Superior Court of California
County of San Bernardino
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San Bernardino, CA 92415-0210

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COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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BY Monica Real-Ramos
MONICA REAL-RAMOS, DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

APPLE VALLEY RANCHOS WATER COMPANY, Plaintiffs, v TOWN OF APPLE VALLEY, Defendants.	Case No.: CIVDS1517935 **RULING ON WRIT PETITION; AND PETITIONER'S EX-PARTE APPLICATION FOR LEAVE TO FILE MOTION FOR JUDICIAL NOTICE**

This matter came before the court for a hearing on a Petition for Writ of Mandate as well as an ex-parte application for Leave to File a Motion for Judicial Notice. The court has reviewed and considered the briefs of the parties as well as the arguments of counsel and issues its ruling as follows:

Introduction

On December 16, 2015, Apple Valley Ranchos Water Company (AVRWC) filed a petition for writ of mandate against Town of Apple Valley. It alleges that the Town adopted a Resolution of Necessity on November 17, 2015, that authorized the Town's acquisition of the Apple Valley Ranchos Water System by eminent domain. It asserts

the Town violated CEQA when it approved the Apple Valley Ranchos Water System Acquisition Project.[1]

On December 14, 2017, this court held a hearing on Petitioner AVRWC's writ petition. Petitioner argued reasons in support of its contention the Town failed to comply with the requirements of CEQA. The Town asserted the transfer of ownership and operation of the water supply system, which the Town refers to as the AVR System, is not a CEQA project as a matter of law, and even if it is a project, it is exempt under the categorical exemption for Class 1 projects and under the common sense exemption. Therefore, the Town argues, Petitioner's arguments addressed to CEQA requirements are without consequence.[2]

NOT A CEQA Project

Town's Request for Judicial Notice

With its opposition, the Town requests that the court take judicial notice of the Joint Application of Mesa-Crest Water Company (U333W) and Liberty Utilities (Park Water) Corp. (U314W) for an Order Authorizing Mesa-Crest Water Company to Sell, and Liberty Utilities (Park Water) Corp. to Purchase, the Public Utility Assets of Mesa-Crest Water Company, and Request for Expedited Consideration, which document was filed with the California Public Utilities Commission on April 24, 2017. (Town's RJN Ex. A.)

At the December 14 hearing, Petitioner stated it did not oppose the request. While at the hearing the court stated it would grant the Town's request, on further

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[1] On January 7, 2016, the Town filed an eminent domain action against AVRWC to obtain the water company's water supply and distribution system located within the boundaries of the Town and County, Case No. CIVDS1600180. The Town's eminent domain action refers to approval of Resolution of Necessity No. 2015-44, which is the same Resolution at issue in the CEQA action. The eminent domain case also is pending before this court.

[2] On October 25, 2017, the Town filed a Notice of Lodging Certified Administrative Record and Certified Augmented Record (hereinafter "administrative record"). This filing included a USB thumb drive represented as containing the administrative record. The submission of a USB drive on October 25, 2017, did not result in the proper lodging of the electronic administrative record. California Rules of Court, rule 3.2207(a)(4) requires that if electronically filed, the administrative record should be contained on a CD-ROM, DVD, "or other medium in a manner that cannot be altered." The USB drive is not demonstrated to be such a medium.

The court made the Town aware of this issue and requested it properly lodge a copy of the administrative record. On December 1, 2017, by a cover letter from the Town's counsel's legal secretary, the Town submitted two CDs representing they contained the certified administrative record. The CDs identified the following records as including: AR0001-AR13498 and AR13499-AR14995.

At the December 14 hearing both parties stipulated, based on the Town's representation that the CDs contain the administrative record on the thumb drive, that the CDs submitted on December 1, 2017 are the true and correct electronic copy of the administrative record. The court treated these CDs as the lodged administrative record.

consideration the court denies the Town's request. If the Town wanted the court to consider such evidence, it needed to make a proper request to augment the record.

Petitioner's Ex Parte Application for Leave to File a Motion for Judicial Notice

On January 23, 2018, Petitioner filed an ex parte motion for leave to file a motion for judicial notice. It seeks to bring before this court a request for judicial notice of moving and opposition papers in the companion eminent domain case regarding discovery of an operations plan prepared by the Town after certification of the EIR.

The Town opposed the ex parte. It asserts, among other arguments, that Petitioner is improperly seeking to re-open arguments regarding the merits of the CEQA claims. It also asserts that Petitioner is seeking to admit extra-record evidence that post-dates the Town Council's November 2015 approvals without meeting the requirements for consideration of such information.

After considering the parties' arguments, Petitioner's ex parte motion is denied. The court will not allow Petitioner to use a request for judicial notice to improperly augment the administrative record.

DISCUSSION

Whether the Town Can Assert as Part of Its Defense that Acquisition of the AVR System is not a CEQA Project or Subject To Exemptions

In reply, Petitioner asserts that the Town's new arguments that the project is not subject to CEQA are without merit because it is based on an assumption that there will be no change to the water system under Town management. It also asserts that if any of these exemptions applied, the Town would have raised them at the outset, not three years later as part of this proceeding. It contends that the Town is now making arguments that it never raised by answer or otherwise.[3] It also asserts that neither Town staff, nor the Town Council, has made factual findings that the project was not a

[3] Petitioners do not provide any legal authority that the Town was required to raise these issues as part of its answer. In addition even if it was, as part of its answer the Town asserted "Compliance with the Law" as the Ninth Affirmative Defense, in which it stated that the Petition is barred because the Town has complied with the law and acted reasonably with intent to obey the law.

CEQA project or that it is exempt, but does not explain the legal consequence of such contention.

Whether the Town's acquisition and operation of the AVR System is a "project" for CEQA purposes, and if so, whether one of the exemptions applies, is a threshold issue. On its face, it appears disingenuous for the Town to prepare an EIR and then in light of attacks on it, assert for the first time as part of its opposition that an EIR was not even required. However, the Town cites to several cases in support of the court considering these issues at this time. These cases conclude that this defense can be raised in response to a petition regarding the sufficiency of an EIR.

In *Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 180-183, the Court held a City that prepared an EIR for a road grade separation project did not forfeit its right to argue no EIR was required because a CEQA exemption applied. Decided on a demurrer, the Court stated, "The City could defend itself against Del Cerro's claim the EIR was inadequate under CEQA by asserting CEQA did not apply. (*See San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1386, 44 Cal.Rptr.3d 128 (*San Lorenzo)* ['"Where a project is ... exempt, it is not subject to CEQA requirements and 'may be implemented without any CEQA compliance whatsoever.'"'].)" (*Del Cerro, supra,* 197 Cal.App.4th at p. 179.)

The *Del Cerro* Court also rejected petitioner's arguments that waiver and equitable estoppel precluded the City from changing its position and asserting the exemption applied. The Court, quoting *Santa Barbara County Flower & Nursery Growers Association v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 876, explained, '"Under the doctrine of equitable estoppel, a party cannot deny *facts* that it intentionally led another to believe if the party asserting estoppel is ignorant of the true facts, and relied to its detriment.... Nothing in the record shows that the [challenger] was unaware of the exemption, or that the County's decision to prepare an EIR prevents the [challenger] from ascertaining the applicable law.' (*Ibid.*) ... 'The preparation of an EIR by the County did not waive the exemption....' [Citation.]" (*Id.* at

p. 179-180.) The *Santa Barbara County* Court also explained that "'estoppel cannot be applied against a governmental entity if it would nullify a policy adopted for the benefit of the public.'" The Court concluded that the exemption at issue was part of the Legislature's public policy determination that an exemption is appropriate. (*Del Cerro, supra,* 197 Cal.App.4th at p. 180.)

As part of its reply, Petitioner does not offer any argument that the reasoning of *Del Cerro* does not apply to the circumstances here to the extent that *Del Cerro* concludes that a local agency can defend itself against a petitioner's claims the EIR was inadequate by asserting CEQA does not apply.

At the hearing, Petitioner admitted as much when in the face of this court's inquiry about the cases the Town relies on, it responded that the cases seem to stand for the principle that the Town can bring the issue up at any time. Petitioner then went on to assert that in the factual context here, where the Town did an initial study, made findings and official determination to proceed with an EIR, the facts are significantly different. This argument does not provide a basis to distinguish *Del Cerro* where, as discussed above, that case involved the City completing an environmental impact report and in the face of a challenge to the adequacy of the EIR, raising as a defense the project was exempt from CEQA.

Even if this court considered that *Del Cerro* involves a statutory exemption and at issue here is a categorical exemption, such consideration does not provide reason to find *Del Cerro* distinguishable. With respect to the different types of exemptions, CEQA does not apply to projects that are statutorily or categorically exempt. (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1380-1381.) "A critical difference between statutory and categorical exemptions is that statutory exemptions are absolute, which is to say that the exemption applies if the project fits within its terms. Categorical exemptions, on the other hand, are subject to exceptions that defeat the use of the exemption and the agency considers the possible application of an exception in the exemption determination." (*Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 966 fn.8.)

With respect to categorical exemptions, "[t]he Legislature ... has authorized the State Resources Agency to identify other categories of exemptions, which are contained in the Guidelines. [Citation.] As to these, CEQA does not apply where there is 'a categorical exemption [in the Guidelines] and the application of that categorical exemption is not barred by one of the exceptions set forth in [Guidelines] Section 15300.2' (Guideline § 15061, subd. (b)(2).)" (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1380-1381.) "The Guidelines contain 33 classes of categorical exemptions. (Guidelines, §§ 15301-15333.) Each class embodies a 'finding by the Resources Agency that the project will not have a significant environmental impact.' [Citations.] In addition to the categorical exemptions, the Guidelines also incorporate a '"common sense exemption,"' which '"provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act."' [Citations.]" (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1381.)

"There are exceptions to the categorical exemptions. (See Guidelines § 15300.2.) Among other things, a 'categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.' [Citations.] This is sometimes called either the 'significant effects' exception or the 'unusual circumstances' exception. [Citations.]"[4] (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1381.)

With respect to exemption determinations at issue here, the Town was not required to hold a hearing for an exemption determination. (*Del Cerro, supra,* 197 Cal.App.4th at p. 182; *San Lorenzo, supra,* 139 Cal.App.4th at p. 1385; *Association for Protection of Environmental Values in Ukiah v. City of Ukiah* (1991) 2 Cal.App.4th 720,

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[4] Other exceptions to categorical exemptions include:

- Projects that may result in damage to scenic resources within an official state scenic highway designated under Streets & Highway Code section 262. (Pub. Resources Code § 21084, subd. (c); Guidelines, § 15300.2, subd. (d).)
- Projects located on a site included on any list in Government Code section 65962.5. (Pub. Resources Code § 21084, subd. (d); Guidelines, § 15300.2, subd. (e).)
- Projects that may cause a substantial adverse change in the significance of a historical resource as specified by Public Resources Code section 21084.1. (Pub. Resources Code § 21084, subd. (e); Guidelines, § 15300.2, subd. (f).)

730 (*City of Ukiah*).) An agency also is not required to make a written determination regarding its determination with respect to a categorical exemption. (*Robinson v. City & County of San Francisco* (2012) 208 Cal.App.4th 950, 961.) Therefore, findings documenting the basis for an exemption determination are not required by statute or the CEQA Guidelines. (1 Kostka & Zischke, *Practice Under the California Environmental Quality Act* (2d ed. 2015) § 5:115.) An agency's finding that a particular proposed project comes within one of the exemption classes necessarily includes an implied finding that the project has no significant effect on the environment. (*City of Ukiah, supra,* 2 Cal.App.4th at p. 731-732; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115.) Nonetheless, even if formal findings are not required, the lead agency must review the factual record in making the determination that the exemption applies. (*Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 386-387.)

Considering the discussion in *Del Cerro,* there is no basis to conclude the type of exemption at issue affects the conclusion that a local agency can defend against claims the EIR is inadequate by asserting CEQA does not apply. In light of Petitioner failing to demonstrate *Del Cerro* has no application or providing argument demonstrating waiver or equitable estoppel should apply here, *Del Cerro* controls.

The Town also cites and discusses *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 700-701, in which the Court concluded that the County was not "barred" from asserting that the subdivision is not a CEQA project or subject to the common sense exemption, even though it completed an initial study and proceeded by way of a mitigated negative declaration. There, however, the Court had concluded that the County, in approving a mitigated negative declaration, always took the position that what it was doing was not required by CEQA, and its position was that it was gratuitously conducting a CEQA analysis when the law did not actually require it, because the subdivision did not qualify as a CEQA project or was subject to the common sense exemption. (*Id.* at p. 700.) The Court noted that the County was not arguing that what it did at the administrative level was wrong, just that it was not

legally required by CEQA. (*Id.*) Once again AVRWC does not provide any argument to demonstrate *Rominger* is distinguishable.

Here, when the record of what was discussed at Town council meetings is considered (which is discussed in more detail later), the reasonable inference is that the Town Attorney had concluded that at issue was a CEQA project and that no exemptions applied, therefore he recommended the Town proceed with an initial study and an EIR. In that light it appears the Town now is arguing that what it did at the administrative level was wrong. *Rominger* does not address what happens in such situation because in *Rominger,* the County always took the position that it was not required by CEQA to complete a negative declaration. Nonetheless, even if such provides a basis for distinguishing *Rominger*, the decision of *Del Cerro* remains, where the Court rejected the argument that because the City prepared an EIR, it waived any right to later invoke a CEQA exemption. The Court found the City's changed position did not preclude it from later invoking the exemption. (*Del Cerro, supra,* 197 Cal.App.4th at p. 179.)

In *Rominger,* the Court also discussed the reason why such issue should be considered as part of the public agency's defense. It stated, "[t]he Romingers have offered us no persuasive reason why the [C]ounty should be barred from asserting that the environmental review it conducted was more than what was legally mandated. In fact, if the [C]ounty were correct on this point, it would serve no purpose for the courts to spend valuable time and resources reviewing whether a purely *voluntary* environmental review complied with legal provisions that did not actually mandate that review. The task of the courts under CEQA is '"to review the agency's actions to determine whether the agency complied with the procedures *required by law.*"' (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113, 62 Cal.Rptr.2d 612, italics added.) The [C]ounty's argument here is that its actions complied with procedures required by law because the law required *no* procedures and thus everything the [C]ounty did went 'above and beyond the requirements of the law.'" (*Rominger, supra,* 229 Cal.App.4th at p. 700-701.) The Court concluded "the [C]ounty is not barred from making this argument. Thus notwithstanding its preparation of a

mitigated negative declaration, the [C]ounty is entitled to argue" the subdivision at issue was not a project or was subject to the common sense exemption. (*Id.* at p. 701.)

Finally, in another case cited by the Town, *California Farm Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 190-191, the Court did not prevent a state agency from asserting a categorical exemption not identified in the notice of exemption. The Court stated, "However, it is clear a notice of exemption is not mandatory and its only effect when filed is to start the statute of limitations running. [Citations.] Therefore, the fact the [agency] listed the project exemption only under Class 13 and not Class 4 would not necessarily preclude the [agency] from defending its exemption determination by asserting other categorical exemptions, *at least where there is no claim or showing of prejudice.*" (Emphasis added.)

Petitioner has not made any claim or showing that it will suffer prejudice if the court considers threshold issues of whether the Town's acquisition of the AVR System is a CEQA project and if so, whether exemptions apply. In light of the case law discussed above concluding that a local agency can defend against an EIR by asserting a CEQA does not apply, the Town's arguments were considered.

Whether the activity is a CEQA project

At issue is the first step in the CEQA process, the determination of whether the activity is a project for CEQA purposes or is exempt from CEQA. Judicial review of any agency's compliance with CEQA where no administrative hearing at the agency level is required is governed by Public Resources Code section 21168.5, which limits judicial inquiry to whether there was a prejudicial abuse of discretion. (*California Farm Bureau Federation, supra,* 143 Cal.App.4th at p. 185.)

"'Whether an activity is a project is an issue of law that can be decided on undisputed data in the record.'" (*Rominger, supra,* 229 Cal.App.4th at p. 701.) To answer the question, a two-pronged test is applied. CEQA defines a "[p]roject" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is ...: [¶]

(a) An activity directly undertaken by the public agency." (Pub. Resources Code, § 21065.)

Here, it is without dispute that the acquisition of the AVR System is an activity directly undertaken by the public agency.

The second issue is whether the activity has a "potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...."[5] (Guidelines, § 15378, subd. (a).)

The Town argues that it only proposes to acquire and operate an existing water system. It contends that it has not proposed or approved changes to the AVR System or its operation. It asserts that it will operate and maintain the system out of the existing operations and maintenance facility located within the Town. Therefore, citing the EIR, it contends the acquisition will not result in reasonably foreseeable significant environmental impacts.

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[5] As discussed in Union of Medical Marijuana Patients, Inc. v. City of Upland (2016) 245 Cal.App.4th 1265, 1272-1273:

> The Guidelines define and provide examples of direct and reasonably foreseeable indirect changes to the environment. "A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant." (Guidelines, § 15064, subd. (d)(1).)
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> "An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project.... For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution." (Guidelines, § 15064, subd. (d)(2).) "An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable." (Guidelines, § 15064, subd. (d)(3).)

Citing to cases in support, it asserts that a mere transfer of ownership, without more, is not a CEQA project.[6] Also citing the EIR, the Town asserts that substantial evidence shows the acquisition will not result in potentially significant impacts and that analysis of alleged impacts would be premature and speculative at this time.

In response, Petitioner argues that the Town's project description identifies the project as both the acquisition of the system and the continued operation of it by the Town in the same manner as Petitioner. It contends that this makes all the difference. It asserts that the water system was operated by Petitioner as a private company regulated by CPUC and subject to safeguards inherent therein and will be operated by a public entity, not subject to CPUC oversight. Petitioner asserts that when the administrative record is reviewed, it demonstrates that the Town considered whether an EIR was necessary and concluded it was and proceeded with the EIR process.

Petitioner's argument that in the EIR the Town makes unsupported assumptions that it will be able to operate the system in the same manner as Petitioner is related to arguments that Petitioner makes about deficiencies in the EIR. Petitioner argues that the EIR does not have a finite and stable project description to answer who will be able to operate the AVR System and impermissibly defers analysis on that issue. It asserts that in a financial feasibility study conducted before the Town commenced the EIR process, a financial consultant warned: "There are a wide range of uncertainties and risk factors associated with the potential AVR acquisition. The Town would begin a new

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[6] The Town also asserts AVRWC is judicially estopped from arguing the acquisition is a project because AVRWC asserted such argument to the CPUC when it sought to acquire the Yermo water system. It relies on documents in the administrative record in which the CPUC concluded no CEQA review of AVRWC's acquisition of the Yermo water utility. (AR 98:10137-10138; AR 77:8170.) The court is not going to find judicial estoppel applies. Further, the Town is not completely straightforward in presenting this argument where the Town's Attorney made statements at the May 26, 2015 hearing in which the Town Council considered the issue of whether to enter into a contract with a consultant for the completion of an EIR. According to Town Attorney John Brown, "[i]t would [be] irresponsible of the Town to not fully comply to the letter in the requirements of the California Environmental Quality Act. In no small part, because the town itself felt, for example, that the acquisition of Yermo Water Company by Apple Valley Ranchos Water Company should have been the subject of an environmental assessment.... [¶][¶] [W]e feel there are reasons why the acquisition of Apple Valley Ranchos Company, Water Company, both by Carlyle Infrastructure, and now by Liberty, should also be environmentally assessed, because there are [sic] undoubtedly going to result in physical changes in the environment as a result of those projects." (AR 20:2147.) While such statements by the Town Attorney may evoke consideration of waiver and equitable estoppel, as previously discussed *Del Cerro* places limitation on consideration of such principles and Petitioner did not raised waiver or equitable estoppel as an issue.

relatively complicated enterprise involving employees and a large customer base, but the Town has no actual experience operating a water system. While the Town currently owns a wastewater enterprise, acquisition of the water system would add numerous new responsibilities including supplying water, maintaining facilities, and billing and accounting for customers. Future operating costs may be higher than anticipated under this analysis because of the Town's lack of experience in running the system." (AR 81:8358.) It argues that in the EIR section regarding "operation and maintenance facility," the analysis is based on a proposal that the Town will operate the water system in exactly the same manner as AVRWC, citing AR 5:822; 856. It contends that there is no showing that such operation is feasible.

Petitioner also argues that when the Town published its initial Notice of Preparation on June 24, 2015, 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." (AR 6:1068.) In an amended notice issued three weeks later, the Town revised the project description without explanation or evidence that the Town would operate the system "without proposing any changes to [AVRWC's] manner of operation." (AR 6:1074.) It asserts that between these two times, the Town did not and has not performed any study or provided a plan to demonstrate that the Town has the qualifications and capability to operate the system "in the same manner" as AVRWC, and there is no substantial evidence it can. It asserts that the EIR acknowledges that the Town does not yet know whether it is qualified to operate the system, stating the Town will have to obtain a permit from the State Water Resources Control Board to prove it "possesses adequate technical, managerial and financial capability" to operate the system. (AR 5:841.)

Petitioner asserts that potential environmental impacts in the future could vary greatly depending on whether the Town, a private contractor, or another public agency is the operator. However, the Petitioner does not provide any analysis or description of

what these potential environmental impacts are. It also does not cite to evidence in support of the purported environmental impacts that it contends will result.

Analysis

The administrative record demonstrates the following:

At an April 28, 2015 special meeting of the Town Council, the Town considered the issue of whether it should direct Town staff and the Town Attorney to proceed with preparation and completion of financial and other legal documents necessary for the Town Council to consider pursuing at its next Town Council meeting the acquisition of the water system owned and operated by the AVRWC. (AR 123:11084.)

At that meeting, Alisha Winterswyk from the Town Attorney's office gave a presentation regarding an environmental assessment. As part of her discussion she stated, "So as many of you are probably aware, anytime a public agency in California entertains a discretionary action that may have a potential impact, physical impact on the environment, either directly or indirectly, then that public agency must first, before taking an action in furtherance of the project, evaluate the environmental consequences of the decision. [¶] So here, the Town of Apple Valley would have the obligation to evaluate the environmental consequences of the potential acquisition of the Apple Valley Ranchos Water system.... [¶] At this particular time, the Town does not have plans to increase the size of the system, to change operations of the system, or to make any physical improvements to the system. So the project description in any environmental review would be tailored accordingly. [¶] ... [W]ith respect to environmental review, we expect that an environmental impact report would be prepared for the proposed project." (AR 18:1978-1980.) She gave a PowerPoint presentation that gave an overview of the CEQA review process and steps involved. The presentation did not provide any discussion of the issue of whether the acquisition was a CEQA project, instead focusing on the initial study and preparation of the EIR. (AR 18:1980-1983; AR 12:1602-1603.) At the conclusion of the meeting, the Town decided to give direction to staff and the Town Attorney to proceed with preparation and completion of financial and other legal documents necessary for Town Council to

consider at the next council meeting whether to pursue acquisition of the AVR System. (AR 18:2104-2106.)

At the Town Council meeting on May 26, 2015, the Town considered the issue of whether to authorize the Town Attorney to contract with an environmental and planning firm for the preparation of the necessary environmental documentation to study the Town's potential acquisition and operation of the AVR System. (AR 132:11978.) At the May hearing, Charity Schiller from the Town Attorney's office discussed that the item before the Council pertains to the environmental evaluation process the Town is required to undertake under CEQA before making any commitment to acquire the AVR System. (AR 20:2125.)

During the public comment part of the meeting, an individual asked why an initial study is not good enough. She stated, "Because what we have here is we have an existing entity, an existing system, and acquiring an existing system I'm very unclear as to what this project is that you're going to do an environmental assessment of." (AR 20:2130.)

In response, the Town Attorney spoke and discussed that Attorney Schiller would address this question and might "touch upon the fact that there are some that would argue that a simple change in ownership of Apple Valley Ranchos Water Company might not in and of itself rise to the level of a negative declaration, let alone an Environmental Impact Report. [¶] It's easy for me to say that here this evening, but I can assure you that there are attorneys representing Apple Valley Ranchos Water Company and Liberty that would in no way agree with that, and they will bring suit immediately if we do not cross all of our Ts and dot our Is with respect to our obligations under the California Environmental Quality Act. [¶] I'm sorry to say that, but I think that's been made clear here this evening once again. So, having said that, I think we're prepared once again to be as transparent as we can, with the [T]own [C]ouncil's permission, to respond to [this individual's] question first." (AR 20:2144-2145.)

Attorney Schiller responded, stating, "At this time our understanding is that there are no proposals to expand or to modify operations in any substantial way, so as the Town Attorney summarized, it really is largely a title transfer; that is the project." (AR 20:2145.) As for why an initial study was not enough, she discussed that CEQA "is intended to provide public transparency, to provide an explanation to an apprehensive citizenry of why an agency is making a decision, and to explain what the environmental impacts are, if there are any, of a decision that's before an agency." She discussed that an EIR is the most thorough form of disclosure that gives the most opportunity for public review, comment, and input, and that is the direction the Town is leaning. (AR 20:2145-2146.)

Town Attorney Brown again spoke and discussed that AVRWC's acquisition of the Yermo Water Company should have been subject to environmental assessment, because the Yermo system is a failed system and there are proposed improvements of $7 million. However, a decision was made not to environmentally assess the Yermo Water Company. He also stated that he believed that the acquisition of AVRWC by Carlyle Infrastructure and Liberty should have been environmentally assessed, "because there are undoubtedly going to result in physical changes in the environment as a result of those projects." He then went on, "[n]onetheless, the reason we're here this evening is because we think it's the right thing, the moral thing, and the legal thing to do to recommend the preparation of a full environmental assessment." (AR 20:2147-2148.)

At the meeting, Council Member Art Bishop spoke in which he stated, "I'm very grateful we're going through the CEQA process, and I believe we should. I believe it would be completely wrong for us forward the negative deck [sic]. We are constantly, as city government, telling people you need to abide by state law, you need to abide by CEQA. [¶] I think going through the CEQA process will give the people of Apple Valley, the people of our community the ability for us to put input and for us to learn from the CEQA requirements." (AR 20:2153.)

The Town Council decided to move forward and authorize the Town Attorney to enter into a contract to complete the environmental review process. (AR 20:2154-2155.)

In July 2015, an Amended Initial Study was issued. The project location was described as being comprised "of the approximately 50 square-mile area currently served by the Park Water Company/Apple Valley Ranchos Water Company water supply system (AVR System)." The majority of the Project Area is in the incorporated area of the Town, with the remainder located in Victorville and unincorporated San Bernardino County. (AR 6:1082.) The Project description in the Amended Initial Study also included the following statements: "As part of the proposed Project, the Town would purchase all rights and interest in the AVR System from Park Water Company/Apple Valley Ranchos Water Company (collectively referred to as the AVR in this document) or other legal owner." "The Town's proposed acquisition of the AVR System would include all associated assets, (i.e., real, intangible, and personal property)...." "The Town is proposing only to acquire and operate the existing system, and is not proposing changes or expansion to the physical AVR System or to the associated water rights, nor is the Town proposing any changes to the manner of operation of the AVR System or the exercise of the associated water rights. The Town would operate and maintain the system out of AVR'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." "The AVR System is a stand-alone system...." "The Town's acquisition of AVR's water rights would entitle the Town to the currently established allocations assigned to AVR, and would require the Town to meet the same standards in terms of replenishment if it were to exceed established limits on withdrawals." "The underlying purpose of the proposed Project is for the Town of Apple Valley to acquire, operate, and maintain the existing AVR System." (AR 6:1082-1086.) (Emphasis in original.)

In the Final EIR, the same basic description is provided, except that it also includes a statement that the reason the Yermo Water Company facilities are not

included is because it is located approximately 45 miles from the Town, does not provide any water services to the Town, and does not serve any benefit to the Town's residents. The FEIR also stated the Yermo system is entirely separate and a distinct system that is not integrated into the AVR System. (AR 5:821.)

The amended initial study found the following environmental impacts potentially significant as a result of the project unless mitigation is incorporated: (1) substantially deplete groundwater supplies or interfere substantially with groundwater recharge; (2) conflict with applicable land use plan, policy, or regulation with jurisdiction of the project; (3) exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board; (4) require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effect; (5) require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental affects; (6) have sufficient water supplies available to serve the project from existing entitlements and resources, or any new or expanded entitlements needed; and (7) result in a determination by the wastewater treatment that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to existing commitments. The basic reasoning underlying such findings was that one of the objectives of the project is to provide greater local control over rate setting and water rates. The conclusion was that if water rates were reduced in the long term, water usages and consumption could increase potentially increasing the use of ground water and runoff. (AR 6:1105, 1107, 1116-1117.)

In general an initial study is not performed unless it is found that the activity is a "project" and is not subject to any exemption. A purpose of an initial study is to eliminate unnecessary environmental impact reports. (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1372-1373.)

While the initial study is part of the second tier of CEQA analysis, the Town does not sufficiently explain how it could have made the findings that it did in the amended

initial study, which were presumably supported by substantial evidence, and now claim that its acquisition and operation of the AVR System is not a "project." The Town does not cite to any evidence demonstrating substantial evidence did not support the initial study's findings.

"'Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerns, without regard to whether the activity will actually have environmental impact.'" (*Rominger, supra,* 229 Cal.App.4th at p. 701.) The analysis is whether the activity *may* cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Here, the Town's amended initial study found potentially significant impacts as a result of its project. The Town's reliance on the FEIR to assert that it ultimately was determined no such impacts would occur does not support the conclusion that the activity was not a "project" for CEQA purposes. The definition of project is not limited to situations where an activity *will* demonstrably have an environmental impact. Instead, when considering whether an activity is a project, the focus is on whether the project *may cause* a direct or reasonably foreseeable indirect physical change in the environment. (Pub. Resources Code, § 21065.) Here, by proceeding with an initial study that made findings regarding potentially significant impacts, acquisition and operation of the AVR System qualified as a project.

Therefore, the Town did not meet its burden on this issue of demonstrating the acquisition and operation of the AVR System is not a CEQA project.

Whether the categorical exemption, Class 1, applies

"Once a lead agency has determined that an activity is a project subject to CEQA" it "shall determine whether the project is exempt from CEQA." (Guidelines, § 15061, subd. (a).) The Guidelines provide a "Class 1" categorical exemption for "Existing Facilities." (Guidelines, § 15301.) "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving

negligible or no expansion of use beyond that existing at the time of the lead agency's determination.... The key consideration is whether the project involves negligible or no expansion of an existing use." (*Id.*)

Examples of "[t]he types of 'existing facilities'" to which the exemption applies include, "(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewage, or other public utility services." (Guidelines, § 15301, subd. (b).) Public Utilities Code section 216 defines a "public utility" as including a "water corporation," "where the service is performed for, or the commodity is delivered to, the public or any portion thereof." The delivery of water falls within this general example of investor and publicly-owned utilities.

With respect to a public agency's assertion the Class 1 categorical exemption applies, "'the substantial evidence test governs [the court's] review of the [agency's] factual determinations that a project falls within a categorical exemption.'" (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1382.) An agency's finding that a particular proposed project comes within one of the exemption classes necessarily includes an implied finding that the project has no significant effect on the environment. (*City of Ukiah, supra,* 2 Cal.App.4th at p. 731-732; *Davidon Homes, supra,* 54 Cal.App.4th at p. 115.) "At the administrative level, once an agency 'determines based on substantial evidence in the record, that the project falls within a categorical exemption ..., the burden shifts to the challenging party ... '"to produce substantial evidence ..."' ... that one of the exceptions to categorical exemption applies.' [Citation.]" (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1389.)

The Town asserts that the project at issue is for the acquisition and continued operation of an existing water supply system and no changes in or expansion of existing uses were proposed or approved. Therefore, it contends, the Class 1 exemption applies.

Petitioner argues that for the exemption to apply, it must involve "negligible or no expansion of an existing use." It contends that all that is presented is the Town's unsupported assumption that it can operate the system exactly the same as Petitioner.

It asserts there was no study to support that assumption and therefore, substantial evidence to support the "existing facilities" exemption is lacking. Because it contends substantial evidence does not support a finding the Class 1 exemption applies, Petitioner asserts that it need not address whether any exception to this categorical exemption applies.

Analysis

Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384(a).) The court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous ... is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (Pub. Resources Code, § 21082.2, subd. (c).)

A reviewing court is limited to determining whether the record contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached. All reasonable doubts must be resolved in favor of the agency's determination, and the court may not set aside the agency's decision even if the opposite conclusion is more reasonable. (*Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 573-574.) An agency's determinations are given substantial deference and presumed correct; Petitioner bears the burden of proving the contrary.

In considering this issue, "[t]here must be 'substantial evidence that the [activity is] within the exempt category of projects. [Citation.] That evidence may be found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold. [Citation.]" (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1386.)

Petitioner focuses on a February 2014 study that the Town commissioned in which the consultant stated the Town has no experience operating a water system and that such presents uncertainties and risks. However, Petitioner does not point to any environmental impacts identified by this financial consultant as the risks and uncertainties being considered. (AR 81:8358.)

The court already has discussed the description of the project in the Amended Initial Study that included statements the Town is purchasing all rights and interest in the existing AVR System. It proposed "only to acquire and operate the existing system, and is not proposing changes or expansion to the physical AVR System or to the associated water rights, nor is the Town proposing any changes to the manner of operation of the AVR System or the exercise of the associated water rights." (AR 6:1084.) The description of the project itself provides substantial evidence the project involved "negligible or no expansion of use."

As proposed, the project involves only a proposed change in control of an investor-owned utility to a publicly-owned utility and the Class 1 exemption applies. As part of the discussion at the April 2015 meeting on whether to proceed with exploring acquisition of the AVR System, the Town discussed that in California, the overwhelming majority of water service is provided by municipal water systems and other public water agencies. (AR 124:11114; AR 12:1595.) At meetings in April and May 2015, the Town Attorney representatives repeatedly stated that the Town has no plans to increase the size of the system, change operations, or make any physical improvements. (AR 18:1979; 20:2144-2145.) The Town considered the existing operations and maintenance facility provides office space and work area for 39 employees, 20 office workers, 19 technical and field staff, and provides fleet and maintenance functions. (AR 5:854.) There is no proposal to change the manner of operation. The Town proposes to operate and maintain the system out of Apple Valley Ranchos Water Company's existing operations and maintenance facility. (AR 6:1084; 5:855, 856.) The current infrastructure would remain at the existing location and the Town proposes to operate in the same manner as AVRWC. (AR 6:1084.) The regular business hours

would continue. All activities, including service, would occur during usual business hours, with an exception for emergency service. Existing buildings at the site would be maintained and new facilities are not proposed. (AR 5:856-857.)

The Town's financial feasibility report reviewed the current water system and its operation. (AR 81:8322-8332.) Information also exists regarding customers, water rates, proposed AVRWC revenues, annual water use, predicated precipitation and rainfall, water use and future projections. (AR 88:8693-8733, 8734-8981, 8982-9089, 9090-9123, 9124-9151, 9152-9244, 9253-9313.) The 2014 Annual Report of AVRWC to CPUC detailed operations and financial information related to the AVR System, which set forth operating costs, facilities, water use, etc. (AR 104:10192-10296.) The Watermaster Annual Report for Water Year 2013-2014 set forth information regarding existing water rights in the Mojave Basin Area. (AR 127:11182-11370.)

The information the Town cites supports the Town's conclusion that it would take over existing operations, and that as part of its acquisition, it was not proposing any expansions of use or facilities. Petitioner's contention that a financial study concluded that taking over the AVR System posed risks and uncertainties because the Town did not have actual experience operating a water system does not demonstrate that the Town will not be able to operate the AVR System using existing facilities.

With respect to the Yermo system, as part of its other arguments, Petitioner asserts that the Yermo severance was not taken into consideration. However, AVRWC completed its acquisition of the Yermo system after the Town proposed the project. There is no evidence the Yermo water system provides water services to the Town or that the two systems are integrated systems. The Yermo system is a separate water system and not demonstrated to be part of the AVR System that the Town sought to acquire and operate. (AR 5:821, 830-831, 1052-1053, 14:1711.) Petitioner does not cite to any evidence in the administrative record to demonstrate the Yermo system was integrated with the AVR System.[7]

[7] As part of the CPUC's resolution conditionally approving AVRWC's purchase of the Yermo Water Company's assets, the CPUC noted the application did not involve any new construction or changes in the source of

Petitioner's claim that the Town should have commissioned an Operations Study is not sufficient to find that substantial evidence does not support the Town's conclusion. Petitioner does not cite to any evidence in the administrative record that the Town's lack of experience means the change in ownership will result in an expansion of use, such that the Town's conclusion is without support. Speculation by Petitioner as to whether the Town will be able to operate the system in the same manner as AVRWC does not change the scope of the proposed project, which is to acquire all of Petitioner's existing AVR System and operate it without any change or expansion.

Further, as Petitioner points out, the change of ownership will need to be approved by the State Water Resources Control Board which requires the Town to first obtain a permit by demonstrating that it possesses adequate technical, managerial, and financial capability to operate. (AR 5:841.) Petitioner does not explain how the Town's ability to obtain such a permit, which if it cannot means a change of ownership would not be approved by the Board, results in the project being more than the transfer of ownership of an existing public utility for CEQA purposes. Finally, Petitioner does not argue that any of the exceptions apply; therefore, it conceded that the exceptions to the exemption are not at issue.

It may seem inconsistent for this court to conclude that the Class 1 categorical exemption applies and at the same time conclude the acquisition and operation of the AVR System is a project because it may have significant environmental impacts. However by statute, CEQA does not apply to the classes of projects designated as exempt under the categorical exemptions. (Pub. Resources Code, § 21080, subd. (b)(9); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1101.) Once a project qualifies for a categorical exemption, no further environmental review is required under CEQA unless one of the exceptions to the categorical exemptions

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water supply and "no evidence of any other changes in the operation of the Yermo water system." (AR 98:10137.) The Yermo water system is not demonstrated to be integrated with the AVR system. (AR 98:10128.)

applies. (Guidelines, §§ 15300, 15300.2, 15300.4; Pub. Resources Code § 21080, subd. (b)(9).)

One such exception is that there is a reasonable possibility of a significant effect on the environment due to unusual circumstances. (Guidelines, § 15300.2, subd. (c).) With respect to the unusual circumstance exception, in *Berkeley Hillside, supra,* 60 Cal.4th at p. 1097-1098, the Court explained that the plain language of the unusual circumstances exception supports the view that for the exception to apply, "it is not alone enough that there is a reasonable possibility the project will have a significant environmental effect; instead, in the words of the Guideline, there must be 'a reasonable possibility that the activity will have a significant effect on the environment *due to unusual circumstances.*' (Guidelines, § 15300.2, subd. (c), italics added.)" The Court concluded that to construe the statute otherwise would give no meaning to the phrase "due to unusual circumstances." (*Id.* at p. 1098-1109.) The Court specifically rejected an interpretation that a proposed project's potential environmental effects alone render the unusual circumstances exception to apply. (*Id.* at p. 1109, fn.3 (bold emphasis added).) "Evidence that a project *may* have a significant effect is not alone enough to remove it from a class consisting of similar projects that the Secretary [of the Natural Resources Agency] has found '*do not* have a significant effect on the environment.'" (*Id.* at p. 1115 (bold emphasis added).)

Therefore, it is not enough that a project that falls within the Class 1 categorical exemption *may* have a significant effect on the environment. Instead, in applying the unusual circumstances exception, the agency first determines whether the project presents unusual circumstances. If so, then it considers whether there is a reasonable possibility that a significant environmental impact will result from those unusual circumstance. (*Id.* at p. 1114-1115.) In addition, "evidence that the project *will* have a significant effect *does* tend to prove that some circumstance of the project is unusual. In that limited circumstance, a finding the project will have a significant effect necessarily establishes some circumstance of the project is unusual. (*Id.* at p. 1115.)

On the issue of the unusual circumstances exception, Petitioner bears the burden of proof. Here, the Town's determination the unusual circumstances exception was inapplicable must be implied, because the Town made no explicit findings. (*San Francisco Beautiful v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022-1023.) Nonetheless, the court need not consider whether the Town's implied determination is supported, because Petitioner argued there was no need to address whether any exceptions apply. (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1099 (concluding the court is not required to consider undeveloped challenges); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-935 (concluding it is not the court's burden to independently review the record to make up for Petitioner's failure to carry its burden).) Petitioner failed to provide any argument or identify any evidence that demonstrates the unusual circumstances exception applies.

In light of Petitioner failing to meet its burden of demonstrating an exception such as the unusual circumstances exception applies, the Class 1 categorical exemption is demonstrated to apply and the project is exempt from CEQA.

Common Sense Exemption

The Town also argues that its proposed acquisition and operation of the AVR System is subject to the common sense exemption. Under the common sense exemption, a project is exempt from CEQA if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (Guidelines, § 15061, subd. (b)(3).)

In making the determination that there is no possibility that the activity in question may have a significant effect, the agency must make a factual review of the record to determine whether the exemption applies. "[W]hether a particular activity qualifies for the common sense exemption presents an issue of fact, and the agency invoking the exemption has the burden of demonstrating that it applies." (*Muzzy Ranch Co., supra,* 41 Cal.4th at p. 386.) The Town has "the burden to elucidate the facts that justifie[s] its invocation of CEQA's common sense exemption." (*Id.*) In *Muzzy Ranch, supra,* even though the lead agency failed to make the required factual review of the

record in determining that the common sense exemption applied and in that sense erred, the Court still considered the issue of whether the record supported the agency's use of the exemption. (Kostka & Zischke, *supra,* § 5.124.) "Determining whether a project qualifies for the common sense exemption need not necessarily be preceded by detailed or extensive fact finding. Evidence appropriate to the CEQA stage in issue is all that is required." (*Muzzy Ranch, supra,* 41 Cal.4th at p. 388.)

Citing only to portions of the EIR, the Town asserts that technical studies, analysis of cumulative impacts, analysis of potential acquisition alternatives, the EIR, and other evidence in the record provides substantial evidence showing that "it can be seen with certainty that there is no possibility" that the acquisition may have a significant impact on the environment, citing AR 5:839-840, 824-25, 856-857.

The Town has not met its burden on this issue. The fact the EIR concluded that there will not be any significant environmental impact does not demonstrate the common sense exemption applies. Once again, the common sense exemption only applies if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. However, the Town's own amended initial study concluded that there may be some potential significant effects, without mitigation. (AR 6:1105, 1107, 1116-1117.) The Town does not discuss its initial study and demonstrate why such findings were not supported by substantial evidence and that substantial evidence actually demonstrates the contrary.

Conclusion

Because the Class 1 categorical exemption is demonstrated to apply, there is no reason for this court to expend time and resources reviewing whether the EIR complied with CEQA. (*See Rominger, supra,* 229 Cal.App.4th at p. 700-701.)

RULING

The court denies Petitioner Apple Valley Ranchos Water Company's petition for writ of mandate. As part of its opposition, the Town raised threshold issues regarding CEQA's application to the project at issue. After considering the argument and evidence in the administrative record, substantial evidence supports the Town's conclusion the

Class 1 categorical exemption applies. As a result, notwithstanding its preparation of an EIR, no such environmental review was mandated by CEQA and the court will not consider Petitioner's arguments directed to whether the EIR complied with CEQA.

On further consideration, the court denies the Town's request for judicial notice.

The court denies Petitioner's ex parte motion for leave to file a motion for request for judicial notice.

Based on the parties' stipulation at the December 14 hearing, the court treated the CDs submitted to the court on December 1, 2017 as the lodged electronic version of the administrative record.

Dated this 9 day of February, 2017

DONALD ALVAREZ
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO SAN BERNARDINO SUPERIOR COURT JUSTICE CENTER 247 W. Third Street San Bernardino, CA 92415	CASE NUMBER CIVDS1517935
APPLE VALLEY RANCHOS WATER COMPANY, Plaintiff, vs. TOWN OF APPLE VALLEY, Defendants.	Donald Alvarez, Judge Department S23

I, Nicci Martinez, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

RULING ON WRIT PETITION; AND PETITIONER'S EX-PARTE APPLICATION FOR LEAVE TO FILE MOTION FOR JUDICIAL NOTICE

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Bernardino, California.

HILL FARRER & BURRILL LLP 300 S. Grand Avenue, 37th Floor Los Angeles, CA 90071	BEST BEST & KRIEGER LLP P.O. Box 1028 Riverside, Ca 92502

NANCY EBERHARDT
Court Executive Officer

Dated: 2-13-18

By: _____
NICCI MARTINEZ

CLERK'S CERTIFICATE OF SERVICE BY MAIL