

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

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Application of Western Water Holdings, LLC,
PWC Merger Sub, Inc., Park Water Company
(U 314 W), and Apple Valley Ranchos Water
Company (U-346-W) for Authority for Western
Water Holdings, LLC to Acquire and Control
Park Water Company and Apple Valley
Ranchos Water Company.

Application 11-01-019
(Filed January 21, 2011)

**APPLICANTS' RESPONSE TO
ADMINISTRATIVE LAW JUDGE'S
RULING OF MARCH 24, 2011**

FULBRIGHT & JAWORSKI L.L.P.

David A. Ebershoff

555 S. Flower Street, 41st Floor
Los Angeles, CA 90071
Tel.: (213) 892-9200
Fax: (213) 892-9494
E-mail: debershoff@fulbright.com

Attorneys for Applicants PARK WATER
COMPANY and APPLE VALLEY
RANCHOS WATER COMPANY

NOSSAMAN LLP

Martin A. Mattes

50 California Street, 34th Floor
San Francisco, California 94111-4707
Tel.: (415) 398-3600
Fax: (415) 398-2438
E-mail: mmattes@nossaman.com

Attorneys for Applicants WESTERN
WATER HOLDINGS, LLC and
PWC MERGER SUB, INC.

May 2, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U 314 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.

Application 11-01-019
(Filed January 21, 2011)

**APPLICANTS' RESPONSE TO
ADMINISTRATIVE LAW JUDGE'S
RULING OF MARCH 24, 2011**

In compliance with the ADMINISTRATIVE LAW JUDGE'S RULING TO REQUEST AN OPINION LETTER FOR THE COUNSEL OF THE MOJAVE WATER AGENCY ON WATER RIGHTS HELD BY APPLE VALLEY RANCHOS WATER COMPANY ("ALJ's Ruling"), issued by Administrative Law Judge ("ALJ") Long on March 24, 2011, Applicants Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company, and Apple Valley Ranchos Water Company (collectively, "Applicants") hereby submit for the record, as Attachment A to this Response, an opinion letter from counsel for Mojave Water Agency ("MWA") addressing three questions posed by the ALJ's Ruling. That letter is provided as Attachment A to this Response.

Pursuant to the ALJ's Ruling, on March 25, 2011, counsel for Applicants submitted a request to William J. Brunick, Esq., of Brunick, McElhaney, Beckett, Dolen & Kennedy PLC, counsel for MWA Counsel, a request for an opinion letter addressing the three questions posed in the ALJ's Ruling. By letter dated April 27, 2011, and received by

Applicants' counsel on May 2, 2011, MWA Counsel provided a statement for the Mojave Basin Watermaster responding unequivocally in the negative to each of the three questions posed in the ALJ's Ruling. That is the letter provided as Attachment A to this Response.

Park Water and its fellow Applicants hope that this Response to the ALJ's Ruling will assist ALJ Long and the Commission in reaching a prompt and favorable resolution of the pending Application, which will, in turn, allow the planned transaction to proceed without undue delay.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

David A. Ebershoff

555 S. Flower Street, 41st Floor
Los Angeles, CA 90071
Tel.: (213) 892-9200
Fax: (213) 892-9494
E-mail: debershoff@fulbright.com

Attorneys for Applicants PARK WATER
COMPANY and APPLE VALLEY
RANCHOS WATER COMPANY

NOSSAMAN LLP

/S/ MARTIN A. MATTES

Martin A. Mattes

50 California Street, 34th Floor
San Francisco, California 94111-4707
Tel.: (415) 398-3600
Fax: (415) 398-2438
E-mail: mmattes@nossaman.com

Attorneys for Applicants WESTERN
WATER HOLDINGS, LLC and
PWC MERGER SUB, INC.

May 2, 2011

ATTACHMENT A

**STATEMENT OF COUNSEL
FOR MOHAVE BASIN WATERMASTER
ON QUESTIONS PRESENTED BY
ADMINISTRATIVE LAW JUDGE LONG**

BRUNICK, MCELHANEY, BECKETT, DOLEN & KENNEDY

PROFESSIONAL LAW CORPORATION

1839 COMMERCENTER WEST

SAN BERNARDINO, CALIFORNIA 92408

MAILING ADDRESS:

POST OFFICE BOX 6425

SAN BERNARDINO, CALIFORNIA 92412

TELEPHONE: (909) 889-8301

FAX: (909) 388-1889

215 CAJON STREET

P. O. BOX 1320

REDLANDS, CALIFORNIA 92373

TELEPHONE (909) 793-0818

PLEASE REFER TO

STEVEN K. BECKETT
WILLIAM J. BRUNICK
RAYMOND F. DOLEN
STEVEN M. KENNEDY
LELAND P. MCELHANEY

April 27, 2011

Hon. Douglas M. Long
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, California 94102

In Re:

*Application of Western Water Holdings, LLC, PWC Merger Sub, Inc.,
Park Water Company (U314W) and Apple Valley Ranchos Water
Company (U346W) for Authority for Western Water Holdings, LLC to
Acquire and Control Park Water Company and Apple Valley Ranchos
Water Company*

Application 11-01-09 (Filed January 21, 2011)

Dear Hon. Judge Long:

Pursuant to your March 24, 2011 request for a response as to the issue of Western Water Holdings P.W.C. Merger, and its effect on water rights held by Apple Valley Ranchos Water Company (Ranchos), Mojave Water Agency submits the following information.

It is my understanding that the family of Mr. Henry H. Wheeler has entered into an agreement to sell its shares of Park Water Company which is the sole owner of stock of Apple Valley Ranchos. Ranchos obtained the water rights pursuant to the Judgment in the Mojave Basin Adjudication. I am informed that the sale transaction does not contemplate the sale of assets of Ranchos or Park including the water rights now or in the future. Further, the proposed sale will not cause a loss or diminishment of Apple Valley Ranchos' rights to lease Jess Ranch water rights acquired by Jess Ranch, another party to the adjudication, pursuant to the Judgment in the Mojave Basin. I am informed and believe that there is no proposal to transfer or encumber any of these water rights.

It is Mojave Water Agency's belief that, pursuant to California Public Utilities Code, all water rights and any leases thereof will continue to be dedicated, and shall remain only for the use in the service area of the Apple Valley system and its customers.

Therefore, based upon the following assumptions and information, I offer this statement for the Mojave Basin Watermaster to the following questions:

1. Is there any provision in the Judgment or the Mojave Water Agency Act by which the Transaction will constitute a transfer of Ranchos' water rights?

RESPONSE: No.

2. Is there any provisions in the Judgment or the Mojave Water Agency Act, or any other reason, that would require approval by the Mojave Water Agency for the Transaction to be effective?

RESPONSE: No.

3. Is there any provisions in the Judgment or the Mojave Water Agency Act by which the Transaction will encumber, diminish, or cause a loss of Ranchos' water rights in the Mojave Basin.

RESPONSE: No.

I have attached for your review a copy of the Watermaster Rules as to transferability and Exhibit F of the Judgment.

Please feel free to contact this office should you have further questions or concerns.

Very truly yours,

**BRUNICK, McELHANEY, BECKETT, DOLEN &
KENNEDY PLC**



WILLIAM J. BRUNICK

WJB\pqj

Enclosure(s): As stated

cc: Fred Fudacz, Esq., Nossaman LLP
Martin A. Mattes, Esq., Nossaman LLP
John A. Brown, Esq., Best, Best & Krieger

u:\Mojave\CPUCALJ Long\Ltr.3

WATERMASTER RULES
AS T O
TRANSFERABILITY

1 F. *Records Provided to Watermaster.* Parties must provide copies of all
2 records used to quantify water production as outlined in A through E above, including,
3 electrical consumptions records, pump test records, flow meter readings, flow meter
4 calibration tests, fuel consumption records, time of use meter records or any other records
5 used. Additionally, Watermaster shall acquire electrical consumption records and pump
6 test records maintained by Southern California Edison Company.

7 G. *Compliance.* Any party not in compliance with the provisions of this
8 Section 11, as outlined in A through F above, shall be assessed for all applicable
9 assessments based on Watermaster's estimate of water production, the total annual
10 pumping capacity of the diversion works, or the producer's Base Annual Production.

11 12. *Transfers of Production Rights.* Transfers of Production Rights will become
12 effective as follows:

13 A. *Notice to Watermaster of Transfers.* Any transfer of a Production Right or
14 portion thereof shall be operable only when the requirements of Exhibit "F" of the
15 Judgment are met, when both Transferor and Transferee have stipulated to the Judgment,
16 when all current and past due assessments owed to Watermaster by the transferee and the
17 transferor have been paid, and when the Parties file with the Watermaster a copy of the
18 appropriate transfer documents which:

19 (1) Identify both the transferee(s) and the transferor(s) together with
20 the name of the responsible parties, the Party to receive any Carryover credit and
21 the name(s) of the person(s) who will pay any applicable assessments. Any
22 transferee must be or become a Party pursuant to Paragraph 40 of the Judgment
23 prior to the date of the transfer.

24 (2) Identify the nature of the transfer, i.e., sale, assignment, lease, etc.

25 (3) For Temporary Transfers accurately recite the maximum amount
26 of Transferor's share of Free Production Allowance and/or Carryover Right to be
27 transferred and the price per acre-foot to be paid by the Transferee(s). The
28 temporary nature of the transfer must be identified as either a one year transfer of

1 the transferred Free Production Allowance or a continuing transfer of the
2 transferred Free Production Allowance in excess of one year.

3 (4) For permanent transfers, accurately recite the amount of
4 Transferor's Base Annual Production Right to be transferred and the total price to
5 be paid by the Transferee(s).

6 (5) Execution and notice requirements:

7 (a) Permanent Transfers are executed by both Transferee(s)
8 and Transferor(s). At least thirty (30) days prior to filing with
9 Watermaster any proposed permanent transfer of a Base Annual
10 Production Right, the proposed Transferor shall provide written notice by
11 certified mail (with return receipt requested) of the proposed transfer to
12 any party with a recorded security interest, deed of trust or a lien in such
13 real property or in crops growing or to be grown thereon. A list of those
14 so notified shall be provided to the Watermaster together with copies of
15 the notice and return receipts. A Preliminary Title Report on seller's
16 property shall also be provided to the Watermaster for permanent
17 transfers. If a real estate sale is completed prior to notification to
18 Watermaster of the proposed permanent transfer, the Transferee shall
19 provide Watermaster with a copy of the recorded Deed and a Title
20 Insurance Policy showing ownership of the land associated with the Base
21 Annual Production Right.

22 (b) Temporary transfers over one (1) year are executed by both
23 Transferee(s) and Transferor(s). At least thirty (30) days prior to filing
24 with Watermaster any proposed temporary transfer over one (1) year, the
25 proposed transferor shall provide written notice by certified mail (with
26 return receipt requested) of the proposed transfer to any party with a
27 recorded security interest, deed of trust or a lien in such real property, or
28 in crops growing or to be grown thereon. A list of those so notified shall

1 be provided to the Watermaster together with copies of the notice and
2 return receipts. A Preliminary Title Report on seller's property shall also
3 be provided to the Watermaster for temporary transfers in excess of one
4 (1) year.

5 (c) Temporary transfers one (1) year or less are executed by
6 both Transferee(s) and Transferor(s). Compliance with (a) and (b) of this
7 section are not required.

8 (6) Are acknowledged by parties in a form sufficient for recordation
9 with the County Recorder.

10 (7) List the Designee(s) of both the Transferor(s) and Transferee(s) to
11 receive future service and notice of papers and process.

12 (8) Are accompanied by a map of the service area where the water was
13 used by Transferor(s) (Assignors) and a map of the service area where the water
14 is intended to be used by the Transferee(s) (Assignees).

15 (9) Are accompanied by a listing showing the identification and
16 locations of the production facilities to be involved in or affected by the transfer.

17 (10) Conform with the following time requirements for filing with the
18 Watermaster:

19 (a) Permanent Transfers of Base Annual Production Right,
20 including those involving Foreclosure or Deed in Lieu of Foreclosure, at
21 least forty five (45) days prior to a regularly scheduled meeting before the
22 Watermaster.

23 (b) Temporary Assignment of Free Production Allowance,
24 whether one (1) year or multiple years in duration, at least thirty (30) days
25 prior to a regularly scheduled meeting before the Watermaster.

26 (c) Transfers of Current Year Carryover in Lieu of Payment of
27 Replacement Water Assessments incurred during the prior water year, at
28 least thirty (30) days prior to either the April or May Watermaster meeting

1 (d) Transfers of Free Production Allowance or Carryover Right
2 in Lieu of Payment of Makeup Water Assessments incurred during the
3 prior water year at least thirty (30) days prior to the April or May
4 Watermaster meeting.

5 (11) In any year in which MWA institutes a Free Production Allowance
6 Purchase Program, any transfers of Free Production Allowance to MWA shall
7 comply with the provisions set forth above in this Section 12, Transfers of
8 Production Rights. Such transfers shall be executed on forms provided by MWA.

9 B. *Approved Transfer Forms and Other Forms.* Transfers shall be reported
10 on approved Watermaster forms which are attached hereto, marked and identified as
11 follows:

12 Exhibit "C" - Permanent Transfer of Base Annual Production Right

13 Exhibit "D" - Temporary Assignment of Free Production Allowance

14 Exhibit "E" - Designee to Receive Future Notices for and on Behalf of
15 Defendant(s)

16 Exhibit "F" - Stipulation for Intervention After Entry of Judgment

17 Exhibit "G" - Request for Transfer of Base Annual Production Right After
18 Foreclosure

19 Exhibit "H" - Request for Transfer of Base Annual Production Right After
20 Accepting Deed in Lieu of Foreclosure

21 Exhibit "I" - Request for Assignment of Carryover Right in Lieu of Payment of
22 Replacement Water Assessments

23 Exhibit "J" - Request for Assignment of Free Production Allowance in Lieu
24 Payment of Makeup Water Assessments

25 C. *Payment of Assessments Prior to Watermaster Acceptance of Transfers.*

26 The Watermaster shall take no action on any proposed transfer unless all past due
27 assessments, interest and penalties owed to Watermaster by either Transferee or
28 Transferor have been paid prior to the date that the proposed transfer is submitted to

1 Watermaster. Transferee and Transferor must also be in compliance with Section 11,
2 Quantification of Production.

3 D. *Emergency Transfers of FPA to Accommodate Exports from the Basin for*
4 *Emergency Domestic Use.* Transfers of FPA for the right to export water from the basin
5 for emergency domestic use shall conform to the following:

6 (1) Both the Transferor and the Transferee must be stipulating parties
7 to the Judgment.

8 (2) The Transferor is responsible for payment of all assessments
9 incurred pursuant to these Rules and Regulations resulting from pumping water
10 pursuant to the transfer.

11 (3) Transfers shall be effective for a period not to exceed six months.

12 (4) Transferor shall develop proper monitoring and reporting as
13 directed by Watermaster.

14 (5) Transferee must demonstrate a declared emergency need for water
15 or demonstrate an impending emergency need.

16 (6) Transfer shall be for an amount not to exceed 100 acre-feet "in the
17 aggregate" for all such transfers occurring within one water year.

18 (7) The total amount of water exported shall be debited to the
19 Transferor's current year FPA (excluding Carryover) at a rate of two acre-feet for
20 each acre-foot to be exported in the appropriate Subarea and Transferor shall be
21 responsible for all assessments for all water exported. Transfers of Carryover
22 Rights to cover any portion of the Replacement Water requirement of this section
23 are not allowed.

24 (8) The Executive Officer of the Watermaster is hereby delegated with
25 the authority to approve Emergency Transfers up to 100 acre-feet. Watermaster
26 shall take notice of such approval by the Executive Officer at its next scheduled
27 meeting.
28

1 F. *Records Provided to Watermaster.* Parties must provide copies of all
2 records used to quantify water production as outlined in A through E above, including,
3 electrical consumptions records, pump test records, flow meter readings, flow meter
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6 test records maintained by Southern California Edison Company.

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1 Watermaster. Transferee and Transferor must also be in compliance with Section 11,
2 Quantification of Production.

3 D. *Emergency Transfers of FPA to Accommodate Exports from the Basin for*
4 *Emergency Domestic Use.* Transfers of FPA for the right to export water from the basin
5 for emergency domestic use shall conform to the following:

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7 to the Judgment.

8 (2) The Transferor is responsible for payment of all assessments
9 incurred pursuant to these Rules and Regulations resulting from pumping water
10 pursuant to the transfer.

11 (3) Transfers shall be effective for a period not to exceed six months.

12 (4) Transferor shall develop proper monitoring and reporting as
13 directed by Watermaster.

14 (5) Transferee must demonstrate a declared emergency need for water
15 or demonstrate an impending emergency need.

16 (6) Transfer shall be for an amount not to exceed 100 acre-feet "in the
17 aggregate" for all such transfers occurring within one water year.

18 (7) The total amount of water exported shall be debited to the
19 Transferor's current year FPA (excluding Carryover) at a rate of two acre-feet for
20 each acre-foot to be exported in the appropriate Subarea and Transferor shall be
21 responsible for all assessments for all water exported. Transfers of Carryover
22 Rights to cover any portion of the Replacement Water requirement of this section
23 are not allowed.

24 (8) The Executive Officer of the Watermaster is hereby delegated with
25 the authority to approve Emergency Transfers up to 100 acre-feet. Watermaster
26 shall take notice of such approval by the Executive Officer at its next scheduled
27 meeting.
28

**EXHIBIT F
TO THE JUDGMENT**

1
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3
4
5 Attorney for Watermaster

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 FOR THE COUNTY OF RIVERSIDE

8 CITY OF BARSTOW, ET AL)

9 Plaintiff,)

10 v.)

11 CITY OF ADELANTO, ET AL)

12 Defendants.)

NO. 208568
STIPULATION FOR INTERVENTION
AFTER ENTRY OF JUDGMENT

OF _____
as Defendant(s)

13
14 IT IS HEREBY STIPULATED by and between the Mojave Basin Area Watermaster for
15 and on behalf of all parties to the instant action and _____

16
17 _____ the proposed Intervenor(s) herein, that said proposed
18 Intervenor(s) may intervene in the instant action and become entitled to all of the benefits and bound by
19 all of the burdens of the Stipulated Judgment herein.

20 The Court will consider the attached proposed Order confirming said Intervention at _____
21 o'clock _____ M on _____ 20____, in Department _____ located at _____

22 To be set by Watermaster

23 Watermaster shall give at least 30 days notice to the parties herein of said hearing.
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DATED: _____

Watermaster

By _____
Chairman

Attest:

Secretary

DATED: _____

Intervenor(s)

By _____

By _____

Name of Intervenor's Designee:

Address of Designee:

Telephone Number of Designee:

CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I served by electronic mail and by hand delivery, the foregoing **APPLICANTS' RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING OF MARCH 24, 2011** on the parties in Application 11-01-019, below:

By electronic mail:

debershoff@fulbright.com; PeterAllanEsq@gmail.com; ascici@aol.com;
chucksmith13@verizon.net; tom_hoegerman@avusd.org; bill@lomac.com;
bill@lomac.com; Charity.Schiller@bbklaw.com; sel@cpuc.ca.gov;
mmattes@nossaman.com; Kelly.Cwiertny@bbklaw.com; Piero.Dallarda@bbklaw.com;
barbara@clarkfork.org; george.b21@verizon.net; bryan.lin@carlyle.com;
leigh@parkwater.com; douglpluta@saeinc.org; wilson.so@saeinc.org;
john.brown@bbklaw.com; rschmidt@bartlewells.com; dug@cpuc.ca.gov;
jrc@cpuc.ca.gov; lwa@cpuc.ca.gov;

By hand delivery:

Hon. Douglas M. Long
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue, Room 5023
San Francisco, CA 94102

Hon. Michael R. Peevey
Assigned Commissioner
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94102

Executed this 2nd day of May, 2011, in San Francisco, California.

/S/ JEANNIE WONG

Jeannie Wong

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A1101019 - WESTERN WATER HOLDING

FILER: APPLE VALLEY RANCHOS WATER COMPANY

LAST CHANGED: APRIL 13, 2011

Parties

DAVID A. EBERSHOFF
ATTORNEY
FULBRIGHT & JAWORSKI, L.L.P.
555 SO. FLOWER STREET, 41ST FLOOR
LOS ANGELES, CA 90071
FOR: PARK WATER COMPANY AND APPLE
VALLEY RANCHOS WATER COMPANY

PETER W. ALLAN
ATTORNEY AT LAW
20202 MASSAI TRAIL
APPLE VALLEY, CA 92307
FOR: PETER W. ALLAN

ANGELO S. CICI
13421 CHOCO ROAD
APPLE VALLEY, CA 92308
FOR: ANGELO S. CICI

JAMES SMITH
11910 CHIMAYO ROAD
APPLE VALLEY, CA 92308
FOR: JAMES SMITH & CHRISTINE SMITH

THOMAS E. HOEGERMAN
APPLE VALLEY UNIFIED SCHOOL DISTRICT
12555 NAVAJO ROAD
APPLE VALLEY, CA 92308
FOR: APPLE VALLEY UNIFIED SCHOOL
DISTRICT

WILLIAM E. MCDANIEL JR
19146 KAMBRIDGE ST.
APPLE VALLEY, CA 92308
FOR: WILLIAM E. MCDANIEL, JR.

WILLIAM E. MCDANIEL JR
APPLE VALLEY CHRISTIAN CARE CENTER, INC.
11959 APPLE VALLEY ROAD
APPLE VALLEY, CA 92308
FOR: APPLE VALLEY CHRISTIAN CARE
CENTER, INC./APPLE VALLEY CHRISTIAN
CARE CENTER REAL STATE HOLDING CO.,
LLC/APPLE VALLEY CHRISTIAN SENIOR
COMMUNITY, LLC

CHARITY SCHILLER
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
RIVERSIDE, CA 92502-1028
FOR: TOWN OF APPLE VALLEY

SELINA SHEK
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

MARTIN A. MATTES
COUNSEL
NOSSAMAN, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO, CA 94111-4799
FOR: WESTERN WATER HOLDINGS, LLC AND
PWC MERGER SUB, INC.

Information Only

KELLY CWIERTNY
BEST BEST & KRIEGER LLP
EMAIL ONLY
EMAIL ONLY, CA 00000

PIERO DALLARDA
BEST BEST & KRIEGER, LLP
EMAIL ONLY
EMAIL ONLY, CA 00000

BARBARA HALL
CLARK FORK COALITION
EMAIL ONLY
EMAIL ONLY, MT 00000-0000

GEORGE BUTTS
UTILITY RATE INSTITUTE
EMAIL ONLY
EMAIL ONLY, CA 00000-0000

BRYAN D. LIN
PRINCIPAL
THE CARLYLE GROUP
520 MADISON AVENUE, 41ST FL.
NEW YORK, NY 10022
FOR: WESTERN WATER HOLDINGS, LLC AND
PWC MERGER SUB, INC.

LEIGH K. JORDAN
EVP
PARK WATER COMPANY
9750 WASHBURN ROAD / PO BOX 7002
DOWNEY, CA 90241-7002
FOR: PARK WATER COMPANY AND APPLE
VALLEY RANCHOS WATER COMPANY

CHARLES D. PLUTA
15095 TACONY CT.
APPLE VALLEY, CA 92307

WILSON SO
19744 SENECA ROAD
APPLE VALLEY, CA 92307

JOHN E. BROWN
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
RIVERSIDE, CA 92502

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703-2714

State Service

DOUGLAS M. LONG
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5023
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOSE CABRERA
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
AREA 3-B
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LISA BILIR
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
ROOM 4208
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214