

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U 134 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.

APPLICATION 11-01-019

(Filed January 21, 2011)

**OPENING COMMENTS OF THE TOWN OF APPLE VALLEY ON ALJ LONG'S
DECISION CONDITIONALLY APPROVING THE APPLICATION FOR
AUTHORITY FOR WESTERN WATER HOLDINGS, LLC, CARLYLE
INFRASTRUCTURE PARTNERS WESTERN WATER L.P., AND CARLYLE
INFRASTRUCTURE PARTNERS L.P. TO ACQUIRE AND CONTROL PARK
WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY**

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November 21, 2011

**OPENING COMMENTS OF THE TOWN OF APPLE VALLEY ON ALJ LONG'S
DECISION CONDITIONALLY APPROVING THE APPLICATION FOR
AUTHORITY FOR WESTERN WATER HOLDINGS, LLC, CARLYLE
INFRASTRUCTURE PARTNERS WESTERN WATER L.P., AND CARLYLE
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WATER COMPANY AND APPLE VALLEY RANCHOS WATER COMPANY**

I. Introduction

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Town of Apple Valley ("the Town") hereby files these comments to Administrative Law Judge Long's Decision Conditionally Approving the Application for Authority for Western Water Holdings, LLC, Carlyle Infrastructure Partners Western Water L.P., and Carlyle Infrastructure Partners L.P. (collectively "Carlyle") to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company (collectively "AVR"), issued on November 1, 2011.

The Town has been an active participant in this proceeding since it filed its Protest on February 25, 2011. Since that time, the Town has opposed the merger based on its sincere belief that it is not in the best interest of the Town and its residents and the ratepayers of AVR. Despite the Settlement Agreement submitted by Carlyle and AVR (collectively "Settling Parties"), and even with the conditions attached to the Settlement Agreement, the Town continues to believe that this merger is not in the best interests of those who will be impacted by the change in ownership and therefore, continues to oppose the merger for the reasons set forth.

The Town has reviewed the pleadings and oppositions recently filed by Park Water Company and AVR, which disparage the Town's attempts to relay its citizens' and ratepayers' concerns as nothing more than, "a last ditch desperate eleventh hour attempt to delay the process." (Motion of Park Water Company and Apple Valley Ranchos Water Company for the Commission to Reject the Comments of the Town of Apple Valley's Blue Ribbon Water Committee [10/24/11] at p. 7.) The Town's Blue Ribbon Water Committee is an independent committee of citizens and ratepayers many of whom have put hundreds of hours into the Committee's efforts to inform the Town Council regarding this Application. The Town

anticipates that Park Water Company and AVR may have similarly unflattering remarks with regard to the concerns expressed in these Opening Comments, which echo those previously expressed concerns. However, and contrary to the ill will that Park Water Company and AVR apparently ascribe to the Town, the Town is simply doing its best to convey the concerns of its residents and ratepayers to the Commission while this proceeding is still ongoing and before a final decision is entered approving a transaction. After that point, any inherent deficiencies affecting ratepayers in the terms of a merger will be difficult or impossible to remedy, leaving the Town's residents and ratepayers of AVR in a position where they can ill afford to be during these economic times and possibly requiring judicial intervention to address the concerns raised by the Town on behalf of its residents.

Unlike Park Water Company, AVR, and the Carlyle Group, which have personnel dedicated to handling these matters and unlimited resources to pursue and advance their business interests, most ratepayers are members of the general public who are unfamiliar with the Commission's process and commenting procedures. These ratepayers have to make the time and a special effort to sort through those complicated processes and procedures while continuing to juggle their daily work and family obligations. Simply put, the ratepayers within the Town do not have the unlimited resources that large utilities enjoy, and those ratepayers thus rely upon the Town and the Town's Blue Ribbon Water Committee to relay their concerns to the Commission.

Additionally, as the Town has stated in its filings throughout the proceeding, as a municipality, the Town operates under constraints not present in the world of multinational corporations. The Town must have open discussions at noticed meetings and must reach consensus among elected officials before it can take any significant or substantial action in this type of a proceeding. Though Park Water Company and AVR may find any delay of the merger going into effect (however brief) inconvenient, the concerns of the Town's ratepayers should be given consideration insofar as the outcome of this proceeding will affect those ratepayers for decades into the future. Thus, although the Town respects the Administrative Law Judge's ruling on Park Water Company and AVR's prior Motion regarding the Town and its Blue Ribbon Water Committee's suggested conditions, the Town respectfully requests that the Commission itself give full and careful consideration to the comments and concerns expressed herein with regard to the proposed Decision and in particular to the voice of the people expressed by the Blue Ribbon

Water Committee. By doing so, in the end, further delays and costs to all of those involved may be avoided.

II. The Settlement Agreement, Attached Conditions and Proposed Additional Conditions

The Town appreciates the efforts of the Settling Parties to engage with the Town on conditions to be attached to the Settlement Agreement, and appreciates ALJ Long's recognition of those conditions as a vital part of the approval of the merger. The Town recognizes that several of these conditions were added because of the concerns of the Town and its efforts to ensure that the public is protected as much as possible in the event of a change in ownership structure. Specifically, the Town points to Conditions 9 and 26, and freely acknowledges such conditions may help to protect water rights held by AVR (a cause championed by the Town during this proceeding) and Conditions 11, 12, 16, and 23, which address AVR and Carlyle's commitment to customer service and protection of ratepayers from certain transactional costs associated with this proceeding and future expenses.

While the Town welcomes these conditions, as the Town has continued to express throughout this proceeding, the Town fervently believes that the conditions added to the Settlement Agreement, and approved in ALJ Long's Decision, do not go far enough in protecting ratepayers of AVR. If the Commission is inclined to agree with and adopt ALJ Long's Decision based on the Settlement Agreement and the conditions attached thereto as they currently stand, the Town respectfully requests that such approval be done based upon the inclusion of the following additional conditions:

1. Within one year after the cash received by AVR from the collection of Supplemental Water Acquisition Fees or Supply Facilities Fees must be used to purchase water rights, pre-purchase Replacement Water or invest in backbone level plant and equipment. Such acquisitions should not add to the Rate Base of AVR; however, the repayment of the fees to the customers would add to the Rate Base of AVR.

2. AVR shall provide The Town of Apple Valley on an annual basis with a clear and transparent accounting of the collection of Supplemental Water Acquisitions Fees and Supply Facilities Fees, and clearly indicate with backup accounting data, that these fees were invested in the acquisition of Water Rights, the pre-purchase of Replacement Water or plant and equipment that were not included in the AVR Rate Base at the time of acquisition.
3. The monies collected by AVR from Supplemental Water Acquisition Fees and Supply Facilities Fees that has not been used to purchase water rights and or invested in authorized plant and equipment shall be held in a separate trust fund of AVR similar to the trust fund of a real estate broker or a separate Capital Investment Fund Account. The monies in the trust fund shall not be commingled with other monies of AVR. To the extent allowable by law, the trust shall be set up so that the monies in such trust fund shall not be available to the creditors of AVR should AVR declare bankruptcy or the creditors of AVR lien the assets of AVR.
4. Supplemental Water Acquisition Fees should not exceed \$3,500 per unit and Supplemental Facilities Fees should not exceed \$800 per unit in the current Rate Case. Additionally, AVR is required to justify the multipliers used to determine Supplemental Water Acquisition Fees for Commercial, Industrial and multi-family projects. AVR is also required to justify Supply Facilities fees for larger connections by showing a need for those additional fees.
5. Any water rights that are purchased with Supplemental Water Acquisitions Fees or any of the water rights currently owned by AVR shall not be sold by AVR. Any water rights currently owned by AVR or purchased in the future shall not be used as collateral for any loan of AVR, the Carlyle Group's Infrastructure Fund or any affiliate of these entities. Should AVR or its successors file bankruptcy, to the extent allowable by law, such water right shall not be assigned to the creditor of AVR. To the extent such a stipulation is not permitted, then the Town of Apple Valley should be given a right of first refusal to purchase AVR at a fair market value consistent with the type of right given to the City of

Missoula, Montana in connection with Carlyle's acquisition of Mountain Water Company.

6. Dividends should be limited to Positive Retained Earnings reduced by any balances in the Deferred Debit Accounts. Such balances represent unbilled Revenue. Furthermore, AVR shall not make any distributions that would cause AVR's equity to fall below 45 percent of its Rate Base.
7. AVR or its successor shall not be allowed to lease water rights at a price higher than the ongoing average price for comparative sales at the time of the purchase from any source, including an affiliate of AVR or the Carlyle Group, the Carlyle Group's Infrastructure Fund or any successor to such fund.
8. The Ratio of Debt to Total Asset Value of AVR shall not exceed 0.60 at any time after the merger. The Advanced Credits and Other Deferred credits shall be treated as debt for purposes of this calculation.
9. If any material amounts of AVR utility assets that are pledged or otherwise encumbered to secure debt issuances are divested, the net proceeds of the sale must be used to pay down the debt, or be reinvested in utility assets in accordance with the security agreement under which the debt was issued.
10. In order to protect the assets of AVR that are used to serve the public neither AVR nor its successor shall not guarantee or be a borrower on any loans.
11. AVR shall not be allowed to be a principal in any derivative type transaction or to insure or guarantee such a transaction.
12. Upon reasonable request, AVR shall provide to the Town of Apple Valley a complete set of financial statements similar to the financial statements required of publicly owned industrial companies registered with the SEC. Such financial statements shall include a Balance Sheet, Income Statement and Source and Use of Funds Statement in addition to supporting statements to the level of detail that would enable the Town of Apple Valley to verify that the above stipulations are being adhered to. Such financial statements shall

be provided to the Town within 60 days after the end of AVR's fiscal year. This financial information should also include a forecast for the current fiscal year.

13. In the event that AVR or the Carlyle Group or the Carlyle Group Infrastructure Fund or any successor to any of these entities should decide to sell or otherwise divest itself fully of AVR, the Town of Apple Valley shall be notified prior to any sale of the sale and of the agreed upon price of the proposed transaction. The Town of Apple Valley shall be granted the option of first refusal to purchase AVR on equal terms. Should the Town of Apple Valley wish to proceed with a purchase of AVR, Carlyle shall accept the Town's offer to sell AVR to the Town so long as the Town's offer meets or exceeds the price offered by the third party for a like transaction.
14. Carlyle agrees to consider in good faith any offer from the Town of Apple Valley to purchase AVR or any portion or part of AVR.

The Town believes that these conditions will address deficiencies in the Settlement Agreement as it currently stands. The Town and the Town's specially directed Blue Ribbon Water Committee have spent extensive hours and resources in an attempt to fully vet this transaction by examining AVR's current operations, fees, expenditures and attempting to reconcile those with the terms of the Settlement Agreement in order to provide the best protection for Town residents and ratepayers. These additional conditions further protect water rights that are essential to continued water service and help to ensure the financial stability of AVR, which is essential, as AVR provides an essential service to its ratepayers. The Town believes that the addition of these conditions to the Settlement Agreement will not impose an unfair or undue burden on the Settling Parties and will only serve to bolster the conditions already included in the Settlement Agreement and protect ratepayers to the furthest extent possible in the event the merger is approved by the Commission.

III. Similarity to the Montana Public Services Commission Proceeding

The Town is aware that Carlyle has been pursuing a similar merger attempt in Montana with regard to the Mountain Water Company ("Mountain Water"), a subsidiary of Park Water

Company similar to AVR, within the Montana Public Services Commission (“Montana PSC”) (Docket No. D2011.1.8). The Town has been following that proceeding with interest and is aware of a recent agreement between Carlyle and the City of Missoula, MT that, while technically outside the Montana PSC proceeding, contains several conditions that are consistent with the Town’s positions and that Town has been pressing for in the context of the current Commission Carlyle/AVR proceeding and to which Carlyle has been reluctant to include for reasons unknown to the Town. A copy of that Agreement is attached hereto as Exhibit A.

Specifically, the Town notes the conditions giving Missoula the option to purchase Mountain Water in the event Carlyle attempts to sell the water service provider in the future. Condition No. 2 and its six extremely detailed subparts show that Carlyle understands the value of granting a first right of refusal to a municipality whose residents are ratepayers of the utility. The Town believes that it is very similarly situated to Missoula in each of their respective proceedings and requests the same consideration be given in this proceeding. The Town has attempted to model some of its proposed additional conditions outlined above directly on the terms Carlyle agreed to in the Montana PSC proceeding. The Town, in the instant proceeding, has worked hard to protect its residents and believes that these terms – willingly agreed to by Carlyle in the Montana PSC proceeding – should be applied to the Settlement and made conditions thereto in this proceeding as well.

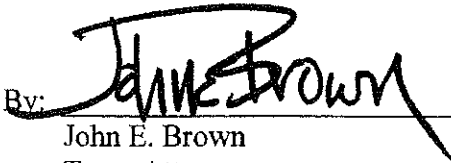
IV. Conclusion

The Town opposes the approval of the merger proposed in this Application, as the Town believes it is not in the best interest of the Town’s residents, a position it has held from the outset of this proceeding. In the event that the Commission believes otherwise, for the reasons stated above, we strongly urge the Commission to require the aforementioned additional conditions recommended by the Town of Apple Valley be added to the Settlement Agreement before it considers approval of the Settlement Agreement. The Town believes that these conditions would

further protect the ratepayers of AVR and the residents of the Town and would not unduly burden either Carlyle or AVR in the course of the proposed transaction.

DATED: November 21, 2011.

Respectfully submitted,
BEST BEST & KRIEGER LLP

By: 
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Town of Apple Valley