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California State Auditor
621 Capitol Mall, Ste 1200
Sacramento, CA 95814

Open Letter to the California State Auditor

Ms. Howle:

Although it is incumbent upon the State Auditor's Office, its auditors and legal counsel (collectively referred to hereinafter as ("Auditors")) to investigate and issue fair and accurate audits, conducted in an ethical manner; such practices did not occur during the City of Victorville's ("City") audit as part of the report on Apple Valley Water Rates. Despite our numerous discussions with the Auditors attempting to set the record straight and correct the woeful inaccuracies, the Auditors failed to use correct and accurate information provided to it by the City; ignored on-point, precedent setting and much anticipated case law; and failed to abide by the Government Auditing Standards ("GAS") claimed to be followed.

As you are aware, the City voluntarily agreed to participate in the audit, as we believed it would be informative to compare our rates with those of surrounding communities. What ensued was an unnecessary investigation into issues which had been thoroughly researched and vetted by a San Bernardino County Grand Jury investigation conducted from 2010 through 2012, which included both an independent forensic audit at the City's request, and a follow-up performance audit.

The Auditors based much of their report on the improper assumption that the Victorville Water District ("VWD") used restricted water delivery fees to fund the construction of its Industrial Waste Water Treatment Plant ("IWWTP"), which produces recycled water for the benefit of VWD customers, which in the Auditor's view amounted to a violation of Proposition 218. This assumption ignored the much-anticipated and recently-published decision in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* ("Capistrano"), 2015 WL 1798898; 15 Cal. Daily Op. Serv. 3836, which states that Proposition 218 does not bar public water agencies from passing on to their customers the capital costs of improvements to provide additional increments of water, specifically those costs associated with building a water recycling plant. In *Capistrano*, the Court of Appeal for the Fourth District specifically recognized that water service is a broad and encompassing concept, "which shows water to be part of a holistic distribution system that does not distinguish between potable and non-potable water," citing the recently amended language of Government Code Section 53750(m) from the Proposition 218 Omnibus Act. In other words, water delivery service "cannot be read to differentiate between recycled water and potable water".

Even after repeated discussions with the Auditors in an attempt to educate them about what kinds of funds were used, how the water ratepayers have benefitted from the IWWTP, will benefit to an even greater degree in the future, and that all procedures were in strict compliance with Proposition 218, the Auditors still issued this biased and unethical report. The Auditors reluctantly qualified findings in the report to state that the City “may have violated” Proposition 218”, rather than flat-out accusing the City of such violation. The Auditors know full well that such a qualified statement only serves one purpose—to protect them from liability and scrutiny. The City and VWD plainly and matter of factly did nothing wrong- it violated no law and was, and continues to be up-front and transparent in all of its dealings. Based upon *Capistrano* case, which the Auditors willfully ignore, as it goes against their biased position, such a statement that the City “may have violated Proposition 218” is incorrect, absurd and ignores sound GAS.

The City encourages the Auditors to take a close look at GAS Number 1.24 (among other standards in Chapter 1 of the GAS), which provides:

1.24 High expectations for the auditing profession include compliance with all relevant legal, regulatory, and professional obligations and avoidance of any conduct that might bring discredit to auditors' work, including actions that would cause an objective third party with knowledge of the relevant information to conclude that the auditors' work was professionally deficient. Professional behavior includes auditors putting forth an honest effort in performance of their duties and professional services in accordance with the relevant technical and professional standards.

By producing the report, the Auditors ignored the law, ignored auditing standards, and ignored the generally accepted ethical obligations imposed upon them.

In addition to making ill-founded conclusions that run afoul of state law and ethical standards, the Auditors wasted precious state and local resources through their investigation into the building of the IWWTP. As has been pointed out on multiple occasions, the borrowing that occurred to build the IWWTP happened a full year after the water rate increases withstood a majority property-owner protest proceeding in compliance with Proposition 218. Therefore, it is not possible for the loan transactions in question to have impacted the water rates: it defies logic.

Despite repeated attempts to correct factual errors, the report continues to be flawed. The report states “the wastewater plant served primarily one customer”. There are two large customers whose wastewater is treated at the IWWTP; the Federal Bureau of Prisons and the beverage manufacturer listed in the report, however, the plant also serves over four thousand other commercial and residential customers. The report goes on to state the VWD “has not sold any reclaimed water”, but the facts again prove otherwise. This fiscal year alone the VWD has sold approximately 250,000,000 gallons of reclaimed water to the High Desert Power Project (“HDPP”) to reduce the use of potable water in their cooling process. Of this, approximately 75,000,000 gallons was sourced from the IWWTP. Furthermore, due to system changes and a recently adopted pretreatment ordinance, the amount of reclaimed water sales sourced from the IWWTP will skyrocket within the next year, benefitting the VWD in increased revenues and reducing the use of potable water.

What is perhaps most ironic about the Auditor's report is that it seems to ignore Governor Brown's recent concerns expressed in response to the *Capistrano* case where he stated "My policy is and will continue to be: Employ every method possible to ensure water is conserved across California." What Victorville accomplished through the use of Victorville Water District revenues to facilitate the construction of the IWWTP, which now generates reclaimed water for the benefit of its rate payers, is exactly the type of program that carries forward the Governor's Mandate. Generating recycled water not only benefits the Victorville Water District rate payers, but it also benefits all water users in the State by offsetting the need for potable water. This offset specifically complies with the Governor's Mandate and works to ensure that precious potable water remains for beneficial use for Californians. As the Court in *Capistrano* has confirmed, such a structure does not violate Proposition 218, contrary to the assertions of the Auditors.

The ultimate absurdity is reflected in the audit objectives in Table 5, particularly the following objective: "4. Review and assess any other issues that are significant to water rates in Apple Valley." The methodology used for this objective is stated as, "Interviewed relevant staff and reviewed related documents to determine the nature of certain transactions between the Victorville Water District and the City of Victorville to determine the appropriateness of transactions involving water district revenues." Let me assure you that none of the transactions between the *City of Victorville* and the *Victorville Water District* have any impact whatsoever on water rates in *Apple Valley*. I cannot imagine how a professional agency charged with this audit could possibly believe this section of the report would in any way satisfy the stated audit objective.

Lastly, and perhaps more important to the wider public discussion of water rates, this inappropriate and redundant investigation will likely become a distraction from the original purpose and request of the Joint Legislative Audit Committee. It will be used to overshadow and call into question the veracity of the remainder of the report, including its original purpose of rate comparison. It is a shame to have spent this amount of taxpayer and ratepayer dollars on a report that perjures itself though an overzealous and inappropriate expansion beyond the original scope and outside the expertise of the staff and legal counsel charged with the task.

Regards,



Douglas B. Robertson
City Manager

cc: Joint Legislative Audit Committee
Governor Brown
Senator Runner
Assemblyman Obernolte
City Council
Gonsalves & Son
Los Angeles Times
Sacramento Bee
San Bernardino Sun
Daily Press