

# **EXHIBIT 12**



August 26, 2019

**VIA E-MAIL ONLY**

Phyllis Stanin  
Vice President, Principal Geologist  
Todd Groundwater  
2490 Mariner Square Loop, Suite 215  
Alameda, CA 94501-1080

Re: Replacement Water Assessment for Production Outside Antelope Valley State  
Water Contractors Association Boundaries – Item 8.D. on Watermaster’s August  
28, 2019 Agenda

Dear Ms. Stanin:

This office serves as legal counsel to Phelan Piñon Hills Community Services District (“Phelan”) in connection with the Antelope Valley Groundwater Adjudication. We have reviewed a draft agenda report regarding the setting of replacement water assessments rates which is Item 8.D. on the Watermaster’s August 28, 2019 agenda. While the agenda for the August 28, 2019 meeting was posted on August 21, 2019, as of 8:45 a.m. on August 26, 2019, the rest of the agenda packet had not been posted to the Watermaster website.

The draft agenda report regarding Item 8.D. refers to Raftelis having determined a rate structure and provided a financial model to the Antelope Valley State Water Contractors Association which has been made available to Watermaster staff for updating rates in the future. The report and financial model have not been made available with the August 28, 2019 agenda or agenda report to the public or to producers who will be expected to pay these rates for comment.

Presumably, the financial report is the same financial report that was presented to the Watermaster Board in April 2019 and the financial model is based on that report. That financial analysis is based on the presumption that it is appropriate to factor 100% of the contribution to capital costs of the State Water Project, inflated to 2017 or 2018 or later values, made by the members of the AVSWCA, since the inception of the State Water Project, into replacement water assessment rates. This assumption is not justified in any way by the Raftelis financial analysis or by any other report distributed in connection with the April 24, 2019 agenda.

Phyllis Stanin  
August 26, 2019  
Page 2

In addition, that financial analysis does not indicate that any consideration has been given to whether any of these capital costs have been recouped from other sources, such as property taxes, water rates or charges, contracts with parties who receive direct water deliveries, state, federal or other grants, or other sources. The failure to consider whether and to what extent these costs have already been recouped potentially results in the members of the AVSWCA recovering more than their costs and turning these replacement water assessments into a profit center for AVSWCA and the Watermaster, which may also be an unlawful tax. This is inconsistent with Propositions 13, 26 and 218.

Moreover, the standard Brown Act notice of the meeting does not give persons who may have to pay these rates a reasonable amount of time to understand the basis for these rates and to investigate whether costs have been recouped from other sources.

Further, the inflation of the costs based on the average CPI is not justified. No explanation is provided as to why the CPI is the appropriate inflation factor or whether other factors were considered. In addition, our office attempted to replicate the process by which the capital costs were inflated to 2017 or 2018 dollars and we have been unable to confirm the accuracy of the calculation contained in the Raftelis financial analysis.

The financial analysis and model are not based on substantial evidence to support the establishment of the replacement water assessments. In the absence of such evidence, the Watermaster should not make a decision on this matter.

Very truly yours,

ALESHIRE & WYNDER, LLP



June S. Ailin  
Partner

JSA

cc: Craig Parton, General Counsel