on cost increases that the VWVRA had imposed on the Town. Specifically, on March 12, 2013, the Town adopted Resolution No. 2013-13 which increased the per EDU rate by 15.25% (from \$24.46 to \$28.19), effective March 13, 2013.

1 (Attached hereto as **Exhibit A** is a true and correct copy of the Resolution.) The Town staff report
2 supporting Resolution 2013-13 stated that the VVWRA had increased treatment costs by 14.9%
3 effective July 1, 2012. It explained that the rate increase would allow the Town to recapture this
4 VVWRA cost increase in the future and recapture a portion, but not all, of the increased costs the
5 Town had previously incurred, but had not yet recovered.

6 10. On June 10, 2014, the Town adopted Resolution No. 2014-18, which increased the
7 per EDU rate by a total of 48%: (11.5% (effective May 28, 2014); 11.5% - FY16 (i.e. July 1, 2015);
8 9% - FY17; 9% - FY18; 7% - FY19.) (Attached hereto as **Exhibit B** is a true and correct copy of
9 the Resolution.) The Town staff report supporting the resolution explained that the VVWRA had
10 proposed to increase rates as follows: 9% in FY15 (i.e. beginning July 1, 2014); 9% -FY16; 9% -
11 FY17; 9% - FY18; and 7% - FY19 for purposes of funding the construction of a sub-regional
12 treatment plant for reclaimed water and to fund the capital cost of maintaining its facilities and
13 sewer system infrastructure. The staff report stated that "increasing the sewer user charges by
14 11.5% by passing through the VVRWA rate increase will allow the Town to recapture its future
15 increased cost for waste water treatment from VVWRA, a portion but not all of the previous
16 increased treatment costs that were not passed through by the Town and fund necessary future
17 capital improvements."

18 11. The Town's approach to these rate increases is flawed and illegal. First, it may not
19 use the "original sewer rate" of \$8 per EDU as the foundation upon which to base increases because
20 the original sewer rate was not Prop. 218 compliant. Second, the Town's math is wrong. The only
21 time a 9% increase in VVWRA costs (to be paid by the Town), for example, should translate to a
22 9% increase in rates charged to the Town's customers, is if VVWRA expense represented *all* of the
23 Town's sewer costs. But the VVWRA expense represents only about 25% of the total wastewater
24 costs in any given year. Thus, a 9% increase in VVWRA rates should only translate to a 2.25%
25 increase (25% of 9%) in customer rates. Third, the Town may not charge current customers a rate
26 to subsidize supposed underpayments by prior customers (i.e. costs "previously incurred but not
27 yet recovered.")
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1 12. For these reasons, the Town's fees and charges violate Section 6 subdivision (b)(1)
2 and (4).

3 **ILLEGAL TRANSFERS**

4 13. The Town uses sewer fees and charges collected from its customers to fund general
5 governmental expenses unrelated to the cost of providing sewer service. According to its Fiscal
6 Year 2015-2016 budget, it has made the following transfers from its Wastewater Fund to its General
7 Fund over the past three fiscal years:

8 2012-2013	\$1,668,538 (Actual)
9 2013-2014	\$1,563,943 (Actual)
10 2014-2015	\$1,707,400 (Estimated)
11 2015-2016	\$1,896,510 (Budgeted)

12 14. The Town contends that these transfers represent reimbursement of expenses that
13 the General Fund has incurred on behalf of the wastewater enterprise and are therefore justified.
14 In the Town's Proposed Budget for Fiscal Year 2015-2016, for example, it has identified costs in
15 a Cost Allocation Plan that purports to support these reimbursements. But many of the
16 reimbursements do not make sense.

17 15. For example, in the Cost Allocation Plan, the Town allocated 21% of the Town's
18 total "General Govt." expenditures (\$3,034,798) to the Wastewater Fund or \$637,308. But the
19 expenditures identified in the General Government budget (page 173 of the FY 15-16 Budget)
20 include costs that are plainly not related to providing wastewater service. For example, the General
21 Government budget includes a transfer of \$1,072,660 to the Parks & Recreation Fund and a
22 \$349,968 transfer to the Golf Course Fund. Neither the Parks and Recreation Department nor the
23 Town's golf course support wastewater operations. These transfers violate Section 6 subdivision
24 (b)(1)(2) and (5).

25 **DISPROPORTIONATE RATES**

26 16. Fees and charges must not exceed the proportional cost of the service attributable to
27 the parcel. Despite dramatic differences in the costs of providing wastewater service to different
28

1 types of customers, the Town charges the same EDU rate (\$35.04) to single family residents, multi-
2 family residents, and commercial customers with "an individual restroom." Other commercial
3 customers with "centralized sewer use facilities" are charged \$35.04, plus a separate amount "per
4 fixture" in excess of twenty units (units are fixtures like showers, sinks, urinals.) This is an arbitrary
5 methodology that is not tied to the costs of providing wastewater service.

6 17. Different types of sewer customers impact the sewer system (and accordingly, the
7 costs of providing service) in dramatically different ways. This difference is most profound as
8 between commercial and residential customers. Commercial customers often discharge far greater
9 contaminants than residential customers, all of which require physical, chemical, and biological
10 processes to remove. Indeed, the industry practice is to account for Total Suspended Solids
11 ("TSS"), Biological Oxygen Demand ("BOD") and NH3 (ammonia) when ascertaining how much
12 to charge customer groups. Thus, in a Prop. 218-compliant utility, a car wash is (and should be)
13 charged more than a residential customer because its impact on the wastewater systems is far
14 greater. In fact, the VVWRA accounts for BOD, TSS, and NH3 in calculating its unit costs to its
15 members. But the Town does not account for these cost components when it charges its customers.
16 Similarly, the Town does not account for another critical and industry-standard cost factor – flow
17 (volume of wastewater). The flow of wastewater can be estimated by reference to the amount of
18 water each parcel utilizes.

19 18. As a result, a widow residing in a one-bedroom apartment is charged the same
20 amount as a Starbucks, drycleaner, or a car wash, despite the extreme difference in the
21 concentration of contaminants in their respective wastewater. She is also charged the same amount
22 as another single family residence with four bathrooms and seven occupants, despite the fact her
23 volume of flow is substantially less. This one-size fits all approach violates Section 6, subdivision
24 (b)(3).

1 **FAILURE TO PROVIDE PROPER NOTICE OF RATE INCREASES**

2 19. Section 6 subdivision (a)(1) requires a local agency like the Town to mail to affected
3 property owners, a notice of proposed rate increases at least 45 days prior to a public hearing. The
4 written notice must include the following critical information:

- 5 • The amount of the fee or charge proposed to be imposed upon each (parcel)
6 • The basis upon which the amount of the proposed fee or charge was imposed
7 • The reason for the fee or charge
8 • The date, time, and location of a public hearing on the proposed fee or charge

9 (§ 6, subd. (a)(1).)

10 20. As explained above, on June 10, 2014, the Town adopted Resolution 2014-18, which
11 increased wastewater user charges for five fiscal years beginning on July 1, 2014. But the written
12 notice that the Town mailed did not comply with Section 6 subdivision (a) because it failed to
13 advise of the proposed increases in fiscal year 15-16 (i.e. beginning July 1, 2015) through fiscal
14 year 18-19 (i.e. beginning July 1, 2018.) (Attached hereto as **Exhibit C** is a true and correct copy
15 of the Notice.) In addition, the Notice failed to notify property owners that in addition to the EDU
16 increase, the Town was proposing to (and later adopted) an increase in the per fixture cost (in excess
17 of 20 fixtures) from \$1.40 to \$1.57.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Petition for Writ of Mandate**

21 **C.C.P. § 1085**

22 **(Against All Respondents)**

23 21. Petitioner hereby incorporates by reference each of the preceding allegations as
24 though fully set forth herein.

25 22. Respondents have refused and continue to refuse to comply with California
26 Constitution article XIID section 6 subdivisions (a) and (b). Specifically, they impose wastewater
27 utility fees and charges that violate the substantive restrictions as set forth in Section 6 subdivision
28 (b)(1)-(5) as discussed more fully above. Furthermore, they impose fees and charges without first
providing notice as required by article XIII D section 6 subdivision (a)

23. There is a clear, present and ministerial duty upon the part of the Respondents to comply with these statutory mandates.

24. Petitioner has a clear, present and beneficial right to the performance of that duty.

25. Petitioner does not have an adequate remedy at law.

26. Accordingly, Petitioner is entitled to a writ of mandate pursuant to C.C.P. § 1085 as specified more fully below.

SECOND CAUSE OF ACTION

Declaratory Relief

C.C.P. § 1060

(Against All Defendants)

27. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

28. An actual, present, and substantial controversy exists between Plaintiff and Defendants. Plaintiff contends that Defendants have imposed and continue to impose wastewater fees and charges in violation of California Constitution article XIII D section 6 subdivisions (a) and (b)(1)-(5). Defendants contend that they have complied, and will continue to comply with said constitutional restrictions and requirements.

29. Plaintiff is entitled to a judicial declaration declaring that the wastewater fees and charges currently being imposed are illegal because they violate these constitutional provisions.

PRAYER FOR RELIEF

WHEREFORE, Petitioner/Plaintiff prays that the Court:

ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS

1. Issue a writ of mandate directing the Respondents to comply with California Constitution article XIID, section 6, subdivisions (a) and (b)(1)-(5) with respect to the wastewater fees and charges they impose each month.

1
2 **ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS**

3 1. Enter a declaratory judgment declaring that Defendants' practices have violated
4 California Constitution article XIID, section 6, subdivisions (a) and (b)(1)-(5).
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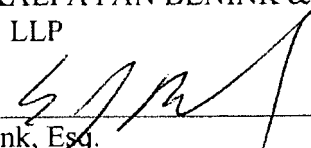
6 **ON BOTH CAUSES OF ACTION AS TO ALL DEFENDANTS**

7 1. Award Petitioner and Plaintiff costs of suit and attorney's fees as provided by law,
8 including under Code of Civil Procedure section 1021.5.

9 2. Grant further relief that the Court deems just and proper and in the interest of justice.
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11 Dated: March 28, 2016

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP

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Eric J. Benink, Esq.
Attorneys for Petitioner/Plaintiff
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VERIFICATION

I, Christina Lopez-Burton read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know the contents thereof. The matters stated therein are true and correct of my own knowledge and belief or on information and belief as indicated therein.

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

Executed in the County of San Bernardino, California.

DATED: March 24, 2016


Christina Lopez-Burton

RESOLUTION NO. 2013-13

A RESOLUTION ESTABLISHING SEWER USER CHARGES INCLUSIVE OF AN INCREASE IN AN AMOUNT OF THREE DOLLARS AND SEVENTY THREE CENTS (\$3.73) PER EQUIVALENT DWELLING UNIT PER MONTH AND ESTABLISHING AN OPERATIVE DATE FOR APPLICATION OF THE PROPOSED INCREASE

WHEREAS the Town of Apple Valley's Municipal Code requires all fees and charges to be adopted by Resolution of the Town Council of the Town of Apple Valley; and

WHEREAS the Town currently charges sewage users in the amount of twenty four dollars and forty-six cents (\$24.46) per equivalent dwelling unit (EDU) per month; and

WHEREAS the Town has proposed charging sewage users in the amount of twenty eight dollars and nineteen cents (\$28.19) per equivalent dwelling unit (EDU) per month; and

WHEREAS the Town has duly proposed and made available to the public data including the costs of providing said services; and

WHEREAS the Town Council of the Town of Apple Valley has held a public hearing to consider an amendment to the fees and charges for such services; and the Town Council has duly considered all oral and written presentations which were made in respect to said fees and charges; and

WHEREAS the amount of the fees and charges imposed on any person as an incident of ownership do not exceed the proportional cost of the service attributable to the property, which service is used by or immediately available to the owner of the property; and

WHEREAS the revenues derived from the fees and charges, as amended, will not exceed the cost reasonably borne in providing the services, and will not be used for any purposes other than that for which the fees and charges are imposed, and the fees and charges are not being imposed for general governmental services.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apple Valley as follows:

Section 1: Sewer User Fees

- (a) Each unit designed for single family occupancy, each residential unit within a multiple family development, and each mobile home unit will be assessed at the rate of \$28.19 per unit per month effective at such time as necessary to cover related costs.
- (b) Each commercial shop or office with individual restroom facilities will be assessed at the rate of \$28.19 per unit per month plus \$1.410 per fixture unit in excess of twenty (20) fixture units effective at such time as necessary to cover related costs.
- (c) Commercial or industrial shops or office with public and/or centralized sewer use facilities will be assessed a minimum of \$28.19 per month plus \$1.410 per fixture unit in excess of twenty (20) fixture units effective at such time as necessary to cover related costs.
- (d) Schools' monthly user fees will be calculated on the basis of total annual enrollment (including faculty) whereby twenty-three (23) students and/or faculty equals one (1) EDU, which is defined as twenty (20) fixture units which will be assessed at the rate of \$28.19 per EDU per month effective at such time as necessary to cover related costs.
- (e) The Sewer User Charge will be collected by the Town on a bimonthly basis for residential service and all others will be collected on a monthly basis.

Section 2: Effective Date

The fees and charges established herein shall become effective on March 13, 2013. Section 1 of this Resolution shall become operative on the same date.

APPROVED and ADOPTED by the Town Council of the Town of Apple Valley, California this 12th day of March, 2013.


Curt Emick, Mayor

ATTEST:


LaVonda Pearson, Town Clerk

RESOLUTION NO. 2014-18**A RESOLUTION ESTABLISHING SEWER USER CHARGES INCLUSIVE OF AN INCREASE IN AN AMOUNT OF THREE DOLLARS AND TWENTY FOUR CENTS (\$3.24) PER EQUIVALENT DWELLING UNIT PER MONTH AND ESTABLISHING AN OPERATIVE DATE FOR APPLICATION OF THE PROPOSED INCREASE**

WHEREAS, the Town Council of the Town of Apple Valley is a member entity of the Victor Valley Wastewater Reclamation Authority (VWRA), a Joint Powers Authority, duly formed under the laws of the State of California; and

WHEREAS, the VWRA approved a 43.0% increase in total (FY15 - 9%, FY16 - 9%, FY17 - 9%, FY18 - 9%, FY19 - 7%) in the sewer user fees for member agencies over the next five years beginning fiscal year 2014-15 effective on July 1 which increased VWRA's rates for FY15 from \$2,528 per million gallons treated, to \$2,756 per million gallons treated or a \$228 increase per MG treated and from Twenty Two Dollars Twenty Seven Cents (\$22.27) to Twenty Four Dollars Twenty Seven Cents (\$24.27) per equivalent dwelling unit (EDU) per month; and

WHEREAS, the Town as a member entity of the VWRA, will be charged the additional 43.0% increase for sewage treatment costs over the next five years beginning July 1, 2014 as outlined above; and

WHEREAS, the Town of Apple Valley's Municipal Code requires all fees and charges to be adopted by Resolution of the Town Council of the Town of Apple Valley; and

WHEREAS, the Town currently charges sewage users in the amount of twenty-eight dollars and nineteen cents (\$28.19) per equivalent dwelling unit (EDU) per month; and

WHEREAS, the Town is requesting to increase the current sewer user fee by an amount of 48% in total (FY15 - 11.5%, FY16 - 11.5%, FY17 - 9%, FY18 - 9%, FY19 - 7%) or Three Dollars and Twenty-Four Cents (\$3.24) equaling 11.5% beginning May 28, 2014 with incremental increases as stated herein thereafter to be effective each July 1 of each subsequent fiscal year in order to recapture and recover the additional sewage treatment charges to the Town charged to it by the VWRA; and

WHEREAS, the Town has proposed charging sewage users in the amount of thirty-one dollars and forty-three cents (\$31.43) per equivalent dwelling unit (EDU) per month in the first year of the rate increase; and

WHEREAS, the Town has duly proposed and made available to the public data including the costs of providing said services; and

WHEREAS, the Town Council of the Town of Apple Valley has held a public hearing to consider an amendment to the fees and charges for such services; and the Town Council has duly considered all oral and written presentations which were made in respect to said fees and charges; and

WHEREAS, the amount of the fees and charges imposed on any person as an incident of ownership do not exceed the proportional cost of the service attributable to the property, which service is used by or immediately available to the owner of the property; and

WHEREAS, the revenues derived from the fees and charges, as amended, will not exceed the cost reasonably borne in providing the services, and will not be used for any purposes other than that for which the fees and charges are imposed, and the fees and charges are not being imposed for general governmental services.

WHEREAS, the Town desires to comply with Section 6 of Article XIII(D) of the California Constitution regarding the notice, hearing and protest procedures.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apple Valley as follows:

Section 1: Sewer User Fees

- (a) Each unit designed for single family occupancy, each residential unit within a multiple family development, and each mobile home unit will be assessed at the rate of \$31.43 per unit per month effective at such time as necessary to cover related costs.
- (b) Each commercial shop or office with individual restroom facilities will be assessed at the rate of \$31.43 per unit per month plus \$1.572 per fixture unit in excess of twenty (20) fixture units effective at such time as necessary to cover related costs.
- (c) Commercial or industrial shops or office with public and/or centralized sewer use facilities will be assessed a minimum of \$31.43 per month plus \$1.572 per fixture unit in excess of twenty (20) fixture units effective at such time as necessary to cover related costs.
- (d) Schools' monthly user fees will be calculated on the basis of total annual enrollment (including faculty) whereby twenty-three (23) students and/or faculty equals one (1) EDU, which is defined as twenty (20) fixture units


which will be assessed at the rate of \$31.43 per EDU per month effective at such time as necessary to cover related costs.

- (e) The Sewer User Charge will be collected by the Town on a bimonthly basis for residential service and all others will be collected on a monthly basis.

Section 2: Effective Date

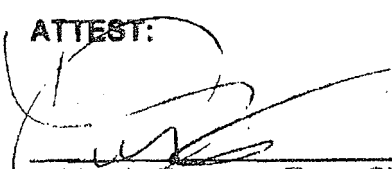
The fees and charges established herein shall become effective on June 11, 2014. Section 1 of this Resolution shall become operative on the same date.

APPROVED and **ADOPTED** by the Town Council of the Town of Apple Valley this 10th day of June, 2014.



Larry Cusack, Mayor Pro Tem

ATTEST:



LaVonda Pearson, Town Clerk



Town of
Apple Valley

Town of Apple Valley

14955 Dale Evans Parkway • Apple Valley, California 92307

NOTICE OF PUBLIC HEARING
ABOUT PROPOSED SEWER USER FEE INCREASE

Dear Property Owner:

In compliance with Section 6 of the California Constitution, Article XIII(D)(Proposition 218), this notice is to provide you with information about the Proposed Fee Increase. On April 08, 2014, at a regular meeting of the Town Council of the Town of Apple Valley, the Town Council adopted Resolution 2014-10 to set a time and place for a public hearing on the proposed sewer user fee increase in an amount of Three Dollars Twenty-Four Cents (\$3.24) per equivalent dwelling unit (EDU) per month and directed staff to proceed with the special notice procedures as required by law.

Hearing Date and Time:

This notice is to inform you of a public hearing to consider the Proposed Fee Increase, which is scheduled for Tuesday, May 27, 2014, at 6:30 p.m. (or as soon thereafter as the matter may be heard) at the Town of Apple Valley Council Chambers, located at 14955 Dale Evans Parkway, Apple Valley, CA 92307.

Information Regarding Pass-Through Proposed Rate Increase:

In March, 2014, the Victor Valley Waste Water Reclamation Authority (VWWRA) proposed an incremental increase totaling 43.0% (FY15 - 9%, FY16 - 9%, FY17 - 9%, FY18 - 9%, FY19 - 7%) in the sewer user charge for member agencies over the next five fiscal years beginning July 1, 2014. The VWWRA increase is intended to provide resources to fund the construction of sub-regional treatment plants for reclaimed water and fund the capital cost of maintaining its facilities and sewer system infrastructure. This increase was approved by VWWRA and becomes effective for member agencies on July 1, 2014.

As reported to Council during Fiscal Year 2013, the Town did not fully pass through the prior cost increase and absorbed over \$140,000 in increased sewer costs at the time of the public hearing in March, 2013. This VWWRA rate increase will increase the Town's sewage charges by approximately \$18,500 per month in the first year. The Town's Sewer Fund cannot sustain the increased costs due to the VWWRA rate increase.

Currently, the Town charges sewer users twenty-eight dollars and nineteen cents (\$28.19) per equivalent dwelling unit (EDU) per month. The fee is proposed to increase by three dollars and twenty-four cents (\$3.24) or 11.5% to thirty-one dollars and forty-three cents (\$31.43) per EDU per month effective May 28. Increasing the sewer user charges by 11.5% by passing through the VWWRA rate increase will allow the Town to recapture its future increased cost for waste water treatment from VWWRA, and a portion but not all of the previous increased

treatment costs that were not passed through by the Town and fund necessary future capital improvements.

At the Public Hearing, the Town will consider all protests against the Proposed Fee Increase. If written protests against the Proposed Fee Increase are presented by a majority of the owners of the identified parcels, the Town will not impose the fee. If there is no majority protest, the Town Council will then consider a Resolution to adopt the Proposed Fee Increase. If adopted, the Proposed Fee Increase would become effective on May 28, 2014.

You Can Be Heard:

Proposition 218 allows affected property owners to respond to Proposed Rate Increases prior to the close of the public hearing. If you object to the Proposed Rate Increase, you may file a written protest with the Town Clerk at, or before, the close of the public hearing. A valid protest must contain 1.) the address, or assessor's parcel number (APN) of the property, and 2.) the signature of the property owner of record. Only one protest may be filed for each parcel. The property owner may also come to the hearing and protest orally. You may use the protest form below. If you have any questions, please contact Marc Puckett, Assistant Town Manager at (760) 240-7000 or you may email him at mpuckett@applevalley.org.

PROTEST FORM

If you would like to protest the Proposed Sewer User Fee Increase, you may complete this Protest Form, detach it, and mail it to the Town of Apple Valley, Town Clerk, 14955 Dale Evans Parkway, Apple Valley, CA 92307, or hand deliver the form to the Town Clerk's office. In order for this form to be counted as a valid protest against the Proposed Fee Increase, this form must be signed and delivered to the Town Clerk no later than the close of the Public Hearing, on May 27, 2014. **Only one protest is allowed per service address.**

Service Address: _____

____ I protest the Proposed Fee Increase

I hereby declare under penalty of perjury that I am the owner of the above listed property or the authorized representative of the above listed property.

Please sign and then print your name: _____ Date: _____

Please print the property owner's name: _____