

## RESOLUTION NO. 2017-08

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL ELECTION TO BE HELD ON JUNE 6, 2017 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF SAID TOWN A PROPOSITION TO AUTHORIZE SAID TOWN TO FINANCE THE ACQUISITION OF THE APPLE VALLEY WATER SYSTEM, CURRENTLY OWNED AND OPERATED BY LIBERTY UTILITIES, INCLUDING RELATED EXPENSES, BY INCURRING DEBT IN THE MAXIMUM AMOUNT OF \$150 MILLION, PROVIDED THAT THE DEBT IS REPAYED FROM REVENUES GENERATED BY THE WATER SYSTEM, AND NOT FROM TAXES, AND FURTHER THAT THE TOWN CONDUCTS AN ANNUAL INDEPENDENT AUDIT

**WHEREAS**, the Town is currently in the process of acquiring Apple Valley Ranchos Water Company's (now known as Liberty Utilities (Apple Valley Ranchos Water Corp.) ("AVR") 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 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; and

**WHEREAS**, the acquisition amounts to a mere title transfer of the existing system from the Apple Valley Ranchos Water Company to the Town; 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 (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**, the Town Council, pursuant to Municipal Code, tit. 3, ch. 3.35, Elections Code Section 9222, and Government Code Section 54380 *et seq.*, may submit to its qualified voters, at an election held for that purpose, the proposition of acquiring debt to provide funds for the acquisition, construction, improving or financing of an enterprise, including any or all expenses incidental thereto or connected therewith, to be paid from the revenues generated by that enterprise; and

**WHEREAS**, the Town may be required to pay an acquisition price for the Apple Valley Water System in excess of the current appraised value; and

**WHEREAS**, based upon an analysis of AVR's most recent Annual Report to the CPUC, Town staff has determined that, through the elimination of certain costs (profits, taxes intercompany service agreements, and corporate overhead/corporate office costs), the Town could support an acquisition cost of as much as \$150 million and either maintain or reduce rates; and

**WHEREAS**, the aforementioned analysis does not include the most recent rate increase granted by the CPUC or the proposed surcharges proposed in Advice Letter 216-W-A, which would likely increase the maximum amount the Town could pay and still maintain or reduce rates; and

**WHEREAS**, the Town Council wishes to submit to the qualified voters a request for authorization to acquire debt in a form to be determined in an amount not to exceed \$150 million (\$150,000,000) in order to finance an acquisition price of the Apple Valley Water System, pay capitalized interest on the debt, fund a debt service reserve fund, pay other costs associated with acquisition and fund a capital or operating reserve for the Apple Valley Water System; and

**WHEREAS**, such debt shall be payable exclusively from the revenues of the water enterprise and such other funds relating to the debt issuance, shall not be secured by the taxing power of the Town, and shall be subject to annual independent audit; and

**WHEREAS**, in an abundance of caution and to provide transparency regarding the acquisition, the Town prepared and circulated an Environmental Impact Report (SCH#2015061078) ("EIR") pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; 14 Cal. Code Regs. Section 15000 et seq.) ("CEQA"); and

**WHEREAS**, on November 17, 2015, the Town certified the EIR, found that the acquisition would not result in any potentially significant impacts to the environment, and approved the acquisition via Town Council Resolution No. 2015-42; and

**WHEREAS**, according to Public Resources Code section 21166 and section 15162 of Title 14 of the California Code of Regulations, when an EIR has been prepared for a project pursuant to CEQA, no subsequent or supplemental environmental impact report shall be required by the lead agency unless substantial changes are proposed to the project or substantial changes occur with respect to circumstances under which the project is undertaken that require major revisions to the EIR, or new information becomes available that was not previously available that shows that the project will have a new or more significant environmental effect; and

**WHEREAS**, to the extent that any CEQA review for the Measure described herein is required, such CEQA review has already been satisfied through the Town's certification of its previously prepared EIR; and

**WHEREAS**, the Town Council has determined that it is necessary for the Town to incur indebtedness for the purpose of financing the acquisition of the Apple Valley Water System.

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

**SECTION 1. Recitals.** The recitals stated above are true and correct and are incorporated herein by reference. Resolutions 2015-42, 2015-43, and 2015-44, adopted at the special meeting of the Town Council on November 17, 2015, and the staff reports associated therewith, are incorporated herein by reference.

**SECTION 2. Special Election.** That pursuant to Sections 1000, 1400, and 9222 of the California Elections Code, the Town of Apple Valley may hold a special election on Tuesday, June 6, 2017 to submit to the qualified voters of the Town a certain proposition, namely: A proposition hereinafter set forth in Section 8 for authorizing the Town to incur debt therefor, in the principal amount stated in the ballot proposition hereinafter set forth, and for the objectives and the purposes set forth herein and in said ballot proposition with further particulars as follows:

(i) That the estimated cost of the acquisition of the Apple Valley Water System and financing the start-up costs of the Apple Valley Water System could amount up to \$150 million. The estimated cost of said municipal acquisition includes the following: (a) legal or other fees incidental to or connected with any litigation, negotiation or entering into of contracts associated with the acquisition of the water enterprise, or authorizing and incurring the debt, and (b) the costs of printing the financial documents and other costs and expenses incidental to or connected with the debt.

(ii) That the maximum rate of interest to be paid on said indebtedness shall not exceed the maximum rate permitted by law, to wit, twelve percent (12%) per annum, the actual rate or rates of interest on said debt to be determined at or prior to the time it is incurred. Such interest may be at fixed or variable rates. Said interest shall be payable daily, weekly, monthly or semi-annually except that interest for the first year may be made payable at the end of said year.

(iii) That if the proposition for the incurring of debt so submitted receives the requisite number of votes required by law, being a majority, in favor of the qualified electors voting on such proposition, the Town may incur debt not in excess of the amount stated in such proposition for the object and purpose set forth in such proposition.

(iv) That the debt shall be payable exclusively from the revenues of the water system and from any other funds, including contributions, from any source which the Town may legally apply to the acquisition of the water system, except any and all proceeds of taxation; that the debt will not be secured by the taxing power of the Town; and that the Town shall conduct an annual independent audit.

(v) Any proceeds received from the sale of any debt shall be applied only to the purposes set forth herein; the proceeds of debt shall be deposited into special accounts to be created therefor as part of the issuance of debt; and to the extent required by law, the Town shall cause a report to be prepared annually under Section 53411 of the Government Code.

**SECTION 3. Polling Places.** The Town Clerk shall request the Board of Supervisors of the County of San Bernardino to permit the Registrar of Voters to cause the precincts, polling places and election officers for said election to be established, to cause all election materials to be printed and mailed to each registered voter in the Town of Apple Valley, to cause all election supplies to be delivered to each polling place, and to cause the returns of said election to be canvassed and to certify the same to the Town Council of the Town of Apple Valley.

**SECTION 4. Notice.** Notice of the time and place of the election is hereby given. The Town Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 5. Election Supplies.** The Town Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election. The ballots to be used at the election shall be in form and content as required by law.

**SECTION 6. Election Costs.** Town staff is hereby authorized and directed to appropriate the necessary funds to pay for the Town's cost of placing the Measure on the election ballot.

**SECTION 7. Compliance with CEQA.** The Town Council hereby finds and determines that, to the extent any CEQA review is required for the proposed Measure, such review was previously completed when the Town certified the EIR for the acquisition (SCH#2015061078) via Town Council Resolution No. 2015-42. Based on the substantial evidence set forth in the record, the Town Council further finds and determines that no subsequent or supplemental environmental review is required for the Resolution because none of the conditions under Public Resources Code section 21166 or section 15162 of Title 14 of the California Code of Regulations requiring the need for further subsequent review have occurred. Specifically, the Town Council finds that no additional environmental review is required because no substantial changes are proposed to the acquisition, no substantial changes have arisen with respect to the circumstances under which the acquisition will be undertaken, and no new information has become available showing that the acquisition will have a new or more significant environmental effect.

**SECTION 8. Purpose of Election; Ballot Measure.** As required by Section 13247 of the Elections Code, the ballot measure shall be printed in substantially the following form:

**BALLOT MEASURE  
(ABBREVIATED STATEMENT/BALLOT LABEL)**

**MEASURE “ \_\_\_ ”:**

**Shall the Town of Apple Valley be authorized to finance the acquisition of the Apple Valley water system, currently owned and operated by Liberty Utilities, including related expenses, by incurring debt in the maximum amount of \$150,000,000, provided that the debt is repaid from revenues generated by the water system, and not from taxes, and further that the Town conducts an annual independent audit?**

Yes/No

**SECTION 9. Election Pursuant to Law.** That except as otherwise provided in this Resolution, the election called hereby shall be held and the votes canvassed pursuant to law for other Town elections.

**SECTION 10. Publication.** Pursuant to Government Code Section 54385, the Town Clerk is hereby directed to publish this Resolution in full once a week for two (2) weeks in the newspaper of general circulation for the Town, and in each edition thereof during each day of publication.

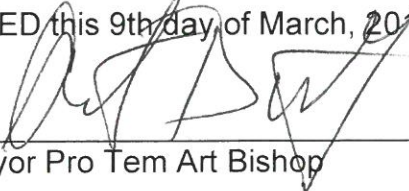
**SECTION 11. Custodian of Record.** The documents and materials that constitute the record of proceedings on which this Resolution has been based are located at Apple Valley Town Hall, 14955 Dale Evans Parkway, Apple Valley, California. The custodian for these records is the office of the Town Manager.

**SECTION 12. 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 13. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**SECTION 14. Certification.** The Town Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 9th day of March, 2017.

  
\_\_\_\_\_  
Mayor Pro Tem Art Bishop

ATTEST:

  
\_\_\_\_\_  
Debra Thomas, Deputy Town Clerk



Town of Apple Valley  
Resolution No. 2017-08

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY

I, LA VONDA M-PEARSON, Town Clerk for the Town of Apple Valley, Apple Valley, California, do hereby certify that Resolution No. 2017-08, duly and regularly adopted by the Town Council at a meeting thereof held on the 9th day of March, 2017 by the following vote:

AYES: Council Members Emick, Stanton, Mayor Pro Tem Bishop,  
Mayor Nassif.

NOES: None.

ABSTAIN: None.

ABSENT: Council Member Cusack.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Apple Valley, California, this 9th day of March, 2017.

LA VONDA M-PEARSON, CMC  
TOWN CLERK

By:



A handwritten signature in black ink, consisting of a large, stylized 'L' and 'P' followed by a horizontal line extending to the right.

(SEAL)