

BROWNS VALLEY IRRIGATION DISTRICT
Spring Valley Project
Frequently Asked Questions (“FAQs”)
November 17, 2010

SPRING VALLEY PROJECT BACKGROUND

1. What is the Spring Valley Project?

The Spring Valley Project is a proposed land development of approximately 2,500 acres situated on two tracts of land. One tract consists of approximately 1,300 acres and is located south of Spring Valley Road running across State Highway 20 down to the Yuba River. The second tract consists of approximately 1,200 acres and lies north of Spring Valley Road to Daphne and Fruitland Roads. The project as described in the existing Specific Plan may include up to 3,500 single- and multi-family residential units. In addition to the residential units, the proposed project includes a commercial center, two school sites, parks, an equestrian center, and community facilities sites. BVID understands that the developer is currently reviewing the scope of the project and may propose changes to it.

2. Who is the Spring Valley Group and What Lands Does It Own or Control?

The “Spring Valley Group” is the name BVID has agreed to use for the landowners involved in the Spring Valley Project. BVID understands that the Spring Valley Group consists of Axel Karlshoej, who owns approximately 750 acres of the project lands outright and is the developer of the project, and R.G. Wood, who owns the remaining 1,750 acres of land and who currently has given an option to Mr. Karlshoej to purchase the remaining land for project purposes.

3. What agencies have legal authority to approve the construction of the Spring Valley Project?

While some state and federal agencies may have decision-making authority over specific components of the project (for example, CalTrans over required improvements to Highway 20), the Yuba County Board of Supervisors has sole decision-making authority over whether to issue the permits and final subdivision map that would allow the developer to build the Spring Valley Project.

4. Can BVID help to stop the Spring Valley Project?

BVID is not involved in and has no control over land use planning, permitting and approvals for the Spring Valley Project. Yuba County is the sole land use planning agency in the BVID area. In their official capacity, BVID’s Board and staff are prohibited from advocating for or against any County land use decision concerning the Spring Valley Project or any development. As discussed below, BVID’s authority is limited to determining if it has sufficient water supplies to serve the project and to ensure that any water provided to the project is put to beneficial use.

BVID'S RIGHTS AND RESPONSIBILITIES WITH RESPECT TO PROVIDING A WATER SUPPLY TO THE SPRING VALLEY PROJECT

5. What is the proposal for BVID to provide a water supply to the Spring Valley Project?

The developer of the Spring Valley Project has requested that BVID: (1) provide up to 4,000 acre feet per year of untreated water supplies (sometimes referred to as "raw" or "ag water") from the Yuba River; and (2) to provide treated domestic water (sometimes referred to as "municipal and industrial water") to the Spring Valley Project and to begin the process of analyzing how treated water service would be provided to residents in the Spring Valley Project.

6. What is the "will-serve letter" that has been given to the Spring Valley Project's developer?

The "will-serve" letter that BVID provided to the Spring Valley Group states that as of the date of the letter, BVID has available up to 4,000 acre feet per year from the Yuba River and that if the water is later available, BVID will sell it to the Spring Valley Group if it satisfies certain conditions, including: (a) providing the necessary facilities at the Spring Valley Group's sole cost to divert and deliver the water to the Spring Valley Project; (b) executing a development or mainline extension agreement with BVID; and (c) abiding by all applicable BVID ordinances, resolutions, rules, and regulations. The will-serve letter is a public document and copies may be reviewed at BVID's office or website.

7. What is the effect of BVID providing a will-serve letter for this project?

Yuba County requires developers to obtain a will-serve letter from a local water agency to prove that a sufficient water supply is available for new development. The will-serve letter is not a commitment from BVID to serve treated water or wholesale untreated water to the Spring Valley Project. BVID would only commit to providing water to the Spring Valley Project after the Spring Valley Group satisfies all conditions listed above in FAQ 6, BVID completes and approves the required water supply assessment for the project, and Yuba County issues all required permits and approvals for the project.

8. Can BVID decide to not deliver water to the Spring Valley Project?

BVID is obligated by law to make available water for beneficial use to lands within the District boundaries. If BVID has available water supplies, it is required to provide them if the beneficiaries pay all of the costs of constructing the facilities necessary to convey the water to the lands on which the water service is requested.

9. Can BVID just wholesale the water to somebody else to treat and deliver to the Spring Valley Project?

Yes, as long as the water is put to beneficial use within BVID.

10. *Will Collins Lake water be used for the Spring Valley Project?*

If BVID provides the water supply for the Spring Valley Project, then the primary source of water is will be the Yuba River. BVID has the supplies available under its Yuba River water right, and its Yuba River diversion is adjacent to the Spring Valley Project and could serve the requested water with certain improvements that would be paid for by the developer. BVID, however, must have flexibility to mange its water supplies in a critical emergency to benefit all water users. Absolutely stating that no water will ever be used from Collins Lake for the Project would prevent effective management of BVID's resources. The State of California requires treated water systems to have greater supply reliability than systems providing untreated water. The Department of Public Health and/or BVID will require the Spring Valley Group to drill a groundwater well and/or build one or more treated or untreated water storage tanks to provide an emergency water supply for the project. If for some catastrophic reason both the primary and emergency supplies failed, BVID might need to provide a temporary emergency supply from Collins Lake to the Spring Valley Project to maintain minimum health and safety standards. Any water supplied to the project from Collins Lake would be terminated as soon as the Yuba River or emergency water supply system was restored. Given the brief time frame when this theoretical need to draw on Collins Lake might occur and the use limits that would be imposed on the already small daily demands of the project in an emergency, providing Collins water supplies to the Spring Valley Project in such limited circumstances is almost certain not to impact water users that rely on Collins Lake.

11. *Could the Spring Valley Project take all the water in a dry year?*

Water usage for the Spring Valley Project is expected to be significantly less than the water usage on the same property for agricultural purposes. BVID's water rights engineer has analyzed BVID's existing water supplies and demands and has determined that BVID has sufficient excess Yuba River water supplies in all water year types available to serve the project. Because BVID has the most senior water rights on the Yuba River, it would be the last water rights holder to be required to stop diversions in a dry year. In other words, if BVID is cut back, the Yuba River would be dry and no one would be receiving water. This also is a reason why BVID is requiring the Spring Valley Group to use water from the Yuba River. Yuba River supplies are available, more reliable in dry years and in this case, would shift potential new demands away from Collins Lake, thus increasing reliability for existing Collins water users.

12. *Could BVID build and own the water treatment system and then lease out the operations to a qualified operator?*

Yes. If the Board decides that BVID should be the retail water purveyor to the Spring Valley Project, it will evaluate this option as well as others to determine which option is in BVID's best long-term interests.

13. *Will my water rates change because of the Spring Valley Project?*

No. Proposition 218 prohibits BVID from charging any of the costs of providing water to the Spring Valley Project to existing untreated water users. If BVID becomes the domestic water

purveyor for the Spring Valley Project, BVID should be able to keep untreated water rates stable with the Spring Valley Project because an equitable portion of the existing District overhead would be funded by the treated water rates that would be paid by Spring Valley Project water users.

14. *BVID started out as an agricultural water district; how can it now decide to serve domestic water?*

Under the Irrigation District Law (Water Code sections 20500 through 29978), an irrigation district can provide many services, including untreated water, treated water, drainage and electricity. Similar changes have taken place in other irrigation districts.

15. *Why can't I get year-round water?*

Any BVID water user could potentially receive year-round water service under the same conditions as the Spring Valley Group. The conditions for making "24/7/365" water service available include: (1) BVID would determine if it has sufficient water supplies and facilities available to provide the requested service; (2) if any new facilities are required to provide the requested service, the water user or users would be required to sign an agreement to pay for the new facilities and pay all costs to construct those facilities; (3) the water user or users would have to pay water service charges that reflect all costs to provide the special service; and (4) the water user or users would be required to comply with any existing and new rules and regulations governing the new water service.

THE DEVELOPER'S OBLIGATIONS TO BVID WITH RESPECT TO THE SPRING VALLEY PROJECT

16. *Is the Spring Valley Project costing BVID money?*

BVID has a funding agreement with the Spring Valley Group that reimburses the District for all of its expenses incurred for working on Spring Valley Project water service issues. Reimbursable expenses include staff and consultant time and expenses, materials, attorneys' fees, and the costs of special studies. Therefore, BVID's water users are not subsidizing any Spring Valley Project expenses.

17. *Will BVID be required to pay for Spring Valley Project water treatment plant?*

If the Board approves the request to serve treated water to the Spring Valley Project, BVID also expects to negotiate and sign new agreements to ensure that the Spring Valley Group pays the full costs of constructing all facilities necessary to treat and deliver water, and to subsidize the operating costs of the Spring Valley water system until it can pay its own way through water rates.

18. Does BVID have any agreements or contracts with the Spring Valley Group?

Beside the “will-serve” letter and funding agreement discussed in FAQs 6 and 16, BVID would enter into a mainline extension agreement with the Spring Valley Group to cover the costs of building the facilities required to deliver water to the Spring Valley Project, assuming it is entitled and built. If BVID agrees to provide additional services to the project, such as water treatment and distribution, BVID may sign additional agreements with the Spring Valley Group and other entities to ensure that BVID recovers all costs of providing those services.

BVID'S PROCESS FOR AND POLICY CONSIDERATIONS WITH RESPECT TO EVALUATING THE SPRING VALLEY PROJECT

19. What is BVID's process for communicating to the public concerning this project?

The Board has taken several steps to ensure public participation in and communication about BVID’s role as a water supplier to the Spring Valley Project, including creation of a standing Spring Valley Project Committee to advise the Board on project issues and forming the District Advisory Committee made up of BVID landowners and water users for the purpose of advising the Spring Valley Project Committee on public concerns about the District’s involvement in the project. In addition, BVID has and will continue a public outreach program to inform ratepayers about its activities and decisions related to the Spring Valley Project, including publishing these FAQs and updating the Spring Valley Project web page on the BVID website with important information about the District’s activities with respect to the project.

20. Why would BVID want to take on a domestic water system such as the Spring Valley Project?

California public policy prefers that public agencies such as BVID (rather than private water companies) own and operate facilities that benefit the public. Because the Spring Valley Project is located within BVID, public policy also prefers that BVID distribute treated water to this project. There is a possible risk to BVID if it does not become the treated water purveyor for the project. The Spring Valley Group could form a new agency to treat and deliver water within the project. If that agency eventually has more customers and better financials, LAFCO might require BVID to merge with that agency. If BVID provides treated water service to the Spring Valley Project, the District would retain control over all water services in the area. BVID’s ability to control the terms of water service to the Spring Valley Project also would permit it to impose water use restrictions that would help reduce the amount of water used by the project to below the 4,000 acre feet requested, for example by requiring use of recycled water and water-saving appliances and technologies. Additional reasons why BVID is considering becoming the water purveyor to the Spring Valley Project are discussed in the answers to FAQs 13, 21, and 24.

21. Could BVID detach the Spring Valley Project area from the District?

BVID could file an application with the Yuba County Local Agency Formation Commission (“LAFCO”) to detach (sometimes referred to as “de-annex”) the Spring Valley Project from the District, but there could be many problems with that action. First, the District might lose a

portion of its revenues if it detaches the Spring Valley Project lands. For example, BVID might have to refund a portion of the moneys collected from landowners within Spring Valley that were paid over many years to finance BVID facilities and operations. Second, because state policy and LAFCO statutes discourage a public agency from detaching lands already within its boundaries, LAFCO could refuse to grant the detachment. This is particularly true if no existing, neighboring agency is willing to include the Spring Valley Project within its boundaries because LAFCO policy also discourages detachments that result in the creation of new single-purpose water districts in areas where an existing provider is authorized to provide services. Finally, BVID may be required to give the detached lands a prorated portion of the District's water rights, which would decrease the water supplies and revenues available to BVID.

22. Could the residents of the Spring Valley Project elect a majority to the Board of Directors?

Currently, BVID is divided into five voting divisions. Each of the five members of the Board of Directors must reside in a different voting division. However, the Directors are elected "at large" by all voters in BVID, meaning that each voter may vote for one candidate from each of the Board voting divisions that are up for election instead of being limited only to voting for one of the candidates in the division in which the voter lives. Under California and federal law, the BVID Board of Directors may adjust the Board voting division boundaries to allocate one or two seats on the Board of Directors to the voters in the Spring Valley Project and to allocate the other three or four seats to the rest of the lands in the District where BVID's existing voters reside. A re-drawing of Board voting divisions can be performed before the Spring Valley Project is built to "lock in" this allocation of voting power. To the extent legally permitted, an allocation of Board seats in this manner will help ensure that BVID's existing voters continue to maintain a majority voice on the Board and still respect the "one person, one vote" legal requirement.

23. Can the water users within BVID put together a referendum concerning the Spring Valley Project and would it be binding?

Under California law, irrigation district voters do not have a power of initiative or referendum. Therefore, voters of BVID could not petition to place a binding or advisory referendum concerning the Spring Valley Project on the District's special or general election ballot. However, initiatives and referendums are permitted at the county level. An example of this is the Yuba County voters' approval of the Spring Valley Specific Plan in 1992.

24. How will a sale of water to the Spring Valley Project help BVID preserve its water rights?

Although the key issue is that BVID is legally obligated to serve water to any landowner in the District that requests service, one of the beneficial side effects of providing water to the Spring Valley Project is that it may assist BVID in preserving its water rights. Under the California Constitution, even an old and high priority water right like BVID's pre-1914 Yuba River appropriative water right must be used to its fullest, beneficial use. If all of a water right is not fully and beneficially used, the unused portion might become forfeited by law. This is true even in drought years as long as BVID's Yuba River water supplies are not entirely used. Even if Collins Lake water users must be cut back because of drought, if Yuba River supplies are available there is no exception in water rights law that would excuse a failure to use all available

supplies. Because BVID is unable to use all of its water rights within the District now, it would be a benefit for BVID if it is able to find a permanent beneficial use for its unused Yuba River water supplies within BVID. The Spring Valley Project is such a use.

25. How else might the Spring Valley Project impact BVID?

The Spring Valley Group's request that BVID deliver no more than 4,000 acre feet of water each year would actually be beneficial to BVID for several other, related reasons, including:

- A. If the project lands were instead used for agricultural purposes or broken into the traditional 5- or 10-acre ranchettes, the land might be entitled to receive a total of 6,000 or more acre feet of water per year. As determined by BVID's engineer, even with a sale to the Spring Valley Group, there would be adequate water supplies available for anticipated growth in water demands from water users in the Yuba River service area.
- B. The water requested by the Spring Valley Group would be used in BVID instead of allowing that water to go unused down the Yuba River or being sold to out-of-District water users, if there is demand for the water and if pumping capacity at the Delta pumps is available.
- C. Demands on Collins Lake are already at or close to their maximum. If the Spring Valley Project lands are not developed under the Specific Plan or other plan of development, BVID might have to serve many individual parcels in the area from Collins Lake, thus increasing demands on and reducing the reliability of Collins Lake water supplies for all existing water users.

[Please note: BVID plans to update this document as additional information is developed concerning the proposed Spring Valley Project. Please check BVID's website (<http://www.bvid.org>) from time to time for updated FAQs.]