



FC 1025 (11/18/09)

Meeting Date: 1/26/10
Agenda Item: 12
Unclassified Manager: J. Fiedler
Extension: 2736
Director(s): All

CONFORMED COPY
BOARD AGENDA MEMO

SUBJECT: Resolution Adopting Procedures for the Imposition of Groundwater Production Charges Including Majority Protest Procedure

RECOMMENDATION:

1. Adopt the Resolution

SUMMARY:

Section 26 of the District Act authorizes imposition of a groundwater production charge after providing the public with notice and opportunity to be heard. The District's past practice has included a process that involved providing notice by letter to all well owners and gathering feedback from Water Retailers and the Board's Advisory committees, as well as holding public hearings to hear input from the public.

Proposition 218 imposes procedural and substantive requirements with respect to imposition of certain new or increased fees and charges. Whether those requirements apply to the District's groundwater production charges is a subject currently before the courts and has not yet been finally decided. The District maintains that the groundwater production charges are not legally subject to those requirements. Whether legally bound or not, the District is committed to increasing the transparency of its groundwater production charge setting process.

While the District's process has always included an opportunity to contest imposition of the charges, for this year the District will modify its charge setting process to specifically include a defined majority protest procedure, as provided for in Proposition 218 for the imposition of charges for water service. Existing District Act provisions differ in some respects from the requirements set forth in the Proposition 218 protest procedure, and the statute itself does not specifically define many of the elements of the protest process. The purpose of the proposed resolution is to bridge that gap and to adopt detailed procedures for establishing a majority protest procedure that conforms to the process that would be required if Proposition 218 were applicable, and makes clear how that procedure is to be implemented.

Staff believes this formalization of the input process and recognition of the right of those called on to pay for the services provided to have a say in them, is in the best interests of the public and the District in that it increases the openness and transparency of the charge setting process.

ADOPTED

SUBJECT: Work Study Session on Preliminary FY 2010-11 Groundwater Production Charge Analysis

FINANCIAL IMPACT:

Though the procedures for imposing groundwater production charges themselves do not have any direct financial impact, the procedures will affect the future finances of the Water Utility Enterprise.

ATTACHMENTS:

Attachment 1, Resolution Adopting Procedures for the Imposition of Groundwater Production Charges

Resolution No. 10 –08

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

WHEREAS, Section 26 of the District Act includes provisions relating to imposition and notice and opportunity to be heard on the imposition of groundwater production charges, including the opportunity to contest the imposition; and

WHEREAS, Section 26 of the District Act provides the purposes for which groundwater production charges can be collected as follows:

- 1) To pay for construction, operation and maintenance of imported water facilities
- 2) To pay for imported water purchases
- 3) To pay for construction, operation and maintenance of facilities to conserve or distribute water including facilities for groundwater recharge, surface distribution, and purification and treatment of water
- 4) To pay for debt incurred for the above purposes.

WHEREAS, Proposition 218, adopted on November 6, 1996, added Articles XIII C and XIII D 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 the District's groundwater production charge is assessed upon a parcel of property or upon a person as an incident of property ownership such that it is subject to proposition 218 is a subject currently before the courts and has not yet been finally decided; and

WHEREAS, regardless of whether the District is legally required to 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 groundwater production charges to mirror the majority protest requirements of Article XIII D section 6 applicable to charges for water to the extent possible; and

WHEREAS, some of the requirements of the majority protest procedure are unclear and require further judicial interpretation or legislative implementation; 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 groundwater production charges and to provide the community with a guide to those decisions and how they have been made;

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 Director's intent in adopting this resolution, to adopt the notice, hearing, and majority protest procedure proceedings that are consistent, and in conformance with, Articles XIII C and XIII D of the California Constitution and with the Proposition 218 Omnibus Implementation Act and the provisions of other statutes authorizing

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imposition of 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. Definition of Record Owner. The District Act authorizes the groundwater production charge to be noticed and imposed on “owners or operators of water-producing facilities” which is not based on property ownership, while Article XIII D requires that notice be provided to the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll. In order to resolve the differences between these two approaches, the District will provide the required notice to the record owner of the property on which the water-producing facility is present, as well as to the owners or operators of water producing facilities (who are tenants of that real property directly liable to pay the groundwater production charge to the District).

SECTION 3. Groundwater Production Charge Proceeding. The following procedures will be used:

A. Those Subject to the charge. The Record Owners of existing water producing wells including water supply and extraction/environmental wells, whether currently active or not.

B. Amount of Charge. A formula or schedule of charges by which the customer can easily calculate the potential charge will be included in the notice. The charge must comply with the following substantive requirements:

1. Revenues derived from the charge will not be used for any purpose other than that for which the charge is imposed.
2. Revenues derived from the charge will not exceed the direct and indirect costs required to provide the service.
3. The amount of the 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 owner.
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 groundwater production charge.

1. The record owner(s) of each parcel subject to the charge, meaning any parcel with a water-producing 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. Where tenants are directly liable to pay the groundwater production charge to the District, they will also be provided with the notice.

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2. The notice must be sent at least forty-five (45) days prior to the date set for the public hearing on the charge.
3. Failure of any person to receive notice will not invalidate the proceedings.

D. Groundwater Production Charge Protest. The following guidelines apply to the 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 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, no more than one protest per category (property owner or well owner/operator) will be counted for any given property or well.
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 well 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, or withdrawn 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.

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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 the protest at any time up until the conclusion of the final public hearing on the charge.
4. A property owner's failure to receive notice of the 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 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

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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, protests submitted against the groundwater production charge exceed 50% plus one of either the identified number of parcels, or 50% plus one of the identified number of owners and operators subject to the charge a "majority protest" exists and the District Board of Directors will not impose any increase to the charge.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on January 26, 2010.

AYES: Directors L. Wilson, T. Estremera, J. Judge, R. Kamei, P. Kwok, R. Santos
NOES: Directors None
ABSTAIN: Directors None
ABSENT: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By 

Richard Santos
Chairperson/Board of Directors

ATTEST: MICHELE L. KING



Clerk/Board of Directors