



# Santa Clara Valley Water District

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**File No.:** 22-0004

**Agenda Date:** 1/11/2022  
**Item No.:** 3.4.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Claim of Alie Hussein Saad.  
Claim of David and Annette Batey.  
Claim of Roga Gabucan.  
Claim of Nan Li.

### **RECOMMENDATION:**

Deny the claims.

### **SUMMARY:**

#### **The Claims**

The Santa Clara Valley Water District (Valley Water) received three claims in October 2021 and one claim in November 2021 from Morgan Hill residents asserting property damage as a result of boars accessing their property allegedly due to the draining of Anderson Reservoir (District 1):

1. Claim of Alie Hussein Saad. Claim received 10/13/21. Claimant is seeking \$5,500 in damages for sod and lawn.
2. Claim of David and Annette Batey. Claim received 10/18/21. Claimant is seeking \$4,499 in damages for sod, yard bench, potted plants and labor.
3. Claim of Roga Gabucany. Claim received 10/20/21. Claimant is seeking \$10,000 in damages for 4,000 square ft of grass area.
4. Claim of Nan Li. Claim received 11/01/21. Claimant is seeking \$3,000 in damages for broken water pipes and 20 plants)

According to claimants, Anderson Reservoir acted as a natural barrier, preventing wild boars from entering their property. However, now that the reservoir has been effectively drained, wild boars are allegedly crossing the dry reservoir and causing property damage to their property, including rooting up their lawns.

### **Claim Analysis**

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The Office of the District Counsel in collaboration with Risk Management investigated these claims and recommends their denial. As explained in greater detail below, the District Counsel is of the opinion that Valley Water does not bear legal liability for these claims for several reasons.

As an initial matter, there is no indication that Valley Water has done anything negligent or unreasonable to cause the boars to enter onto the claimants' property. On the contrary, Valley Water lowered the water level in Anderson Reservoir because the Federal Energy Regulatory Commission (FERC) ordered Valley Water to do so. Because Valley Water did not have any discretion on whether to lower the water level, there is no voluntary action or inaction by Valley Water on which a claimant could base a legal claim.

In addition, California law holds that a landowner is not responsible for the acts of wild animals except under very limited circumstances, none of which apply here.

Also, California is in the midst of an historic drought. It is not unusual for wild animals to seek out new food and water sources as old sources dry up. In other words, it may be the drought and not the draining of Anderson that is causing the wild boars to forage in more developed areas.

There are also various statutory immunities and other legal theories that could protect Valley Water from liability related to its operation of the reservoir and its compliance with the FERC order.

In summary, there is no apparent legal basis on which the claimants base their claims. As such, staff recommends that these claims be denied. Staff has advised the claimants of this recommendation and of their right to speak to the Board at its consideration of this item.

#### **ENVIRONMENTAL JUSTICE IMPACT:**

There are no Environmental Justice impacts associated with this item.

#### **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, Alie Saad
- Attachment 2: Claim, David and Annette Batey
- Attachment 3: Claim, Roga Gabucan
- Attachment 4: Claim, Nan Li

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**UNCLASSIFIED MANAGER:**  
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