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**Sent:** Friday, May 16, 2025 10:03 AM

**To:** Clerk of the Board <clerkoftheboard@valleywater.org>; Board of Directors <board@valleywater.org>

**Cc:** Acos, Jena S. <jacos@bhfs.Com>; Slater, Scott <SSlater@bhfs.com>; Willie Brown <willie.brown@sjwater.com>

**Subject:** Comments regarding proposed 2025-26 water charges

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To the Santa Clara Valley Water District Board of Directors,

On behalf of San Jose Water Company, please find attached this comment letter regarding the proposed 2025-26 water charges in advance of the Board of Director's May 16, 2025 meeting regarding these proposed changes. Thank you.

***Justin M. Bogda***

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***WE HAVE MOVED: Our new address is: 2029 Century Park East, Suite 950 Los Angeles, CA 90067***

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May 16, 2025

VIA EMAIL: [clerkoftheboard@valleywater.org](mailto:clerkoftheboard@valleywater.org); [board@valleywater.org](mailto:board@valleywater.org)

**RE: San Jose Water Company's Concerns with and Protest/Objection to the Proposed 2025-26 Water Charges**

To the Santa Clara Valley Water District Board of Directors:

On behalf of our client San Jose Water Company ("SJWC"), Brownstein Hyatt Farber Schreck, LLP submits this comment and written protest in advance of the Board of Director's ("Board") May 16, 2025 public hearing to voice its concern over Santa Clara Valley Water District's (the "District") historically high water rates and to formally oppose the District's proposed increases to its 2025-26 water charges. SJWC is a regulated public utility that regularly purchases both groundwater and recycled/treated water from the District to provide water service to over 1 million people in the greater San Jose metropolitan area and appreciates the constructive relationship and historical collaboration with the District that has allowed SJWC to provide this service to its customers. However, considering the high cost already levied on users within SJWC's service area in the W-2 Zone in North County, we are compelled to draft this letter to challenge the magnitude of charges that our customers continue to absorb. Accordingly, we request that the Board decline to adopt the proposed increases to SJWC's 2025-26 water charges because they are not proportional to the benefit that SJWC receives and are manifestly unreasonable.

SJWC's current 2024-25 basic user charge for groundwater production is a staggering \$2,229 per acre-foot ("af"), which is the highest basic user charge in all the District's zones—and nearly 300% more than the next highest basic user charge in the W-7 Zone.<sup>1</sup> In addition to being charged a basic user charge for groundwater production, the District also charges SJWC that same basic user charge (\$2,229/af) to receive recycled/treated water service, plus a \$115-200/af contract surcharge.<sup>2</sup> SJWC therefore is likely paying double the amount for the proportionate benefit it receives, and this burden is only increasing: as detailed in the 2025-26 PAWS Report, the District is proposing to increase SJWC's 2025-26 basic user charge to \$2,450/af, which represents a nearly 10% increase over the already high 2024-25 basic user charge and a significant 24% increase over SJWC's 2023-24 basic user charge.<sup>3</sup>

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<sup>1</sup> See 2025-26 Protection and Augmentation of Water Supplies Report ("2025-26 PAWS Report"), p. 49 (showing \$2,229/af basic user charge in the W-2 Zone and \$750.50/af basic user charge in the W-7 Zone).

<sup>2</sup> See *id.*

<sup>3</sup> See *id.*

This increase follows a long history of the District financing its operations by levying exorbitant groundwater production charges on the North W-2 Zone at a far higher rate than any increase levied on the South Zones. Since 2011, the groundwater production charge in the North W-2 Zone has increased nearly fivefold, from \$520/af to a proposed \$2,450/af.<sup>4</sup> Meanwhile, groundwater production charges in the South Zones have increased at a significantly lower rate, while recycled and surface water charges have increased marginally over time. The disproportionate allocation of burden on the basic user charge in the North W-2 Zone (which users contracting for multiple types of water pay twice!) is unjustified and manifestly unreasonable, not proportional to the District's cost of providing service, and places an unfair burden on SJWC without receiving a commensurate extraordinary benefit or service.<sup>5</sup>

As fees that provide a specific service or confer a specific benefit, the District's water charges must comply with the substantive requirements in article XIII of the California Constitution. Specifically, a charge imposed for a specific benefit or service must be granted "directly to [SJWC] that is not provided to those not charged" and the total revenue generated from the charges must "not exceed the reasonable costs to the local government of conferring the benefit" or providing service to SJWC.<sup>6</sup> Importantly, the "manner in which those costs are allocated" to SJWC must "bear a fair or reasonable relationship" to the benefits SJWC receives from the District's activities.<sup>7</sup> Although courts have not definitively concluded how to calculate this proportionality requirement, it is clear that a fair allocation of costs must place a proportional burden on similarly situated users.<sup>8</sup> Further, as a California Court recently decreed, the determination of whether SJWC's proportional burden is reasonable under the California Constitution is "case-specific."<sup>9</sup>

Additionally, property-related fees that are imposed as an "incident of property ownership" (1) must not exceed the cost to provide the service, (2) cannot be used for any other purpose other than that for which the fee is imposed, (3) must not exceed the proportional cost to service the parcel, and (4) cannot be imposed for general governmental purposes.<sup>10</sup> The purchased service must also "be actually used by or immediately available to the property owner."<sup>11</sup> In order to determine whether the fees are proportional to the cost of service to the parcel, costs must be analyzed on a parcel-by-parcel basis to determine which costs are "attributable to the parcel," *i.e.*, the costs must be calculated individually for

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<sup>4</sup> See *Review of the Santa Clara Valley Water District's Cost of Service and Rate Setting Methodology for FY 2011 Groundwater Production Charges* (Mar. 5, 2010), p. 28.

<sup>5</sup> See 2025-26 PAWS Report, p. 54 (estimating that the District's operating costs will increase by an average of 4.7% per year over the next ten years).

<sup>6</sup> Cal. Const., art. XIII C § 1(e)(1), (2).

<sup>7</sup> Cal. Const., art. XIII A § 3(d); Cal. Const., art. XIII C § 1(e).

<sup>8</sup> See *Great Oaks Water Company v. Santa Clara Valley Water District* (2025) 2025 WL 969510, at \*8; *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal. 5th 1191, 1204, 1209.

<sup>9</sup> *Bring Back the Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322, 331 Cal.Rptr.3d 589, 608.

<sup>10</sup> Cal. Const., art. XIII D, § 6(b).

<sup>11</sup> *Id.*

each rate payor.<sup>12</sup> In order to impose differential rates on different customer classes, the District bears the burden to prove that the actual costs of providing the service are different, which requires “more than merely balanc[ing] . . . total costs of service with its total revenues.”<sup>13</sup>

Concerningly, the District’s proposed increases to its 2025-26 water charges fall far short of these standards. The District provides water service to four primary customer classes, including groundwater users, treated water users, surface water users, and recycled water users.<sup>14</sup> As detailed in the District’s cost-of-service studies from 2011 and 2015, the District imposes fees among these four classes based on the “conjunctive use benefit” that groundwater users allegedly receive from the District’s provision of surface and recycled/treated water, which is referred to as “in-lieu groundwater.”<sup>15</sup> As described in the “conjunctive use benefit” methodology, the conjunctive use benefit is calculated as the ratio between the existing system, estimated by the costs as if the system were newly built in 2013 (although the system is already existing and already provides groundwater, surface water, and recycled/treated water service), with the estimated costs hypothetically required to provide a proportionate amount of groundwater to all users under a hypothetical system that *does not* provide surface water or recycled/treated water service.<sup>16</sup> Since the costs of the existing system (if rebuilt in 2013) and the hypothetical primarily groundwater systems are substantially the same, the District justifies levying a basic user charge across all user classes in the same zone.

This methodology was purportedly created to incentivize the correct balance between groundwater production and surface and treated water use. However, the District has used this methodology to unfairly apportion its costs equally among different user classes regardless of the benefit that each user class receives and regardless of the actual costs of providing service. This allocation has resulted in the imposition of astronomical basic user fees on groundwater users in order to subsidize the cost of providing surface and recycled/treated water service by *maintaining the status quo of the existing system*, rather than the estimated cost of service of improving the system or investing in additional groundwater infrastructure. This proportionality is overinflated considering the fact that the existing system already provides service to these different customer classes. The resulting rates are manifestly unreasonable considering the fact that the level of service that the District provides remains unchanged.

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<sup>12</sup> *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1505-06.

<sup>13</sup> *Capistrano Taxpayers Assn.*, 235 Cal.App.4th at 1506 [stating that, to support its tiered rate structure, the city had to correlate its tiered prices with the actual cost of providing water at those tiered levels. “Since [the city] did not try to calculate the actual costs of service for the various tiers, the trial court’s ruling [against the city] on tiered pricing must be upheld simply on the basis of the constitutional text.”].

<sup>14</sup> See 2025-26 PAWS Report, p. 43.

<sup>15</sup> See Report Documenting the Reasonableness of Conjunctive Use Benefit of Surface Water and Recycled Water to Groundwater Customers (Feb. 27, 2015), pp. 12-13, 32.

<sup>16</sup> See *id.*

The unreasonableness of these fees is even more apparent when considering users who, like SJWC, purchase a greater amount of recycled/treated water per month than they produce from groundwater but still pay the “basic user charge” for both groundwater use and purchased recycled/treated water that is “in lieu” of groundwater use under the District’s assessment of “conjunctive benefits.” The District cannot continue to finance its overall system operations primarily through allocations of costs to the North Zone, while requiring users that produce both groundwater and purchase recycled/treated water to pay double the amount per/af to fund the District’s “conjunctive benefit” activities across its entire system regardless of the actual benefit that the user receives. Whatever “conjunctive benefit” SJWC might receive from the District’s activities in other zones and for other user classes, the high costs SJWC’s pays are not proportional to SJWC’s burdens on the system or the benefit that SJWC receives in exchange. These costs are not justified and must be revised to ensure proportionality, fairness, and an accurate accounting of the costs and corresponding benefits of the District’s activities on each user, and should not be used to subsidize the District’s comparatively high cost of service and lack of management oversight and system control. We implore the District to not add additional burdens to working families within SJWC’s service area who are already struggling under the District’s high cost of service.

For these reasons, we respectfully request that the District forego its proposal to increase the 2025-26 groundwater and surface water charges in order to ensure that the charges bear a proportional and fair relationship to the cost of service provided. We hope to continue our collaborative relationship with the District to ensure these high costs are fairly apportioned between users into the future.

Respectfully submitted,



Jena Shoaf Acos