



Santa Clara Valley Water District

File No.: 17-0791

Agenda Date: 12/12/2017

Item No.: 3.5.

BOARD AGENDA MEMORANDUM

SUBJECT:

Claim by Great Oaks Water Company Against the Santa Clara Valley Water District for Refund of Groundwater Production Charges.

RECOMMENDATION:

Deny the claim.

SUMMARY:

On September 20, 2017, Great Oaks Water Company presented the Santa Clara Valley Water District with a written claim demanding that the District refund \$5,568,893.05 plus interest in groundwater production charges collected from Great Oaks for the 2016-17 fiscal year. Great Oaks also demands a refund of any charges that the District will collect from Great Oaks for the 2017-18 fiscal year. We recommend that the District reject Great Oaks' claim in its entirety. A "Notice of Rejection of Claim" letter is attached to this memo as Exhibit A.

This claim is the most recent in a line of similar claims seeking a refund of groundwater production charges that Great Oaks has submitted each year since 2005. The District has denied all of Great Oaks' previous claims, and Great Oaks has filed a lawsuit following each denial. There are currently twelve such lawsuits involving Great Oaks and a thirteenth case involving three other parties.

In this claim, Great Oaks reiterates the arguments it has been asserting in its other claims and lawsuits against the District:

- a. That the charges are property-related fees under Article XIII D, section 6 of the California Constitution (Proposition 218) that were not adopted in compliance with the procedural and substantive requirements of Article XIII D, section 6.
- b. That the charges are assessments under Article XIII D, section 4 of the California Constitution (Proposition 218) that were not adopted in compliance with the procedural and substantive requirements of Article XIII D, section 4.
- c. That the charges do not qualify as fees under Article XIII C, section 1(e) of the California Constitution (Proposition 26) and therefore are taxes that were not

approved by the electorate.

d. That the District has violated the Santa Clara Valley Water District Act by collecting groundwater production charges to fund activities that the Act allegedly does not authorize the District to fund using such charges.

Great Oaks' previous lawsuits against the District have been stayed while the first or "lead" case filed by Great Oaks, challenging the District's 2005-06 groundwater production charges, is litigated. The lead case is now pending before the California Supreme Court, but briefing is on hold while the Supreme Court resolves a separate lawsuit involving similar charges imposed by a water district in Southern California. (*City of San Buenaventura v. United Water Conservation District*, Case No. S226036.)

It is our position that the District's groundwater production charges are not property related fees, assessments, or taxes; that the groundwater production charges were adopted in compliance with the procedural and substantive requirements of Article XIII D, to the extent those requirements apply; and that the District has not used revenue from its groundwater production charges in a manner that violates the District Act. We therefore recommend that the District reject Great Oaks' claim.

If the District rejects Great Oaks' claim, Great Oaks will likely respond, as it has before, by filing a lawsuit seeking a refund of groundwater production charges that it contends the District has illegally collected. We would seek a stay of that lawsuit, as we have in the other cases, pending resolution of the lead case.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Claim

Attachment 2: Notice of Rejection of Claim

UNCLASSIFIED MANAGER:

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