

Severance of Yermo must be part of the Project Description, and the logical and foreseeable environmental consequences of that severance must be evaluated in the DEIR.

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5. The Project Description fails to disclose and discuss changes in the regulatory structure that would result from the proposed acquisition.

The Project Description should also recognize that the acquisition of AVRWC's system in the Town will result in a shift from a public utility regulated by the California Public Utilities Commission ("CPUC"), to a municipal utility without CPUC oversight. Under a municipal structure, property owners would also be permitted to invoke the Proposition 218 process to stop rate increases, which may affect the Town's ability to maintain the system's infrastructure and thus a reliable system. In addition, AVRWC is subject to certain customer service response requirements and other service requirements under CPUC General Order 103-A; a municipal utility is not subject to that order. General Order 103-A also requires AVRWC to have a Summary Operations and Maintenance Plan which is updated every 5 years. As noted above, the Town has not prepared an Operational Plan and the potential environmental impacts of the Town's proposed operation of AVRWC's system cannot be evaluated without one.

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The CPUC also regulates the rate setting process and rate increases for the benefit of customers of AVRWC in ways a municipal utility does not, which, again, raises reliability questions. Under private ownership, shareholders generally want a return on their investment which provides incentive for the company to achieve savings in between rate cases but which the CPUC requires to be passed on to ratepayers in each succeeding rate case. This promotes efficiency and incentive for the company to address replacement of aging infrastructure so that service quality and reliability are maintained.

The CPUC process provides public meetings at which customers can express their desires for lower rates, and the Office of Ratepayer Advocates represents customers in the CPUC proceedings. Its statutory mission is "to obtain the lowest possible rate for service consistent with reliable and safe service levels." The CPUC, through an adversarial process that includes testimony, hearings and briefs, weighs all evidence and points of view and makes a rate-setting determination based on the expenses and capital projects reasonably necessary for the long term best interests of customers, while maintaining safe and reliable service. None of those protections exist with a municipal system.

The CPUC forward-looking rate case process requires advanced planning of investment in infrastructure as evidenced by AVRWC's annual capital budgets and 5-year capital budgets. The DEIR states that the project would allow the Town to pursue grant funding, but does not disclose the fact that private companies are also eligible for grant funding and that the CPUC does allow private companies to pursue grant projects; a

private company just cannot include those projects in its rate base, which is an advantage to the rate payers. AVRWC, and its parent Park Water Company, have pursued grant funding and Park has received \$2.5 million in grant funding.

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Under municipal ownership, the Town council is subject to the political process and may tend to favor lower rates over spending the money necessary to keep the system maintained and the infrastructure timely replaced. Several comments in the DEIR suggest that the Town has no intention of investing capital in the water system in the foreseeable future. And, as noted above, even if the Town council acts responsibly, its decision making is subject to second guessing of the public under the Proposition 218 process. To the extent infrastructure reliability and maintenance may reasonably be negatively affected by the proposed project, resulting in potential significant environmental impacts, these issues should be disclosed and discussed in the DEIR.

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6. The Project Description must describe the reasonably foreseeable future construction of a new O&M facility in Apple Valley and planned system upgrades.

The DEIR states:

“The existing buildings at the site would be maintained at their current locations and continue to house their current O&M functions...Given that the existing O&M facility has sufficient existing space and facilities to support current O&M staff and activities, the proposed Project would not involve construction of new facilities, as identified in the Initial Study prepared for the proposed Project and included in Appendix A.” (DEIR pp. 35-36)

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As the Town is well aware from its participation in the latest rate case, the existing AVRWC Operation and Maintenance building in the Town is too small for existing operations, does not meet current seismic codes or comply with ADA requirements, and is planned to be replaced. This new construction needs to be addressed in the DEIR as the change in ownership will trigger requirements to comply with current building codes.

In addition, the DEIR states that “the proposed Project does not include any expansion in the delivery capacity of the AVR System nor does it contemplate any physical upgrades to any of the AVR System facilities.” (DEIR p. 50) AVRWC has reasonably foreseeable system improvements planned over the next 5 years to upgrade the system as part of its capital plan. These improvements should be evaluated in the DEIR or, if the

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Town does not plan to do any of these projects, the potential, significant environmental consequences of that decision, including degradation of water quality, reduced system pressure, reduced ability to provide fire flows and public fire protection, increases in lost water, and reductions in pump efficiency, should be evaluated and disclosed.

AVRWC also has a Main Replacement Program that was developed by an outside consultant Asset Management Study on Mains (with Kanew analysis) and is designed to avoid catastrophic failures of aging mains and to achieve the AWWA standards for leak rates. Again, this should have been disclosed as a reasonably foreseeable future project, and the lack of any reference in the DEIR to the Main Replacement Program causes serious environmental concerns. By not replacing and upgrading mains that have reached or exceeded the end of their useful life, there will be environmental impacts that are not included or discussed in the EIR.

The Town, in AVRWC's current CPUC rate case proceeding, advocated for substantial reduction in the level of main replacements, a level that would result in a replacement period of about 200 years and would increase leak rates and the potential for pipe failures. The Town maintained this advocacy even after review of additional testimony resulted in AVRWC and ORA reaching a settlement on the issues that included a rate of replacement substantially closer to that initially recommended by AVRWC. The Town did not address any of the engineering studies that were the basis of the main replacement program and introduced no independent analysis, but simply argued that mains should not be replaced because rates were too high. The Town's position on main replacements, were the Project to be approved, would result in a significant "change in operation" compared to the reasonably foreseeable project planning by AVRWC.

In its Application for Rehearing on CPUC Resolution W-4998, the Town also argued that the replacement and upgrade of system infrastructure that has exceeded its useful life is part of the "whole of the action" and that not including the impact of those replacements and upgrades of infrastructure exceeding its useful life in the CEQA review constitutes improper piecemealing of the project. By its own arguments to the CPUC, the absence of any analysis in the DEIR of the impacts of the office building project, the main replacement program, and other projects that are necessary to upkeep AVRWC's system, constitutes improper piecemealing of the Town's proposed "Project."

7. The DEIR has numerous deficiencies and needs to be revised and expanded; the analysis sections should be revised based on an updated Project Description and the DEIR recirculated.

The Project Description in the DEIR is anything but an accurate, stable and finite project description as required for an informative and legally sufficient EIR. (*County*

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*of Inyo v. City of Los Angeles* 71 Cal. App.3d 185, 199 (1977).) It is, in fact, a curtailed, enigmatic and unstable project description. *Id.* at 198. Instead of studying the operations issue, the Town has impermissibly narrowed the description (system to be operated “in the same manner” as the current private operator) so there would be no impacts; and, true to form, the DEIR finds no significant environmental impacts.

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The Town is itself unsure how it will operate the system upon acquisition. The Town does not know the scope of the project or all its facets since it has not studied how the system will be operated or whether it has the expertise to do so. These issues have not been studied and do have environmental implications. The DEIR is therefore premature and merely a sham to get beyond the environmental review stage and deal with the operational aspects later. This is impermissible project segmenting where a single project is divided into smaller individual projects to avoid consideration of environmental impacts of the project as a whole. (*Orinda Assn. v. Board of Supervisors*, 182 Cal.App.3d 1145, 1171 (1986).) And where the DEIR project description omits critical aspects of the Project, it results in an understated and inadequate analysis of the Project’s impacts. (See e.g., *San Joaquin Raptor Wildlife Rescue Center v. Arambel and Rose Development, Inc.* 27 Cal.App.4<sup>th</sup> 713, 722-735 (1994)). A clear and definite project needs to be defined in the Project Description and then analyzed in the DEIR after preparation of a comprehensive operations plan so that operational aspects of the Project are not impermissibly deferred, piecemealed or otherwise ignored.

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The DEIR fails to address whether the Town would continue AVRWC’s low-income discount program to needy individuals and seniors. Under Proposition 218, the Town is prohibited from instituting such a program. The lack of a low-income discount program will have a significant impact on citizens in need, leading to potential population shifts and impacts on social services.

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- B. The discussion of alternatives is inadequate since the Project Description is unstable and there is no substantial evidence that operation of the system by Victorville or Hesperia is feasible.

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The requirement that EIRs identify and discuss alternatives to the project stems from the fundamental statutory policy that public agencies should require the implementation of feasible alternatives to reduce a project’s significant environmental impacts. (*Citizens of Goleta Valley v. Board of Supervisors* 52 Cal.3d 553, 564 (1990); Public Resources Code Section 21002.) The alternatives presented in an EIR must be potentially feasible. (*City of Long Beach v. Los Angeles Unified Sch. Dist.* 176 Cal.App.4<sup>th</sup> 889, 920 (2009); 14 Cal. Code Regs. Section 15126.6(a).)

As discussed above, for a number of reasons, the DEIR does not contain an adequate Project Description. Absent an adequate description, it is impossible to know whether there are potentially significant environmental impacts. And without that information, it is impossible to select a meaningful range of alternatives designed to avoid or substantially lessen the Project's impacts. Nor is there any substantial evidence in the DEIR that operation of the AVRWC system by either the City of Victorville or City of Hesperia is practical, feasible, economic, or that it would fulfill any of the Project objectives. This is again because the Town has done no Operations Study that would address these issues prior to conducting this EIR process. Instead, the Town merely shifted the question of potential operation by these neighboring communities from the Project Description to the Alternatives section in order to streamline the analysis and avoid having to discuss the potential impacts of the alternatives in detail. 14 Cal. Code Regs. Section 15126.6(d).

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- C. The Town's advocacy of the project during the EIR process demonstrates its predisposition on the project outcome and inability to act as an unbiased Lead Agency.

*Save Tara v. City of West Hollywood* 45 Cal.4th 116, 139 (2008) explains the general principle that before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.' ” *Id.* The critical question based upon all the surrounding circumstances is “whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures, that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. *Id.* Under CEQA, the Lead Agency has an obligation to consider all evidence of significant environmental impacts prior to certification of the EIR and must avoid predisposition or prejudging the evidence to favor a project during the CEQA process. This is especially true when the Lead Agency is also the project applicant and is defining the project in such a way that it could have no impacts, selecting and retaining the project's environmental consultants, defining the scope of the CEQA inquiry, certifying the EIR and ultimately voting on its own project.

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The Town's actions to narrow the Project Description and “propose” that the Town operate the system “in the same manner” as AVRWC “for the purpose of the technical analyses in this EIR” were designed to further the Project and foreclose or at least truncate, the environmental review. This is because the Town had already committed itself to the Project before the review process even began. Substantial evidence exists that the Town has operated as a biased advocate in anticipation of the CEQA process and is unable to act as an open-minded Lead Agency as contemplated by CEQA. This evidence

includes a Town sponsored advocacy website called “H2Ours” or [www.avh2ours.com](http://www.avh2ours.com), supporting the Town’s acquisition of AVRWC. The Town’s overt advocacy in favor of acquisition has also included radio advertising, newspaper advertising, cable television advertising and digital advertising, including on the Town’s official Facebook page.

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D. The DEIR’s Hydrology and Water Quality analysis is legally inadequate.

As discussed above, if the Town does not continue AVRWC’s Main Replacement Program, as the DEIR and prior Town comments in the rate case suggest, there will be an increase in the rate of leaks and potential for pipe failures. Because of soil conditions in Apple Valley and because many of the mains are located in public rights of way, water lost due to leaks and pipe failures tends to surface, cause erosion, disrupt traffic, and be lost to evaporation or be lost down storm drains, rather than return to the groundwater aquifer. To meet the same demand, more water will need to be pumped from the ground which will contribute to over-drafting the groundwater basin. In addition, the DEIR’s discussion of the relationship between potential increased water use in response to “water pricing” that may be reduced, or not increased is unclear. (DEIR, pp. 69-70) The DEIR’s conclusion is that rates will not impact “groundwater supply reliability.” But “reliability” of the ground water supply is not the appropriate measure. Increased use of ground water is a significant potential impact that will require more ground water replenishment likely using imported State Water Project (SWP) water. The associated impacts should be discussed in the DEIR.

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In addition, the EPA and State Board DDW are continually evaluating and proposing Maximum Contaminant Levels (MCL) for new constituents to be monitored, as well as revising existing MCLs. The exact same concentrations of constituents that are now acceptable could result in a degradation of water quality, with respect to what is allowed for potable water, due to changed water quality regulations. AVRWC’s personnel take water samples, deliver them to a lab, and handle routine reporting. However AVRWC’s primary water quality expertise comes through administrative support from Park Water. The functions of tracking ongoing changes in water quality regulations and conducting planning to meet them, is accomplished at Park. The DEIR does not explain how the Town will replace this function or what impact the loss of this function will have on the Town’s ability to ensure future compliance with water quality standards.

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An academic study recently performed found that government-owned and operated water systems have a worse record than privately-owned water systems when it comes to compliance with the Safe Drinking Water Act (SDWA).<sup>1</sup> The DEIR notes that the system must comply with SDWA requirements and states that AVRWC has done so

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<sup>1</sup> Konisky and Teodoro, “When Governments Regulate Governments,” (2015) pp. 1, 22.

under its ownership. (DEIR p. 33) The DEIR states that based on AVRWC's 2009/10 Consumer Confidence and Water Quality Report (CCR), there have been no contaminants detected that exceed primary or secondary standards. In section 4.3, purportedly addressing water quality, there is no discussion of the SDWA or water quality and no discussion of how the Town plans to maintain AVRWC's level of compliance with the SDWA in an ever-changing water quality landscape when the concentration of constituents in the groundwater can change (especially if the groundwater basin is receiving less recharge) and the regulations and maximum contaminant levels are also changing. (DEIR pp. 64-71)

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The DEIR assumes that compliance with SDWA will be maintained without any explanation of how this will be done or with what effects. The DEIR, refers to AVRWC's 2009/10 CCR but did not reference any of the subsequent annual reports in the last 5 years.

While none of AVRWC's active wells currently exceed water quality standards, this is a result of AVRWC's active management and planning - not because the groundwater in the Alto sub-basin meets water quality standards. There are water quality issues in the Alto sub-basin, including arsenic and fluoride, which can affect the groundwater in AVRWC's area. AVRWC has had to remove one of its wells from active status due to high arsenic levels, and other systems nearby have fluoride issues. AVRWC has analyzed the groundwater basin and determined the best sites to drill new wells for both optimal water quantity and quality. The best sites are in the southwest part of AVRWC's service area, so well-site planning has to be done in coordination with operational planning; if well sites are concentrated in one area of the system, then the transmission capacity of the system must be up-graded to get the water to other parts of the system. The DEIR fails to discuss the potential impacts of any of these factors. Maintenance of water quality requires an active effort and long-term awareness of the groundwater basin, developments in water quality regulations, and coordination with engineering and operations. The DEIR evaluated conditions in 2010 and went no further with the analysis.

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- E. The DEIR's failure to include discussion of the Main Replacement Program has impacts on transportation and traffic and public safety.

As discussed above, if the Town does not continue AVRWC's Main Replacement Program as the DEIR indicates, there will be an increase in the rate of leaks and potential for pipe failures. Leaks, and especially pipe failures, because many of the mains are in public rights of way in streets, can cause safety problems by flooding roads and intersections and causing erosional damage. This is especially a problem at night when it is hard to see and more so in the winter when it can freeze and result in icy road conditions.

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