



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

---

**To:** Honorable Mayor and Town Council                      **Date:** October 25, 2016

**From:** Frank Robinson, Town Manager                      **Item No:** 13  
Town Manager's Office

**Subject:** CONSIDER ADOPTION OF RESOLUTIONS IN SUPPORT OF MEASURE  
W AND IN OPPOSITION TO MEASURE V

**T.M. Approval:** \_\_\_\_\_                      **Budgeted Item:**  Yes  No  N/A

---

### RECOMMENDED ACTION:

Staff recommends that the Town Council takes the following action:

- A. Adopt the following Resolutions:
1. Resolution No. 2016-34, A Resolution of the Town Council of the Town of Apple Valley Endorsing Measure W
  2. Resolution No. 2016-35, A Resolution of the Town Council of the Town of Apple Valley Opposing Measure V

### SUMMARY:

Staff recommends that the Town Council consider the adoption of the attached Resolutions declaring the Town's support for Measure W and opposition to Measure V.

### BACKGROUND:

#### Acquisition of the Water System

The Town is currently in the process of acquiring Liberty Utilities (Apple Valley Ranchos Water) Corp.'s water supply and distribution system which 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 ("Apple Valley

Water System”). The proposed acquisition of the Apple Valley Water System was a response to a number of factors, including, but not limited to, the following:

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

Although the Town considered acquisition as a last resort, in light of the foregoing factors at a Special Meeting on November 17, 2015, the Town Council adopted two (2) Resolutions of Necessity authorizing the acquisition, by eminent domain, of the Apple Valley Water System. On January 8, 2016, the Town initiated a formal condemnation action to acquire the Apple Valley Water System. This effort to acquire the Apple Valley Water System is still ongoing.

### Measure V

In December of last year, the Town received a Notice of Intent to circulate an initiative petition for what is now known as Measure V. Measure V would amend the Apple Valley Municipal Code to require voter approval before the Town can issue public debt of more than \$10 million in connection with the acquisition, construction, improvement or financing of an enterprise (as that term is defined in state law) when the debt is to be repaid by fees collected by the Town and not from the Town’s taxpayer revenues.

The Town Council placed Measure V on the ballot on July 26, 2016, after determining that the petition had obtained the required number of signatures. At the July 26, 2016 meeting of the Town Council, Town staff presented an Elections Code 9212 report to the Town Council. That report included the following findings:

- If adopted, Measure V will require the Town to seek voter approval before it may issue over \$10 million in public debt to provide funds for the acquisition, construction, improving or financing of an enterprise, such as water, storm water, sewer, electricity, or waste disposal;
- Measure V is designed to frustrate the Town’s current efforts to acquire the Apple Valley Water System. If adopted, the Town would need to obtain voter approval before it may finance the acquisition of the Apple Valley Water System. This will extend the time it takes to acquire the Apple Valley Water System and force the Town to incur more costs in the process; and
- In addition, in the long term, Measure V will generally make it more difficult for the Town to take on large public works and infrastructure projects which are related to enterprises; and
- There are several legal and practical issues with Measure V which raise questions about its enforceability.

## Measure W

At the June 28, 2016 regular meeting of the Town Council, members of the public asked the Town Council to provide voters with a clear choice between Measure V and an alternative measure that would permit the Town to continue with its efforts to acquire the Apple Valley Water System. At the same meeting, the Town Council directed staff to prepare an alternative to Measure V that would offer voters a choice.

In response, in consultation with Town staff, the Town Attorney's Office prepared Measure W for the Town Council's consideration. Measure W would allow the Town to continue with its efforts to acquire the Apple Valley Water System without the need for another election (and the expenses associated with such election). In addition, Measure W would generally require voter approval of any Town debt of more than \$5 million where the debt is for the purpose of acquiring, constructing, improving or financing an enterprise and the debt is secured against the future revenues of that enterprise with one important exception – it will not apply where the following conditions are satisfied:

- (1) The Council conducts a public hearing prior to issuing the debt;
- (2) The Council certifies (based on financial analysis) that the projected revenues from the enterprise exceed the debt payments proposed;
- (3) The Council certifies that debt will not be paid by the taxing power of the Town; and
- (4) The Council requires an annual independent audit to ensure that the proceeds of the debt are utilized in connection with the enterprise only.

This exception will not apply to revenue bonds or other forms of debt where voter approval is required under state law.

On July 26, 2016, the Town Council submitted Measure W to the voters as a clear alternative to Measure V.

## Town Council May Take a Position on the Measures

Although the Town is prohibited from spending public funds on advocacy, it may spend funds on informational resources for the public. Courts have routinely upheld the right of a public agency's legislative body to state a position on a measure.

### **PROPOSED ACTION:**

Town staff recommends the Town Council adopt the attached Resolutions in support of Measure W and in opposition to Measure V.

### **FISCAL IMPACT:**

None.

**ATTACHMENTS:**

1. Resolution No. 2016-34, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ENDORSING MEASURE W
2. Resolution No. 2016-35, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY OPPOSING MEASURE V

## RESOLUTION NO. 2016-34

### A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ENDORSING MEASURE W

**WHEREAS**, the Town is currently in the process of acquiring Liberty Utilities (Apple Valley Ranchos Water) Corp.'s ("Liberty") water supply and distribution system which 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 ("Apple Valley Water System"); and

**WHEREAS**, the proposed acquisition of the Apple Valley Water System was a response to a number of factors, including, but not limited to, the following: longstanding public concern about escalating water rates; the significantly higher water rates paid by customers of the Apple Valley Water System as compared to neighboring jurisdictions; lack of local control over water rates, service, expenditures and policy; lack of responsiveness and accountability of the private owners to concerns of ratepayers within the service area; and the lack of transparency in the operation of the Apple Valley Water System; and

**WHEREAS**, although the Town considered acquisition as a last resort, in light of the foregoing factors, at a Special Meeting on November 17, 2015, the Town Council adopted two (2) Resolutions of Necessity authorizing the acquisition, by eminent domain, of the Apple Valley Water System; and

**WHEREAS**, on January 8, 2016, the Town initiated a formal condemnation action to acquire the Apple Valley Water System; and

**WHEREAS**, on July 26, 2016, the Town Council submitted Measure W to the voters; and

**WHEREAS**, Measure W would generally require voter approval of any Town debt of more than \$5 million where the debt is for the purpose of acquiring, constructing, improving, or financing an enterprise and the debt is secured against the future revenues of that enterprise with one (1) important exception – it will not apply where the following conditions are satisfied: (1) the Council conducts a public hearing prior to issuing the debt; (2) the Council certifies (based on financial analysis) that the projected revenues from the enterprise exceed the debt payments proposed; (3) the Council certifies that debt will not be paid by the taxing power of the Town; and (4) the Council requires an annual independent audit to ensure that the proceeds of the debt are utilized in connection with the enterprise only; this exception will not apply to revenue bonds, which already require voter approval under state law; and

**WHEREAS**, Measure W provides for public input, certification that taxpayers will not be liable for the debt, and annual independent audits before the Town may issue more than \$5 million in debt without a vote of the people while at the same time allowing the Town to proceed with this acquisition of the Apple Valley Water System; and

**WHEREAS**, in accordance with current California law, the Town Council is permitted to express its support for or opposition to a measure so long as members of the public are free to offer comment on the decision to do so; and

**WHEREAS**, on October 25, 2016, the Town Council considered any and all public testimony regarding whether it should take a formal position in support of Measure W; and

**WHEREAS**, the Town Council now wishes to adopt a formal position in support of Measure W.

**NOW, THEREFORE, THE APPLE VALLEY TOWN COUNCIL DOES HEREBY RESOLVE:**

**SECTION 1.** The recitals stated above are true and correct and are incorporated herein by reference.

**SECTION 2.** Endorsement of Measure W. The Town Council of the Town of Apple Valley hereby endorses Measure W.

**SECTION 3.** The Town Council finds that this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**SECTION 4.** Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

**SECTION 5.** This Resolution shall become effective upon its adoption.

**SECTION 6.** The Town Clerk shall certify to the adoption of this Resolution.

**APPROVED** and **ADOPTED** by the Town Council of the Town of Apple Valley, California, this 25th day of October, 2016.

---

Barb Stanton, Mayor

**ATTEST:**

---

La Vonda M-Pearson, Town Clerk

## RESOLUTION NO. 2016-35

### A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA OPPOSING MEASURE V

**WHEREAS**, the Town is currently in the process of acquiring Liberty Utilities (Apple Valley Ranchos Water) Corp.'s water supply and distribution system which 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 ("Apple Valley Water System"); and

**WHEREAS**, the proposed acquisition of the Apple Valley Water System was a response to a number of factors, including, but not limited to, the following: longstanding public concern about escalating water rates; the significantly higher water rates paid by customers of the Apple Valley Water System as compared to neighboring jurisdictions; lack of local control over water rates, service, expenditures and policy; lack of responsiveness and accountability of the private owners to concerns of ratepayers within the service area; and the lack of transparency in the operation of the Apple Valley Water System; and

**WHEREAS**, although the Town considered acquisition a last resort, in light of the foregoing factors, at a Special Meeting on November 17, 2015, the Town Council adopted two Resolutions of Necessity authorizing the acquisition, by eminent domain, of the Apple Valley Water System; and

**WHEREAS**, on January 8, 2016, the Town initiated a formal condemnation action to acquire the Apple Valley Water System; and

**WHEREAS**, on December 21, 2015, the Town received a Notice of Intent to circulate an initiative petition to amend the Apple Valley Municipal Code to require voter approval before the Town can issue public debt of more than \$10 million in connection with the acquisition, construction, improvement, or financing of an enterprise (as that term is defined in state law) when the debt is to be repaid by fees collected by the Town and not from the Town's taxpayer revenues ("Measure V"); and

**WHEREAS**, on May 10, 2016, the proponents of Measure V submitted a signed petition to the Town Clerk's Office with 5,348 raw signatures; and

**WHEREAS**, on June 21, 2016, the Town Clerk's Office, with assistance from the Elections Office of the Registrar of Voters for San Bernardino County, verified that the petition contained 3,873 valid signatures – enough signatures to qualify for the ballot; and

**WHEREAS**, on June 28, 2016, the Town Council received, filed, and accepted the Certificate of Sufficiency of Initiative Petition issued by the Town Clerk and directed staff to prepare an impartial and informational report analyzing the impact of Measure V on the Town as authorized by California Elections Code Section 9212 ("Report"); and

**WHEREAS**, on July 26, 2016, Town staff presented the Report to the Town Council, which included the following findings:

- If adopted, Measure V will require the Town to seek voter approval before it may issue over \$10 million in public debt to provide funds for the acquisition, construction, improving or financing of an enterprise, such as water, storm water, sewer, electricity or waste disposal
- Measure V is designed to frustrate the Town's current efforts to acquire the Apple Valley Water System. If adopted, the Town would need to obtain voter approval before it may finance the acquisition of the Apple Valley Water System. This will extend the time it takes to acquire the Apple Valley Water System and force the Town to incur more costs in the process.
- In addition, in the long term, Measure V will generally make it more difficult for the Town to take on large public works and infrastructure projects which are related to enterprises.
- There are several legal and practical issues with Measure V which raise questions about its enforceability.

**WHEREAS**, on July 26, 2016, the Town Council, in accordance with the California Elections Code, placed Measure V on the November ballot; and

**WHEREAS**, in accordance with current California law, the Town Council is permitted to express its support for or opposition to a measure so long as members of the public are free to offer comment on the decision to do so; and

**WHEREAS**, on October 25, 2016, the Town Council considered any and all public testimony regarding whether it should take a formal position in opposition to Measure V; and

**WHEREAS**, the Town Council now wishes to adopt a formal position in opposition to Measure V.

**NOW, THEREFORE, THE APPLE VALLEY TOWN COUNCIL DOES HEREBY RESOLVE:**

**SECTION 1.** The recitals stated above are true and correct and are incorporated herein by reference.

**SECTION 2.** Opposition to Measure V. The Town Council of the Town of Apple Valley hereby formally states its opposition to Measure V.

**SECTION 3.** The Town Council finds that this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**SECTION 4.** Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

**SECTION 5.** This Resolution shall become effective upon its adoption.

**SECTION 6.** The Town Clerk shall certify to the adoption of this Resolution.

**APPROVED** and **ADOPTED** by the Town Council of the Town of Apple Valley, California, this 25th day of October, 2016.

---

Mayor Barb Stanton

**ATTEST:**

---

La Vonda M-Pearson, Town Clerk