



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor Pro Tem and Town Council Date: November 17, 2015

From: Frank Robinson, Town Manager Item No: 2
Town Manager's Office

Subject: TOWN COUNCIL CONSIDERATION OF TWO PROPOSED RESOLUTIONS OF NECESSITY AUTHORIZING THE TOWN OF APPLE VALLEY'S ACQUISITION OF APPLE VALLEY RANCHOS WATER COMPANY'S APPLE VALLEY WATER SYSTEM BY EMINENT DOMAIN AND THE FILING OF A COMPLAINT

T.M. Approval: _____ Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Staff recommends that the Town Council takes the following actions:

- A. Conduct a public hearing to consider the adoption of Resolutions of Necessity Nos. 2015-43 and 2015-44 authorizing the acquisition, by eminent domain, of Apple Valley Ranchos Water Company's Apple Valley Water System and the filing of a complaint, including providing all parties interested in the affected property and their attorneys and representatives an opportunity to be heard on the issues relevant to the Resolutions of Necessity as outlined below;
- B. Make the following findings in each Resolution as described in greater detail in this report:
 - 1) The public interest and necessity require the proposed Project;
 - 2) The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
 - 3) The property to be acquired is necessary for the Project;
 - 4) The offer of just compensation has been made to the property owner;
 - 5) The property to be acquired is for a more necessary public use than the use to which the property is appropriated; and
 - 6) The requirements of the California Environmental Quality Act have been met.

- C. Adopt Resolutions of Necessity No. 2015-43 and 2015-44 by no less than a two-thirds vote of the entire Town Council.

SUMMARY:

Staff recommends that the Town Council consider the adoption of two Resolutions of Necessity authorizing: (1) the Town's acquisition of Apple Valley Ranchos Water Company's ("AVR") Apple Valley Water System by eminent domain; and (2) the filing of a complaint. The purpose of the proposed acquisition by eminent domain ("Project") is for public ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public.

Staff recommends that the Town Council hold a public hearing on the adoption of two Resolutions of Necessity authorizing the Project, and make the eminent domain findings recommended below, as required under the Eminent Domain Law. (Code Civ. Proc., § 1230.010 *et seq.*) Two Resolutions of Necessity have been prepared for the Town Council's consideration – one governing the interests in the Apple Valley Water System located within the Town and a second for the small portions of the Apple Valley Water System located outside of the Town in limited portions of the City of Victorville and a small unincorporated area of the County of San Bernardino.

BACKGROUND:

HISTORY AND OWNERSHIP OF AVR

Newton T. Bass and Bud Westlund, the modern founders of Apple Valley, in 1945 formed a small private water company they then called the Apple Valley Mutual Water Company. The system was later renamed Apple Valley Ranchos Water Company.

In 1987, Apple Valley Ranchos Water Company was acquired by Park Water Company, which currently owns and operates a water system in Los Angeles and Park Water Company also owns Mountain Water Company in Missoula, Montana. Mountain Water Company is currently subject to an eminent domain action filed by the City of Missoula.

In December 2010, Park Water Company was acquired by the Carlyle Group, a multi-national global asset management firm based in Washington DC with investors all over the world. Park Water Company is owned by Western Water Holdings, LLC, which in turn is owned by Carlyle Infrastructure Partners, a subsidiary of the Carlyle Group. Now, Park Water Company is the subject of a proposed acquisition by Liberty Utilities Company, a subsidiary of Algonquin Power & Utilities Corporation of Oakville, Canada.

The Carlyle Group has accepted an offer from Liberty Utilities of approximately \$250 million, in addition to the assumption of \$75 million of debt.

WATER SYSTEM INFORMATION

The Apple Valley Water System is an integrated and independent water system that provides water service primarily in the Town. In addition, the Apple Valley Water System includes some small geographic areas outside the Town's boundaries in limited portions of the City of Victorville and a small unincorporated area of the County of San Bernardino. The Apple Valley Water System is reported to be currently comprised of 23 groundwater wells, 11 storage tanks, 16 emergency generators, 8 booster pump stations, over 450 miles of pipeline, and more than 22,000 active service connections, covering 14 interconnected pressure zones and providing service to over 62,000 consumers.

The Apple Valley Water System currently serves the majority of the incorporated area of the Town as well as some outlying areas located in a portion of the incorporated City of Victorville and unincorporated San Bernardino County. Although AVR recently acquired Yermo Water Company, the Yermo water system is not considered a part of the Apple Valley Water System and is not proposed to be acquired. This is because the Yermo water system located approximately 45 miles from the Town; does not provide any water services to the Town's residents, businesses, or other uses; and its facilities do not provide any other benefit to the Town's residents. Furthermore, the Yermo water system is an entirely separate and distinct system that is not integrated into the Apple Valley Water System.

CPUC REGULATORY SCHEME

The Apple Valley Water System is the subject of formal reporting and filings by AVR with the California Public Utilities Commission ("CPUC"). The Apple Valley Water System is the subject of other formal filings by AVR, including the filing of an urban water management plan pursuant to Section 10610, *et seq.*, of the California Water Code.

As a regulated investor-owned water utility, AVR has a government-granted and protected monopoly to provide water service to its customers within the officially delineated service area. Water service, expenditures and rates for the Apple Valley Water System are currently subject to exclusive oversight by the CPUC, located in San Francisco. If the Town acquires the Apple Valley Water System, the System will be subject to local oversight instead of oversight by the CPUC. The CPUC has no jurisdiction over the Town's decision whether or not to acquire the Apple Valley Water System by eminent domain and will not have jurisdiction over the eminent domain complaint.

Every three years, AVR requests an increase in water rates as part of the CPUC's general rate case problem. The following chart illustrates AVR's history of rate requests:

| Application Year and Number | Rate Request | |
|------------------------------------|--------------|--------|
| | Year | Amount |
| 2002 Application (A.02-03-046) | 2003 | 27.1% |
| | 2004 | 3.8% |
| | 2005 | 3.7% |
| 2005 Application (A.05-02-005) | 2006 | 8.56% |
| | 2007 | 2.69% |
| | 2008 | 5.46% |
| 2008 Application (A.08-01-002) | 2009 | 22.73% |
| | 2010 | 0.9% |
| | 2011 | 1.32% |
| 2011 Application (A.11-01-001) | 2012 | 20.0% |
| | 2013 | 2.55% |
| | 2014 | 3.32% |
| 2014 Application (A. 14-01-002) | 2015 | 14.88% |
| | 2016 | 8.48% |
| | 2017 | 8.19% |

Invariably, the CPUC grants AVR an increase. In the intervening years, AVR routinely files advice letter requests with the CPUC. The advice letters typically impose new surcharges or adjust rates upwards to account for AVR expenses not fully considered during the prior rate case. AVR submitted 13 advice letters to the CPUC that became effective between 2011 and 2013. For example, in March 2013, AVR requested a surcharge of approximately 26 cents per unit for 18 months to recover a \$2.3 million shortfall in revenues from prior years.

The Town has routinely opposed AVR's proposed increases through the CPUC process, and, with the help of the Office of Ratepayer Advocates, has obtained significant reductions in the proposed increases. Despite this, the increases are unrelenting. For AVR's customers, the CPUC process has meant increases in their water bills year after year.

DECISION TO ACQUIRE

The Town began exploring the potential acquisition of the Apple Valley Water System in response to a number of factors, including, but not limited to, the following: longstanding public concern about AVR's escalating water rates; the significantly higher water rates paid by customers of the Apple Valley Water System as compared to neighboring jurisdictions; lack of local control over water rates, service, expenditures, and policy; lack of responsiveness and accountability of AVR to concerns of ratepayers within the service area; and the lack of transparency in the operation of the Apple Valley Water System.

At the direction of the Town Council, Town staff and expert consultants undertook an exhaustive evaluation process. This process included: reviewing official filings, reports and documents; conducting public meetings seeking input from the community; retaining engineering and financial consulting firms; preparing a report by a utility valuation professional with expertise in utility appraisals to evaluate the fair market value of the Apple Valley Water System; preparing and presenting a detailed Final Environmental Impact Report on the proposed acquisition; and preparing and presenting a detailed financial feasibility analysis considering the financial consequences of municipal ownership of the Apple Valley Water System.

The Town is constitutionally and statutorily authorized to provide water service. (See, e.g., Art. XI, Sec. 9, California Constitution; Gov. Code, § 38730.)

OFFER OF JUST COMPENSATION

On June 26, 2015, in compliance with the requirements of Section 7267.2 of the Government Code, the Town transmitted a formal offer to acquire the Apple Valley Water System from AVR for its appraised fair market value of \$50.3 million following the appraisal process. The offer included a full description of the Apple Valley Water System proposed to be acquired. On July 24, 2015, AVR rejected the Town's offer. AVR has refused to negotiate with the Town and has made it clear that it is unwilling to sell the Apple Valley Water System separate from the other entities owned by Park Water Company.

AVR representatives have rejected participating in any negotiations pursuant to Section 7267.2 of the Government Code or otherwise regarding the Town's acquisition of the Apple Valley Water System. In rejecting the Town's offer, AVR did not identify any defect in the offer, ask for any clarification or additional information regarding the offer, claim that the offer does not comply with Section 7267.2, or make any counter proposal. It has simply asserted its position that it will not participate in any discussions regarding possible Town acquisition of the Apple Valley Water System. It has also declined to discuss the possibility of retaining any assets if the Town acquires the Apple Valley Water System. If the Town Council desires to further pursue the potential acquisition of the Apple Valley Water System, it must do so through the eminent domain process.

PREPARATION AND CERTIFICATION OF EIR

On June 26, 2015, the Town issued a Notice of Preparation informing the public of its intent to prepare an Environmental Impact Report ("EIR") for the proposed acquisition of AVR's Apple Valley Water System. On July 7, the Town held a scoping meeting to enable members of the public and other stakeholders the opportunity to comment on the scope of the EIR. In conjunction with this scoping meeting, the Town provided a public comment period from June 26 to July 27 for comments on the scope of the EIR. On July 17, and in response to requests from the public, the Town issued an Amended Notice of Preparation for the proposed acquisition and provided an additional public review period of July 17 to August 19. On August 4, the Town also held an additional scoping meeting under the California Environmental Quality Act ("CEQA").

After considering the information gathered in the scoping meetings and related comment periods, the Town issued, publicly posted, and broadly circulated a Notice of Availability of the Draft EIR (“DEIR”) for the Project. The Town made the DEIR available for public review at three locations within the Town and online. The comment period on the DEIR extended from September 18 to November 2, 2015.

All public comments were addressed. The comments and responses became a part of the Final EIR (“FEIR”), which was presented to the Town for certification today, November 17, 2015. The Project as described in the Resolutions of Necessity is consistent with the Project as described in the Final Environmental Impact Report.

PROPOSED ACTION

To proceed further with the acquisition process, the Town Council must hold a public hearing on the adoption of the Resolutions of Necessity authorizing the acquisition of the Apple Valley Water System, authorizing the filing of a complaint, and making the findings detailed below, as required under the Eminent Domain Law. Two Resolutions of Necessity have been prepared for the Town Council’s consideration, one governing the interests in the Apple Valley Water System located within the Town and a second for the small portions of the Apple Valley Water System located outside of the Town, in limited portions of the City of Victorville, and a small unincorporated area of the County of San Bernardino.

The Eminent Domain Law provides that a public entity may not commence eminent domain proceedings until its governing body has adopted a resolution of necessity by no less than two-thirds vote of the entire body. Such resolutions may only be adopted after the governing body has given each party with an interest in the affected property, or their representatives, a reasonable opportunity to appear and be heard on the following matters:

- 1) The public interest and necessity require the proposed project;
- 2) The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
- 3) The property to be acquired is necessary for the project; and
- 4) The offer of just compensation has been made to the property owner.

Since, despite the Town’s best efforts, an agreement has not been reached with AVR for the purchase of the Apple Valley Water System and AVR continues to refuse to negotiate with the Town, it may be necessary for the Town to acquire the Apple Valley Water System by eminent domain. The initiation of the eminent domain process in court can only be authorized by the Town Council’s adoption of the Resolutions of Necessity.

Record owners must be afforded an opportunity to appear at the hearing and lodge objections. Notices of this hearing were sent by first class mail to AVR, and other interested parties. The notices state the Town Council’s intent to consider the adoption of Resolutions of Necessity, the right of the property owners to appear and be heard on these issues, and that failure to file a written request to appear at the hearing may result

in a waiver of the right to appear and be heard. The Town scheduled this hearing so that all persons who filed a written request may appear and be heard. In addition, while not required by law, notice of the hearing was published in a local newspaper of general circulation qualified to publish local government official notices. Notice was also provided to AVR's counsel as a courtesy.

FINDINGS REQUIRED IN ADOPTING RESOLUTIONS OF NECESSITY

The following is a detailed outline of the findings required to be made by the Town Council in adopting the Resolutions of Necessity, and the substantial support for each element:

FINDING 1: THE PUBLIC INTEREST AND NECESSITY REQUIRE THE PROJECT

A number of factors demonstrate that the public interest and necessity support the proposed Project including: (1) AVR's high and ever-escalating water rates; (2) the significantly higher water rates paid by rate payers in the AVR Service Area as compared to neighboring jurisdictions; (3) AVR's attempts to obstruct the provision of recycled water within the Town; (4) the lack of transparency in the operation of the Apple Valley Water System; (5) the Town's ability to harmonize land use authority with the water distribution system; (6) the Town's ability to integrate water service and billing with other municipal functions; (7) improved emergency planning and coordination; (8) the environmental sustainability; and (9) benefits for the Town as customer. These considerations were expressed by the ratepayers in detail at the Public Participation Hearings during the prior General Rate Case before the CPUC, as well as in subsequent community meetings and Public Participation Hearings in the current General Rate Case.

(1) High and Escalating Water Rates

Historic Rate Increases

For decades, the Apple Valley community has been concerned about the high and increasing water rates charged by AVR. Looking at water rate and meter charge alone, the average annual bill for an individual using 200 ccf of water has increased from \$486.72 in 2002 to \$769.06 in 2012. (See D.03-08-069 (8/21/2003); D.12-09-004 (9/13/2012).) The LA Times recently reported that rates alone have increased a total of 68% in the last 13 years. These figures do not consider surcharges.

Proposed Decision in Current General Rate Case

On October 16, 2015, the CPUC issued Proposed Decision on AVR's most recent general rate case application (A. 14-01-002). AVR had requested rate increases totaling 14.88% for 2015, 8.48% for 2016, and 8.19% for 2017. In total, the proposed percentage increase amounted to 35.64%. The CPUC, through the Proposed Decision, rejected AVR's excessive request, but still proposes to authorize a 25.27% overall increase. If the Proposed Decision goes into effect, as the Town anticipates, a residential customer maintaining consumption at 16.45 ccf per month would see her or

his bi-monthly bill increase from \$127.20 to \$163.74.¹ (See Proposed Decision, p. 2.) In short, a resident maintaining water usage as before would be expected to pay over \$200 more per year to AVR than they currently do. Even if the average resident cuts their usage by 28%, in line with the Governor's mandated cuts for water purveyors, the resident can still expect to pay AVR an additional \$41.16 per year. (See Proposed Decision, pp. 2, 9.)

Difficulties in Estimating Bill Increases

It is a challenge to estimate the full and complete impact of rate increases if surcharges in addition to rate increases are considered. AVR currently imposes numerous surcharges and adjustments on its customers' bills, making it extremely difficult to predict future billings, verify if the billings are correct, or assess the full impact of AVR's actual increases in its water billings. For example, as recently as October 18, 2015, AVR's rate schedules for residential metered service included the following surcharges:

- An additional \$0.245 on every unit of water for a period of 18 months from the effective date of Advice Letter 190-W-A.
- An additional \$0.287 on every unit of water for a period of 18 months from the effective date of Advice Letter 196-W.

Similarly, as recently as October 18, 2015, AVR's rate schedules for non-residential metered service included the following surcharges:

- An additional \$0.125 on every unit of water for a period of 24 months from the effective date of Advice Letter 180-W-A.
- An additional \$0.263 on every unit of water for a period of 18 months from the effective date of Advice Letter 182-W.
- An additional \$0.245 on every unit of water for a period of 18 months from the effective date of Advice Letter 190-W-A.

While AVR does issue the occasional surcredit through the Advice Letter process, these amounts are dwarfed by the amount of surcharges.

Reasons for High and Escalating Water Bills

AVR's high and ever-escalating water bills are attributable to a number of factors, including: (i) the CPUC's authorization of a rate of return; (ii) dividends; (iii) shared general office expenses; (iv) taxation; (v) the Water Revenue Adjustment Mechanism; (vi) the incentive to overcapitalize; and (vii) the inefficient and costly CPUC system. All of these factors would not be applicable to the Town's ownership and operation of the Apple Valley Water System.

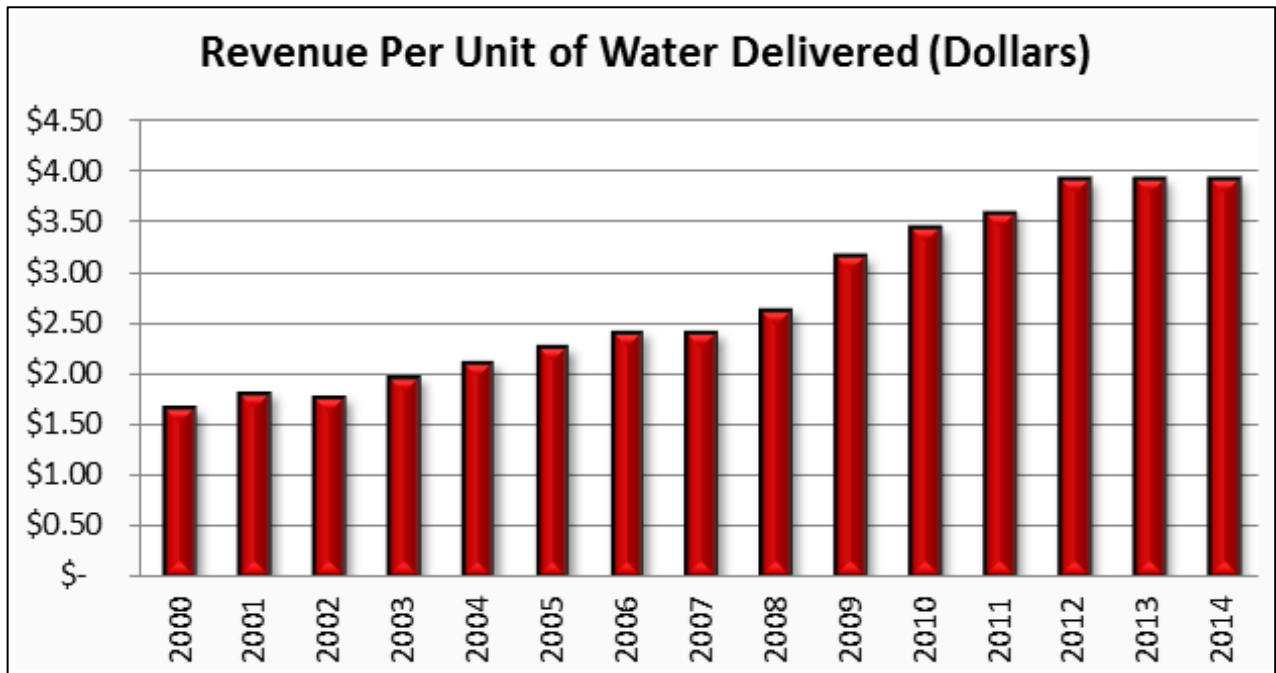
¹ The CPUC's Proposed Decision sets the expected bill increases out on a monthly basis. Here, they are set out as bi-monthly figures to more accurately reflect AVR's billing cycle.

(i) Rate of Return

As a CPUC-regulated investor-owned utility, AVR is entitled to charge its users a “rate of return,” or profit. This is a rate of return on its capital investments. Currently the rate of return that AVR is authorized by the CPUC to charge the Apple Valley Water System users is 9.07%. However, in AVR’s most recent rate case application, AVR reported that the rate of return for the last recorded year was 11.94%. Based on AVR’s Annual Report for 2014, Town staff estimates that AVR received a rate of return of roughly 9.58% last year. Furthermore, according to a report issued earlier this year by the California State Auditor, in 2013, Apple Valley Ranchos received a return on its investment of \$3.6 million, or \$198 per connection. (California State Auditor (April 2015) Report 2014-32, p. 2.) The rate of return is ultimately a cost passed on to ratepayers.

By contrast, municipal water providers are not permitted to charge a rate of return for water service. The Town’s ownership of the Apple Valley Water System would subject it to Proposition 218, which does not permit cities to make a profit in water service operations. Thus, acquisition of the Apple Valley Water System by the Town would result in a savings to the consumers of any pass-through of the rate of return or profit.

The following chart, based on data from AVR’s Annual Reports, shows the revenue received by AVR for every unit of water sold over a period of 15 years:



(ii) Dividends

Additionally, as part of a publicly traded company (i.e. the Carlyle Group), AVR is incentivized to pay dividends to its shareholders. This incentive puts pressure on AVR to increase water rates to pay those dividends to provide an attractive rate of return to investors. The Carlyle Group has paid numerous dividends to its shareholders in recent years, including four dividends totaling \$2.83 per share in 2015 to date. Ownership of the Apple Valley Water System by the Town would put an end to the payment of dividends and the upward pressure this puts on water rates as well as an end to any inherent conflict of interest between shareholders and ratepayers.

(iii) Shared General Office Expenses

The fact that Park Water Company and its parent company have multiple operations in and outside California also raises the issue in every rate case proceeding before the CPUC whether the costs associated with these other operations unrelated to customer water service are being imposed improperly on ratepayers in the Apple Valley community. This issue of “general office” expenses is the constant subject of CPUC rate proceedings which can become very contentious. The high salaries and benefits of senior managers of Park Water Company are shared by Apple Valley ratepayers along with ratepayers in Missoula, Montana, and in Los Angeles without regard for the time spent by these managers in those communities.

(iv) Taxation

Also, as an investor-owned for-profit utility, AVR is required to pay state and federal income taxes and property taxes, which add substantially to the cost of its operations. A recent state audit comparing water rates in the Apple Valley area noted that “[f]or 2011 through 2013, AVR’s average cost for property, income, and other taxes was \$154 per connection.” (California State Auditor (April 2015) Report 2014-32, p. 23.) Because municipal utilities are not-for-profit entities, they are not required to pay taxes. Thus, acquisition by the Town would also save this expense.

(v) Water Revenue Adjustment Mechanism (“WRAM”)

Another issue affecting rates under AVR’s ownership is the Water Revenue Adjustment Mechanism (“WRAM”), which is unique to the CPUC and does not affect municipal purveyors. Under the WRAM, AVR is entitled to charge a surcharge to water users when there is a drop in water consumption – in other words, rate payers pay more for consuming less so AVR does not face a drop in revenues when demand goes down. The drop in demand may be caused by periods of drought like California is now experiencing or from other factors. The WRAM system has been used to impose charges on ratepayers having nothing to do with water conservation. For example, rate payers were required to pay for their drop in water usage due to cutting back consumption in the face of the Great Recession, thereby providing economic protections to private for-profit corporations in an economic downturn.

New issues relating to WRAM have arisen since the last hearing on the resolutions of necessity. On April 1, 2015, Governor Brown ordered water reductions by urban water purveyors throughout California by 25% from a 2013 baseline. As a result, State authorities have directed a 28% reduction for the Apple Valley Service Area. This reduction under the current WRAM structure will result in additional surcharges.

WRAM essentially shifts all the economic risks of drop in consumption due to new and ongoing external events from water utility shareholders to ratepayers. This reduction in economic risk to AVR is a substantial benefit to the shareholders of its ultimate owners.

(vi) Incentive to Over-Capitalize

Other factors also put upward pressure on rates and surcharges under the current system in comparison to municipal ownership. AVR's profits are derived from its rate of return on its capital investments. This creates an economic incentive to incur capital expenditures. There is limited incentive to find less costly materials or alternatives, or phase in cost effective infrastructure projects.

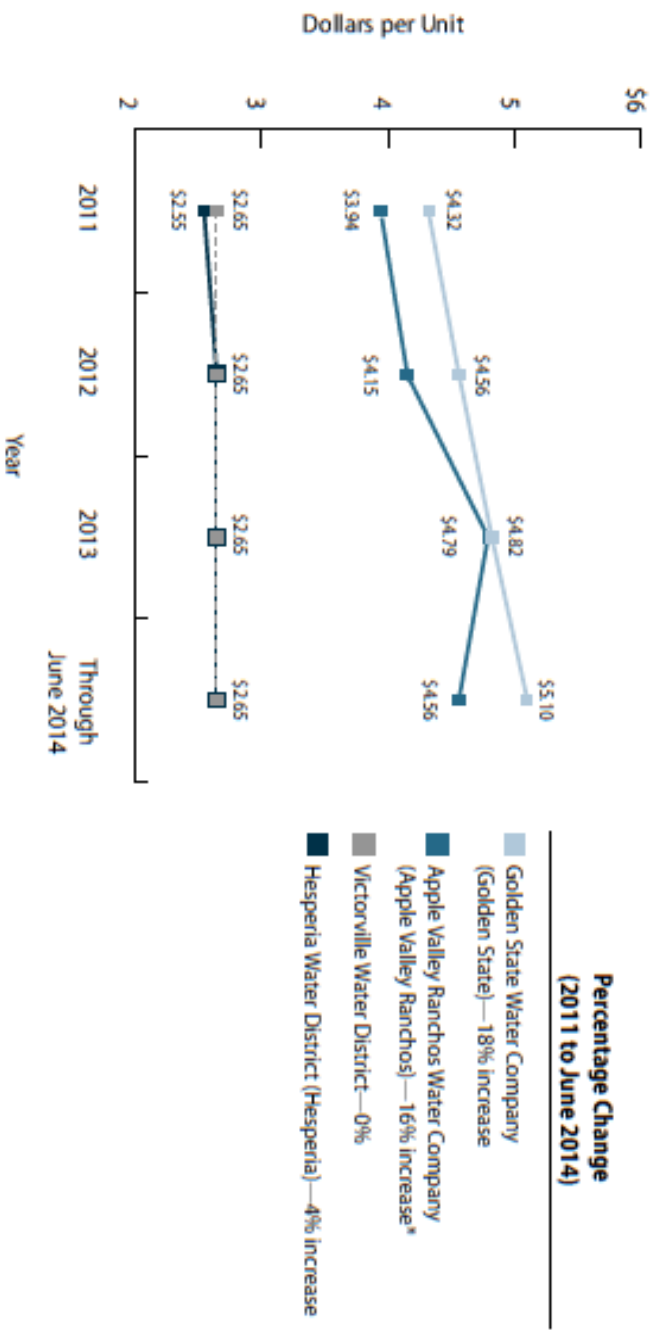
(vii) Inefficient and Costly CPUC System

The CPUC regulatory system is also cumbersome and expensive. The various CPUC proceedings are protracted, litigious, and expensive. AVR then passes on its expenses for its lawyers, personnel, and consultants in this process to its customers. Policy decisions on water planning, capital expenditures, operational expenses, rates, and rate design are all made in this process, which is often a multi-year process, involving review by the CPUC of literally thousands of pages on such subjects as expenditures on postage, office equipment, and pensions. In turn, the Town has participated extensively in these proceedings as interveners, most of which have been held in San Francisco. These interventions are at taxpayer expense – unlike for other interveners, the Public Utilities Code does not allow for compensation of municipal interveners.

(2) Comparably Higher Rates

A report issued earlier this year by the California State Auditor determined that, of the four utilities audited, "Apple Valley Ranchos had the highest average monthly residential water bill" (California State Auditor (April 2015) Report 2014-32, p. 19.) That report included the figure on the following page, which shows AVR's rates are comparatively higher than the publicly operated systems in nearby Victorville and Hesperia:

Figure 4
Residential Standardized Effective Rate Per Unit of Water
2011 Through June 2014



Sources: California State Auditor’s analysis of water utilities’ rate schedules and related documents for residential meters 5/8, 3/4, or 1 inch, depending on the utility.

Note: The effective rate combines the standard rate per unit of water with all other charges included on a customer’s bill, such as monthly service charges and surcharges, and takes into consideration tiered rates. The privately owned water utilities—Apple Valley Ranchos and Golden State—have surcharges and surcredits, and the amounts above reflect the average amount of surcharges and surcredits in effect during each year. One unit of water is equivalent to one hundred cubic feet of water or 748 gallons. The effective rate can vary with consumption as a result of tiered rates. For the purposes of this figure, we assumed a consumption rate of 14.9 hundred cubic feet, the average consumption of the four utilities, which ranged between 11 and 18 hundred cubic feet.

* Apple Valley Ranchos’ rate decreased in 2014 because some of the previous years’ surcharges expired and it issued a one-time surcredit of \$3.14 per customer to refund an over-collected balance from 2013. The standard rate per unit of water and the service charge did not decrease.

(California State Auditor (April 2015) Report 2014-32, Figure 4.)

In a broader survey of local water purveyors performed by Town Staff in October 2015, the disparity in rates between AVR and other local water purveyors is clear:

October 2015 - High Desert Water Rate Comparison

| Water Provider | Min. Monthly Service Charge 5/8" x 3/4" Meter | Min. Monthly Service Charge 3/4" Meter | Min. Monthly Service Charge 1" Meter | Water Usage Charge for 10 CCF | Water Usage Charge for 17 CCF | Drought Surcharge for 17 CCF | Water Usage Charge for 28 CCF | Drought Surcharge for 28 CCF |
|--------------------------|---|--|--------------------------------------|-------------------------------|-------------------------------|------------------------------|-------------------------------|------------------------------|
| AVR* | \$ 22.55 | \$ 33.83 | \$ 56.38 | \$ 28.45 | \$ 50.16 | \$ 0.48 | \$ 87.31 | \$ 5.72 |
| City of Hesperia | \$ 19.63 | \$ 19.63 | \$ 29.45 | \$ 9.00 | \$ 19.85 | | \$ 36.90 | |
| City of Victorville | \$ 18.25 | \$ 18.25 | \$ 18.25 | \$ 15.30 | \$ 26.01 | | \$ 42.84 | |
| County Serv. Area 64 | | \$ 14.10 | \$ 23.50 | \$ 8.50 | \$ 14.84 | | \$ 25.62 | |
| Golden State Water Co. * | \$ 16.15 | \$ 24.25 | \$ 40.40 | \$ 32.14 | \$ 42.84 | | \$ 101.13 | |
| Helendale CSD | | | \$ 26.25 | \$ 8.77 | \$ 15.35 | | \$ 25.69 | |

* Excludes CPUC taxes, fees, WRAM and MCBA surcharges and other CPUC approved balancing accounts

October 2015 - AVR Bills as a Percentage of Other Water Providers (Assuming 5/8" x 3/4" meter and usage of 17 ccf)

| | AVR | City of Hesperia | City of Victorville | Golden State Water |
|--------------------------------------|---------|------------------|---------------------|--------------------|
| Bill Based on Assumptions | \$73.19 | \$39.48 | \$44.26 | \$58.99 |
| AVR Bill as % of Water Purveyor Bill | 100.00% | 185.38% | 165.36% | 124.07% |

The CPUC does not seem inclined to address the disparity identified. As part of its Proposed Decision in the recent general rate case, the CPUC denied the Town's request for a study on how Ranchos might be run more efficiently. (See Proposed Decision, pp. 34, 42.)

Town staff performed a comparative analysis between investor ownership and municipal ownership. This comparative analysis was outlined in a presentation given to the Town Council on March 24, 2015, by Assistant Town Manager Marc Puckett. The Town's presentation conservatively made the assumption that most expenses, including capital expenditures, would be roughly the same under either scenario and used AVR's actual expenditure history as a basis. However, the analysis adjusted for the removal of the authorized rate of return, taxes, CPUC fees, and corporate office costs. Without these costs, Town staff estimates that it can stabilize water rates immediately upon completion of the acquisition. Although the Town does not expect to be able to decrease rates, Town staff believes the stabilization of rates to be the first step toward rates becoming more competitive with neighboring jurisdictions.

(3) Obstructing Recycled Water

The State Legislature has found and declared "that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the state." (Wat. Code, § 13511.) Accordingly, the development of recycled water sources is an important legislative goal of the State. (Wat. Code, § 13512.)

AVR does not provide recycled water within the Apple Valley Service Area. In addition, AVR has no plans to build a water reclamation plant that could service the Apple Valley Service Area.

In contrast, the Town, in a joint effort with the Victor Valley Wastewater Reclamation Authority ("VWVRA"), is currently constructing the Apple Valley Subregional Water Reclamation Plant (the "Plant") at Brewster Park in Apple Valley, which is anticipated to be complete by mid-2017. The Plant will treat a portion of the local wastewater and produce about one million gallons per day of quality recycled water. Initially, the recycled water will be used to water the Apple Valley golf course. However, over time, it is anticipated that it might be used to reduce the amount of potable water currently used for construction, irrigation and landscaping projects.

Since the inception of the Plant, AVR and its attorneys have made clear to the Town that it does not intend to permit the Town or VWVRA to provide recycled water to third parties within the Apple Valley Service Area. AVR has indicated a willingness to sue should the Town try to provide this important resource to others. Although AVR does not provide recycled water, it has argued that the provision of recycled water in its service area would be an inverse condemnation under the Public Utilities Code. While the Town has maintained that this pro-monopolistic law is not applicable to recycled water provision, the threat of suit is significant. AVR has indicated that despite its failure to develop recycled water sources within the Apple Valley Service Area, it would like to

serve as the retailer of recycled water, thereby permitting it to make a profit on a resource it played no role in developing.

(4) AVR's Lack of Transparency

At present, AVR's water rates are set at CPUC proceedings located in San Francisco. The CPUC has been under increasing public and legislative scrutiny for what commentators call the "regulatory capture problem" where the regulators are perceived to become too aligned with the interests of those they are supposed to regulate. In the last year in particular, following the explosion of a gas pipeline in San Bruno, the cozy relationship between the CPUC and public utilities has been thrust into the spotlight. In that case, the utility at issue was Pacific Gas and Electric. However, in light of Town staff's interaction with the CPUC over the last few years, there is no reason to doubt the same cozy relationship exists between the CPUC and AVR.

CPUC rate proceedings for AVR are typically handled by an administrative law judge appointed by the Commission before being submitted for final review by the Commission itself. The procedure is extremely time-consuming and involves significant review of numerous technical documents. Because most hearings take place in San Francisco, the majority of the process takes place outside the community and with little opportunity for public input. Occasionally, the CPUC will pay a single visit to the community for a public participation hearing, where community members have an opportunity to voice their concerns. However, the extent to which this single hearing influences the CPUC is questionable.

In contrast, under the ownership and control of the Town, rates would be set based on local needs and demands and at proceedings within the Town. Affected ratepayers would have greater access to the process and the opportunity to speak before elected officials. When the Town engages in the process of rate design (i.e. the development of rate tiers and billing practices), there will be an opportunity for significant public input. The public input process on rate design ensures ratepayers have a voice in this important issue for the community. Most significantly, ownership of the Apple Valley Water System by the Town would increase local control over the system and rate setting. Important water decisions that affect daily life and business activities in the community would be made by Town Council Members, who are elected by the ratepayers directly impacted by their decisions. In other words, Town ownership gives the Apple Valley community a voice in its water future.

Ownership of the Apple Valley Water System by the Town would also lead to more open, transparent operations and rate setting. Currently, some of the rate decisions made by the CPUC occur at behind-closed-door sessions not accessible to the public. Extensive and important documents provided by AVR in CPUC proceedings are redacted and provided under "seal" so as to be kept secret from ratepayers and the public at large. Under Town control, operation decisions and rate setting would be subject to the Brown Act, the Public Records Act, and other laws providing greater transparency in municipal governance. AVR is not subject to these public access and disclosure requirements.

Thus, Town ownership will result in greater local accountability and public transparency in the operation, environmental review and rate-setting process. Ownership by the Town, which is accountable to the citizens of the Apple Valley community, will result in better public service. The citizens of the Apple Valley community would have greater control over the rates and operations of the Apple Valley Water System, making it more responsive to the community's needs in community planning and in expeditiously addressing issues of local concern.

(5) Harmony with Land Use Authority

In contrast with AVR's ownership, the Town's ownership would harmonize water purveyance with land use authority. At present, AVR develops its system on a piecemeal and as-needed basis with little regard for master planning and with little to no oversight. AVR's methods, which lead to fragmentary expansion, are not conducive to a cohesive, adaptable system. Compounding this, AVR rarely, if ever, engages the Town in its planning efforts. It simply operates as an independent agency with little regard for demographics, land use patterns, or development potential. For example, AVR has frequently failed to perform any environmental review of its projects. Under Town ownership, future development of the Apple Valley Water System would occur in a manner compatible with the land use objectives of the Town.

In the long term, local control provides the opportunity of greater coordination and harmonization of community goals on a local basis. For example the Town can better provide recycled water, address environmental impacts of proposed capital projects and water policies, set rate design after community input, coordinate waste water operations with water operations, assure effective emergency response, and coordinate the timing of water projects with municipal projects, community needs, and land use planning.

(6) Integration with Municipal Functions

The Town's acquisition of the Apple Valley Water System will result in improved integration of water service with other municipal functions. In particular, unlike AVR, the Town will be able to take advantage of economies of scale as it already provides wastewater service within the Town. For example, the Town would be able to adopt a single, integrated billing system for both water and wastewater service. At present, as a result of numerous surcharges, AVR ratepayers are scarcely able to look at their water bills and understand what exactly they're paying for. In contrast, under Town ownership, ratepayers will be provided with more clarity in their bills. Customers are entitled to know on what basis they are being billed. When customers understand their bills, the bill can become a useful tool – the bill can act as a signal to encourage better behavior and make better decisions with regard to water.

(7) Improved Emergency Coordination and Response

The Town's acquisition of the Apple Valley Water System will result in improved emergency coordination and response. The Town's ownership and operation of the Apple Valley Water System would allow the Town to plan facilities in a manner best suited for a timely and efficient emergency response. In addition, it would give the

Town the responsibility to ensure that there is sufficient fire flow within the system to deal with emergencies when they arise. At present, although there is no indication that AVR is failing in this regard, the Town is forced to rely on AVR's performance and representations. Should the Town own and operate the system, the Town would have the control necessary to ensure that the pressure is adequate to handle emergencies if and when they arise.

(8) Environmental Sustainability and the Drought Response

Earlier this year, Governor Brown declared a statewide drought emergency. In connection with that declaration, the Governor has called for mandatory reductions in water use. These reductions have been used by AVR as an excuse and opportunity for further rate hikes and surcharges.

Because they lack land use authority (as discussed above), investor-owned public utilities are ill-suited to managing a drought emergency. Despite being the entity responsible for meeting the Governor's mandate, AVR has few tools available to it to address the drought emergency. Surcharges are the only tool AVR has at its disposal to address drought. AVR utilized surcharges prior to any other water purveyor in the High Desert. Town staff and the Town Council have received multiple comments from members of the public criticizing AVR's surcharge structure. On October 29, 2015, AVR filed an advice letter to revert to Stage 1 of its water shortage contingency plan, thereby removing surcharges. However, at any time in the future, AVR may simply file an advice letter to reinstate the surcharges.

In contrast to AVR, the Town possesses the regulatory police power of a general law city. Among other things, the Town is able to adjust land use standards, establish violations and accompanying fines, and set landscaping requirements. This would allow the Town to adopt a more holistic approach to tackling the drought in comparison to AVR's unsophisticated, one-note approach.

The current water reduction mandate – with the accompanying potential of penalties and surcharges being imposed by AVR, a private corporation – is also a factor to consider. The current drought and resulting emergency water reduction mandates underscore the importance of local control and accountability in addressing local needs and circumstances and the ever growing importance of water policy and practices.

Beyond simply improving the drought response, the Town's ownership of the system will result in the improved environmental sustainability of the system. As discussed above, AVR's expansion has often occurred in a piecemeal fashion with little oversight and no apparent regard for environmental consequences. In contrast, under CEQA, the Town would be required to consider the environmental impacts of any expansion. Likewise, as noted above, the Town's ownership and operation of the system is more conducive to the development of recycled water resources.

(9) Town as Customer

In addition to the foregoing factors, the Town will benefit from Town ownership and operation as a customer of the system. In particular, the Town is better able to establish more efficient billing. Likewise, the Town has faced significant rate increases in recent years for its own facilities.

At present, the Town has several water accounts with AVR. These accounts are not integrated and are not even on the same billing cycle. Under Town ownership, Town staff believes that the billing can be simplified to provide for easier accounting to various Town programs. In addition, the Town can better plan facilities to reduce the costs associated with providing water to the Town.

Likewise, as with all ratepayers, the Town is subject to excessive and escalating bills from AVR. In addition to the rate increases imposed upon ratepayers that are discussed earlier in this report, the Town has been subject to additional and especially harsh rate increases. This year, AVR, with the support of the CPUC and against the Town's protest, terminated tariff deviation agreements with the Town for both James Woody Park and the Apple Valley Golf Course. Town staff calculated that for July and August in fiscal year 2013/2014, the Town used 50,779 ccf of water for the Apple Valley Golf Course account and paid \$45,415.52. For the same period in fiscal year 2015/2016, the Town used 22,497 ccf and paid \$70,785.25. In short, despite cutting its usage by over 50% in one year, the Town's bill for the account increased by over 50%. The same story is true for James Woody Park, where the Town has cut usage by over 40%, yet the bill has increased by roughly 75%. For other parks served by AVR, the situation is not much better. Town staff has determined that despite an aggregate reduction in water usage of 49%, the Town's bill for these parks has decreased by just 2.5%.

Conclusion

Over 80% of the water service in California and throughout the nation is provided by government providers. There are only nine Class-A private CPUC-regulated water companies (those that have 10,000 or more connections) in California. Continuing with acquisition of the Apple Valley Water System through the eminent domain action, would bring the Apple Valley Water System in keeping with this norm of municipal water service in California. The Town undertook this process following years of public outcry about AVR's rates and surcharges, and pleas to the Town to step in and take control of the Apple Valley Water System to bring local control of operations and rate setting, increase public transparency in the process, and create the right incentives for investing in the community's water future. All of the above factors amply demonstrate that the proposed Project is in the public interest and necessity.

In evaluating whether the public interest and necessity require the Project, the Town Council should also consider and weigh countervailing factors. These include the uncertainties and costs of litigation, acquisition, and future operations, which could affect the amount and timing of any anticipated benefits. AVR has thus far engaged in

active and expensive campaign against the Town's acquisition efforts. It is anticipated that AVR will aggressively contest any action under the Eminent Domain Law.

FINDING 2: THE PROJECT IS PLANNED OR LOCATED IN A MANNER MOST COMPATIBLE WITH THE GREATEST PUBLIC GOOD AND THE LEAST PRIVATE INJURY

Under the proposed Project, the Town is acquiring the Apple Valley Water System, which consists of the facilities, infrastructure, real property, and all contractual and other rights necessary for operation of the Apple Valley Water System. Acquisition of the Apple Valley Water System will provide the Apple Valley ratepayers all of the benefits detailed in Finding 1 above, including: control of rising water rates, greater local control in decision making, greater transparency and accountability to the ratepayers. This action is being taken by the Town in response to input from the community of Apple Valley, expressing support for Town control of the Apple Valley Water System. Thus, the proposed Project is consistent with the greatest public good.

The Town's operation of the Apple Valley Water System is also consistent with the greatest public good. The Town already successfully provides management functions for wastewater service within the Town. In that role, the Town monitors and complies with all regulatory requirements; interfaces with regulatory agencies (such as the Regional Water Quality Control Board) to ensure permit compliance; and employs a team of trained billing, administrative, and operational personal to handle all aspects of the provision of wastewater services. Additionally, the Town maintains this system in accordance with the Sewer System Master Plan Update, which includes a 'Long-Term Routine Maintenance Program' including specifications for testing, inspections, and repairs, and also accounting for projected growth in the area. The System Master Plan Update considered land use data from the 2009 Apple Valley General Plan and local Specific Plans that would be served by the Town in order to generate future flow predictions and buildout requirements. The Town will use these same skills and expertise to support operations and any future maintenance or improvement needs if and when they arise.

At this time, the Town is not proposing any changes in existing operations or the construction of any system improvements, nor are alterations to operations or the physical system reasonably foreseeable at this time. As a prudent operator, the Town will study, propose, and evaluate any such changes (as necessary) on a forward going basis. As discussed in Finding 1, the Town has also reviewed alternatives to the Project, including the alternative of the status quo. The Town's FEIR also analyzes various project alternatives and configurations, including: no project; operation by the City of Hesperia; operation by the City of Victorville; and operation by the Town from an alternative facility.

The Town plans to acquire no more property from AVR than is necessary to operate the Apple Valley Water System, to minimize any private injury.

Further, by proposing to acquire the Apple Valley Water System (which covers a large portion of Apple Valley, a small portion of the City of Victorville, and a small unincorporated portion of the County of San Bernardino) the Town is proposing to

acquire the whole system which is operated as one unit, thus minimizing any impact of the Project on the small portions of the neighboring communities that are served by the system. Similarly, acquiring the entire Apple Valley Water System minimizes the impact on AVR as it does not leave any stranded assets of the System in place. Thus, there is little or no impact or private injury to the rest of AVR's operations if the Apple Valley Water System is acquired by the Town.

Although AVR recently acquired the Yermo Water Company and its facilities ("Yermo Water System"), the Project does not include acquisition of the Yermo Water System for the following reasons: (1) the Yermo Water System is located east of the City of Barstow, approximately 45 miles from the Town; (2) Yermo Water System does not provide any water services to the Town's residents, businesses, or other uses; (3) the Yermo Water System's facilities do not provide any other benefit to the Town's residents; and (4) the Yermo Water System is an entirely separate and distinct system that is not integrated into the AVR system. In light of the fact that the Yermo Water System was acquired in the last three months and is not integrated with the Apple Valley Water System, no private harm is anticipate to AVR or its parent companies as a result of the Town not acquiring this asset. To the extent AVR argues otherwise would be tantamount to an admission that Town ratepayers were expected to subsidize the acquisition and renovation of the Yermo Water System.

Additionally, to assure that the customers of the Apple Valley Water System are not negatively impacted by the potential acquisition by the Town, the Town has performed its due diligence. The Town has engaged in review and analysis of a proposed transition to municipal ownership and control with the objective that the transition will proceed efficiently and smoothly. Town staff will continue with process to ensure that, should the acquisition take place, the Town is ready to fulfill its duties as a water purveyor. The Town has a proven track record of safe, reliable, responsive, cost effective and efficient service to its constituents. The Town is planning the Project in a manner to minimize any interruption of the service to customers upon assumption of control of the Apple Valley Water System.

For the foregoing reasons, including the finding and discussion for Finding 1 which are incorporated by reference, the Project is also planned in a manner that is compatible with the greatest public good and least private injury.

FINDING 3: THE PROPERTY TO BE ACQUIRED IS NECESSARY FOR THE PROJECT

Section 1240.110 of the California Code of Civil Procedure provides in pertinent part that "any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire any interest necessary for that use including, but not limited to, . . . rights of any nature in water . . . [and] public utility facilities" A description of the property to be acquired is attached to the Resolutions of Necessity.

Under the proposed Project, the Town is only contemplating acquiring the interests of AVR that are necessary for Town ownership and operations of the Apple Valley Water System, which is a public water utility system. Thus, the Town seeks no more property

of AVR than is necessary to operate the Apple Valley Water System to serve the Apple Valley community.

Further, under AVR's control, Apple Valley is served by the Apple Valley Water System, which covers most of Apple Valley, small portions of the City of Victorville, and a small unincorporated portion of the County of San Bernardino. In one of the Resolutions of Necessity, the Town is only contemplating that portion of AVR's operations within the Town. Because the Apple Valley Water System is operated as a single entity, the Town is, however, proposing in the second Resolution of Necessity to acquire small portions of the service area located outside of the Town, to minimize any impact on the small portions of the system located outside of the Town and also to make certain water service is appropriately provided within the Town's boundaries. Section 1240.125 of the California Code of Civil Procedure expressly provides that a local public entity may acquire property outside its territorial limits for water supply purposes. Appropriate notices have been given to the jurisdictions involved and no negative comments or objections have been received from them or their constituents.

For the foregoing reasons, including the findings and discussions in Findings 1 and 2, which are incorporated by reference, the Town is only proposing to acquire the property that is necessary for the proposed Project, namely Town ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public.

FINDING 4: THE OFFER OF JUST COMPENSATION HAS BEEN MADE TO AVR

In accordance with the requirements of the California Government Code, the Town has had the Apple Valley Water System appraised for its fair market value. In addition, the Town has transmitted a formal offer to acquire the Apple Valley Water System. Furthermore, the Town has made additional reasonable efforts to acquire the Apple Valley Water System from AVR by negotiation.

For purposes of appraising the Apple Valley Water System, the Town retained Hayward Consulting Group. David L. Hayward, its principal, is an expert in valuing water utilities. Mr. Hayward holds a B.S. and M.S. in Economics from the University of Utah and has over 30 years of experience in public utility appraisals and utility assessments, including appraisals of water companies. Mr. Hayward is the author of several books on the subject, including: *Valuing a Water Utility* (3rd Ed., 2013); *Water Utility Costs, Values, Rates, and Subsidies: A Practical Guide for Regulators and Economists* (2012); and *The Economic Value of Water Utility Service* (2009). As part of the appraisal process, Mr. Hayward made himself available to AVR and toured the Apple Valley Water System's facilities. He also reviewed publicly available information on AVR and the Apple Valley Water System, including information from CPUC proceedings and filings, and other public sources.

Mr. Hayward appraised the fair market value of the entire Apple Valley Water System, which includes the facilities, infrastructure, real property, and all contractual and other rights necessary for the operation of the system, including from a business valuation perspective. On June 26, 2015, in compliance with the requirements of Section 7267.2 of the Government Code, the Town transmitted a formal offer to acquire the Apple

Valley Water System from AVR for its appraised fair market value of \$50.3 million following the appraisal process. AVR rejected that offer on July 24, 2015 and has refused to negotiate with the Town over the potential acquisition.

Accordingly, the Town has complied with its obligations under California Government Code Section 7267.2, in making an updated offer of just compensation to AVR.

FINDING 5: THE TOWN'S PROJECT IS A MORE NECESSARY USE OF THE APPLE VALLEY WATER SYSTEM

As a public utility that provides water service, the Apple Valley Water System is already appropriated to a public use. (See Article X, Section 5 of the California Constitution.) As amply demonstrated by the above findings and discussion, which are incorporated by reference herein, the proposed Project, public use and the acquisition by the Town is a more necessary use than the use to which the Apple Valley Water System is presently put to by AVR, as defined within the meaning of California Code of Civil Procedure Section 1240.610, *et seq.*

FINDING 6: THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT HAVE BEEN MET

Today, November 17, the Town Council considered Resolution No. 2015-42 certifying the FEIR for the Project and approving the Project. That Resolution is incorporated herein by this reference. No further action under CEQA is required.

FISCAL IMPACT:

As stated previously, Town staff performed a comparative analysis between investor ownership and municipal ownership. The Town's experts conservatively made the assumption that most expenses, including capital expenditures, would be roughly the same under either scenario and used AVR's actual expenditure history as a basis. However, the analysis adjusted for the removal of the authorized rate of return, taxes, CPUC fees, and corporate office costs. Without these costs, Town staff estimates that it can stabilize water rates immediately upon completion of the acquisition.

The analysis also highlighted key financial benefits of local ownership which included the fact that the rate structure would not include profit for private shareholders and that the Town would not pay federal income taxes, state income taxes, or local property taxes. According to AVR's Annual Report for 2014, the taxes paid amounted to \$3,800,909 and net income amounted to \$4,691,639, which together totaled \$8,492,548.

These resources would immediately be available to fund debt service on any bonds issued to acquire the Apple Valley Water System. This total does not take into account possible operational efficiencies which may be found within AVR's organization. For example, AVR is a wholly-owned subsidiary of Park Water Company. Inter-company service agreements exist between Park Water Company and AVR for many central administrative functions. For these services, AVR pays Park Water Company the cost

plus a percentage for profit. In addition, it is probable that corporate office costs can be reduced.

Town staff estimates that, collectively, the resources immediately available upon acquisition to fund debt service requirements exceed \$10,000,000.

Assuming the Town issues a 30-year revenue bond at 4.75% to fund the acquisition, annual debt service requirements would range between \$3.2 and \$5.3 million based on a valuation of the system at between \$50 and \$83.3 million. At the high end of this range of values, annual debt service requirements would amount to half of the resources immediately available to fund the bond payments. The revenue bonds would be solely supported from resources generated from ratepayers of the Apple Valley Water System.

Further, the Town can issue debt today at an interest rate of approximately 3.7 – 4.0% which is significantly below the rate of interest assumed above. The lower interest rate would significantly reduce borrowing costs freeing up resources to use for additional capital improvements or reduction of rates.

No property tax increases would be necessary to fund the acquisition because the present rates coupled with cost savings are, assuming a reasonable range of valuations, sufficient to fund the annual bonded debt payments.

Attachments:

- A — Resolution No. 2015-43 Authorizing Acquisition by Eminent Domain of Those Portions of Apple Valley Ranchos Water Company's Water System Known as the Apple Valley Water System to the Extent Located Within the Town of Apple Valley
- B — Resolution No. 2015-44 Authorizing Acquisition by Eminent Domain of Those Portions of Apple Valley Ranchos Water Company's Water System Known as the Apple Valley Water System to the Extent Located within Portions of the City of Victorville and an Unincorporated Area of the County of San Bernardino, State of California, or Otherwise Outside the Boundaries of the Town of Apple Valley

EXHIBITS A and B – Map and Description of Apple Valley Ranchos Water System on file in the Town Clerks Office and available for viewing at <http://avh2ours.com/council>.

RESOLUTION NO. 2015-43

RESOLUTION OF NECESSITY OF THE TOWN OF APPLE VALLEY AUTHORIZING ACQUISITION BY EMINENT DOMAIN OF THOSE PORTIONS OF APPLE VALLEY RANCHOS WATER COMPANY'S WATER SYSTEM KNOWN AS THE APPLE VALLEY WATER SYSTEM TO THE EXTENT LOCATED WITHIN THE TOWN OF APPLE VALLEY

WHEREAS, by this Resolution of Necessity the Town proposes to acquire that portion of the Apple Valley Water System as further described in Exhibits "A" and "B," to the extent located within the Town's limits, for a proposed public project, to wit, for the public ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public (hereinafter, the Project) pursuant to Sections 1240.010, 1240.110, 1240.120, 1240.610, *et seq.*, and 1240.650 of the California Code of Civil Procedure; Sections 37350.5 and 38730 of the California Government Code; and Article I, Section 19, Article X, Section 5, and Article XI Section 9 of the Constitution of the State of California; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the Town scheduled a public hearing on this proposed Resolution of Necessity for Tuesday, November 17, 2015, at 6:30 p.m. at the Town Council Chambers at Town Hall located at 14955 Dale Evans Parkway, in Apple Valley, California, and gave Apple Valley Ranchos Water Company notice and an opportunity to appear and be heard at the hearing on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the Town Council, and all interested parties were afforded an opportunity to be heard; and

WHEREAS, the Town Council may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apple Valley as follows:

Section 1. Incorporation of Recitals and Staff Report. The Town Council finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

Section 2. CEQA Compliance. In accordance with the California Environmental Quality Act (Pub. Res. Code, § 21000 *et seq.* [CEQA]) and the State Guidelines for Implementation of CEQA (Tit. 14, Cal. Code Regs § 15000 *et seq.*), the Town Council certified a final Environmental Impact Report (State Clearinghouse # 2015061078) for the Project that fully analyzes and discloses the potential environmental impacts associated with the Town's acquisition of the Apple Valley Water

System. No further environmental review is required for the Town Council to adopt this Resolution of Necessity.

Section 3. Compliance with California Code of Civil Procedure. The Town has complied with the requirements of section 1245.235 of the California Code of Civil Procedure, regarding notice and the hearing.

Section 4. Public Use. The Proposed Project, namely, for public ownership, operation, and maintenance of the Apple Valley Water System to provide water service to the public, constitutes a public use.

Section 5. Description of Property. Attached as Exhibit "A" is a map of the Apple Valley Water System to be acquired within the Town of Apple Valley. Attached as Exhibit "B" is a description of the property and its location, to be acquired.

Section 6. Findings. The Town Council hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The property defined, described and depicted in Exhibits "A" and "B" is necessary for the proposed Project; and
- (d) The offer required by Section 7267.2 of the California Government Code was made.

Section 7. More Necessary Public Use. The Town Council further finds and determines that use of the Apple Valley Water System by the Town for the proposed Project is a more necessary public use within the meaning of California Code of Civil Procedure sections 1240.610 and 1240.650, than the use to which the Apple Valley Water System is already appropriated.

Section 8. Further Activities. The Town Attorney is hereby authorized to acquire the Apple Valley Water System in the name of and on behalf of the Town by eminent domain and the Town Attorney is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. The Town Attorney is further authorized to take such steps as may be authorized and required by law, and to make such deposits as may be required by order of court, to permit the Town to take possession of and use the Apple Valley Water System as needed. The Town Attorney is further authorized to correct any errors or to make or agree to non-material changes in the description of the property interests to be acquired that are deemed necessary for the conduct of the condemnation action, or other proceedings or transactions required

to acquire the Apple Valley Water System. The Town Attorney is further authorized to reduce or modify the extent of the property or other interests to be acquired, with the consent of the Court and/or the parties, so as to reduce the compensation payable in the action where such change would not substantially impair the operation of the proposed Project.

Section 9. This Resolution shall take effect immediately upon adoption. The Mayor Pro Tem shall sign this Resolution and the Town Clerk shall attest and certify to the passage and adoption thereof.

PASSED AND ADOPTED this 17th day of November, 2015.

Mayor Pro Tem

ATTEST:

Town Clerk

EXHIBIT A

MAP OF APPLE VALLEY WATER SYSTEM WITHIN TOWN LIMITS

(On File in Town Clerks Office and available for viewing at <http://avh2ours.com/council>)

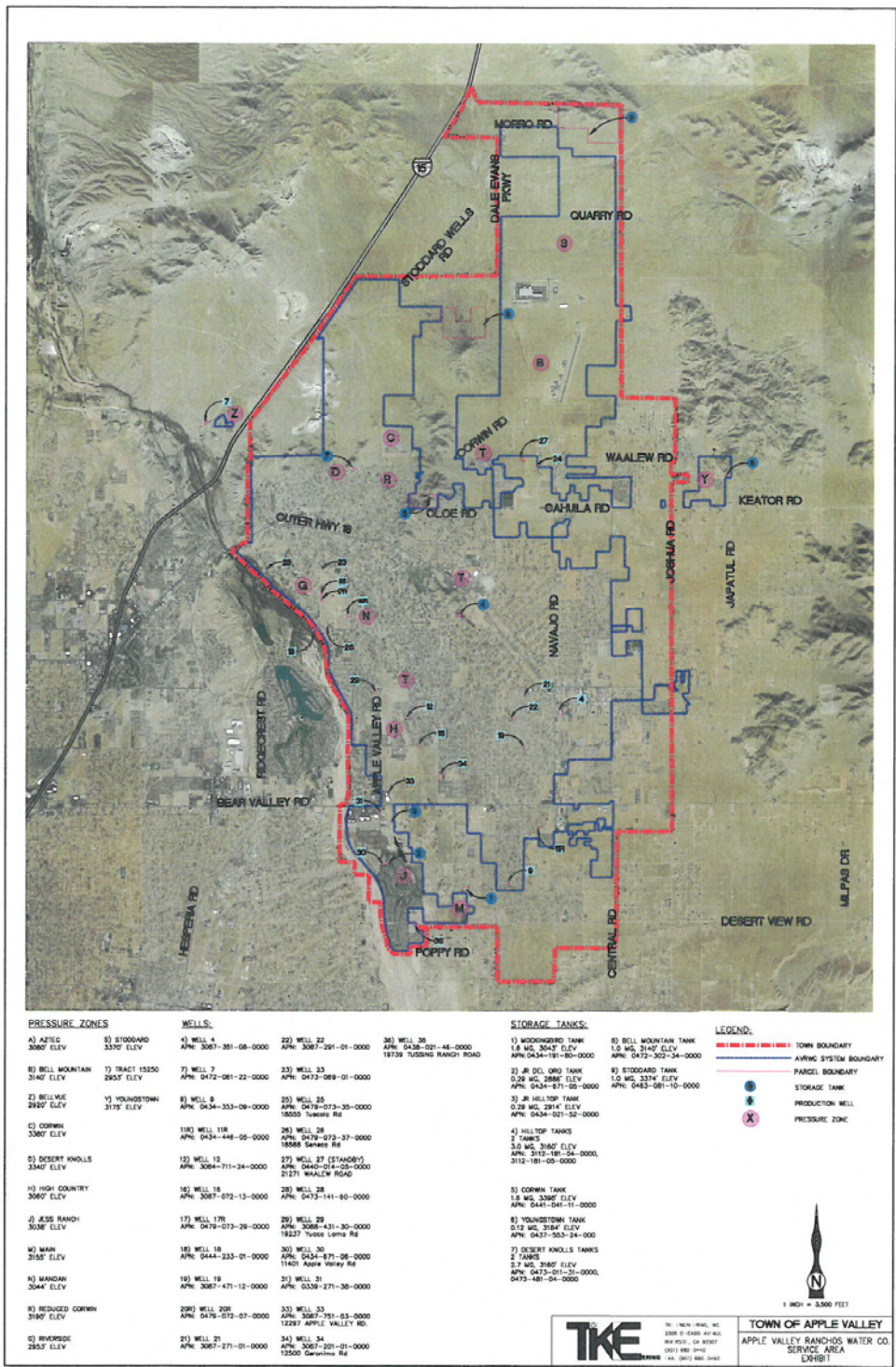


EXHIBIT B

DESCRIPTION OF APPLE VALLEY WATER SYSTEM

(On File in Town Clerks Office and available for viewing at <http://avh2ours.com/council>)

RESOLUTION NO. 2015-44

RESOLUTION OF NECESSITY OF THE TOWN OF APPLE VALLEY AUTHORIZING ACQUISITION BY EMINENT DOMAIN OF PORTIONS OF APPLE VALLEY RANCHOS WATER COMPANY'S WATER SYSTEM KNOWN AS THE APPLE VALLEY WATER SYSTEM TO THE EXTENT LOCATED WITHIN PORTIONS OF THE CITY OF VICTORVILLE AND AN UNINCORPORATED AREA OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, OR OTHERWISE OUTSIDE THE BOUNDARIES OF THE TOWN OF APPLE VALLEY

WHEREAS, by this Resolution of Necessity, the Town proposes to acquire that portion of the Apple Valley Water System as further described in Exhibits "A" and "B," to the extent located outside the Town's limits, including in small portions of the City of Victorville and an unincorporated area of the County of San Bernardino, for a proposed public project, to wit, for the public ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public (hereinafter, the Project), pursuant to Sections 1240.010, 1240.050, 1240.110, 1240.120, 1240.125, 1240.610, *et seq.*, and 1240.650 of the California Code of Civil Procedure; Sections 37350.5 and 38730 of the California Government Code; and Article I, Section 19, Article X, Section 5, and Article XI, Section 9 of the Constitution of the State of California; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing on this proposed Resolution of Necessity for Tuesday, November 17, 2015, at 6:30 p.m. at the Town Council Chambers at Town Hall located at 14955 Dale Evans Parkway, in Apple Valley, California, and gave Apple Valley Ranchos Water Company notice and an opportunity to appear and be heard at the hearing on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the Town Council, and all interested parties were afforded and an opportunity to be heard; and,

WHEREAS, the Town Council may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apple Valley as follows:

Section 1. Incorporation of Recitals and Staff Report. The Town Council finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

Section 2. CEQA Compliance. In accordance with the California

Environmental Quality Act (Pub. Res. Code, § 21000 *et seq.* [CEQA]) and the State Guidelines for Implementation of CEQA (Tit. 14, Cal. Code Regs., § 15000 *et seq.*), the Town Council certified a final Environmental Impact Report (State Clearinghouse # 2015061078) for the Project that fully analyzes and discloses the potential environmental impacts associated with the Town's acquisition of the Apple Valley Water System. No further environmental review is required for the Town to adopt this Resolution of Necessity.

Section 3. Compliance with California Code of Civil Procedure. The Town has complied with the requirements of Section 1245.235 of the California Code of Civil Procedure, regarding notice and the hearing.

Section 4. Public Use. The proposed Project, namely, for public ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public, constitutes a public use.

Section 5. Description of Property. Attached as Exhibit "A" is a map of the Apple Valley Water System to be acquired outside the Town's limits, including small portions of the City of Victorville and an unincorporated area of the County of San Bernardino. Attached as Exhibit "B" is a description of the property and its location, to be acquired.

The Yermo water system, which was recently acquired by Apple Valley Ranchos Water Company, is not considered a part of the Apple Valley Water System. The Yermo water system located approximately 45 miles from the Town; does not provide any water services to the Town's residents, businesses, or other uses; and its facilities do not provide any other benefit to the Town's residents. Furthermore, the Yermo water system is an entirely separate and distinct system that is not integrated into the Apple Valley Water System.

Section 6. Findings. The Town Council hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The property defined, described and depicted in Exhibits "A" and "B" is necessary for the proposed Project; and
- (d) The offer required by Section 7267.2 of the California Government Code was made.

Section 7. More Necessary Public Use. The Town Council further finds and

determines that the use of the Apple Valley Water System by the Town for the proposed Project is a more necessary public use within the meaning of California Code of Civil Procedure sections 1240.610 and 1240.650, than the use to which the Apple Valley Water System is already appropriated.

Section 8. Further Activities. The Town Attorney is hereby authorized to acquire the Apple Valley Water System in the name of and on behalf of the Town by eminent domain, and the Town Attorney is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. The Town Attorney is further authorized to take such steps as may be authorized and required by law, and to make such deposits as may be required by order of court, to permit the Town to take possession of and use the Apple Valley Water System as needed. The Town Attorney is further authorized to correct any errors or to make or agree to non-material changes in the description of the property interests to be acquired that are deemed necessary for the conduct of the condemnation action, or other proceedings or transactions required to acquire the Apple Valley Water System. The Town Attorney is further authorized to reduce or modify the extent of the property or other interests to be acquired, if with the consent of the Court and/or the parties, so as to reduce the compensation payable in the action where such change would not substantially impair the operation of the proposed Project.

Section 9. This Resolution shall take effect immediately upon adoption. The Mayor Pro Tem shall sign this Resolution and the Town Clerk shall attest and certify to the passage and adoption thereof.

PASSED AND ADOPTED this 17th day of November, 2015.

Mayor Pro Tem

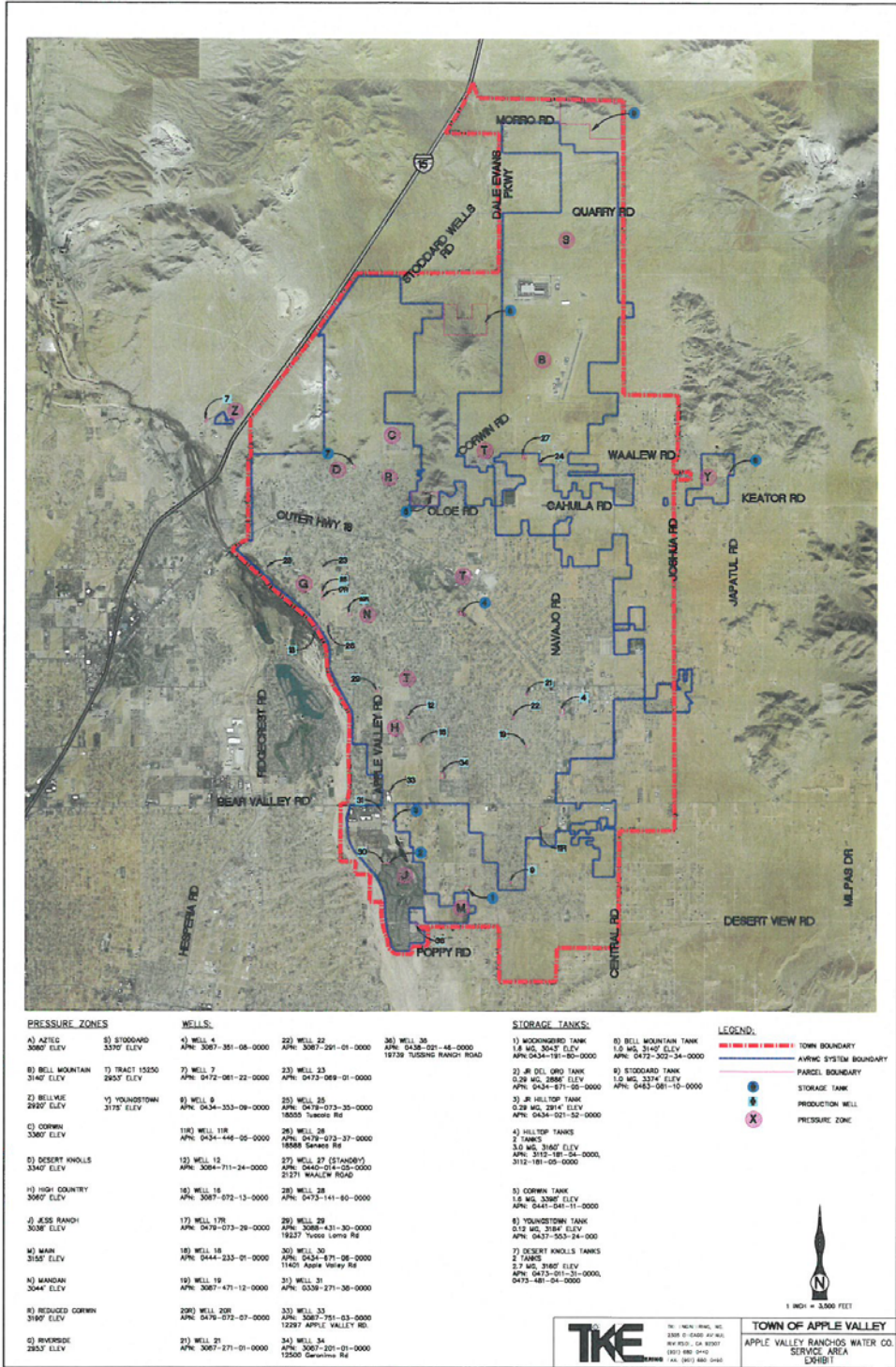
ATTEST:

Town Clerk

EXHIBIT A

MAP OF APPLE VALLEY WATER SYSTEM OUTSIDE TOWN LIMITS

(On File in Town Clerks Office and available for viewing at <http://avh2ours.com/council>)



| PRESSURE ZONES | WELLS | STORAGE TANKS | LEGEND |
|--------------------------------|---------------------------------------|---|--|
| A) APPLE 3087 ELEV | 1) WELL 4 APN: 3087-351-08-0000 | 1) WOODBOND TANK 1.8 MG, 3142' ELEV APN: 0434-191-90-0000 | --- TOWN BOUNDARY --- AIRWAY SYSTEM BOUNDARY --- PARCEL BOUNDARY |
| B) BELL MOUNTAIN 2947 ELEV | 2) TRACT 10320 2957 ELEV | 2) AN DILL ORO TANK 0.29 MG, 2986' ELEV APN: 0434-871-02-0000 | ● STORAGE TANK ● PRODUCTION WELL ● X PRESSURE ZONE |
| C) BELLVIEW 2920' ELEV | 3) YOUNGSTOWN 3175' ELEV | 3) AN HILLTOP TANK 0.29 MG, 2914' ELEV APN: 0434-021-52-0000 | |
| D) CORWIN 3367 ELEV | 4) WELL 8 APN: 0434-333-09-0000 | 4) HILLTOP TANKS 2 TANKS 3.0 MG, 3167' ELEV APN: 3112-181-04-0000, 3112-181-05-0000 | |
| E) DESERT KNOLLS 3347 ELEV | 5) WELL 10 APN: 0434-444-02-0000 | 5) CORWIN TANK 1.8 MG, 3067' ELEV APN: 0441-041-11-0000 | |
| F) HIGH COUNTRY 3067 ELEV | 6) WELL 11 APN: 0434-711-24-0000 | 6) YOUNGSTOWN TANK 0.12 MG, 3162' ELEV APN: 0437-503-24-0000 | |
| G) JESS BANCH 3038 ELEV | 7) WELL 12 APN: 3084-711-24-0000 | 7) DESERT KNOLLS TANKS 2 TANKS 2.7 MG, 3167' ELEV APN: 0437-011-20-0000, 0473-481-04-0000 | |
| H) MAH 3158' ELEV | 8) WELL 13 APN: 0434-333-09-0000 | | |
| I) MANDAN 3044' ELEV | 9) WELL 14 APN: 0434-444-02-0000 | | |
| J) REDUCED CORWIN 3197 ELEV | 10) WELL 15 APN: 3087-471-12-0000 | | |
| K) RIVERSIDE 2853' ELEV | 11) WELL 16 APN: 0434-711-24-0000 | | |
| | 12) WELL 17 APN: 0434-711-24-0000 | | |
| | 13) WELL 18 APN: 0434-711-24-0000 | | |
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| | 94) WELL 99 APN: 0434-711-24-0000 | | |
| | 95) WELL 100 APN: 0434-711-24-0000 | | |

EXHIBIT B

DESCRIPTION OF APPLE VALLEY WATER SYSTEM

(On File in Town Clerks Office and available for viewing at <http://avh2ours.com/council>)