

November 2, 2015

Via E-Mail (applevalley@applevalley.org), Fax (760-240-7910)

& Federal Express

PHONE: (213) 620-0460
FAX: (213) 624-4840
DIRECT: (213) 621-0809
E-MAIL: ddennis@hillfarrer.com
WEBSITE: www.hillfarrer.com

Lori Lamson
Assistant Town Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Re: Apple Valley Ranchos Water System Acquisition Project

Dear Ms. Lamson:

This letter is written on behalf of Apple Valley Ranchos Water Company ("AVRWC") and responds to the call for comments on the Draft Environmental Impact Report ("DEIR") for the Town of Apple Valley's "Apple Valley Ranchos Water System Acquisition Project" ("Project"). The Town of Apple Valley ("Town") proposes to take AVRWC's system by eminent domain and operate the system itself supposedly without changes in the way AVRWC operates the system.

As described below, the DEIR is inadequate for a number of reasons, including (1) the Project Description fails to identify the whole of the Project with sufficient clarity and specificity, and omits so many important and relevant factors, that a meaningful analysis of any potential significant environmental impacts cannot be made; (2) the discussion of Alternatives is inadequate since the Project Description is unstable, and there is no evidence the Alternatives proposed are even feasible; (3) the Town has impermissibly acted as advocate for its own Project in advance of the CEQA analysis and cannot now continue as an unbiased Lead Agency; (4) various substantive analyses, including sections on hydrology and water quality, transportation, traffic and public safety, stormwater conveyance, and growth inducing impacts, omit important information critical to the analysis.

At this stage, the Project is inadequately defined and the environmental analysis is premature such that the DEIR violates CEQA's informational mandates and must be revised and recirculated. (*Laurel Heights Improvement Association v. Regents of the University of California* 6 Cal.4th 1112, 1130 (1993); Pub. Res. C. section 21092.1; 14 Cal. Code Regs. Section 15088.5.)

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- A. The DEIR's project description has been improperly manipulated to limit the scope of environmental review by artificially narrowing the project description, thus minimizing the potential project impacts and undercutting public review.

An EIR is "an informational document," and "the purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized, and to indicate the alternatives to such a project." (*Laurel Heights Improvement Assn. v. Regents of the University of California* 47 Cal.App.3d 376, 390 (1988); Public Resources Code Section 21061.)

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* 71 Cal. App.3d 185, 199 (1977).) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Id.* at p. 198)

Absent a project description that describes the entire project, the public and decision makers will not be adequately informed about the full scope and magnitude of the Project. (*City of Santee v. County of San Diego* 214 Cal.App.3d 1438, 1454 (1989) ("[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives...").)

Importantly, a project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. (*Laurel Heights Improvement Assn. v. Regents of the University of California (Laurel Heights I)* 47 Cal.3d 376 (1988).) Responsibility for a project cannot be avoided by limiting the title or description of the project. (*Rural Land Owners Association v. Lodi City Council* 143 Cal.App.3d 1013, 1025 (1983).) Moreover, a single project may not be divided into smaller individual projects in order to avoid the lead agency's responsibility to consider the environmental impacts of the project as a whole. This is impermissible project segmenting or piecemealing. (*Orinda Assn. v. Board of Supervisors* 182 Cal.App.3d 1145, 1171 (1986).)

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According to the DEIR, “the acquisition *and subsequent operation* of this water supply system by the Town represents the proposed Project.” (DEIR, p. 1; emphasis added.) Although the project is denominated the “Apple Valley Ranchos Water System Acquisition Project,” the “acquisition” portion of the Project merely represents a legal change in ownership with little or no environmental implications. The essence of the Project, from a CEQA standpoint, is the “subsequent operation,” but the DEIR contains so little information about this aspect of the Project, and the information that has been provided has been intentionally manipulated to minimize potential Project impacts, as to make the DEIR of little value in assessing the Project’s potential impacts.

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1. The Initial Study Project Description is uncertain and, therefore, unstable.

According to the June 24, 2015, “Project Description” in the Town’s “Notice of Preparation of an Environmental Impact Report,” the proposed Project includes “the Town’s subsequent operation of the AVR System, either internally by the Town or through a qualified private contractor or public agency.” As of that date, the Project included possible operation by (1) the Town, or (2) some unspecified private contractor, or (3) some unspecified public agency other than the Town. As of that date, the Project Description was so indefinite and vague as to make any assessment of the environmental impacts of the “subsequent operation” meaningless. Potential environmental impacts, as compared with current operations, could vary greatly depending on whether the Town, a private contractor or another public agency would be the operator. And the degree of specificity required by CEQA would not be achieved until a study was conducted recommending an Operations Plan specifying just how the post-acquisition water system would be operated so that the impacts of that operation could be identified and evaluated.

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Instead of performing an operations study or developing and adopting an Operational Plan to provide the specificity to allow for a meaningful analysis, the Town instead impermissibly narrowed the Project Description to avoid systematic analysis altogether. On July 16, 2015, three weeks after issuing the original Notice of Preparation, the Town issued an “Amended Notice of Preparation of An Environmental Impact Report.” Instead of describing operations to be provided by the Town or a private contractor or a public agency, as was the case in the June 24 NOP, the Amended Notice states only: “The proposed Project includes the Town’s subsequent operation of the AVR System, although alternatives to the Town’s direct operation of the system would be evaluated in the EIR...The Town would operate and maintain the system out of AVR’s existing operations and maintenance facility.”

2. The DEIR Project Description is uncertain and, therefore, unstable.

The Amended NOP Project Description was then carried over from the Amended NOP to the DEIR itself:

“For the purpose of the technical analyses in this EIR, it is proposed that O&M activities would be managed from the same location from which they are currently performed: 21760 Ottawa Road. Additionally, it is proposed that AVR System infrastructure, including supply pipelines and storage tanks, would remain at existing locations within the existing AVR System service area. (Figure 2-3 and Figure 2-4) Finally, it is proposed that the Town of Apple Valley would operate the AVR System and exercise the associated water rights in the same manner as Apple Valley Ranchos Water Company has done. Other potential operational scenarios for the system, including other public agencies and private contractors, are considered in Section 6.0, Alternatives, of this document as required under CEQA.” (DEIR, p. 35; emphasis added.)

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Beginning the Project Description with the caveat, *“For the purpose of the technical analyses in this EIR it is proposed,”* demonstrates that the selection of the Town as the sole operator was the result of an effort to minimize impacts in the EIR – not the result of any operational study –and may not represent the most likely operational scenario once the EIR is certified. “Proposing” the Town as operator for purposes of the “technical analyses” and the assertion that, after acquisition, the Town would operate the system “in the same manner” as AVRWC, was merely the path of least resistance to getting past the EIR requirement with the least amount of analysis required – a strategy that does not comply with CEQA’s informational goals.

3. The Town has no Operations Plan.

Rather than studying the operation issues at the outset and making them a part of the Project Description, the Town impermissibly narrowed the Project Description to avoid that analysis and deferred any decision about operations to some future date. Instead of deciding on a finite project, and deciding whether a private operator or other public operator would be selected, so that the Project Description would be finite and the impacts of each of those possibilities could be evaluated, the Town moved any discussion of operators– other than the Town– to the Alternatives Section in the DEIR where the

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impacts analysis is much less rigorous. Instead of creating an Operations Plan, or at least a specific proposal after an operational study, so that any environmental impacts could be meaningfully assessed, the Town concluded that (for now) it would “propose” to operate the system itself in exactly the same way AVRWC privately operates the system so that there would be no impacts. This narrowing strategy deserves special scrutiny since, under the proposed project, the Town, which is the Lead Agency in charge of both drafting and approving the EIR, can “propose” itself as the operator for purposes of the “technical analysis” and then, once the EIR is certified and the project adopted, the Town can administratively change operators and avoid the environmental analysis of that change altogether.

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The DEIR’s factual description of the Town’s “subsequent operation,” and particularly what it omits, exemplifies the Town’s lack of knowledge of both the existing water system and what it would require were the Town to acquire it without having an Operations Plan prior to circulating the draft. Operational problems can lead to system reliability problems which can have significant environmental consequences. But by asserting that the Town would operate the system “in the same manner” as AVRWC, the Town attempts to avoid that analysis. Examples of operational aspects that are not considered in DEIR include:

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- Many of AVRWC’s current functions are not handled in Apple Valley but are performed by Park Water Company at its Downey location. These include all billing services, accounting services, engineering services, regulatory compliance reporting requirements, and water quality services. The DEIR is silent on how or where these operations would be handled if the Town were to operate the system.
- The DEIR is silent on whether Town staff and other Town Departments will be called upon to assist in running the water system. Will the Town be able to operate the system without hiring additional personnel? If additional staff is required, in what facility will they work? Will the Town need to secure additional facilities? Are the Town Departments equipped to handle the water system, both from a personnel and expertise standpoint? Will using Town Departments place a strain on other essential Town services? None of these is discussed in the DEIR.
- In the DEIR, the State Water Resources Control Board states that the Town would need to apply for and obtain a public water system permit, which requires the applicant to demonstrate its capability to manage the system. While the DEIR acknowledges that the Town would have to demonstrate “adequate technical, managerial and financial capability to assure the delivery

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of pure, wholesome and potable drinking water,” the Town’s ability to make that showing is pure speculation in the absence of an Operations Plan.

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- Although the DEIR states that the Town will continue operation of the existing O&M Facility during regular business hours (M-F 7:30-5:30)[DEIR p. 35], existing Town departments at the Town office currently work nine out of ten working days and are closed every other Friday. If Town staff at the Town office is used to perform functions currently done at Park Water, the DEIR is silent on whether they would work only nine out of ten days and how this would impact customer service (the improvement of which is one of the stated goals of the Project).
- The DEIR evidences the Town’s lack of understanding of the components of a water utility based on its abbreviated list of AVRWC assets (pages 1 and 34) or the types of personnel required to operate a water utility (Table 2-5, page 33). Many categories of the AVRWC plant are not identified, such as hydrants, meters, valves, pressure reduction stations, pumping structures, SCADA equipment, communications equipment and computer equipment. On staffing, the DEIR lists “plumbing system staff” which do not exist and only lists one employee as “water treatment staff” without regard to the number of employees holding Water Treatment Operator certifications or Water Distribution Operator certifications. The DEIR does not address what the appropriate or necessary number or grade of certifications is required for staffing a water utility the size of AVRWC. On p. 35, the DEIR uses different staffing numbers for AVRWC. -- first 39, then 48.
- The Town does not have experience operating a water system. According to the Town’s 2014 “Financial Feasibility Analysis for the Acquisition of the Apple Valley Ranchos Water System:”

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“RISK FACTORS OF THE AVR
ACQUISITION

There are a wide range of uncertainties and risk factors associated with the potential AVR acquisition. The Town would begin a new relatively complicated enterprise involving employees and a large customer base, but the Town has no actual experience operating a water system. While the Town currently owns a wastewater enterprise, acquisition of the water system would add numerous new responsibilities

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including supplying water, maintaining facilities, and billing and accounting for customers. Future operating costs may be higher than anticipated under this analysis because of the Town's lack of experience in running the system. Also, operations costs could increase due to rising electricity, chemical, or commodity costs over which the Town has no control." (Financial Feasibility Analysis, p. 41)

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What water losses or impacts on the reliability of the system should be expected as the Town moves up the learning curve? Will hiring new staff be conducted? Will current AVRWC staff be recruited to work directly for the Town? Will the Town need to hire consultants for training inexperienced staff? Could operating cost issues affect Town delivery of other services such as police or fire, as well as water quality in the system? These issues should be evaluated.

- In addition to having no Operations Plan, the Town provides no infrastructure replacement plan. The Town does not address what it would cost to acquire the system and, therefore, does not know what cash-flow it would have available to replace aging infrastructure, and it will have no reserves for that purpose. (Financial Feasibility Analysis, p. 34)
- The DEIR claims that increased customer service and reliability are project objectives but does not address how these would be achieved. Ordinarily such improvements would require more attention throughout the system, whether in the form of added maintenance, more complaint responsiveness, more long range planning, more personnel, better training for new or existing personnel, any and all of which have increased physical and/or operating cost implications. These must be discussed, understood and disclosed.
- The DEIR asserts that everything will remain unchanged under Town ownership without explaining how the Town will accomplish that. The Town is not proposing any changes to operations, but the DEIR shows it is not aware of how AVRWC operates. Rate increases for the Town operated sewer system have outpaced those by AVRWC, and the Town has diverted enterprise funds from the sewer system to the Town's general fund, indicating poor management.

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4. The Project Description ignores severance of the Yermo System.

AVRWC's service area includes both services in the Bellview Heights area of Victorville and the Yermo system near Barstow. The map of AVRWC's service area in Figure 2.1 of the DEIR does not show these service areas outside the Town's jurisdictional boundaries and is not accurate. This is in direct contradiction of the letter included in the DEIR from LAFCO in which LAFCO specifically asked for a new map including Bellview and Yermo.

With respect to Bellview, it is contradictory that that the Town has chosen to include the Bellview system (in the City of Victorville) and not Yermo in the acquisition, even though both systems are outside the Town's political subdivision.

The DEIR acknowledges that AVRWC's service area includes a water system and service in both the Town and the Yermo Water District near Barstow:

"Although Park Water Company/Apple Valley Ranchos Water Company recently acquired the Yermo Water District and its facilities, the proposed project does not include acquisition of the Yermo Water System, which is located east of the City of Barstow and is currently undergoing a transfer from its current owner to Apple Valley Ranchos Water Company. This is because the Yermo Water District facilities are located approximately 45 miles from the Town; Yermo Water District does not provide any water services to the Town's residents, businesses, or other uses; and the Yermo Water District's facilities do not provide any other benefit to the Town's residents. Furthermore, the Yermo system is an entirely separate and distinct system that is not integrated into the AVR System."

Since Yermo is a part of AVRWC, it is not enough for the DEIR to indicate that it will not be acquiring the Yermo portion. Severance of the Yermo system from AVRWC must be made part of the Project Description so that the DEIR will assess the potential environmental implications that may flow from the severance. For example, AVRWC personnel work on the Yermo system from the AVRWC facility in the Town, and if they cannot do so, AVRWC will have to establish a facility in the Yermo service area - a base of operations with a yard, staging area, materials inventory for repairs, etc. The impacts of constructing that facility, if necessary, and operating it must be disclosed.

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