RESOLUTION NO. 12-10

A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SANTA CLARA VALLEY WATER DISTRICT ADOPTING PROCEDURES
FOR THE IMPOSITION OF SURFACE WATER CHARGES

WHEREAS, pursuant to Section 4 of the District Act, the purposes of the District Act are to authorize the District to provide comprehensive water management for all beneficial uses within Santa Clara County; and

WHEREAS, Section 5(5) of the District Act authorizes District to do any and every lawful act necessary to be done that sufficient water may be available for beneficial uses within Santa Clara County; and

WHEREAS, Section 5(12) authorizes the District to make contracts and do all acts necessary for the full exercise of all powers vested in the District; and

WHEREAS, Proposition 218, adopted on November 6, 1996, added Articles XIIIC and XIIID to the California Constitution which impose certain procedural and substantive requirements with respect to the imposition of certain new or increased fees and charges; and

WHEREAS, whether legally required or not, the District Board believes it to be in the best interest of the community to align its practices with respect to the imposition of surface water charges to mirror the majority protest requirements of Article XIII D, section 6 applicable to charges for water services to the extent possible; and

WHEREAS, the District Board believes it to be in the best interest of the community to record its decisions regarding implementation of the provisions relating to imposition of surface water charges and to provide the community with a guide to those decisions and how they have been made; and

NOW, THEREFORE, the Board of Directors of Santa Clara Valley Water District does hereby resolve as follows:

SECTION 1. Statement of Legislative Intent. It is the Board of Directors' intent in adopting this resolution, to adopt the notice, hearing, and majority protest procedure proceedings that are consistent, and in conformance with, Articles XIIIC and XIIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act and the provisions of other statutes authorizing imposition of surface water charges. To the extent that these requirements are legally required to supercede the requirements set forth in the District Act, these provisions are intended to prevail.

SECTION 2. Definitions.

A. **Record Owner.** The District will provide the required notice to the Record Owner. "Record Owner" means the record owner of the property on which the surface water use-facility is present, and the tenant(s) who are District surface water permittees liable for the payment of the surface water charge.

B. **Charge Zone.** "Charge Zone" means the District zone (i.e. Zone W-2 or Zone W-5) that a surface water user's turnout is located, which is applicable in identifying the proposed surface water charge. Surface water users that receive surface water outside of either Zone W-2 or Zone W-5 are deemed to be located in the zone to which the surface water user's turnout is most nearly located.

SECTION 3. Surface Water Charge Proceeding. The following procedures will be used:

A. **Those Subject to the charge.** The Record Owners of the existing surface use-facilities.

B. **Amount of Charge.** A formula or schedule of charges by which the customer can easily calculate the potential surface water charge will be included in the notice. The surface water charge is comprised of a basic user charge and a surface water master charge. The surface water charge must comply with the following substantive requirements:

1. Revenues derived from the surface water charge will not be used for any purpose other than that for which the charge is imposed.

2. Revenues derived from the surface water charge will not exceed the direct and indirect costs required to provide the service.

3. The amount of the surface water charge must not exceed the proportional cost of the service attributable to the property.

4. No charge may be imposed for a service unless the service is actually used by, or immediately available to the property owner (or, if applicable, the tenant).

5. No charge can be imposed for general governmental services where the service is available to the public at large in substantially the same manner as it is to property owners.

C. **Notice.** The following guidelines apply to giving notice of the surface water charge.

1. Record Owner(s) of each parcel subject to the surface water charge, meaning any parcel with a surface water use-facility, will be determined from the last equalized property tax roll. If the property tax roll indicates more than one owner, each owner will be sent the notice. District surface water permittees liable for the payment of the surface water charge will also be provided with the notice.

2. The notice must be sent at least forty-five (45) days prior to the date set for the public hearing on the surface water charge.

3. Failure of any person to receive the notice will not invalidate the proceedings.

D. **Surface Water Charge Protest.** The following guidelines apply to the surface water charge protest procedure:

1. The notice will be mailed to all affected Record Owners at least forty-five (45) days prior to the date of the public hearing on the proposed surface water charge.

2. Written protests must be forwarded to the Clerk of the Board by mail or in person, sealed in an envelope which conceals the contents, with the property address or APN written on the outside of the envelope. To be counted, protests must be received no later than the date for return of protests stated on the notice, or the close of the public hearing, whichever is later.

3. A protest must be signed under penalty of perjury. For properties with more than one Record Owner, a protest from any one surface water user-facility will count as a protest for the property. No more than one protest will be counted for any given property.

4. Only protests with original signatures will be accepted. Photocopied signatures will not be accepted. Protests will not be accepted via e-mail. Protests must be submitted in sealed envelopes identifying the property on which the surface water user-facility is located, and include the legibly printed name of the signator. Protests not submitted as required by this Resolution will not be counted.

5. This proceeding is not an election.

6. Written Protests must remain sealed until the tabulation of protests commences at the conclusion of the public hearing. A written protest may be submitted or changed by the person who submitted the protest prior to the conclusion of the public testimony on the proposed charge at the public hearing.

7. Prior to the public hearing, neither the protest nor the envelope in which it is submitted will be treated as a public record, pursuant to the Government Code section 6254(c) and any other applicable law, in order to prevent potential unwarranted invasions of the submitter's privacy and to protect the integrity of the protest process.

E. **Tabulating Protests.** The following guidelines apply to tabulating protests:

1. It will be the responsibility of the Clerk of the Board to determine the validity of all protests. The Clerk will accept as valid all protests except those in the following categories:

   a. A photocopy which does not contain an original signature;
   b. An unsigned protest;
   c. A protest without a legible printed name;
   d. A protest which appears to be tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;

e. A protest submitted to the District via e-mail;
f. A protest submitted in an envelope that does not have the address or APN written on the outside of the envelope;
g. A protest signed by someone other than the Record Owner for the APN.

The Clerk's decision, after consultation with the District Counsel, that a protest is invalid is final.

2. An impartial person, designated by the governing board, who does not have a vested interest in the outcome of the proposed charge will tabulate the written protests submitted, and not withdrawn. The impartial person may be a member of the Clerk of the Board Office.

3. A Record Owner who has submitted a protest may withdraw that protest at any time up until the conclusion of the final public hearing on the surface water charge.

4. A property owner's failure to receive notice of the surface water charge will not invalidate the proceedings conducted under this procedure.

F. Public Hearing.

1. At the public hearing, the District Board will hear and consider all public testimony regarding the proposed surface water charge and accept written protests until the close of the public hearing, which hearing may be continued from time to time.

2. The District Board may impose reasonable time limits on both the length of the entire hearing and the length of each speaker's testimony.

3. At the conclusion of the hearing, the Clerk of the Board, or other neutral person designated to do the tabulation will complete tabulation of the protests from Record Owners, including those received during public hearing.

4. If it is not possible to tabulate the protests on the same day as the public hearing, or if additional time is necessary for public testimony, the District Board may continue the public hearing to a later date to receive additional testimony, information or to finish tabulating the protests; or may close the public hearing and continue the item to a future meeting to finish tabulating the protests.

5. If according to the final tabulation of the protests from Record Owners, the number of protests submitted against the proposed surface water charge (or increase of the surface water charge) within a Charge Zone exceeds 50% plus one of either: (i) the identified number of parcels within that Charge Zone, or (ii) the identified number of owners and tenants who are subject to the surface water charge within that Charge Zone, then a "majority protest" exists and the District Board of Directors will not impose the surface water charge within that Charge Zone.

Resolution 12-10

A Resolution of the Board of Directors of the Santa Clara Valley Water District Adopting Procedures for the Imposition of Surface Water Charges

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on February 14, 2012.

AYES:	Directors	T. Estremera, D. Gage, J. Judge, P. Kwok, R. Santos, B. Schmidt, L. LeZotte
NOES:	Directors	None
ABSENT:	Directors	None
ABSTAIN:	Directors	None

SANTA CLARA VALLEY WATER DISTRICT

By: _____
LINDA J. LEZOTTE
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

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Clerk/Board of Directors

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