



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** May 9, 2017
From: Frank Robinson, Town Manager **Item No:** 7
Town Manager's Office
Subject: CONSIDER ADOPTION OF RESOLUTION IN SUPPORT OF MEASURE
F

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

RECOMMENDED ACTION:

That the Town Council adopt Resolution No. 2017-12 - A Resolution of the Town Council of the Town of Apple Valley Endorsing Measure F

SUMMARY:

Staff recommends that the Town Council consider the adoption of the attached Resolution declaring the Town's support for Measure F.

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 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. 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 November 2016, the Town's voters approved Measure V, which was funded by Liberty. Measure V amended the Apple Valley Municipal Code to require voter approval before the Town can issue public debt of more than \$10,000,000 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 applies to the Town's efforts to acquire the Apple Valley Water System.

Measure F

On March 9, 2017, the Town Council called a special election for June 6, 2017 and submitted Measure F to the voters. If approved, Measure F would authorize the Town to finance the acquisition of the Apple Valley Water System, currently owned and operated by Liberty through the issuance of debt in an amount up to \$150 million. The debt is to be repaid from revenues generated by the water system. Under Measure F, taxes may not be used to repay the debt. Therefore, taxes will not be increased as a result of the adoption of Measure F. In addition, Measure F requires that the Town conduct an annual independent audit.

Analysis by the Town Finance Department shows the cost of acquiring the system will likely be much less than the \$150 million requested. In 2015, an independent appraisal placed a value of approximately \$50 million on the Apple Valley water system. In addition, according to Liberty's documents, the system's rate base is approximately \$60 million. Finally, in Missoula, Montana, community acquisition of a similarly sized water system owned by the same company was recently priced at approximately \$88 million. However, because a final price for the Apple Valley Water System has not been determined, and in order to avoid another costly public vote, Measure F has a not-to-exceed ceiling of \$150 million.

The Town Finance Department has indicated that the Town can save an estimated \$11.9 million annually when it owns the system because it will not pay profits, taxes, or corporate overhead expenses. These savings are sufficient to cover the annual repayments on bond debt at an acquisition cost of \$150 million with realistic rates for the bonds. The

Town's current bond rating is 'A', as rated by Standard and Poor's. According to Barclays, the Town can currently issue bonds at around 4%. At this rate or at a conservative but realistic rate of 4.75%, the cost savings could exceed the loan repayment by several million dollars a year. These savings can be put toward additional capital expenditures or lowering water rates.

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 Resolution in support of Measure F.

FISCAL IMPACT:

None.

Attachment:

Resolution No. 2017-12 - A Resolution of the Town Council of the Town of Apple Valley Endorsing Measure F

RESOLUTION NO. 2017-12

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ENDORSING MEASURE F

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 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 March 9, 2017, the Town Council called a special election to be held on June 6, 2017 and submitted Measure F to the voters; and

WHEREAS, Measure F is required as a result of the adoption of Measure V by voters in November 2016; and

WHEREAS, Measure F would authorize the Town to finance the acquisition of the Apple Valley Water System currently owned and operated by Liberty in an amount up to \$150 million provided that the debt is repaid from the revenues generated by the system and so long as the Town conducts an annual independent audit; and

WHEREAS, under Measure F, tax revenues may not be used to fund the acquisition and taxes will not be increased to cover the acquisition cost; and

WHEREAS, the Town's Finance Department has determined that the Town can afford to make repayments on the debt of up to \$150 million within the current rate structure as a result of significant savings because the Town will not pay profits, taxes, or corporate overhead expenses as Liberty does; and

WHEREAS, the Town's Finance Department has stated that cost savings could exceed the loan repayment than several million dollars a year – such savings can be put toward additional capital expenditures and the lowering of water rates for all customers; and

WHEREAS, Measure F will allow the Town to continue with its 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 May 9, 2017, the Town Council considered any and all public testimony regarding whether it should take a formal position in support of Measure F; and

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

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 F. The Town Council of the Town of Apple Valley hereby endorses Measure F.

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.

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

Mayor Scott Nassif

ATTEST:

La Vonda M-Pearson
Town Clerk