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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

TOWN OF APPLE VALLEY,

Plaintiff and Appellant,

v.

APPLE VALLEY RANCHOS WATER
et al.,

Defendants and Respondents.

E078348

(Super. Ct. No. CIVDS1600180)

**ORDER MODIFYING OPINION
AND DENYING PETITION
FOR REHEARING
[NO CHANGE IN JUDGMENT]**

The petition for rehearing is denied. The opinion filed in this matter on January 15, 2025, is modified as follows:

1. On page 2 the third paragraph is modified to delete the word “entirely” and replace it with “in large part” so that the sentence reads as follows:

We reverse for two main reasons: (1) the trial court applied the wrong standard of proof and, in turn, failed to give the appropriate deference to TAV’s decision and underlying findings, and (2) the trial court improperly based its decision on post-RON facts and event, namely, Liberty’s conduct after TAV adopted the RONs. The matter is remanded for further proceedings consistent with this opinion.

2. On page 6, section III Discussion, after (2) the sentence is modified to read as follows:

(2) the court erroneously refused to admit and consider the AR and the RONS' findings/objectives and TAV's reasons for adopting them and, in so doing, misapplied the rebuttable presumption;

3. On page 12, in the citation after the second full sentence of the first paragraph, change "§ 1245.250, subd. (c)" to "§ 1245.250, subdivision (b)."

4. On page 22, in the last full paragraph, delete "(*ibid.*)"

5. On page 34, the second paragraph third sentence is modified to read as follows:

Liberty necessarily could not do so unless the RON and its underlying findings/objectives in the AR and TAV's reasons for adopting the RON were considered at the outset.

6. On pages 35 and continuing on page 36, the last paragraph is modified to read as follows:

“'[I]ndependent judgment' review” “does not mean the preliminary work performed by the [agency] in sifting the evidence and in making its findings is wasted effort [I]n weighing the evidence the courts can and should be assisted by the findings of the [agency].” (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 812.) The trial court's SOD completely failed to apply these principles, irrespective of which standard of review applies. Liberty does not and cannot dispute that the SOD does not mention the RONS' findings and objectives and ignores a number of TAV's reasons for adopting the RONS while disregarding a significant amount of supporting evidence and