

# STATUS UPDATE

To the Town Council and Community  
Regarding  
**The Apple Valley Water System  
Acquisition Efforts**  
October 16, 2018

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# BACKGROUND

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# OVERVIEW

ASSISTANT TOWN ATTORNEY  
THOMAS RICE

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## History of Concern

- Community has long voiced concerns to the Town Council about rising water rates
- Town has previously allocated significant resources to intervene in CPUC proceedings
- Town has achieved significant victories but rates are still too high
- Ownership of the Apple Valley Water System has now transferred multiple times between hedge funds and multinational utility conglomerates

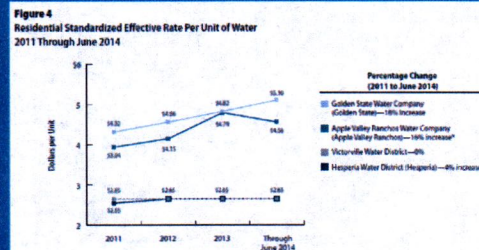
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## Topics To Be Covered #1

- Background
  - History of Concern and Rate Increases
  - Current CPUC Matters
  - Process to Date
- Environmental Compliance
  - Preparation of EIR
  - Victory in CEQA Lawsuit
- Acquisition
  - Right to Take
  - Valuation

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## State Audit Into Water Rates in the High Desert



State Auditor's Report 2014-132 (Issued April 30, 2015)

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## Rate Comparison October 2015

October 2015 - High Desert Water Rate Comparison

Water Provider	Min. Monthly Service Charge \$/ft <sup>3</sup> a 3/4" Meter	Min. Monthly Service Charge \$/ft <sup>3</sup> a 1" Meter	Min. Monthly Service Charge \$/ft <sup>3</sup> a 1 1/2" Meter	Water Usage Charge \$/CCF	Water Usage Charge \$/CCF for 17 CCF	Drought Surcharge \$/CCF for 17 CCF	Water Usage Charge \$/ft <sup>3</sup> a 3/4" Meter	Drought Surcharge \$/ft <sup>3</sup> a 3/4" Meter
JWR*	\$ 22.56	\$ 33.65	\$ 55.36	\$ 28.43	\$ 50.16	\$ 0.49	\$ 47.31	\$ 5.72
City of Hesperia	\$ 19.43	\$ 19.43	\$ 29.43	\$ 9.00	\$ 19.80		\$ 38.90	
City of Victorville	\$ 18.25	\$ 18.25	\$ 18.25	\$ 15.90	\$ 26.01		\$ 42.84	
County Serv. Area 64		\$ 14.10	\$ 23.90	\$ 8.90	\$ 14.84		\$ 28.62	
Golden State Water Co.*	\$ 18.15	\$ 24.25	\$ 40.40	\$ 32.14	\$ 42.84		\$ 101.13	
Hemlock CSD			\$ 28.25	\$ 8.77	\$ 15.35		\$ 25.69	

\* Excludes CPUC taxes, fees, WRAM and MCBAs surcharges and other CPUC approved balancing accounts

October 2015 - JWR Bills as a Percentage of Other Water Providers (Assuming JWR a 3/4" meter and usage of 17 ccf)

	JWR	City of Hesperia	City of Victorville	Golden State Water
Bill Based on Assumptions	\$72.19	\$38.48	\$41.29	\$58.99
JWR Bill as % of Other Provider Bill	100.0%	53.3%	57.2%	81.7%

## Most Recent Rate Case Decisions

### \*2014 Application (D15-11-030)

✧ Adopted revenue requirement increase for 2015 of **25.27%**

✧ CPUC acknowledged that a residential customer maintaining water consumption will see bill increase by **\$17.19** each month, or **\$206.28** annually

## History of Rate Increase Requests

- |   |   |
|---|---|
| <p>*2002 Application (A.02-03-046)</p> <ul style="list-style-type: none"> <li>✧27.1% in 2003</li> <li>✧3.8% in 2004</li> <li>✧3.7% in 2005</li> </ul>   | <p>*2011 Application (A.11-01-001)</p> <ul style="list-style-type: none"> <li>✧20.0% in 2012</li> <li>✧2.55% in 2013</li> <li>✧3.32% in 2014</li> </ul>   |
| <p>*2005 Application (A.05-02-005)</p> <ul style="list-style-type: none"> <li>✧8.56% in 2006</li> <li>✧2.69% in 2007</li> <li>✧5.46% in 2008</li> </ul> | <p>*2014 Application (A. 14-01-002)</p> <ul style="list-style-type: none"> <li>✧14.88% in 2015</li> <li>✧8.48% in 2016</li> <li>✧8.19% in 2017</li> </ul> |
| <p>*2008 Application (A.08-01-002)</p> <ul style="list-style-type: none"> <li>✧22.73% in 2009</li> <li>✧0.9% in 2010</li> <li>✧1.32% in 2011</li> </ul> | <p>*2018 Application (A. 18-01-002)</p> <ul style="list-style-type: none"> <li>✧3.96% in 2019</li> <li>✧5.06% in 2020</li> <li>✧3.60% in 2021</li> </ul>  |

## Rate of Return

\*In its most recent application (A-18-01-002), the Water Company indicated that its rate of return was **9.28%** in its last recorded year (2016).

\*The authorized rate of return during this time was 9.07%.

## History of Bill Increases Due to Rate Decisions

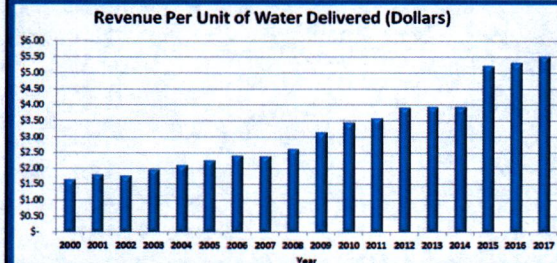
- \*2002 Application
  - ✧24.6% (D. 03-08-069)
- \*2005 Application
  - ✧13.1% (D. 05-12-020)
- \*2008 Application
  - ✧16.7% (D. 08-09-026)
- \*2011 Application
  - ✧19.9% (D. 12-09-004)

THIS ASSUMES 200 CCF USE OF WATER ANNUALLY - ACTUAL RATE INCREASES VARY FROM INDIVIDUAL TO INDIVIDUAL

SHOWS METER CHARGE ONLY, NOT:

- WRAM
- LOW-INCOME
- BALANCING ACCOUNTS
- OTHER SURCHARGES

## Water Company Revenue Per Unit of Water Sold



Source: Water Company Annual Reports, 2000-2017, Schedule B-1 (Operating Revenues) and Schedule D-7 (Water Delivered)



## Active CPUC Matters Cost of Capital Application

- Cost of Capital Application No. 18-05-006
- Filed on May 1, 2018
- Proposal to decrease authorized cost of capital and authorized rate of return (from 9.07% to **8.11%**).
- According to the Water Company, the reduction for the average residential customer would be \$6.93 every two months, or **\$41.58** annually.

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## Liberty's Outreach on PPH

### Upcoming Community Events

Check Back Soon For Upcoming  
Events!



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## Active CPUC Matters 2018 Application

- Filed on January 2, 2018
- Rate Increases Effective January 1, 2019
- The proposed revenue increase for residential customers is **4.26%** in 2019, **5.12%** in 2020, and **3.69%** in 2021.
- For the "average" residential customer with 5/8 x 3/4" meter using 23.11 ccf every two months, the annual increase will be **\$37.02** in 2019, another **\$41.52** in 2020, and yet another **\$30.48** in 2021.

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## Current Rate Comparison

### \*Water Company (Current Schedule No. 1)

- ✦ Service Charge - \$22.24/month; \$266.88/year
- ✦ Rates - \$3.876/ccf for first 12 ccf; \$4.488/ccf for next 12 ccf; and \$5.100/ccf thereafter
- ✦ Total cost, excluding surcharges, for 192 ccf annual = \$773.57 + \$266.88 = **\$1,040.45**

### \*City of Hesperia (January 1, 2018)

- ✦ Service Charge - \$23.045/month; \$276.54/year
- ✦ Rates - \$0.92/ccf for first 14 ccf; \$1.65/ccf for next 21 ccf; \$2.24/ccf thereafter
- ✦ Total cost, no surcharges, for 192 ccf annual = \$194.16 + \$276.54 = **\$470.70**

### \*City of Victorville (July 1, 2018)

- ✦ Availability Charge - \$12.68/month; \$152.16/year
- ✦ Rates - \$2.025/ccf
- ✦ Total cost, no surcharges, for 192 ccf annual = **\$540.96**

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## Public Participation Hearings

**MAKE YOUR VOICE HEARD!!**

**OCTOBER 25, 2018**

**1 P.M. & 6 P.M.**

**Apple Valley Conference Center**

**14975 Dale Evans**

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## Process to Date 2015 - 2016

### \*2015

- ✦ Early 2015 - Appraisal of System
- ✦ Mid 2015 - Fair Market Value Offer Made and Declined
- ✦ Nov. 17, 2015 - Resolution of Necessity Hearing and EIR Certification
- ✦ Dec. 16, 2015 - Water Company Sues Town over CEQA
- ✦ Dec. 21, 2015 - Notice of Intent Filed for Measure V

### \*2016

- ✦ Jan. 7, 2016 - Town Files Eminent Domain Complaint
- ✦ Early 2016 - Town Prepares CEQA Administrative Record
- ✦ Mid 2016 - Measure V Qualifies; Town Places Measure V and W on Ballot
- ✦ Nov. 2016 - Measure V and W Obtain 50% of Votes; Measure V Becomes Law

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## Process to Date 2017-2018

### \*2017

- ✧ CEQA Action Delayed Due to Motion to Augment CEQA Record
- ✧ Mar. 2017 – Town Council Places Measure F on Ballot Requesting Authority to Issue \$150 million in Revenue Bonds
- ✧ Jun. 2017 – Measure F Passes With 57.89% of Votes In Favor
- ✧ Mid to Late 2017 – CEQA Briefing
- ✧ Dec. 14, 2017 – CEQA Hearing Before Judge

### \*2018

- ✧ Feb. 2018 – Court Rules In Town's Favor on CEQA
- ✧ May 2018 – Water Company Agrees Not to Appeal CEQA win; Town Waives \$23,452 in Costs
- ✧ Discovery and Eminent Domain Case Preparation Ongoing
- ✧ Standard of Review

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## EIR RATIONALE

▪ Apple Valley Ranchos made clear from the very beginning that it would “challenge the Town Council at each and every step of the way.”

▪ EIRs provide more public disclosure. Members of the public expressed concerns about the project and raised a number of questions that the EIR process was able to fully address.

## ENVIRONMENTAL COMPLIANCE

TOWN CEQA ATTORNEY  
CHARITY SCHILLER

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## EIR RATIONALE

▪ “In my view as the Town Attorney, it would irresponsible of the Town to not fully comply to the letter in the requirements of the California Environmental Quality Act.”

▪ Town believed, and continues to believe, that the Water Company's acquisition of Yermo Water Company should have been subject to environmental review.

▪ “Right thing to do”

—John Brown, Town Attorney (May 26, 2015)

## CEQA TIMELINE

- Notices of Preparation: Summer 2015
- EIR certified: November 17, 2015
- Lawsuit filed: December 16, 2015
- Court enters Judgment denying Writ of Mandate: March 8, 2018
- Final settlement: May 4, 2018

## EIR RATIONALE

▪ “The CEQA process 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.”

▪ “[An Environmental Impact Report] involves the most opportunities for the public to review, to comment, [and] to provide input . . . .”

—Charity Schiller, Town CEQA Attorney (May 26, 2015)



## EIR COSTS RATIONALE

- The cost of EIR process was relatively minimal.
- Litigation costs would have been far greater if Town lost at trial court by arguing only for an exemption.
- Preparing an EIR was an attempt to save the Town money in the long run.
  - ❖EIRs have a more deferential standard of review.
  - ❖Preparation of an EIR would ensure Town better positioned at trial court in inevitable lawsuit.

## Right to Take Phase

- Trial on the Town's "Right to Take" the Water System
  - ❖Standard of Review
- Discovery Ongoing – Depositions, Document Production, Document Demands, etc.
- Judge Trial
  - ❖Trial Date Not Yet Set; Anticipated 2019
- Water Company counsel claims trial may take as long as 30 court days (i.e., 6 weeks)

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## CEQA Decision

- Arguments Made By Water Company
- The Town's Response
- The Court's Ruling
- Settlement Agreement

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## Valuation Phase

- Determines the value of the water system, i.e., how much the Town must pay
- Takes place several months after Right to Take Phase
  - ❖Different types of experts and information presented
- Jury Trial

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## ACQUISITION PROCESS

TOWN ACQUISITION/LITIGATION COUNSEL  
KEN MACVEY

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