

Town Council Agenda Report

Date: July 23, 2019 Item No. 9

To: Honorable Mayor and Town Council

Subject: PRESENTATION ON WATER ENTERPRISE TRANSITION PLAN AND ADOPTION OF RESOLUTION RELATING TO THE RETENTION OF LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. EMPLOYEES AND THE RETENTION OF ANY CONSULTANTS NECESSARY FOR THE ADMINISTRATION AND OPERATION OF THE SYSTEM

From: Douglas B. Robertson, Town Manager

Submitted by: Douglas B. Robertson, Town Manager

Budgeted Item: ☐ Yes ☒ No ☐ N/A

RECOMMENDED ACTION:

That the Town Council: (1) receive a presentation from the Town Manager on the Water Enterprise Transition Plan; and (2) adopt Resolution No. 2019-23, authorizing the Town Manager to employ certain Liberty Utilities (Apple Valley Ranchos Water) Corp. employees upon the completion of the acquisition of the Apple Valley Water System, directing the Town Manager to retain such consultants as may be necessary for the administration and operation of the system, and finding that no further environmental review is required under CEQA.

BACKGROUND

The Apple Valley Water System

The water system currently owned and operated by Liberty Utilities (Apple Valley Ranchos Water) Corp. (the "Apple Valley Water System" or "System") is an integrated and independent water system that provides water service primarily in the Town of Apple Valley.

Acquisition of the Apple Valley Water System

Pursuant to the Resolutions of Necessity adopted by the Town Council on November 17, 2015, the Town is pursuing the acquisition by eminent domain of the Apple Valley Water System for multiple reasons, including, but not limited to, the following:

- Longstanding public concern about escalating water rates;
- The significantly higher water rates paid by customers of the Apple Valley Water System as compared to neighboring jurisdictions;
- The lack of local control over water rates, service, expenditures, and policy;
- The lack of responsiveness and accountability of the corporate owners to concerns of ratepayers within the service area;
- The lack of transparency in the operation of the Apple Valley Water System; and

- The lack of long term water planning coordinated with Town planning objectives and community input..

On December 16, 2015, the owner of the System sued the Town alleging the Town's approval of the acquisition via the adoption of the Resolutions of Necessity violated the California Environmental Quality Act despite the Town having subjected the project to the highest level of environmental review – an environmental impact report. After a lengthy legal battle, in February 2018, the Court ruled in favor of the Town.

On January 8, 2016, the Town initiated a formal condemnation action to acquire the Apple Valley Water System. The case is still ongoing and is split into two phases. First, there is the "right to take" phase, during which a judge will determine whether the Town may acquire the System. A trial on this phase is set to begin on September 30, 2019. Second, once the Court concludes that the Town may acquire the System, there is a valuation phase, during which a jury will determine the fair market value of the System. Following the conclusion of the second phase, the Town will formally acquire and resume operation of the System. The acquisition of the Apple Valley Water System has received broad support from the residents of the Town. In June 2017, Town voters approved Measure F, authorizing the Town to issue up to \$150 million in debt for the purposes of acquiring the System.

ANALYSIS

Water Enterprise Transition Plan

Although no physical changes to the existing system are proposed, the Town's current Water Enterprise Transition Plan is the Town Manager's current working document addressing the Town's plan for transitioning and integrating water administration, operation, and planning into the existing Town of Apple Valley structure. The Plan is broken down into three phases: (1) a Pre-Acquisition Phase, consisting of tasks the Town would seek to accomplish in the period immediately following the Court concluding that the Town has the right to acquire the system; (2) a Transition Phase, consisting of tasks the Town expects to perform immediately following acquisition and through the first six months of operation, including a condition assessment; and (3) an Operations Phase, consisting of tasks the Town expects to perform following the assessment.

Resolution Authorizing Retention of Employees

In order to deliver on the Town's promise to residents of improved service, it is important for the Town to be prepared to initiate specific steps to take over operation of the System as soon as the Court affirms the Town's right to acquire the System. An important part of the preparation is anticipating staffing needs. To begin the process of addressing such needs, it would be beneficial to provide assurances to those individuals currently administering and operating the System regarding the Town's current staffing plans. Accordingly, along with the presentation of a Water Enterprise Transition Plan, we are presenting a resolution relating to the retention of certain System staff for the Town Council's consideration.

The proposed Resolution would authorize the Town Manager to employ all current employees of Liberty Utilities (Apple Valley Ranchos Water) Corp., with the exception of executive and contract employees. Prospective employees must meet certain eligibility criteria including, for example, that they meet minimum qualifications for the position and are able to meet the minimum requirements for employment with the Town. The starting salary for said employees shall be no less than the salary as of July 23, 2019 and employees will be entitled to the same

benefits as those available to similarly situated Town employees. Employees hired in this manner would be considered hired on the date they were hired by Liberty for benefit purposes, with the exception of statutorily-defined benefits such as retirement benefits through CalPERS. New employees would remain subject to a probationary period in accordance with Town personnel rules, policies, and regulations. In addition, the Resolution would authorize the Town Manager to retain such consultants and vendors as he considers necessary for the successful administration and operation of the System in accordance with the Town's Municipal Code.

CEQA COMPLIANCE

Water Enterprise Transition Plan

The Water Enterprise Transition Plan presented to the Town Council merely outlines the anticipated organizational, administrative, and procedural steps that would be undertaken during the initial months of the Town's ownership of the System. However, and because the Plan merely outlines initial operational tasks but does not propose formal policies, physical changes, or other approvals, the Council need not formally approve the Transition Plan. Further, the Plan does not propose any physical changes to the System, but instead confirms the steps and future studies that the Town will need to undertake to evaluate the System as part of the Town's operation. As such, the Transition Plan does not require review under the California Environmental Quality Act. Indeed, CEQA confirms that the "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment," "administrative or maintenance activities," and "general policy and procedure making" are not "projects" subject to CEQA review. (14 Cal. Code Regs. § 15378.)

Moreover, and even if the Transition Plan were formally adopted, it is limited to the initial operation of an existing water system and the steps that are needed to evaluate and plan for potential future actions – actions that are exempt from CEQA review. (14 Cal. Code Regs. §§ 15301 [exempting the operation of "existing facilities"]; 15262 [exempting feasibility and planning studies].)

Finally, as identified above, the EIR previously certified by the Town Council already included an analysis of the reasonably foreseeable impacts associated with the Town's acquisition of the System and the Town's subsequent operation of the System. The Transition Plan is consistent with the analysis already set forth in the previously certified EIR, and no new information of substantial importanceshowing any new significant environmental impacts (such as changes in the nature of the acquisition, changes in the circumstances under which the acquisition is undertaken, or new information) has become available. Thus, no further CEQA review is required. (Public Resources Code § 21166; 14 Cal. Code Regs. § 15162.)

Resolution Authorizing Retention of Employees

Similarly, the Resolution authorizing the employment of certain Liberty Utilities (Apple Valley Rancho Water) Corp. employees and the hiring of certain consultants is not subject to CEQA review. The actions described in the Resolution involve personnel, staffing, and employment decisions that will not result in any physical changes to the System that may cause direct, indirect, or cumulative environmental impacts. Accordingly, the adoption of the Resolution is not a "project" requiring environmental review under CEQA. (14 Cal. Code Regs. 15378 [administrative or maintenance activities, specifically including personnel-related actions, are not CEQA "projects"].)

Even were the Resolution to be treated as a CEQA “project,” the retention of Liberty Utilities (Apple Valley Ranchos Water) Corp.’s employees would still be exempt from CEQA pursuant to 14 Cal. Code Regs. § 15301 (the Class 1 “Existing Facilities” exemption), insofar as the Resolution merely authorizes the continued operation of an existing system by existing employees.

Finally, the EIR previously certified by the Town specifically described and analyzed Liberty Utilities (Apple Valley Rancho Water) Corp.’s vendor, service, and “Employee Makeup” – including the approximate number of employees, their roles and responsibilities, and the primary locations from which employee tasks were undertaken – and confirmed that the Town anticipated that it could operate the system using approximately the same number of employees. Thus, the retention of Liberty Utilities (Apple Valley Ranchos Water) Corp.’s employees is consistent the Town Council’s previous analysis, and no new information of substantial importance showing any new significant environmental impacts (such as changes in the nature of the acquisition, changes in the circumstances under which the acquisition is undertaken, or new information) has become available. No further CEQA review is required. (Public Resources Code § 21166; 14 Cal. Code Regs. § 15162.)

FISCAL IMPACT

None associated with receipt and file of this report. Employees retained as a result of the associated resolution will be funded through the water operations budget once the System is acquired.

ATTACHMENTS

1. Water Enterprise Transition Plan
2. Resolution No. 2019-23, authorizing the Town Manager to employ certain Liberty Utilities (Apple Valley Ranchos Water) Corp. employees upon the completion of the acquisition of the Apple Valley Water System; directing the Town Manager to retain such consultants as may be necessary for the administration and operation of the system; and finding that no further environmental review is required under CEQA