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EXEMPT FROM FILING FEES, PURSUANT TO GOVERNMENT CODE SECTION 6103

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
JUN 01 2021
BY Monica Real-Ramos
MONICA REAL-RAMOS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY, a municipal corporation,

Plaintiff,

v.

APPLE VALLEY RANCHOS WATER COMPANY, a California corporation; DOES 1-1000; AND ALL PERSONS UNKNOWN CLAIMING AN INTEREST IN THE PROPERTY,

Defendants.

Case No. CIVDS 1600180

TOWN OF APPLE VALLEY'S:

(1) OBJECTIONS TO TENTATIVE STATEMENT OF DECISION;

(2) REQUEST FOR FINDINGS AND STATEMENT OF DECISION

Assigned for All Purposes to Hon. Donald R. Alvarez (Department 23)

Complaint Filed: January 7, 2016

Trial Date: October 22, 2019 to July 15, 2020

Hearing on Objections to Tentative Statement of Decision: 10:00 a.m. July 23, 2021

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I. INTRODUCTION

Plaintiff Town of Apple Valley ("the Town") respectfully objects herein to the Court's May 7, 2021 Tentative Statement of Decision ("TSD"). Per the Court's Case Status Conference and Minute Order of May 12, 2021, the Court set June 1, 2021 for the filing of objections to the TSD; June 18, 2021 for responses to the objections; and July 23, 2021, 10:00 a.m., for the objections hearing. The Town asserts and reserves all rights under Code of Civil Procedure section 632 and California Rules of Court, Rule 3.1590. The Town requests that the Court prepare and file a final Statement of Decision consistent with the Town's objections and requests for findings as stated herein. It requests that such decision be issued within 30 days of the July 23, 2021 hearing date.

II. GENERAL OBJECTION

A statement of decision should explain the factual and legal basis for the Court's decision as to each principal controverted issue at trial for which the statement was requested. (Code Civ. Pro. §632; *Whittington v. McKinney* (1991) 234 Cal.App.3d 123; *Wolf v. Lipsy* (1985) 163 Cal.App.3d 633, 643.) The Town objects to the TSD on the grounds that the Court has not stated the factual and legal basis for its decision as to each principal and controverted issue at trial and that the TSD also commits errors of law, misstates evidence, makes findings not based on substantial evidence, and fails to address uncontroverted material facts, as stated herein. The fact that a particular objection is not made to a particular point or finding does not mean that the Town concedes such point or finding. The Town reserves the right to make further objections as permitted or authorized by law and procedure.

III. OBJECTIONS AS MATTER OF LAW

A. The Court is Acting as Policy Maker and Legislator

Objection: Findings in the Town's Resolutions of Necessity (the "RON") are quasi-legislative and as such are entitled to deference under case law and principles of separation of powers. (See, e.g., *Anaheim Redevelopment Agency v. Dusek* (1987) 193 Cal.App.3d 249, 260; *County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654.) The TSD substitutes the Court's legislative and policy making judgment over that of the Town Council as a

legislative body. The TSD negates the legislative nature of these findings when it states that "[t]he 1992 legislation made the issues of necessity *judicial* issues to be decided by the Court after trial—not issues decided *legislatively* by the Town when it adopted the Resolutions of Necessity." (TSD 11:6-8; emphasis in original.) Nothing on the plain face of the relevant 1992 amendments or in their legislative history states that the quasi-legislative nature of the findings in resolutions of necessity regarding the condemnation of privately owned utility property no longer exists. Such a sea-change in the law would have been so noted in the statutory language and the legislative history and it is not. For example, Code of Civil Procedure §§ 1245.210 (a) and 1245.220 requiring that "the *legislative* body of the local public entity" (emphasis added) must be the body that hears and acts on resolutions of necessity was never modified with respect to condemnations of private utilities. The TSD effectively interprets the 1992 amendments to give the Court the power to act as a supervening legislator and policy maker over local municipal policy and affairs.

B. The TSD Rests on Rulings that Allowed Liberty Instead of the Town Council to Define What Are Proper Objectives for the Town's Project

Objection: The Court's October 31, 2018 ruling on the standard of review concluded that Liberty Utilities (Apple Valley Water) Corp. ("Liberty") was free to determine what evidence and claims to present in rebutting the presumptions in the RON. (Ruling: 19:9-10; "It is up to Liberty to decide what evidence it believes is relevant to meeting its burden of proof.") This ruling as implemented in trial and in the TSD delegated to Liberty the power to define and select the target to be attacked instead of Liberty responding to and rebutting the Town's actual goals and objectives. (In fact, Liberty proceeded first at trial and completed its case-in-chief without introducing into evidence the RON it claimed it was rebutting. The Town had to introduce it.) This effectively meant the Court delegated to Liberty the authority to define the scope and delineation of the public interest and necessity, the greatest public good and least private injury, and more necessary use, to which the Town was to respond as so defined and limited without consideration of the Town's actual objectives. This delegation is contrary to the statutory framework in the Eminent Domain Law regarding condemnations of privately owned utility

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property. (Code Civ. Proc. §§1235.193; 1240.650 (c); and 1245.250 (b).) By allowing Liberty to define the target in any manner it so chose, the Court also gave, and the TSD also gives, Liberty the de facto power to usurp the Town council's legislative powers. (The Town incorporates by reference its opening and responding briefs and accompanying requests for judicial notice re "Applicable Standard of Proof and Status of Administrative Record" filed with the Court for hearing on August 24, 2018.)

At the same time, the Court never held that "it is up to the Town to decide what evidence it believes is relevant in supporting the presumptions in the RON or in responding to Liberty's case-in-chief." To the contrary, as will be further discussed in other objections, the TSD severely restricts what the Town is able to produce for court consideration while giving Liberty carte blanche. By ruling that it would be "up to Liberty to decide what evidence . . . is relevant" the Court also abdicated its judicial responsibility on determining what is relevant. The Town asked the Court to reject such delegations to Liberty but the Court declined to do so and on that basis made findings in the TSD.

C. The Court Erroneously Rejected Presentation/Consideration of the Administrative Record for the RON

Objection: The Court in its October 31, 2018 ruling re "Standard of Review" and in subsequent rulings rejected presentation and consideration of the Town's administrative record as requested and briefed by the Town. (October 31, 2018 Ruling 18:25-19:28.) When the Court ruled on October 31, 2018 to reject consideration of the administrative record it did so in the abstract without ever reviewing the contents of a proffered administrative record even though case law provides administrative records are to be considered in right to take challenges. (See, e.g., *Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 25.) The Town filed on October 17, 2019 its "Notice of Lodging Certified Administrative Record" which contained a detailed subject matter index of the bate stamped administrative record for the RON lodged with the Court. (This notice is incorporated by reference.) After that filing, the Court reaffirmed its October 31, 2018 ruling to disallow presentation of this record indicating it had already made its ruling. It did so on a wholesale basis with no formal hearing on the specific

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contents of the administrative record, solicitation of written objections to specific contents of the record, or actual systematic Court review of what the record contained. (7-13-20 RT 29:11-21; 7-14-20 RT 3:3-8:7.) The administrative record provides the nature and basis of the Town's legislative decisions and findings in the RON. The administrative record provides detailed relevant background that was before the Town Council when it adopted the RON. This same Court (Hon. Judge Alvarez) in Liberty's separate companion CEQA lawsuit challenging the Town project did allow presentation and consideration of the administrative record. This CEQA administrative record was in fact included as a portion of the administrative record lodged in the right to take trial. (See October 17, 2019 Notice of Lodging, which includes an index for the CEQA administrative record in San Bernardino Superior Court Case No. CIVDS 1517935.) Nevertheless, the Court rejected consideration even of that portion. (7-14-20 RT 3:3-8:7.) In other words, the Court's rulings authorize, and the TSD continues to authorize, Liberty to define in its untethered discretion what is relevant while also prohibiting presentation of the administrative record regarding the Town's legislative findings. This combination essentially means that any challenge to the RON's findings may become, and in this case did become, a standard-free "free for all" where anything goes under the guise of rebutting these findings. The Court was asked to consider this administrative record, declined to do so, and declined to make findings based on this record.

CEQA Alleged As EXEMPT NOT REQUIRED

Because not subject to CEQA

D. The Court Shifted the Burden of Proof to the Town when Liberty has the Burden of Proof

Objection: These rulings (i.e., that Liberty can define what is relevant while also disallowing the RON administrative record) effectively shifted the burden of proof to the Town requiring the Town to rebut Liberty's case-in-chief. This is contrary to the statutory framework that puts the burden of proof on Liberty to rebut the presumptions that the Town's findings are true. Liberty was not required to respond to the Town's objectives for the project and generally elected not to do so. Instead the Town was required to respond to Liberty on Liberty's terms. The TSD rests on this shifting of the burden of proof.

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E. The TSD Applies the Wrong Legal Standard of Review

Objection: The TSD applies the incorrect legal standard of review. As the Town has briefed regarding the applicable standard of review (briefing previously incorporated by reference), the correct standard is gross abuse of discretion. This standard is not followed in the TSD.

The TSD also emphasizes and underscores that public interest and necessity "require" the project when case law establishes that necessity findings do not require strict necessity and are to be liberally construed. (See, e.g., *City of Hawthorne v. Peebles* (1959) 166 Cal.App.2d. 758, 762.)

The TSD also relies heavily on *SFPP, LP v. The Burlington Northern & Santa Fe Railway Co.* 121 (2004) Cal.App.4th 452. That case is inapposite. It involved a dispute between two private utilities over the exercise of eminent domain when there were no legislative decisions, no legislative findings, no resolutions of necessity, and no presumptions in favor of necessity. At the same time, the TSD does not address whether or not the public interest and necessity and other objectives that the Town has for the project can be best met by the project. In fact, the Town's objectives are generally unaddressed in the TSD and are largely uncontroverted. NO EVID SUPPORTS SOMT

F. Liberty and the TSD Failed to Address the Town's Findings as They Existed When the RON was Adopted

Objection: The RON was adopted November 17, 2015. As of that time the Town and its community had experienced two principal ownerships of the water system: the Wheeler family ownership; the Carlyle Infrastructure Partners ownership. These two ownerships, including their performance in operating the water system, were the subject of extensive testimony and evidence in the trial. It is uncontroverted and acknowledged by Liberty witnesses that the Wheeler ownership's practices regarding capital investment were "unsustainable" and that the Wheeler ownership fostered a culture of training and practice of not documenting in writing the company's actual reasons for capital improvement priorities, a practice that continues. It is also uncontroverted that Carlyle took control of the water system in December 2011 with no prior utility experience in California and that the CPUC declared in its decision on Carlyle's takeover

that Carlyle was unknown to the CPUC. It is uncontroverted that Carlyle contemplated to be a short-term owner with the intent of flipping its holdings to a new purchaser for Carlyle to gain a substantial profit. It is uncontroverted that one of Liberty's principal witnesses testified that Carlyle was "corporation first." It is also uncontroverted that Carlyle made no monetary injections for capital projects—instead capital improvements were funded by customers through rates. Other uncontroverted facts demonstrate that the findings in the RON were well supported as of the date of their adoption. These uncontroverted facts are not addressed in the TSD. In fact, the TSD does not address the Wheeler or Carlyle ownerships or conditions as they existed at the time of the adoption of the RON. The findings in the RON as they were adopted on November 17, 2015 were presumed true as of November 17, 2015. These findings were not controverted or rebutted in the trial as not being true as of the time of adoption. The TSD does not find, and has no basis in the record to find, that the findings in the RON were rebutted or were shown not to be true as of the time of their adoption. Therefore, the findings in the RON must still be presumed true as of the time the RON was adopted on November 17, 2015.

G. The TSD Erroneously Relies on Post-RON Liberty-Related Conditions/Circumstances in Order to Find the Presumptions Favoring the Findings in the RON were Rebutted

Objection: Liberty took ownership of the water system after adoption of the RON. The TSD throughout the entire decision relies heavily on Liberty's performance/conditions existing after the adoption of the RON on November 17, 2015. In fact, "Liberty" is referenced throughout the TSD but Liberty had no ownership role at the time of the adoption of the RON. To allow post-RON conditions based on Liberty as the new owner to rebut legislative findings as they existed at the time of adoption of the RON essentially supersedes the legislative acts of legislative decision makers. It also undermines the statutory framework in the Eminent Domain Law for condemning private utility property. For example, Liberty has taken the opportunity, an opportunity inappropriately affirmed by the TSD, to step in after the fact to claim its superiority in certain respects over the prior owners and the Town. Under this logic, if Liberty were failing for whatever reason (such as going into major financial decline) it would then be permissible for Liberty to have sold the water system to yet another party, who could then rebut the presumptions

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based on its supposed superior status compared to Liberty and the Town. Permitting such a moving target undermines the statutory framework regarding such condemnations. Because the TSD principally relies on findings of conditions/circumstances existing after the adoption of the RON, the presumptions favoring the findings in the RON must be found not rebutted.

H. The TSD Relies on Factual and Legal Contentions that Were Not Raised in its Answer and Must Therefore be Disregarded Under CCP Sections 1250.345 and 1250.350

Objection: The TSD relies upon factual and legal contentions presented by Liberty that exceed those pled by Liberty in its current Amended Answer, dated February 17, 2017. Unique pleading requirements apply to right to take challenges. A right to take objection must "state the specific ground upon which the objection is taken, and if the objection is taken by answer, the specific facts upon which the objection is based." (Code Civ. Proc. §1250.350.) The failure to so state results in the waiver of the objection. (Code Civ. Proc. §1250.345.) The great majority of the TSD relies upon purported facts and classes of facts (including those relating to post-RON circumstances) not pled in the Amended Answer. They are therefore waived and must be disregarded. As to the objection letter dated November 12, 2015, which is attached as Exhibit C to the Amended Answer, it is part of the administrative record and contains numerous objections asserted prior to the adoption of the RON. The Court's decision should be confined to evidence relating to these objections as they existed at the time of the hearing on the RON, even if it is extra-record evidence.

I. The TSD Inconsistently Applies *Marina Towers* by Allowing Liberty to Present Evidence on Post-RON Conditions while Restricting the Town from Doing So

Objection: As will also be discussed further below, the TSD erroneously and inconsistently asserts that the Town is modifying the proposed project as defined in the RON and the accompanying FEIR and restricts or discounts consideration of evidence presented by the Town in responding to Liberty's case-in-chief that relies on post-RON evidence, conditions, and circumstances. In doing so the TSD relies on *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 1202 and the Town's FEIR and the RON. (See generally TSD 3:15-24; 6:27-7:6; and TSD II . C.) As previously noted, the Court in its October 31, 2018 ruling on the standard of

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review authorized Liberty to produce whatever evidence and contentions it claimed to be relevant in rebutting the presumptions. This "blank check" improperly includes evidence on post-RON facts and conditions regarding Liberty and the Town. On the other hand, the TSD limits the scope of what the Town may present contending that the Town is modifying the project from what was defined in its FEIR and the RON and offering what it considers to be post-RON evidence. It is uncontroverted that the CPUC found that Liberty's acquisition of the water system was CEQA exempt. Its decision stated: . . . Ranchos will continue to operate as they did before the transfer of control under the Transaction. Therefore, the transaction qualifies for an exemption from CEQA . . ." (Exh. 3573-19.) Thus, Liberty is unrestricted—it can present any evidence/contentions it deems relevant, including post-RON evidence and contentions, including, contentions about improved operations resulting from its acquisition of the water system despite its CEQA exemption premised on no change in operations. On the other hand, the Town is restricted from doing the same. This unequal treatment is logically inconsistent, arbitrary and capricious, and violates fundamental principles of due process and fair play.

In addition, *Marina Towers* is inapposite. The situation faced by the *Marina Towers* court was there was no project description at all in the resolution of necessity and no actual proposed public use. The resolution of necessity was found on its face, invalid. That is not the situation here and Liberty itself has acknowledged that it is not challenging the facial validity of the Town's RON. (See 8/24/19 RT 17:14-25.)

J. The Matter Should be Remanded to the Town Council for Consideration of Post-RON Facts and Conditions

Objection: To mitigate these previously described errors, the matter should be remanded to the Town Council for consideration of post-RON facts and conditions. The basis for this objection is spelled out in detail below.

1. The Court's Proposed Finding that Liberty has Rebutted the Presumptions Improperly Relies on Evidence and Conditions That Did Not Exist at the Time of the Hearing on the RON

In its ruling on the standard of review, this Court stated that in "this case, the proper

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adoption of a resolution of necessity is the basic fact that once established, the presumed fact[s] of the three elements of section 1240.030 [and 1240.650(a)] **exist**." (Ruling On Motion Re: Standard of Review, 15:3-11; emphasis added.)

The TSD finds that the existing presumed facts have been largely rebutted by evidence of post-hearing conditions and circumstances that did not exist at the time of the hearing. This begs the following questions:

What is the legal basis for the Court's consideration of Post-RON facts and conditions?

Can the presumed facts as they existed at the time of the adoption of the RON be rebutted by evidence of facts and conditions that did not exist?

To what extent did the Court rely on evidence of Post-RON facts and conditions in finding that Liberty has rebutted the presumed facts?

Should the Court consider only facts and conditions that existed at the time of the hearing on the RON--when the water system was owned by Carlyle?

Can the presumed facts be true at one time but not another? In other words, can they be true when Carlyle owned the system but not under Liberty's ownership?

Is the existence of the presumed facts dependent on when the right to take challenge is heard or who makes the challenge?

Is it irrelevant that the Town could not have foreseen Liberty's Post-RON operational practices at the time the RON was adopted?

Did the Court consider whether Liberty's post-RON performance/conduct may have been influenced by the condemnation action?

2. To be Consistent, Evidence of Conditions and Events That Occurred After the RON Hearing Should not be Considered by this Court in the First Instance

A right to take action is a writ proceeding. When filed after the adoption of a resolution of necessity, but before the filing on the eminent domain complaint, it is filed as a writ action. (Code Civ. Proc. §1245.255(a)(1).) After the filing of the complaint, it remains a writ action. (*Inglewood Redevelopment Agency v. Aklilu* (2007) 153 Cal.App.4th 1095, 1114 (a challenge "raised as a defense in an eminent domain action is reviewed under the same standard as a

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challenge by way of a writ of mandate. In either case, trial court applies . . . . section 1085.")

Answering the foregoing questions is difficult because of Liberty's position that all writ aspects have been supposedly stripped clean from this action because the Court "does not act as a court of review, **but as a finder of fact in the first instance**." (Liberty's Opening Brief Re Applicable Standard Of Proof And Status Of Administrative Record, 3:7-8.) Liberty argues that this allegedly frees the Court from the administrative record and allows it to consider extra-record evidence, as was done by the Courts in the three extra-territorial cases cited by Liberty: (1) *City of Carlsbad v. Wight* (1963) 221 Cal.App.2d 756; (2) *City of Los Angeles v. Keck* (1971) 14 Cal.App.3d 920; and (3) *San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885.

Although the courts in all three extra-territorial cases cited by Liberty considered extra-record evidence, that evidence concerned facts and conditions that existed *at the time the decisions to acquire were made*. For example, in *Keck*, the property was grazing land owned by Mr. Keck at the time the decision to acquire was made and continued being grazing land owned by Mr. Keck through the appeal. (*Keck*, 14 Cal.App.3d at 928.) The Court in *Grabowski* states that its review was to determine if the public necessity findings "existed." (*Grabowski*, 205 Cal.App.3 at 898.) *SFPP* is of no help because the parties did not change and the offered pipeline alternatives existed prior to the decision to acquire. There is simply no eminent domain authority stating that even when authorized to act as a finder of fact in the first instance, a court may consider new evidence addressing facts that did not exist at the time of the hearing on the RON.

3. Even Where Courts Have Independent Authority to Weigh Evidence They Remand to Allow Agencies to Consider Relevant Post-Evidence on Post-Hearing Evidence in the First Instance

Writ cases have recognized that although evidence of events occurring after a hearing on a resolution of necessity is a form of extra-record evidence, such evidence is different as it raises time related equitable issues which may dictate that even where a court may consider such evidence, it should remand to an agency to consider the evidence in the first instance. (Civ. Proc. Code §1094.5(e); *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 596–597, fn. 4; *Curtis v. Board of Retirements* (1986) 177 Cal.App.3d 293, 299.)

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Liberty has argued that writ principles do not apply in instances where a court is authorized to weigh evidence in the first instance, that they are mutually exclusive. This is not true.

As noted in *Western States Petroleum Assn.*, the degree of judicial scrutiny and the evidence to be considered varies with the facts and nature of the action:

> After careful consideration, we conclude that the commentators are correct. "**The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation**, but lies somewhere along a continuum with non-reviewability at one end and independent judgment at the other." Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum. However, we will continue to allow admission of extra-record evidence in traditional mandamus actions challenging ministerial or informal administrative actions if the facts are in dispute. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th at 575-576; emphasis added, internal citations omitted.)

Both traditional and administrative writ cases have addressed the issue of whether courts authorized to consider evidence in the first instance should consider evidence of post-hearing facts and events and have noted that the "**better practice**" is to remand the evidence for first consideration by the public agency:

> "This does not mean that the trial court should admit such [post-hearing events] evidence in all cases. In keeping with the principle that the administrative agency should have the first opportunity to decide the case on the basis of all of the evidence, **the better practice might be to remand the action for agency redetermination in the light of the new evidence, particularly where the evidence would have been crucial to the administrative decision**." (*Windigo Mills*, 92 Cal.App.3d at 596–597, fn. 4; *Curtis*, 177 Cal.App.3d at 299; *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1592.)

4. Equity Favors Remanding The Matter To The Town For Consideration Of Liberty's Evidence on Post-Hearing Conditions

The RON was adopted when the water system was owned by Carlyle, which had no prior water system experience, was characterized at trial as having a corporate first mentality, was

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hostile to the Town's recycling efforts, and most importantly, acquired the water system with the intent of selling it, was required by the CPUC to develop a disposition plan for the water system and was scheduled to sell the water system pursuant to its pending agreement. These were some of the key facts that led to the adoption of the RON. All the post-hearing events evidence introduced by Liberty relating to its supposed stellar operation of the water system did not exist for consideration at the time the Town was considering the adoption of the RON.

Reliance on post-hearing conditions by Liberty and the Court has converted the matter into an equitable one, which can be boiled down to the single question of whether the Town's decision to acquire can be challenged with evidence it could never have considered because it did not exist and which was presented at trial by an entity and numerous witnesses not then involved in the operation of the water system.

As an alternative to seeking to work out the equitable conundrums raised by the consideration of post-hearing conditions evidence, which would require the Court to consider and rule on the merits of the Town's case as to Carlyle, the Court should remand the matter to permit the Town to consider Liberty's post-hearing evidence on post-hearing conditions.

This option is not new or radical, as illustrated by the above authorities, which note that even where courts are authorized to weigh evidence in the first instance, which is Liberty's main argument as to why all writ principles supposedly do not apply in this case, the better practice is to remand.

Remanding would produce an outcome that is consistent with how the case would have proceeded had Liberty operated the system at the time of the hearing on the RON, with the Town having an opportunity to consider matters as they actually exist under Liberty's operation and with Liberty having presented evidence relating to how it has supposedly improved the water system since its acquisition from Carlyle.

It would also bring it into line with the standard eminent domain principle that the right to take must be determined based upon the facts and conditions that existed as of the date of the commencement of the eminent domain action. (*City of Los Angeles v. Koyer* (1920) 48 Cal.App.720, 722, 727.)

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K. The TSD Erroneously Finds the Town Attempted to Modify Its Project When It Presented Independent Expert Testimony and Uncontroverted Evidence of Major Operational, Safety and Physical Water System Deficiencies in Rebuttal to Liberty's Case-in-Chief

Objection: The Town's project is the acquisition, operation, and maintenance of the Ranchos water system. Liberty in its case-in-chief provided testimony on its post-RON practices, operations, and capital improvements to demonstrate its claimed excellence as an operator as rebuttal to the presumptions in favor of the findings in the RON. The TSD erroneously states that the testimony of the Town's independent water engineer and water system management expert witness was inconsistent with the Town's project and on that basis rejects or discounts his testimony accordingly. (TSD 16:8-23.) Liberty presented days of testimony about the post-RON conditions and operations of the system to tell its story how it is an excellent operator of the water system. It did so not through independent expert testimony but through the testimony of current and former employees that worked on the system. The Town provided uncontroverted ***rebuttal*** testimony and evidence contradicting this claim by demonstrating that Liberty in multiple respects failed to meet critical industry standards in operating and maintaining the system. For example, it was never controverted that:

- 10 of the 11 storage tanks fail to meet current AWWA standards (6/16/20 Close 73:4-9; Exh. 4334-9, Exh. 3891, Exh. 3892 in passim).
- several of these tanks have physically shifted from their original foundations (See, e.g., Exh. 3891; Exh. 3892 in passim);
- tanks with millions of gallons of water overlooking residences fail to comply with industry seismic standards and best practices (6/16/20 Close 99:16-100:8; 102:23-103:5; Exh. 3877-6 thru 9.) Exh. 4082-17; Exh. 4253-1, 3);
- no written seismic studies were commissioned for any of the system facilities (12/4/19 Dalton 48:25-49:7; 53:8-14; 2/25/20 Miles 120:25-121:2; 3/3/20 Miles 52:2-20);

- the system's tanks do not have enough storage by themselves to meet maximum day demand (6/17/20 Close 22:14-22:10; Exh. 4082-8);
- the company's own commissioned engineering studies and internal reports show that governing fire flow and pressure regulations are being violated (2/25/20 Miles 130:11-26; 3/3/20 Miles 3:3-8; 31:11-14; Exhs. 4128-3, 4, 194-5, 6, 30);
- the company's own internal reporting states that it is a common experience for the system to have multiple wells down and out of service at the same time (6/17/20 Close 41:26-42:14; Exh. 4082-9, 10, 13);
- cross-connection regulations designed to present backflow contamination are being violated at multiple sites (6/18/20 Close 23:21-25:22; Exh. 3905-2; Exh. 3913-7; Exh. 3915-3; Exh. 3919-4);
- the company had no written operations plan but instead just a several year old "summary" (11/6/19 Thomas-Keefer 59:11-19; 11/7/19 Thomas-Keefer 22:4-23:10; Exh. 209; Exh. 210);
- the company has no comprehensive water master plan (12/4/19 Dalton 41:12-26; 2/25/20 Miles 129:13-25);
- the company's most current engineering studies date back to 2013 with others dating as far back as 2006, and that none have been updated (12/4/19 Dalton 42:6-15);
- a portion if not a majority of tanks, wells, booster stations, and wells suffer serious physical deterioration, including miles of what Liberty called "lousy" steel pipe (6/16/20 Close 64:12-19; 65:10-19; 11/14/19 Dalton 103:20-104:12; Exh. 883-1); and
- for years the company has followed and continues to follow the

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practice of intentionally not documenting in writing the actual reasons for its capital project decisions out of concern for legal liability (12/4/19 Dalton 22:11-24:6; See also p. 2:13-22 of the Stipulation Regarding Use of Deposition Video.)

This evidence was in response to Liberty's case-in-chief and does not represent a modification of the proposed project. The TSD does not address these and other major deficiencies or make findings thereto. To the limited and incomplete extent the TSD reviews this evidence as rebuttal, it does so unsystematically with the erroneous backdrop and filter that the Town is attempting to modify its project.

In fact, this testimony is also consistent with the project as proposed in its FEIR and the RON and underscores the Town's originally stated objectives (as reflected in the FEIR, the report to Town Council on the RON, and the administrative record,) of greater transparency, accountability, environmental review and sustainability, and local control over the operation and maintenance of the water system serving the needs of customers and Town constituents.

The uncontroverted evidence demonstrates that Town acquisition, operation, and maintenance of the water system will mean the Town and its constituents will have the opportunity to review, assess, and make future decisions, fully in compliance with CEQA, in operating and maintaining the water system with greater transparency and knowledge of the true conditions of the water system.

It is arbitrary and capricious and an abuse of discretion to discount's the Town's evidence on these issues, especially when Liberty was authorized to put in evidence on these topics at its own choosing and without restriction. If Liberty is allowed to put in post-RON evidence on its operation and maintenance of the system then the Town is entitled to do the same and is entitled to equal consideration. The TSD fails to provide such consideration.

L. <u>The TSD Improperly Speculates that the Town Will Violate the Law</u>

Objection: In finding the presumptions are rebutted, the TSD speculates that the Town will not follow the law and will violate Proposition 218. It does so based on settlements of two lawsuits and the testimony of a Liberty expert. As discussed in more detail *infra,* the Court

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sustained the Town's objections as to consideration of these settlements, which by law and their nature are not admissions of liability, but nevertheless relies upon them in the TSD. (TSD 52:13-53:8.) The TSD even questions the propriety of the settlements which were in fact approved by another judge at San Bernardino County Superior Court. The Court relies on the "expert" testimony of Dr. Hildreth, a Georgia State University professor, who testified he had no experience or expertise with respect to Proposition 218 and had only a lay person's understanding of Proposition 218. (11/14/19 Hildreth 60:25-66:1; 61:15-19; 63:4-8.) The TSD relies on matters inadmissible under Sections 1101(b), 1152, and 664 of the Evidence Code. The TSD relies on pure speculation, which is an abuse of discretion and arbitrary and capricious. By doing so, the TSD also shifts the burden of proof to the Town to disprove speculative allegations.

M. <u>The TSD Relies on Irrelevant Conduct of Other Public Entities to Speculate on How the Town Will Operate the Water System</u>

Objection: Liberty provided extensive testimony on what other entities, particularly Victorville, were doing in operating their water systems. (TSD 34:28-35:22.) This is equivalent to using the character evidence of another entity to predict the future conduct of the Town in terms of capital investment. This relies on inadmissible and irrelevant evidence. At the same time, the TSD fails to consider that the Victorville and other municipal water systems do not suffer the major deficiencies or what the TSD identifies as "the pressing engineering needs" of the Ranchos water system, which still exist after decades of private ownership. (TSD 34:21-22.) The finding that "there is a substantial risk that the Town would would fail to commit the needed level of capital improvements and maintenance to the system (TSD 33:17-19) rests on pure speculation.

N. <u>The TSD Makes the Improper Policy/Legislative Determination CPUC Regulated Providers are Superior to Publicly Owner Water Providers</u>

Objection: The TSD incorrectly asserts that the Town "is really objecting to existing California law and the regulatory scheme created by it." (TSD 37:11-12.) The Town is critical of how the regulatory scheme in actual practice has been specifically applied to the Town, its community, and the water system customers, after it has expended hundreds of thousands of dollars in multiple CPUC water proceeding interventions. Such concerns about the CPUC

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process have been recognized as legitimate in proceeding with condemnation of privately owned water systems. (See *Golden State Water Co. v. Casitas Municipal Water District* (2015) 235 Cal.App. 1246.

What in fact the Town specifically noted, however, is that "it would be problematic to find that CPUC investor owner water utilities are inherently inferior to public ownership." At the same time, the Town noted "[i]t would be daunting for the court to find that CPUC oversight of investor owned water utilities is inherently superior to publicly owned providers when the latter provide 85% of the water service [to customers in California]." (Town November 23, 2020 "Proposed Statement of Decision," (49:24-27).) Yet that is what the TSD does. It essentially finds municipal provision of water service is inherently inferior compared to CPUC regulated investor owned water service. For example, the TSD states: "Control by the Town Council leaves the water system vulnerable to political pressure to keep rates low, regardless of whether it is prudent in the short run or the long run. . . . Town oversight is inclined toward short-term decision making because Town councilmembers must run for re-election every few years. . . .The pressure to keep rates low increase the likelihood that the water system's buried capital assets will be run to failure . . . PUC regulation takes the politics out of rate setting, focusing instead on prudent investments in the system." (TSD 42:13-25.) These "findings" about institutional characteristics of municipal and investor owner water providers are not unique to the Town and could negatively apply to each and every municipal public water provider in California, which collectively provide 85% of water service in the State. The TSD even critiques voter approved Proposition 218 (which requires municipal water revenues to be directed toward supporting municipal water systems). For example, the TSD states "Proposition 218's 'right to object' is more of a theoretical paper right, rather than an actual one in practice." (TSD 52:10-12.) In short, the TSD has the Court acting as a preeminent legislator and policy maker with respect to law and policy on water service in California. The TSD's findings that the presumptions are rebutted rest on this improper basis.

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O. The TSD Considers Irrelevant and Speculative Factors for Finding that the Project is Not Planned or Located in the Manner Consistent with the Greatest Public Good and the Least Private Injury

Objection: The TSD finds that Liberty has rebutted the presumption that the project is planned or located in the manner most consistent with the greatest public good and the least private injury. (CCP Section 1240.030(b).) The TSD quotes the Law Revision Commission comment on this section but does not quote it in full context, which reads: "This limitation, which involves *essentially a comparison between two or more sites*, has also been described as 'the necessity for adopting a particular plan' for a given improvement. [Citations omitted. Emphasis added.]" The remainder of the comment focuses exclusively on factors in comparing alternative ***"locations."*** The Law Revision Commission comment makes clear that this section is about alternative locations and that reference to "plan" relates to planning the location of a proposed public improvement (e.g., such as a road).

The TSD in its analysis of this section relies on *SFPP, LP v. The Burlington Northern & Santa Fe Railway Co.* (2004) 121 Cal.App.4th 452. As the TSD recognizes this case was about alternative physical ***locations*** of the project. But the TSD then flips the CCP section to involve comparing "plans" not tied to physical locations. ("While *SFPP* involved the comparison of public good and least private injury of the location of the project, here the issue is not location but the plan for the Town's project. (TSD 76:10-12; emphasis in original.) The TSD rewrites the statute, coming up with an interpretation that expressly contradicts the Law Revision Commission and is not even supported by the only case cited. By doing so, the TSD adds a new layer of considerations above and beyond those contemplated under Section 1230.030(b), which in turn constrains or even undermines the meaning of "public use and necessity" in Section 1230.030(a), which according to the same Law Revision Commission includes "all aspects of the public good including but not limited to social, economic, environmental and esthetic considerations." The TSD in effect uses Section 1230.030(b) to constrain or even nullify findings under Section 1240.030(a).

The TSD fails to recognize the reality here that the project is already physically located, its physical location is already planned out. The project consists of an existing system, not a

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proposed public improvement to be located at one place or another.

Until its post-trial briefing, Liberty had also challenged the presumption under Section 1240.030(c) that the property is necessary for the project. It is instructive that Liberty abandoned this objection. It did so for good reason because the property to be acquired ***is*** the water system, which in turn is the essential component of the project. It is illogical to say under these circumstances the property is not necessary for the project. This same logic applies here—the project is ***already located***; its location ***already planned.***

But even under the TSD's interpretation of Code of Civil Procedure section 1240.030(b), the TSD considers irrelevant and speculative factors to find the presumption in regard to this section is rebutted. The TSD relies on three legally improper considerations.

First, it objects that the existing low income assistance rate program is not explicitly provided for in the Town's project. This is a program where Liberty water customers subsidize other customers by surcharges on their water bills. This is not a program where Liberty itself provides any such rate assistance. It is uncontroverted that the Town has the legal authority to provide such assistance through its general fund and that municipal water providers in California actually do provide such programs. It is also uncontroverted that water rates by neighboring residents in other communities, such as Hesperia, are actually lower than Liberty's low income rates. But in any case, whether and how such subsidies should be made will be, like it is for the majority of communities in California, a legislative/policy choice to be made by the local legislative body after input from the community and local customers. It is not for the Court to decide how or whether or to what extent this policy/legislative choice regarding subsidies from Peter to pay Paul should be made in Apple Valley. And it would be premature for the Town to make this determination in advance of acquisition. One of the principal reasons for the acquisition is precisely to give customers and constituents an opportunity to be heard on this kind of decision-making.

Second, the TSD cites loss of tax revenues as causing private injury. Nowhere is it stated who is actually injured or by how much. But it ignores the fact that the State and Federal governments have already made a policy/legislative decision that local public entities are not to

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pay certain types of taxes. In fact, all public agency acquisitions of private property by eminent domain result in loss of property taxes. Under the logic of the TSD all such eminent domain acquisitions would be contrary to serving the greatest public good with the least private injury. Under the logic of the TSD, the fact that that 85% of water service in California is provided by public providers should not be considered consistent with the greatest public good and the least private injury either. The TSD improperly elevates the Court to be the preeminent legislator.

Third, the TSD finds there will be private injury because unidentified nearby distressed water systems will not be acquired by Liberty. It is entirely speculative whether Liberty will acquire such systems. No specific plans were testified to, just possibilities of acquisitions that never happened. Any such acquisitions by Liberty would be for profit and investment, not charity, and would have to be agreed to by the system owners and approved by regulators. It is purely speculative whether Liberty will conclude any such unidentified acquisitions involving unidentified customers would be a prudent investment or whether such proposed acquisitions would be agreed to or approved. On the other hand, there is no reason to believe that other established nearby water providers, such as Golden State Water Company, the cities of Hesperia and Victorville, or the Town itself as a water provider could not also step in.

P. The TSD Fails to Consider Whether the Town's Objectives for the Project Will be Best Met by the Project

Objection: For purposes of considering the presumptions in favor of the public interest and necessity and more necessary use, the TSD generally and systematically does not address what the Town's objectives and goals are and whether they can be better met or only met by the project. In fact, a review of the TSD does not in any systematic manner discuss the Town's objectives other than to appreciate the Town's "motivations" and "aspirational goals." (TSD 2:6-8.) The FEIR and the resolution approving it, the report to the Council on the RON, the administrative record in support of the RON, and the complaint in eminent domain identify specific project objectives. These include, but are not limited to, local access to water decision makers; increased transparency over water decisions; accountability to customers and community instead of to shareholders; having a cost-based and community oriented water system where

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water revenues are used only to serve local water customers; meaningful and robust CEQA review of water projects; comprehensive water planning integrated with Town planning, services, projects, and development; pursuit of water project grants; elimination of company lawsuit threats against the Town for pursuing recycled water projects, and more. These and other objectives generally are not considered in the TSD. The uncontroverted evidence demonstrates that these objectives fall within the category of serving "all aspects of the public good"[1] and "concern the whole community or promotes the general interest in its relation to any legitimate object of government"[2], and that these objectives will be better served or can only be satisfied by the project.

IV. THE TENTATIVE STATEMENT OF DECISION FAILS TO MAKE FINDINGS REGARDING MATERIAL UNCONTROVERTED EVIDENCE, MAKES FINDINGS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND MISSTATES THE EVIDENCE

Below the Town identifies by general subtopics areas in the TSD that misstates the evidence, fails to make material findings, or makes findings not supported by substantial evidence. The Town also asks that the final Statement of Decision address certain material contentions.

A. TOWN OBJECTIVES

The Town objects to the TSD on the ground that the Court does not address many of the Town's stated objectives in adopting the RON to proceed with this acquisition of the water system. On November 17, 2015, the Town Council made a legislative decision to adopt resolutions of necessity to acquire the water system. In making this decision, the Town Council considered numerous public policy issues associated with the potential acquisition, including (1) Apple Valley Ranchos' ("AVR") higher and ever-escalating water rates, (2) the higher rates paid by AVR ratepayers as compared to neighboring jurisdictions, (3) AVR's attempt to obstruct the provision of recycled water within the Town, (4) the lack of transparency in operation of the water system, (5) the Town's ability to harmonize land use authority with the water system, (6)

[1] Law Revision Comment on Section 1240.030(a) on what public interest and necessity include.
[2] *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d. 60, 69, in defining the scope of "public use." In this instance the Town's project encompasses a range of community objectives broader than those served by the status quo of Liberty's more limited "public use " for the water system.

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the Town's ability to integrate water service and billing with other municipal functions, (7) improved emergency planning and coordination, (8) environmental sustainability, and (9) the benefits of the Town as a customer of the water system. The Town Council also considered the importance of local control in the operation of the system and in the rate setting process. These policy issues were addressed in detail in the staff report that was prepared for the Town Council meeting, and they were discussed in the open council meeting where the Town Council adopted the resolutions of necessity. (2/13/20 Lamson 63:13-68:13, Ex. 891.) The TSD does not address the majority of the issues that were debated and considered by the Town Council in adopting the resolutions of necessity, and the Town objects.

First, the Court does not address the issue of local control, and the importance of local control to the Town and its people. The Town has demonstrated the importance of having local control over the services and amenities provided to the Town's people. This includes the Town's Mission and Vision Statements, which stress the importance to the Town's people to have local control given the Town's geographic isolation. (2/6/20 Lamson 63:26-65:17; Exh. 3616.) The Town objects insofar as the Court does not address this issue or this evidence in its TSD.

Second, the Court's TSD does not address the issue of AVR's attempt to obstruct the provision of recycled water within the Town. The Town provided evidence of its extensive efforts to preserve and protect the groundwater basin by using recycled water to irrigate the Town's park lands as part of the new Town sub-regional facility that was constructed in concert with Victor Valley Wastewater Reclamation Authority ("VVWRA"). The Town further provided evidence that AVR objected to that project and threatened to file suit against the Town for an alleged violation of service duplication laws. (2/10/20 Lamson 42:6-44:11; 2/13/20 Lamson 14:12-25, 45:18-47:7; Exh. 3684-7, 23; Exh. 3668.) The Town objects insofar as the Court does not address this issue or any of this evidence in its TSD.

Third, the Court does not address the issue of the lack of transparency in the operation of the water system. The Town provided evidence of AVR's lack of transparency in the operation of the water system, and that in contrast, the operation of the Town and its municipal functions is fully transparent, open and available to everyone. (See e.g. 7/1/20 Robertson 62:12-22; 2/13/20

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Acevedo 88:17-89:1, 94:1-96:10; Exh. 4239-30 thru 36, 51 thru 52, 67 thru 78; Exh. 3613.) The Town objects insofar as the Court does not address this issue or any of this evidence in its TSD.

Fourth, the Court does not address the issue of the Town's ability to harmonize land use authority with the water system. The Town provided evidence that land use planning is critical because the Town is relatively new and largely undeveloped. The Town also provided evidence that AVR does not participate in land use and environmental planning, and that AVR likewise does not assist the Town in its efforts to attract new business to the Town. This includes undisputed evidence from the Town's CEQA expert that there will be greater land use coordination in the CEQA review process under Town ownership. (See e.g. 2/10/20 Lamson 71:6-77:18; 2/13/20 Acevedo 121:22-123:26; 2/24/20 Haddow 123:12-124:4.) The Town objects insofar as the Court does not address this issue or any of this evidence in its TSD.

Fifth, the Court does not address the issue of the Town's ability to integrate water service and billing with other municipal functions. The Town provided evidence that it has a plan to fully integrate water service and billing with its other municipal functions like sewer and solid waste services, which will provide for efficiency and clarity. The Town also showed that AVR's customer bills are confusing and difficult to understand, that there would be more clarity in billing under municipal ownership. (See e.g. Exh. 156; Exh. 800.) The Town objects insofar as the Court does not address this issue or any of this evidence in its TSD.

Sixth, the Court does not address the issue of emergency planning and coordination. The Town provided evidence that there are areas in the system that are not meeting local fire standard requirements. (6/18/20 Close 36:8-37:2; Exh. 194-59; Exh. 3850.) The Town objects insofar as the Court does not address this issue or any of this evidence in its TSD.

Seventh, the Court does not address the issue of environmental sustainability. The Town provided evidence at trial regarding the Town's efforts at water conservation, and in particular, the Town presented its Water Conservation Ordinance, which was first enacted in 2006, and it offered testimony regarding the Town's ability to use its police powers to enforce conservation. (2/10/20 Lamson 45:14-47:14; Exh. 4245.) The TSD only addresses water conservation in terms of AVR charging customers more as consumption increases. (TSD, pp. 25-26.) The Town

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objects insofar as the Court does not address the Town's ability to promote conservation through its police powers.

Eighth, the Court does not address the issue of the benefits to the Town as a customer of the water system. The Town provided evidence at trial regarding the large amount it pays for water service as a customer of AVR. (11/13/19 Harris 64:4-11.) The Town objects insofar as the Court does not address this issue or any of this evidence in its TSD.

The Town requests that the Court issue a Statement of Decision that addresses the following questions:

In reaching its decision, did the Court consider the importance of local control to the Town? If so, how did this policy goal of the Town factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the Town's purple pipe recycled water project, and the overall importance of recycled water to the Town? If so, how did this factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the importance of transparency to the Town? If so, how did this policy goal of the Town factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the importance of being able to harmonize land use authority with the water system? If so, how did this policy goal of the Town factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the importance of being able to integrate water service and billing with other municipal functions? If so, how did this policy goal of the Town factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the importance of emergency planning and coordination? If so, how did this policy goal of the Town factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the importance of environmental

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sustainability? If so, how did this policy goal of the Town factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

In reaching its decision, did the Court consider the benefits of Town ownership to the extent that the Town is a customer to the water system? If so, how did this factor into the Court's decision and what evidence did the Court rely on in reaching it decision on this issue?

B. THE WHEELER AND CARLYLE OWNERSHIPS

The Town objects as an abuse of discretion that the TSD does not address the Wheeler Family ownership of the water system (1988-2011) as well as the Carlyle Infrastructure Partners ownership (2011-2016). It is undisputed that the evidence shows that under the Wheeler ownership "capital investment was not consistent with long-term sustainability of the system" (2/19/20 Schilling 5:10-26) and that the Co-CEO under this ownership testified he believed there was dysfunctionality in internal decision-making (2/19/20 Schilling 55:10 -26). It is also undisputed that under this ownership company employed engineers were trained for "liability" reasons not to document project priorities, to discuss them only verbally, a practice that continued after Liberty's acquisition. (12/4/19 Dalton 22:11-24:6; See also p. 2:13-22 of the Stipulation Regarding Use of Deposition Video.)

It is also undisputed that when Carlyle Infrastructure Partners took ownership from the Wheeler ownership the Carlyle entity was structured to be only a limited life entity and not a long term owner or manager of the water system. (2/19/20 Schilling 45:4-23; 2/19/20 Schilling 46:1-19; 47:22-26.) It is also undisputed that within two years of its taking ownership Carlyle began marketing the sale of its ownership to private entities. (2/19/20 Schilling 71:14-19.) It is also undisputed that Carlyle did not advance any financing or funding for operations and capital improvements during its ownership. Capital improvements were instead funded out of retained earnings obtained through customer payments. (2/19/20 Schilling 60:8-15; 77:13-15). It is undisputed that the Ranchos water system first tier water rates increased during the Carlyle ownership by 73% or at annual rate of over 18%. (Exh. 427-13.) It is undisputed that the Carlyle ownership was in effect when the Town adopted the RON.

The Town requests that the Statement of Decision address the following questions:

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Are the performance and circumstances of the Wheeler ownership considered relevant in determining whether the presumptions in favor of the RON findings are rebutted?

Are the performance and circumstance of the Carlyle ownership considered relevant in determining whether the presumptions in favor of the RON findings are rebutted?

C. WATER RATES

The TSD finds that "Liberty's water rates compare favorably to water rates charged by nearby municipally owned water systems." It further indicates that Liberty water rates should be considered to be lower. (TSD III (A) (4)). These findings are based on testimony of Liberty witness Dr. Hanemann. The Town objects to these findings as not supported by substantial evidence and as misstating the evidence.

For example, the TDS does not acknowledge that Dr. Hanemann's survey analysis shows that Liberty's rates are the highest of those he surveyed in his 2018 survey. His survey shows Liberty is 44% higher than Victorville and 38% higher than Hesperia based on average customer monthly consumption. (Exh. 427-9.) If looked at on a per water consumption unit basis, Liberty is actually 80% higher than Victorville and Hesperia. The TSD cites the State Auditor survey as authoritative but does not acknowledge that this same survey in evidence shows that in June 2014 the Ranchos water rates were over 70 % higher than Victorville and Hesperia. (Exh. 68-24.) The TSD does not acknowledge that surcharges were not included in Dr. Hanemann's survey, which would make Liberty's rates even higher than Victorville and Hesperia. The TSD instead focuses on Dr. Hanemann's post-survey "adjustments." These include falsely increasing neighboring providers' rates by using Liberty's capital expenditures as a baseline to be added on to other providers' rates, (even though the TSD also finds the Ranchos' system has "pressing engineering needs" for greater capital expenditures, needs the other systems do not have). Dr. Hanemann's adjustments lack any credible or sound foundation. The TSD does not consider that Dr. Hanemann could not identify a single water rate survey in the world that made the "adjustments" he made (1/13/20 Hanemann 78:24-79:2). It remained uncontroverted these adjustments are in direct contradiction to what he has done in his own published academic studies. (3/9/20 DeShazo 79:-80:10.)

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It is further objected that the TSD's rejection of the rate surveys of Town witness Dr. DeShazo (which show Liberty having the highest water rates of water providers surveyed in Riverside and San Bernardino Counties in 2018) is not based on substantial evidence and relies principally on the fact that these surveys did not make the type of adjustments Dr. Hanemann made.

D. APUC/LIBERTY BUSINESS PRACTICES

The Town objects as arbitrary and capricious and an abuse of discretion that while the TSD relies on post-RON evidence regarding Liberty's performance, the TSD fails to discuss, weigh and consider undisputed material negative evidence regarding Liberty's conduct, practices, and objectives, including but not limited to the following.

It is undisputed that the ultimate parent of Liberty is Algonquin Power & Utilities Corporation, ("APUC") is a Canadian corporation traded on the New York and Toronto stock exchanges. APUC has told its shareholders it has targeted 10% compounded annual growth rates for EBITDA (a measure of profit) and dividends. In contrast to when the RON was adopted, the Apple Valley Ranchos water system is now under the ultimate control of an out-of-country corporation which the CPUC does not regulate. It is undisputed that APUC's sole source of revenues is its chain of subsidiaries. Since the RON, these subsidiaries now impose "affiliate" charges on Apple Valley Ranchos. Specifically, APUC has five corporate layers above the Apple Valley water system, with each layer imposing charges on Apple Valley Rancho Corp. at the bottom that go into Ranchos' general administration charges. (Exh. 4529.) These charges have increased and now exceed $4,000,000 per year. (Exh. 4552-6.) It is undisputed that these general office administration charges exceed 30% of Apple Valley Ranchos overall operational expenses, the highest percentage that any witness testifying on the subject has ever seen for any water provider, investor owned or municipal. (6/22/20 Close 14:-15:3; 6/29/20 Koorn 60:10-26.)

At the same time, APUC entities above Ranchos are insulated from liability by contract provisions that Liberty executives signed on behalf of Ranchos. (12/11/19 Sorenson 80:13-25; Exh. 3803-3; Exh. 3804-3.)

It is undisputed that Liberty is consistently achieving a rate of return (from which profits

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and dividends can be generated) above the rate of return authorized by the CPUC. For example, in 2017 Liberty achieved a return on equity of 14.38% when its authorized rate was 9.79%, or almost 50% higher than authorized. (Exh. 4558-1.)

It is undisputed that JD Power customer satisfaction surveys commissioned by Liberty show that Apple Valley Ranchos has among the highest customer **dissatisfaction** rates when compared with other surveyed water providers in the West and nationally. (These surveys also show similarly high customer dissatisfaction rates for other Liberty water providers in other geographic areas. (Exh. 4144; 3582; 4195; 4143.)

E. MEASURE F

The Town objects as arbitrary and capricious and as an abuse of discretion that the TSD does not consider Measure F. In June 2017, the voters of the Town of Apple Valley approved Measure F by 58%. This ballot measure authorized the Town to incur up to $150,000,000 in debt financing to acquire the water system. This was approved despite the fact that in consultation with Canadian executives Liberty expended $1.3 million on Measure F and another Apple Valley ballot measure campaign in the goal of stopping the Town's acquisition. Case law indicates that courts should not disregard the will of the voters when they approve funding of the condemnation of an investor owned water utility. (*Golden State Water Co. v Casitas Municipal Water District* (2015) 235 Cal.App.4th 1246.)

The Town requests the Statement of Decision to address the following question:

Is the approval of Measure F considered relevant in assessing whether any presumption has or has not been rebutted?

F. CPUC v. TOWN SYSTEM OVERSIGHT

The TSD finding that CPUC oversight is superior to Town oversight is objected to as not supported by substantial evidence because it does not address undisputed evidence specifically related to Apple Valley. For example, the TSD does not address the uncontroverted evidence that the Town has expended hundreds of thousands of dollars in multiple CPUC interventions only to be rebuffed, as when the CPUC rejected the Town's request for Apple Valley Ranchos to do a study on how to be more efficient. (E.g., Exh. 3569-45.) It does not address the fact that if the

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Town is to be heard on system operations and rates it will have to intervene in expensive multiple CPUC proceedings mostly in San Francisco. (E.g., Exh. 4557.) It does not address the uncontroverted evidence that the CPUC has allowed for five years in a row the corporate owners of the Ranchos water system to reap a rate of return much higher than the authorized rate of return. (E.g., Exh. 4558.) It does not address the uncontroverted evidence that the CPUC approved Carlyle as qualified to take over the water system when (1) the CPUC acknowledged Carlyle was unknown to the CPUC; (2) the CPUC acknowledged Carlyle had no utility track record in California; (3) the CPUC acknowledged Carlyle as an investor planned to operate the system only on a limited term basis; (4) the CPUC agreed to keep Carlyle's structure and ownership interests confidential, meaning the Town, customers, and constituents would not be advised on Carlyle's background. (Exh.3566-4.) It does not address the uncontroverted December 2018 State Auditor report that the CPUC failed to meet its oversight obligations over water utilities, such as requiring them to make full or timely notices regarding water rate proceedings or failing to have water utilities audited as required by statute (which necessarily includes Apple Valley Ranchos). (Exh. 3613-15, 21, 27.) It does not address why the CPUC allowed the Wheeler ownership to maintain a capital program that according to the company's Co-CEO was not sustainable. It does not address why the CPUC was unable to stop the company practice of not documenting in writing the real reasons for its capital project decisions. It does not address the fact that CPUC oversight since the RON is even more strained given that the water system is now ultimately managed by an out-of-country corporation insulated by several intervening subsidiaries the CPUC does not regulate. It does not address why CPUC oversight allowed the Yermo water system to incur over the years 40 plus water quality violations.

The TSD also finds that "the economic incentive to invest in the capital assets could be lost if CPUC regulation were to be replaced by Town regulation." (TSD 43:4-6.) The Town objects to this finding as not supported by substantial evidence, is based on speculation, and shifts the burden of proof to the Town. Moreover, the fact that the Town is and will continue to be the largest customer of the system; the fact that the Town has demonstrated two decades of commitment to water and utility service as illustrated by its recycled water project, its multiple

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CPUC interventions, and its community choice aggregation program; and the fact that the Town and its constituents have had to deal with hundreds of water main breaks per year in which streets and homes are flooded, illustrate some of the many incentives and commitments the Town has to invest in the system. These incentives and commitment are not considered in the TSD.

G. THE CONDITION AND OPERATION OF THE WATER SYSTEM

The TSD finds that Liberty has proved that the Apple Valley water system has been operated and maintained both effectively and efficiently. It also finds that the evidence revealed no substantial problems with the operation or maintenance of the Apple Valley water system. (TSD 25:19-24.) These findings misstate the evidence, are contradicted by uncontroverted evidence, and are not supported by substantial evidence. The Town incorporates by reference its prior objections, including Objections III(K) and IV(B) which recites uncontroverted evidence of material operational, maintenance, and physical system deficiencies.

The TSD misstates the evidence when it says that the system has been operated efficiently given that 95% of the system's costs are fixed and only 5% are variable. This assertion is not supported by substantial evidence. For example, this is contradicted by the filed annual reports for Ranchos in evidence showing variable costs substantially exceeding 5% of the system's annual costs.

The TSD also misstates the evidence and is not supported by substantial evidence in claiming the system has been efficiently operated because of alleged decline in operating expenses. For example, this disregards uncontroverted evidence that operating expenses, such as over $1,000,000 in a year, reflect deductions from operational expenses due to accounting transfers of charges elsewhere, not the actual elimination of charges. (12/12/19 Sorensen 70:16-26; 121:15:24; Exh. 480-59.) It also ignores the uncontroverted findings of the Public Advocates Office that Liberty has incurred significant diseconomies by its cost structure becoming top heavy with its merger acquisitions. (Exh. 4566-2; 3/9/20 DeShazo 95;3-10; Exh. 4276-11.) It further ignores that it is uncontroverted that key Liberty managerial personnel were "stretched thin" and that managerial, operational and financial personnel and systems faced the risk of substantial demands due to Liberty's acquisition program. (12/11/19 Sorensen 70:16-26.; 121:15-24; Exh.

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480-59.)

1. **Public Health And Safety**

The TSD has found that there appears to exist a "substantial risk to public health, safety and continued reliable water service under the Town's plan of operation." (TSD 25:12-14.) The Town objects that this misstates the evidence, constitutes speculation, and is not supported by substantial evidence. In making this finding, the Court emphasized that the Town has no experience in operating the water system. (TSD 22:28.) The following questions are requested to be addressed.

To what extent did the Court take into account the fact that Carlyle, like the Town, had no experience with water system operations at the time Carlyle acquired the water system? (2/19/20 Schilling 42:25-44:18.)

To what extent did the Court consider the fact that the CPUC approved the acquisition by Carlyle as an inexperienced water operator? (2/19/20 Schilling 42:25-44:18.)

To what extent did the Court consider the fact that it was well known that Carlyle was to be a temporary owner that would own the system for about five to seven years? (2/19/20 Schilling 45:4-23.)

To what extent did the Court consider the fact that as a condition of approval, the CPUC required Carlyle to file a specific plan for the future disposition of the system by March 2020? (2/19/20 Schilling 46:1-19; 47:22-26.) To what extent did the Court consider Mr. Schilling's testimony that no such plan was created or filed? (2/19/20 Schilling 47:22-48:13.) To what extent did Carlyle's inexperience impact water quality and system operations? Did the Court compare the Town's plan with Carlyle's operation of the water system?

The Court noted that five Ranchos employees testified at trial that they would not work for the Town. To what extent did the Court consider that Ms. Thomas-Keefer (Operations Manager) and Mr. Penna (General Manager) offered no such testimony? To what extent did the Court consider that fact they Ms. Thomas-Keefer and Mr. Penna were not asked by Liberty if they would work for the Town?

To what extent did the Court consider the fact that none of the remaining 37 employees

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were called by Liberty to testify that they would not work for the Town? To what extent did the Court consider the fact that Liberty did not conduct or present a survey on whether the remaining 37 employees would work for the Town? Is there any evidence that any of the remaining 37 employees have ever stated that they would not work for the Town?

Prior to the acquisition of the water system by Carlyle, the management team for the water system included Messrs. Wheeler, Schilling, Jordan, Martinet, Young, Lynch, Warner and Dalton and Ms. Bruno. (2/19/20 Schilling 25:8-14.) After the acquisitions by Carlyle and Liberty, the following people left: Messrs. Wheeler, Shilling, Jordan, Kappes and Warner and Ms. Bruno. (2/19/20 Schilling 15:9-21; 74:10-75:19.) To what extend did the Court consider the departure of the foregoing individuals?

To what extend did the Court consider the testimony at trial showing that the majority of the water system employees remained through the Wheeler, Carlyle and Liberty ownership periods? (2/19/20 Schilling 18:1-16; 20:1-11; 25:4-26:3; 11/7/19 Thomas-Keefer 71:9-20.)

To what extend did the Court consider Mr. Lent's testimony that he and his fellow workers, the majority of which are Apple Valley residents, decided to stay despite ownership changes because of their interest in, and loyalty to, the community? (12/5/19 Lent 49:22-50:3.)

To what extend did the Court consider Mr. Schilling's characterization that the coming and going of water system employees is natural? (2/19/20 Schilling 76:15-18.) To what extent did the Court consider Ms. Thomas-Keefer's testimony that it is possible to replace water system employees who leave with other water system employees because of the high water certification rate among employees? (11/7/19 Thomas-Keefer 72:11-18.)

To what extent did the Court consider the fact that the Town uses the same GIS tracking system for demographics and the sewer system and that it has used it for over 10 years? (2/13/20 Acevedo 100:15-102:17.) To what extent did the Court consider that the Town's GIS operator is a certified GIS professional with a Master's Degree in GIS, which are certifications that are not possessed by Ms. Garcia, Liberty's current GIS operator? (2/13/20 Acevedo 103:16-104:17; 12/10/19 Garcia 6:4-9.)

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To what extent did the Court consider the fact that Mr. Lent is close to retiring but recognized that some of the employees are in different stages as far as home ownership and family concerns? (12/5/19 Lent 56:10-20.)

To what extent did the Court consider Town Manager Doug Robertson's testimony that he will make job offers to all of the water system employees who work in the Town at their current salaries and benefits. (11/5/19 Robertson 52:18-23; Exh. 156-2 thru 3.) To what extent did the Court consider the fact that the Town's adopted plan requires matching current salaries? (Ex. 156-2.)

To what extend did the Court consider the benefits of the Public Employee's Pension Reform Act as a defined benefit plan? (3/12/ Busch 5:18-7:23.)

Mr. Close testified that a review of the work orders for the water system shows that the majority of the work is contracted, that there is nothing inherently wrong with contractors performing provided services, and that he was personally involved in the retention of contractors. (6/18/20 Close 58:6-62:7.) Ms. Thomas-Keefer's video deposition testimony, which was played during the trial, stated that Ranchos relies on more than half a dozen contractors in operating the water system. (6/18/20 Close 60:14:11.) To what extent did the Court consider the fact that Liberty presently relies on external contractors in maintaining the water system?

The Town's plan provides authority to hire a contractor to operate the water system should water system employees decide not to work for the Town. (Ex. 156-7.) Mr. Close testified that he has seen municipalities hire such contractors, that his former team at his former engineering firm provided such services, and that a contractor could be brought in to provide the needed TMF certifications. (6/22/20 Close 77:2-78-6.) Liberty did not present any evidence that an outside contractor could not be brought in to operate the water system. The Court, however, states that no "evidence was presented at trial of an outside consulting firm operating such a large water system in California." (TSD at pp. 24:28-25:1.) Is there any basis for discounting Mr. Close's opinion on this issue, especially when no contrary evidence was presented by Liberty? Does Liberty bear the burden of showing that a contractor would not or could not be able to operate the water system?

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Is eminent domain for the acquisition of a water system available only to cities with experience in operating a water system since the Court has found that external consultants supposedly constitute a "vulnerable" management practice? (TSD 24:24-26.)

The TSD states that Liberty related personnel in other locations provide services to the water system. It further states that the "Town's notion that it can simply squeeze the direct work done by non-Apple Valle based employees on the plates of existing Town employees is infeasible." (TSD at pg. 24:16-18.) To what extent did the Count consider the fact that Liberty never identified the total number of people actually involved in the operation of the water system? To what extent did the Court consider the fact that Liberty never identified the total number of people in Oakville and Downey actually involved in the operation of the water system? To what at extent did the Court consider the fact the Carlyle operated the water system without Liberty employees in Oakville?

2. Water Conservation

The TSD states that from June 2015 through December 2017 Apple Valley conserved more water than the surrounding publicly owned systems in Victorville, Hesperia and Adelanto. (TSD 26:18-21.) The RON was adopted in November 2015. (Exhs. 3651 & 3652.) This means that only five months of data was available for consideration by the Town in deciding whether to acquire the system. As a result, the majority of the conservation data should not be considered. To the extent it is considered, it should be limited to the period June 2015 through December 2015. To what extent did the Court consider the fact that only five months of conservation data was available for consideration by the Town in deciding whether to acquire the system?

The TSD also does not consider the Town's commitment to conservation, such as its pioneering adoption of conservation ordinances in 2006 and exercise of police power, a power Liberty, Carlyle, and the Wheeler ownerships lacked. It also does not consider the Town's commitment to recycled water and Ranchos' threats to sue the Town for those commitments.

3. Operational Standards

The TSD states that Liberty complies with the CPUC's General Order 103-A. (TSD 28:15-18.) General Order 103A requires an Operations and Maintenance Plan. (Ex. 4102-30,

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§VII.) Liberty, however, does not have a complete plan, but only a summary. (1/16/20 Bruno 96:1-11; Exh. 209; Exh. 210; 11/6/19 Thomas-Keefer 59:11-19; 11/7/19 Thomas-Keefer 22:4-23:10; Exh. 209; Exh. 210.) Moreover, that summary has not been regularly updated as required. (11/6/19 Thomas-Keefer 104:2-22; 109:3-110:6; 1/16/20 Bruno 97:3-11; Exh. 209; Exh. 210.) As to the emergency plans presented at trial, Ms. Bruno testified that they were essentially the same as when the Wheeler family owned the system. (1/16/20 Bruno 103:2-104:1.) To what extent did the Court consider the foregoing testimony relating to the plan summary and the emergency plans?

As to water pressure, Ranchos' internal documentation shows that the physical system faces serious water pressure fluctuations and transmission challenges. (2/25/20 Miles 130:11-26; 3/3/20 Miles 3:3-8; 31:11-14; Exhs. 4128-3 thru 7; 194.) Other problematic system conditions confirmed by Mr. Miles include: the lack of booster pump stations with dedicated fire pumps (3/3/20 Miles 64:5-19); the lack of adequate protection against high pressure waves, known as water hammers (3/3/20 Miles 65:11-15); wells being continuously out of service (2/25/20 Miles 123:4-14); the system continuing to experience about 300 main leaks and 500 service line leaks per year (3/3/20 Miles 110:13-17); and the lack of a water master plan. (2/25/20 Miles 129:13-25.) Moreover, Liberty did not dispute Mr. Close's testimony regarding cross-connection violations. (6/18/20 Close 23:21-25:22; Exh. 3905-2; Exh. 3913-7; Exh.3915-3; Exh. 3919-4.) To what extent did the Court consider the foregoing evidence in determining that the water system is operated in compliance with the CPUC's General Order 103-A?

The TSD states that criticisms of the lower fire flow standards set by the Apple Valley Fire Protection District Ordinance 42 ("Ordinance 42") are not a proper basis justifying the use of eminent domain. (TSD 20:15-18.) The evidence presented at trial, however, showed that significant portions of the water system do not meet the local fire flow and pressure governing regulations. (6/18/19 Close 36:8-37:2; Exh. 194-59.) To what extent did the Court consider the foregoing evidence in finding that the water system complies with Ordinance 42?

Mr. Lent testified that the area around Mr. Szobonya's property included the installation of a fire hydrant because this area of the Town lacks adequate fire protection. (7/13/20 Lent 58:3-

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60-26.) To what extent did the Court consider evidence that this and other areas of Town lack adequate fire protection? (6/18/19 Close 36:8-37:2; Exh. 194-59.)

As to emergency water flow, to what extent did the Court consider the fact that Apple Valley has significantly less storage than the Victorville water system? (Exh. 889-1; 6/17/20 Close 40:1-13.) For emergency purposes, Messrs. Dalton and Close testified that Ranchos supplements its storage capacity with mobile generators. (12/2/19 Dalton 75:15-20; 6/17/20 Close 23:24-24:14; Exh. 4082-8.) To what extent did the Court consider their testimony that water storage is the preferred choice for providing fire flow. (12/2/19 Dalton 64:23-65:8; 102:15-22.) To what extent did the Court consider Mr. Miles testimony that he is unaware of any written plan or practice drills to mobilize the mobile units. (3/3/20 Miles 48:8-49:3.)

4. Water System Safety

It is undisputed that the AWWA sets the best practices standards for the water industry. The Town identified numerous instances where Liberty has failed to comply with current AWWA standards. For example, the majority of the tanks do not meet the AWWA's current D100 seismic standards. (6/16/20 Close 73:4-9; Exh. 4334-9.)

The TSD states that Mr. Close conducted only a visual inspection of the tanks and that no other testing was performed showing safety threats. Mr. Close's inspection, however, noted that the following tanks have no concrete foundations and were not seismically bolted: Youngstown (Ex. 3941); Bell Mountain (Ex. 3871); Stoddard (Ex. 3892); Hilltop Tank 1 (Ex. 4229); Hilltop Tank 2 (Ex. 4229); and Desert Knolls 1 (Ex. 3877).

Desert Knoll 1 is not seismically bolted, stores 2 million gallons of water and sits directly above homes. (Ex. 3877; Ex. 207-1; Exh. 4253-1 thru 8; 6/16/20 Close 96:23-26.)

Mr. Close noted evidence of tank movement and testified that the lack of seismic bolting means that in an earthquake the tanks can be made to bounce up and down causing elephant foot and rupturing. (6/16/20 Close 97:1-20; Ex. 3891-6; 6/16/20 Close 86:1-11.) This evidence was not disputed by Mr. Dalton or any other Liberty witness. To what extent did the Court consider the lack of seismic bolting? The Court noted that some of the tanks have "some sort of earthquake protection." (TSD 30:3.) To what extent did the Court consider whether this

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earthquake protection prevents seismic tank movement?

As to seismic safety studies, to what extent did the Court consider the fact that despite the recommendations of its own consultants and engineering studies, Liberty has not conducted a seismic study of its tanks? (Exh. 196-1, 27; 12/4/19 Dalton 48:25-49:7; 3/3/20 Miles 52:4-20; 6/16/20 Close 77:8-11; 80:13-81:12.)

The TSD finds that compliance with AWWA standards is "voluntary." (TSD 29:11-13.) The Town objects "voluntary" is vague and ambiguous. Would the Court consider following generally accepted accounting principles ("GAAP") to be voluntary? To what extent did the Court consider the benefits of compliance with AWWA standards and whether the failure to comply evidences a failure to operate the water system in accordance with industry best practices?

5. Water System Capacity To Meet Demand

The TSD notes that one of the differences between the system capacity analysis of Mr. Dalton and Mr. Close is their respective MGD numbers. Mr. Dalton's analysis relies on a figure of 29.5 and Mr. Close on a figure of 30.9. The Court further noted that this figure is supposed to be based on a 10 year information period. According to the TSD, that information was supposedly available to Mr. Close in the annual reports of the Division of Drinking Water. (Ex. 4668.) Ms. Thomas-Keefer's testimony demonstrated, however, that the annual reports presented during trial are not available to the public on-line but are available only to participating water systems. (Ex. 4668-2; 7/15/2020 Thomas-Keefer 24:19-25:25.)

In conducting his water source analysis, Mr. Close removed the water production from Well 36, which is located in the Jess Ranch Zone. He did so because its production transmission from the Jess Ranch Zone to the Main Zone is choked by the capacity of the Jess Ranch pumping station. (6/17/19 Close 51:25-55:5; 49:23-51:24.) Mr. Dalton testified that water from the Main Zone can be transmitted into the Jess Ranch Zone from the Main Zone through two difference paths. (TSD 32:3-8.) This misses the point. The issue is not transmitting water into the Jess Ranch Zone but out of it and into the Main Zone. It is this ability that is chocked by the limited capacity of the Jess Ranch pumping station. When asked if the amount of water that could be

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moved from the Jess Ranch Zone to the Main Zone was limited by the capacity of the Jess Ranch pump station, Mr. Dalton testified: "Of course." (7/14/62 Dalton 62:18-25.) Mr. Close's consideration of this limitation and his exclusion of Well 36 was therefore warranted. What was not warranted was Mr. Dalton's decision to include the capacity of Wells 21 and 26 because they were inactive at the time he conducted his analysis. (7/14/20 Dalton 56:9-57:23.)

6. Customer Service

The TSD states that Liberty's customer service is responsive and effective. (TSD 32:9-10.) On this issue, Liberty relied primarily on the testimony of Ms. Vogel and Ms. Bruno. Ms. Vogel is in charge of customers service. (1/14/20 Vogel 93:2-21.) At trial she did not testify about the poor customer service results of the J.D. Power Surveys and Liberty's Corporate Score Card. (12/11/19 Sorensen 128:17-129:11; Exh. 4143-1 thru 2; Exh. 4195-11; 12/12/19 Sorensen 26:17-27:9; Exh. 4143-1, 2.) Ms. Bruno is a former Park Water employee and she testified that she never reviewed the poor results of the J.D. Power surveys and Liberty's Corporate Score Card. (1/16/20 Bruno 72:17-25; 73:4-25; 1/16/20 Bruno 72:8-81:21.) To what extent did the Court consider the poor results of the J.D. Power surveys and Liberty's Corporate Score Card? To what extent did the Court consider the fact that Ms. Vogel did not testify about the J.D. Power surveys and Liberty's Corporate Score Card and that Ms. Bruno never reviewed their poor results? (1/16/20 Bruno 72:17-25; 73:4-25.) The TSD states that the Town provided the testimony of only one water system customer, Mr. Szobonya. (TSD 32:28-33:1.) To what extent did the Court consider the fact that Liberty did not call a single customer as a witness to testify about customer service?

7. Needed Capital Investments

In discussing capital investments, the TSD noted the amount invested by Victorville. (TSD 34:28-33:10.) The TSD, however, does not analyze the different capital needs of the Victorville system. Mr. Close noted that the Victorville system is newer, having been essentially built from the 1980s, and that its original pipes were of better material and still have a considerable amount of time in their useful lives of approximately 100 years. He demonstrated that the Victorville system did not have the same main replacement issues as the Apple Valley

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water system, and that the Victorville system therefore told him "nothing" about the Apple Valley water system. (6/18/20 Close 96:9-98:18; 6/22/20 Close 2:14-4:2.) Mr. Robertson testified that Victorville deferred capital investments during the great recession only for the period recommended by the system engineer. (11/04/19 Robertson 41:23-42:5.) Liberty did not present any evidence that the engineer's recommendation was incorrect.

As to the relationship between depreciation and the need for replacement and capital investment, Mr. Close explained that although a new pipe system might start to immediately depreciate in year one, it will not need replacement until later. (6/18/20 Close 90:6-17; 92:20-93:7.) In order to properly calculate the replacement rate for the Victorville system, Mr. Close stated that he would need information beyond the 2008 ten year period relied upon by Ms. Bruno, including the following information Ms. Bruno did not have: past replacement rate, the leak and break rate up to that point, the age and material of the pipes, the location of the breaks, the condition of the soil, the renewal rate and the criticality of the system. (6/18/20 Close 93:8-94:3.) Liberty did not demonstrate how it is possible to calculate the investment needs of the Victorville system without that information.

The TSD states that the Town's investment in the sewer system is below that rate of depreciation. (TSD 36:12-22.) Liberty, however, did not present any evidence on the condition of the sewer system, its size, maintenance history, leak and brake rates, the age of the pipes, the material of the pipes, the location of breaks, and the condition of the soil.

Mr. Molinari testified that he receives three to five dig alerts per day for digging projects near the sewer system that involve repairs to leaks to the Ranchos water system. (10/24/19 Molinari 94:20-95:21.) In contrast, Mr. Molinari testified that there had not been a single leak incident involving the sewer system in almost a year. (10/24/19 Molinari 94:6-8.)

Mr. Molinari further testified that he has always had the funding he needs to maintain the sewer and the other Public Works facilities in the way they need to be maintained, and that there are no "short-cuts" in the maintenance of the sewer system merely because the pipelines are buried. (10/24/19 Molinari 99:7-16.)

Mr. Molinari's foregoing testimony was unrebutted and all that is considered in the TSD

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is the depreciation rates as if the sewer system and the water system suffer from the same wear and tear and have the same maintenance, replacement and capital investment needs.

To what extent did the Court consider the capital investments made by public water systems in determining whether the Town would make the needed capital investments? Did the Court make a finding that the Town would underinvest simply because it is a public agency?

H. Significant Maintenance and Improvements Can be Undertaken Without Further CEQA Compliance

The TSD states that Town's Project is "to acquire the system *and make no changes to it*." (TSD 16:21-22.) As to the Town's objectives listed in the FEIR, Dr. Haddow testified that they are consistent with the project definition for CEQA purposes and that they can be undertaken without further substantive CEQA review. (2/25/20 Haddow 31:2-37:2.)

Dr. Haddow further testified that some physical improvements will not require subsequent CEQA review because they are exempt or not a project at all, such as repairing, maintaining and at times even replacing tanks, booster stations, pipes, pressure reducing valves, etc. (2/25/20 Haddow 39:9-43:4-12.) This evidence was undisputed.

To what extent did the Court consider the maintenance and improvements that can be undertaken without further CEQA review and under the current project definition? To what extent did the Court consider the fact that Carlyle's acquisition was also approved on the basis that it would continue operations without changes and as a result was not subject to CEQA review? (2/19/20 Schilling 28:6-29:9.) Did the Court understand the FEIR to mean that the Town intended to acquire the water system and perform no maintenance despite the fact it would not require subsequent CEQA review or a change to the project definition?

Dr. Harrow testified that CEQA review and compliance under Town ownership would be more transparent and robust. (2/24/20 Haddow 68:19-79:23.) The testimony was unrebutted. To what extent did the Court consider the benefits that would result from greater CEQA transparency and robustness?

I. LIBERTY AND TOWN RATE MODELS

In making findings regarding the rate models (TSD III (3)) presented respectively by

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Liberty and the Town, the TSD misstates the evidence and makes findings not supported by substantial evidence. The Town therefore objects to these findings.

For example, the TSD misstates the evidence regarding the Town's project objectives relating to rates. (See, e.g., " . . . the Town's certified EIR stated that reduction of water rates would be an *'unlikely event.'* (Exh. 165-124. Emphasis added." TSD 54:12-14.) The TSD thereupon concludes that since reducing rates is not a project component, the Town's acquisition does not serve the public interest and necessity or more necessary on that basis. (TSD 54:16-19.) This is what the EIR actually says: "In achieving the Project goal of greater control over water pricing and rates, water pricing may be reduced in the long terms or, more likely would not rise as rapidly as would have occurred under the system's current private ownership." (Exh. 165-79.) (This is repeated in the trial record and also in the administrative record for the RON.)

The TSD also misstates the evidence regarding the rate model supported by the Town's experts (Koorn, Close, and Poor). At page 58 the TSD copies verbatim a chart from Liberty's reply brief. This purports to reflect the results of the Town's model assuming a $110,000,000 debt acquisition scenario but fails to do so. The actual model projects millions of dollars in savings under Town ownership compared to Liberty ownership, which is consistent with the proposed project. (See, e.g., Exh. 4333-42 based on Liberty's rate case pro forma revenue requirements projections filed with the CPUC under penalty of perjury; see also Exh. 4338-5, which incorporates the CPUC Joint Comparison Exhibit.) The TSD also misstates the evidence regarding the basis and foundation for the model's office general office allocation that was testified to by Town witnesses, including Koorn, Close, and Robertson. It further misstates the evidence regarding the model's consideration of average monthly consumption, taxes, and other factors, and in its comparison with the Hanemann model.

In rejecting the Town's model, the TSD also finds: "The Purchase Price Will Largely Determine the Town's Annual Debt Service, But the Town Used One Low Purchase Price in Its Analysis." (TSD 59:1-2.) This misstates the evidence. The Town's model used three acquisition scenarios: $70,000,000 based on current rate base (the company's depreciated investment upon which it gets its rate of return); $150,000,000 (based on the cap set by Measure F); and

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$110,000,000, which is between the two. The TSD faults the selection of the $70,000,000 scenario, which was made by the experts themselves. The TSD quotes a former Assistant Town Manager as stating he expected the Town would ultimately acquire the water system for $100,000,000, which was his supposition on what the system might be acquired for after litigation or negotiation. The TSD does not discuss the fact that the Town did have a water utility valuation expert value the system, which was (rounding off) valued at $50,000,000 or the fact that the $70,000,000 includes post-eminent domain lawsuit expenditures that are subject to potentially being disallowed by statute because they were made after the eminent domain summons was served. In any case, the model looks at acquisition scenarios of $110,000,000 and $150,000,000 but, unlike Dr. Hanemann, appropriately does not look at scenarios above what would not be allowed under Measure F.

The TSD also discusses Liberty's alleged economies of scale. The TSD again misstates the evidence. It says Town expert Koorn did not include economies of scale in the model that Liberty might have. This ignores that the model is based on Liberty's own pro forma and projections filed with the CPUC. Presumably, if there are economies of scale, they would have already been included by Liberty. It also ignores the fact that the claimed Liberty economies of scale have no proper foundation.

The TSD claims that the evidence shows Liberty has economies of scale based on quantity discounts but misstates the evidence. It cites three examples testified by Liberty witness Sorensen. One involved a discount that was not agreed to and was under negotiation at the time of testimony. One involved a quantity discount for a contract outside of California that did not reference Apple Valley Ranchos. One involved a contract that was not consummated and that Mr. Sorensen said the company could get out of if the CPUC did not approve the project that was the subject the contract. (12/12/19 Sorensen 75:5-82:5; Exh. 963, 967, and 3581.) In fact, there is no evidence of actual consummated quantity discounts benefiting Ranchos. Liberty did not introduce any evidence quantifying or totaling any alleged quantity discounts Ranchos water system was supposedly getting. Dr. Hanemann could not specify any such discounts and did not quantify any either. (1/13/20 Hanemann 3:16-20.)

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Dr. Hanemann also did not actually quantify any economies of scale specific to Apple Valley Ranchos based on the specifics of actual operations. (Unlike the Town's model, Dr. Hanemann did not rely on input from a water system engineer generally or with respect to the Ranchos system itself.) The TSD misstates the evidence when it states: "The Town did not, as the court recalls, dispute any of the data relied on by Dr. Hanemann in determining economies of scale or his use of that data." (TSD 62:13-15.) As discussed extensively in the Town's briefing, it most certainly did. (See, e.g., sect. XI of Town 10-22-20 Post-Trial Brief, hereby incorporated by reference.)

For example, it pointed out Dr. Hanemann's claim of economies of scale rested on five academic journal articles, some of which are several years old and studied water utilities in places like Wisconsin. Dr. Hanemann did not do a specific quantitative analysis of Apple Valley Ranchos or Liberty's actual operations and practices—his quantitative analysis of economies of scale is based entirely on the journal articles he handpicked that say nothing about Apple Valley. In using these articles, Dr. Hanemann's assumed that the Town would lose economies of scale because it would also not be acquiring Liberty Park Water connections in the Downey area of Los Angeles, 90 miles away from Apple Valley. These connections constitute a separate water system in a geographically separate service area. Dr. Hanemann claimed that the Town would lose economies associated with the Park's connections and he thereupon did a arithmetic calculation based on the number of connections that the Park Water system has that were not being acquired. He did not actually evaluate in any manner what specific economies were supposedly associated with these specific Park connections. Instead he relied on the mere number of Park connections not being acquired and these journal articles. But the data Dr. Hanemann used from the journal articles concerned only *single* water systems. None involved economies of scale for geographically *separate* systems like Apple Valley and Park. Nor did Dr. Hanemann have any academic studies that showed that a loss of connections involving two geographically separate water systems actually has resulted in loss of economies of scale. Nor did he do any such studies himself although he could have with Liberty when Liberty Park Water's system in Missoula was condemned. He did not do this study because he testified he "did not have the

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time." His "calculation" that the Town would lose economies of scale therefore has no foundation, is not even supported by the five academic journal articles, and is purely speculative.

At the same time, these journal articles showed that public water providers provide better quality and/or less costly service than private providers. One of the five journal articles Dr. Hanemann relied upon was of water systems throughout the United States. It found that public water providers are consistently less costly than private providers, being 12% lower even without consideration of any tax savings public providers might enjoy. Without explanation, Dr. Hanemann did not factor these qualitative or quantitative savings in his model. Also without explanation, Dr. Hanemann did not evaluate whether the Town would enjoy any economies of scale even though the Town has thousands of sewer and trash connections.

The TSD also misstates the evidence regarding Dr. Hanemann's discount rate analysis. As shown in trial, in his expert deposition Dr. Hanemann testified he did no such analysis. (1/9/20 Hanemann 77:10-78:19.) The Town objected to his testimony on that basis but the Court overruled that objection despite upholding similar objections regarding the Town's experts. The Town reasserts that objection. Dr. Hanemann at trial also failed to testify how he arrived at his 7% discount rate and provide empirical support for the selection of this specific rate even though he acknowledged that specific discount rates must be carefully selected. In other words, no foundation for this specific number was ever laid and his discount analysis therefore should be rejected.

The TSD does not note that even under the model's skewed assumptions, such as falsely assuming that the Town will pay state and federal income taxes, or his unfounded assumption that the Town will have increased costs by 10% and 15% for operations and capital by not acquiring the Park connections, the model still shows, as Dr. Hanemann acknowledged, that the Town's revenue requirements actually will be lower than Liberty's once the acquisition debt is paid off. (1/13/20 Hanemann 61:17-62:15.) That means even his model shows rates will be lower under Town acquisition.

The Town objects to consideration of the Hanemann model, including the economies of scale opinion, as speculative, lacking foundation, and as inherently not credible, and that any

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findings relying on this model are not supported by substantial evidence.

J. TOWN FINANCES

The Town objects to the TSD on the ground that the Court's findings are based in part on the financial condition of the Town's general fund and its other enterprise funds, and the Town further objects to the TSD on the ground that the Court's findings are based on the Town's history of transfers from its enterprise funds to the general fund for administrative overhead and settled Proposition 218 litigation against the Town. These findings are based on speculation, inadmissible evidence, irrelevant evidence, are not supported by substantial evidence, and fail to address material uncontroverted evidence.

The Town objects to the Court's findings regarding the Town's financial condition as a factor for its finding that the economic incentive to invest in the water system could be lost if the Town takes ownership of the water system. (See TSD at pp. 46:3-47:23.) It was undisputed that if the Town were to acquire the water system, the water enterprise fund would operate as a self-sustaining and stand-alone fund, and that water rates would be set by an independent cost of service analysis. (11/13/19 Harris 75:1-25; 7/1/20 Robertson 75:15-26, 78:20-24.) The experts on both sides confirmed that the Town had the capability to finance the acquisition of the water system, and that if acquired, the water enterprise would operate as a stand-alone fund. Both sides' experts agree the Town would have a bond rating of A or higher in financing the acquisition. (12/17/19 Peters 8:8-24; 3/4/20; Porr 102:17-26.), which is higher than Liberty's BBB rating. Both sides' bond experts also agreed that the Town will be able to finance the acquisition of the water system. (Id.; See also 3/11/20 Busch 28:24-29:4; 12/16/19 Peters 103:3-8.) Both sides experts also agreed that the water enterprise fund would be self-sustaining and independent. (11/14/19 Hildreth 75:5-8; 3/4/20; Poor 16:23-17:3.) The financial condition of the Town is irrelevant, and as a matter of law should have no bearing on the presumptions at issue in this action.

The Town also notes here that while it issued a line of credit with JP Morgan, it was undisputed that the purpose of doing this was in large part to fund the acquisition of the water system, which is a one-time expense. (11/4/19 Robertson 81:26-83:1.) This was undisputed, and

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yet ignored by the Court. It was likewise ignored by the Court that the Town has a balanced general fund budget, which it achieved through cuts in personnel and services, rather than transfers from enterprise funds. (7/1/20 Robertson 76:8- 77:25.) Thus even if the condition of the general fund and other enterprise funds was relevant, which it is not, the Court ignored undisputed evidence that shows that the Town's financial condition is solid.

The Town also objects to the Court's finding that the Town has "siphoned" off millions of dollars from the enterprise funds to the general fund in prior the years and that the Town was sued for violating Proposition 218, and that there would be pressure to maximize transfers from the water enterprise fund to the general fund to "help keep the general fund afloat." (See TSD at pp. 47:24-50:8.) This finding is not based on substantial evidence; instead it is based on inadmissible evidence regarding Proposition 218 that even if it were admissible does not support the finding. This finding relies on the testimony of Dr. Hildreth, who acknowledged he did no analysis of the contents of the transfers to determine whether or not they were appropriately based on the cost of administrative services that Town employees provided to the enterprises. Instead, he did a paper exercise of subtracting one set of numbers in Town CAFR's from another set. (11/14/19 Hildreth 56/16—57:21.) At the same time, the uncontroverted evidence shows that the general fund would only charge administrative overhead to the water enterprise fund based on a cost allocation plan that would be approved by the Town Council after the Town acquired the water system. (11/13/19 Harris 68:11-69:23; 7/1/20 Robertson 98:14-99:17.) Mr. Robertson testified that he would never recommend "raiding" (or "siphoning") money from the water enterprise fund in order to prop up the general fund and he never heard of any Town leader ever say that was the goal in acquiring the water system. (7/1/20 Robertson 76:1-78:5.) This was not refuted. Also not controverted, and not addressed in the TSD, was that Measure F approved by the voters requires that there be an annual independent audit of the water enterprise fund. (Exh. 3624-2.)Yet what the Court has found if the acquisition were to occur, the Town would siphon money from the water enterprise fund to prop up and fund general fund expenditures. This constitutes pure speculation based on inadmissible and irrelevant evidence.

Stated another way, the Court has found that the Town would violate the law (Proposition

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218), if it were to acquire the water system. Evidence Code section 664 provides that "[i]t is presumed that official duty has been regularly performed." (Evid. Code § 664; *State Bd. of Educ. v. Honig* (1993) 13 Cal.App.4th 720, 748; *George v. Beaty* (1927) 85 Cal.App. 525, 528-29 ["[we] are bound to presume . . . 'that official duty' *will be* 'regularly performed.'"] [Emphasis added]; *Erven v. Board of Supervisors* (1975) 53 Cal.App.3d 1004, 1012.) There was no evidence presented to rebut the presumption of Evidence Code Section 664, and yet that is what the Court found. This was error. It was also error for the Court to rely on "character evidence" as the basis for its speculative finding that the Town would violate the law if it acquired the water system. (*See* Evid. Code § 1101, subd. (b).)

Moreover, the Court's reliance on prior litigation against the Town under Proposition 218 is improper. At the outset of trial the Court sustained an Evidence Code Section 1152 objection when AVR's counsel attempted to elicit testimony regarding Proposition 218 settlements. The Court stated: "I will sustain the [Section 1152] objection. I don't want to digress into getting into separate lawsuits that were filed for different purposes and different reasons. Then we start getting in lawsuits within a lawsuit, if we can avoid that, so I prefer to keep our focus where we need to deal with it." (11/5/19 Robertson 56:13-57:24.) The Court's reliance on Proposition 218 settlements, which were approved by this Court, constitutes legal error.

The Town requests that the Court issue a Statement of Decision that addresses the following questions:

In reaching its decision, did the Court find the condition of the Town's general fund or its other existing enterprise funds to be relevant to its determination in this case, and if so, on what basis did the Court find such evidence to be relevant?

In reaching its decision, did the Court find the Town's history of transfers from its enterprise funds to the general fund for administrative overhead to be relevant to its determination in this case? If so, on what basis does the Court find such evidence to be relevant?

In reaching its decision, did the Court consider the undisputed evidence that if the Town were to acquire the water system, the water enterprise fund would operate as a self-sustaining and stand-alone fund, and that water rates would be set by an independent cost of service analysis? If

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so, how did such evidence factor in the Court's decision? If not, why not?

In reaching its decision, did the Court consider the undisputed evidence that the Town would be able to finance the acquisition of the water system, and that in doing so, the Town would receive an A rating for its bond issuance? If so, how did such evidence factor in the Court's decision? If not, why not?

In reaching its decision, did the Court consider the undisputed evidence that the line of credit with JP Morgan was issued in large part to fund the acquisition of the water system, which is a one-time expense? If so, how did such evidence factor in the Court's decision? If not, why not?

In reaching its decision, did the Court rely on the Town's prior Proposition 218 litigation settlements, which had been approved by judicial officers of this Court, and which this very Court previously found to be inadmissible based on Evidence Code Section 1152? If so, on what basis did the Court rely on such evidence, and did the fact that judicial officers of this Court approved of such settlements have any bearing in this Court's decision?

In reaching its decision, did the Court consider the undisputed evidence that if the Town were to acquire the water system, it would only charge administrative overhead to the water enterprise fund for the general fund based on a cost allocation plan that would be approved by the Town Council after the Town acquired the water system, and that the Town would not siphon off money from the water enterprise fund to prop up the general fund? If so, how did such evidence factor in the Court's decision? If not, why not?

K. SYSTEM TRANSITION TO TOWN

The Town objects to the TSD on the ground that the Court found that there is a substantial risk to public health and safety in the Town's plan to hire existing Liberty employees and consultants to operate the water system after acquisition. This finding is not based on substantial evidence and is purely speculative. The Court cites to testimony of five Liberty employees in Apple Valley who testified that they were not interested in working for the Town, and then states that the Town failed to present evidence of "even a single Liberty employee who has expressed a willingness to become an employee of the Town." (TSD at pp. 23-25.) The Town further objects

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insofar as the Court has shifted the burden to the Town, when it was Liberty's burden to disprove that the Town would be able to hire any and all employees. As the Court noted, there was evidence that there are 42 Liberty employees who work in the Town. Liberty presented evidence of only five employees who said that they did not want to work for the Town. Even if the Court were to accept that testimony at face value, Liberty failed to prove that the Town would be unable to hire the remaining 37 Liberty employees, and Liberty failed to prove that there is no market for consultants who can work for the Town to fill any gaps that may exist from Liberty employees who do not transition to work for the Town and from those Liberty employees work in Downey and Oakville and who support the water system in Apple Valley. The Town presented evidence that there is a market for consultants that can help operate the water system in the event that Liberty employees choose not to work for the Town. (06/22/20 Close 77:24 – 78:6.) There was also uncontroverted evidence in the record that AVR employees who work in the Town generally stayed when the water system was sold from Wheeler to Carlyle, and then again when the system was sold from Carlyle to Liberty. (12/5/19 Lent 49:22-50:3.) The Court appears to have ignored this uncontroverted evidence, and the Town objects.

The Court also states in the TSD that Liberty employees may not want to work for the Town because they would be required to restart the clock on their retirement benefits, and the Court states that the Town has not investigated how the salaries of Liberty employees compare to salaries of Town employees, and that the Town's "zero-based-budget" presented by Mr. Close shows that the Town would cut the salary of the average AVR employee by $25,000. (TSD 23.) The Town objects to this finding on the ground that it ignores the Town's Transition Plan, which is not controverted and which specifically provides that AVR employees would be offered employment with the Town at their existing salaries and benefits. (7/2/20 Robertson 26:20-27:11; Exh. 156-2 thru 3, 7 thru 8, 79 thru 80.) Also, while the Court notes the five-year waiting period for a new public employee to eligible for retirement benefits under the Public Employees' Pension Reform Act, the Court does not provide any analysis the differences between a defined-benefits plan like a public-sector pension and a defined contribution like a 401(k)-style plan, nor does the Court indicate how many Liberty employees are older and more experienced, and thus

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may not want to work for the Town for five years. There was uncontroverted evidence in the record that defined benefit pension plans are generally more attractive than defined contribution plans. (03/12/20 Busch 6:20 – 7:23.) This evidence was not addressed by the Court, and the Town objects.

The Town requests that the Court issue a Statement of Decision that addresses the following questions:

In reaching its decision, did the Court consider that the Town's Transition Plan, which was adopted by the Town Council, provides that upon acquisition the Town will offer employment to all AVR employees who work in the Town at their existing salaries and benefits? If so, how did this factor in to the Court's decision?

In reaching its decision, did the Court consider it to be Liberty's burden to prove that its employees would not join the Town, or did the Court consider it to be the Town's burden to prove that the employees would join the Town? If the Court considered it to be Liberty's burden, did the Court consider that Liberty called only 5 of 42 employees who work in the Town to testify that they would not want to work for the Town?

In reaching its decision, did the Court consider that AVR employees who work in the Town generally stayed when the water system was sold from Wheeler to Carlyle, and then again when the system was sold from Carlyle to Liberty? If so, how did that factor into the Court's decision?

In reaching its decision, did the Court consider evidence regarding the availability of consultants who could be hired to operate the water system in the event some or all of the Liberty employees refused to join the Town?

In reaching its decision, did the Court consider evidence regarding the differences between defined benefits plans and defined contribution plans? If so, how, if at all, did those differences factor into the Court's decision?

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V. CONCLUSION

The Town respectfully requests the Court to issue a Statement of Decision consistent with the Town's objections and requests for findings. It further requests that the Court issue a Statement of Decision finding that none of the findings in the RON have been rebutted or alternatively remand the matter to the Town council as indicated herein.

Dated: June 1, 2021

BEST BEST & KRIEGER LLP

By: /s/ Kendall H. MacVey

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PROOF OF SERVICE

I, Sylvia Perez, declare:

I am a citizen of the United States and employed in Riverside County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, California 92502. On June 1, 2021, I served a copy of the within document(s): **TOWN OF APPLE VALLEY'S: (1) OBJECTIONS TO TENTATIVE STATEMENT OF DECISION; (2) REQUEST FOR FINDINGS AND STATEMENT OF DECISION**

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Riverside, California addressed as set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on June 1, 2021, at Riverside, California.

/s/ Heather McCoy
Heather McCoy