



CALIFORNIA PUBLIC UTILITIES COMMISSION

CONSUMER PROTECTION & SAFETY DIVISION

**INVESTIGATIVE REPORT
ON
GREAT OAKS WATER COMPANY**

**BY: MIKE KOHAYA
APRIL 11, 2012**

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1 **I. EXECUTIVE SUMMARY**

2 On November 19, 2010, the California Public Utilities Commission (Commission)
3 issued Decision (D.)10-11-034 in Application (A.)09-09-001, Great Oaks Water
4 Company (Great Oaks) general rate case (GRC) proceeding. The Commission ordered
5 the Consumer Protection and Safety Division (CPSD) to prepare an Order Instituting
6 Investigation (OII) to further review whether Great Oaks’ failure to inform the
7 Commission and its staff that it was withholding payment to the Santa Clara Valley
8 Water District (SCVWD) of the pump tax revenues collected from its customers violated
9 any of the following: the Commission’s Rule 1.1, the Uniform System of Accounts
10 (USOA) for Class A Water Companies, the Rate Case Plan, or Public Utilities (PU) Code
11 Sections 451 and 794.¹ Based on a review of the Commission’s Division of Water and
12 Audits’ (DWA’s) Financial and Compliance Verification Report and parties’ comments
13 in A.09-09-001, the Commission found good cause existed to further investigate Great
14 Oaks’ conduct and to determine whether fines should be imposed.²

15 Based on its investigation, CPSD found:

- 16 • Great Oaks violated the Commission’s USOA for Class A
17 Water Companies.
- 18 • Great Oaks violated the Commission’s Rate Case Plan for
19 Class A Water Utilities (D.07-05-062).
- 20 • Great Oaks violated Public Utilities Code Section 451.
- 21 • Great Oaks violated Public Utilities Code Section 794.
- 22 • Great Oaks did not violate Rule 1.1.

23 CPSD recommends the Commission open an OII based on CPSD’s findings and
24 order Great Oaks to show cause as to why penalties should not be imposed for any
25 violations found.

26

¹ Decision 10-11-034, Ordering Paragraph 12.

² Decision 10-11-034, pp. 67-68.

1 **II. SCOPE OF INVESTIGATION**

2 CPSD conducted an investigation into Great Oaks' accounting treatment of its
3 pump tax³ funds. CPSD staff reviewed DWA's Verification Report and associated
4 workpapers, comments submitted by both Great Oaks and the Division of Ratepayer
5 Advocates (DRA) in A.09-09-001, data responses from Great Oaks, the USOA for Class
6 A Water Companies, the Rate Case Plan, PU Code Sections 451 and 794, Rule 1.1, Great
7 Oaks' 2009 annual report and D.07-05-062, Opinion Adopting Revised Rate Case Plan
8 for Class A Water Utilities. As part of its investigation, CPSD sent two data requests on
9 March 8, 2011 to Great Oaks. CPSD received responses to these two data requests on
10 March 18, April 6, and April 8, 2011.

11 **III. BACKGROUND**

12 In April 2009, Great Oaks stopped paying for pump taxes levied by the SCVWD.
13 On September 3, 2009, Great Oaks filed its GRC Application requesting the Commission
14 authorize rate increases for the 2010-2012 rate cycle. Great Oaks also submitted the
15 required data pursuant to D.07-05-062, Appendix A, Rate Case Plan and Minimum Data
16 Requirements for Class A Water Utilities General Rate Applications. In its GRC
17 Application, Great Oaks recorded groundwater production charges (or pump tax) as
18 operating expenses as of August 2009 and forecasted these expenses for the remainder of
19 2009, and for 2010 through 2012. The pump tax is treated as a pass-through operating
20 expense for ratemaking purposes and Great Oaks collected revenues from its customers
21 to cover payment of the pump tax. Great Oaks included its pump tax expense and
22 revenues to calculate its revenue requirement. However, it did not disclose to DRA that
23 it stopped paying the pump tax and was holding the funds in a money market account.

24 On October 19, 2009, Great Oaks updated its GRC Application and corrected its
25 workpapers. During the evidentiary hearings on January 21-22, 2010, Tim Guster,
26 General Counsel for Great Oaks, gave testimony on his litigations against SCVWD. He
27 explained the issues including how, in his opinion, SCVWD was illegally collecting this

³ Groundwater charges levied by SCVWD are referred to as pump tax by Great Oaks.

1 pump tax. On January 23, 2010, Great Oaks again updated its workpapers. These were
2 additional opportunities for Great Oaks to disclose to DRA and the Commission that it
3 had stopped paying the pump tax and was holding the funds in a money market account.

4 In March 2010, SCVWD informed DRA that Great Oaks had been refusing to pay
5 the pump tax since April 2009.⁴ Great Oaks' delinquent account as of March 2010 was
6 \$4,856,030.⁵ These pump tax payments are due monthly and incur a 1% monthly interest
7 charge on the delinquent amount.⁶ Great Oaks claims that it was withholding payments
8 because of a series of lawsuits it filed in Santa Clara County Superior Court regarding the
9 pump tax charges levied by the SCVWD.⁷ The court ruled against the SCVWD on the
10 pump tax charges levied on Great Oaks in the 2005-2006 fiscal year. However, this
11 matter is unresolved because the SCVWD appealed the court's decision.⁸ On March 27,
12 2012, SCVWD requested an oral argument. As of April 10, 2012, the court had not ruled
13 on the SCVWD appeal.

14 On March 19, 2010, DRA filed a motion to reopen the evidentiary record in A.09-
15 09-001 to admit information demonstrating that Great Oaks had not disclosed to the
16 Commission that it was withholding payment of pump tax charges, and to request that the
17 Commission issue an order to show cause for an alleged violation of Rule 1.1 and
18 possible violation of Section 2114 of the Public Utilities Code.

19 On March 31, 2010, Great Oaks filed its Annual Report for calendar year 2009.
20 Included were balance sheets showing an unusually large ending balance for accrued
21 liabilities (Account 230) when compared to the beginning balance. Within this account is
22 a line item, Pump taxes payable, which accounted for the large ending balance. Account

⁴ This was a phone call from SCVWD to DRA.

⁵ Motion of the DRA to reopen the record to admit Great Oaks' nondisclosure of lack of payment of groundwater charges and request that the Commission issue an order to show cause for violation of Rule 1.1 and possible violation of Section 2114, filed March 19, 2010, p 2.

⁶ Letter from SCVWD to Great Oaks dated August 13, 2010. Attachment A.

⁷ Letter from Great Oaks to SCVWD dated August 19, 2010. Attachment B.

⁸ Letter from Great Oaks to SCVWD dated September 23, 2010. Attachment C.

1 230 also had a line item for Pump taxes interest due. The balance sheet is not included in
2 the items required to be submitted as part of the GRC application.⁹

3 On June 21, 2010, the Assigned Commissioner and Administrative Law Judge
4 issued a joint ruling reopening the evidentiary record of Great Oaks' GRC Application,
5 A.09-09-001.¹⁰ The Ruling directed the DWA to determine, among other things,
6 whether Great Oaks' failure to inform DRA and the Commission of its actions in
7 withholding funds from the SCVWD violated any Commission accounting or reporting
8 requirement.¹¹

9 On August 20, 2010, DWA submitted its Financial and Compliance Verification
10 of Great Oaks (Verification Report) for the period from March 1, 2009 to June 30, 2010.
11 The Verification Report found that Great Oaks was not in compliance with the USOA for
12 Class A Water Utilities, D.04-06-018,¹² and Public Utilities Code Sections 451 and 794.¹³
13 DRA found that, as of August 13, 2010, Great Oaks owed the SCVWD \$6,481,420 for
14 groundwater charges, which included interest and penalty charges.¹⁴

15 On September 23, 2010, after DWA submitted its Verification Report,
16 Great Oaks remitted, under protest, \$5,880,991 to SCVWD, the amount collected
17 from its ratepayers plus the accrued interest in their money market account with
18 Waddell & Reed Services and will continue to make payments to the SCVWD
19 when due.¹⁵ Great Oaks asserts that the aforementioned payment represents
20 payment of pump taxes for the period of time from March 2009 through June 2010

⁹ D.07-05-062, Appendix A.

¹⁰ See Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo, at 9, available at <http://docs.cpuc.ca.gov/efile/RULINGS/119462.pdf>.

¹¹ Id. at 12.

¹² D.04-06-018 was superseded by D.07-05-062.

¹³ D.10-11-034, Appendix D, pp. 9-11.

¹⁴ See letter from SCVWD to Great Oaks dated August 13, 2010. Attachment A.

¹⁵ See copy of check dated September 15, 2010, Attachment D.

1 and that these amounts are not to be applied to interest.¹⁶ SCVWD asserts that the
2 balance still due to SCVWD from March 2009 through June 2010, and calculated
3 through April 30, 2012, is \$781,213.79.¹⁷

4 **IV. GREAT OAKS VIOLATED THE COMMISSION’S USOA FOR**
5 **CLASS A WATER COMPANIES**

6 The Uniform System of Accounts (USOA) for Class A Water Companies was
7 adopted and prescribed by the Commission effective January 1, 1955.¹⁸ The USOA
8 Section 2.A states that:

9 “Each utility shall so keep its books of account, and such
10 other books, records, and memoranda which support, or are
11 necessary to an understanding of, the entries in such books of
12 account, as to be able to furnish readily full information as to
13 any item included in any account. Each entry shall be
14 supported by such detailed information as will permit a ready
15 identification, analysis, and verification of all of the facts
16 relevant thereto.”

17
18 The USOA Section 2.B states that:

19
20 “The books and records referred to herein include not only
21 accounting records in a limited technical sense but all other
22 records such as minute books, stock books, reports,
23 correspondence, memoranda, and the like, which may be
24 useful in developing the history of or facts regarding any
25 transaction.”

26
27 Great Oaks withheld pump tax payments collected from its ratepayers for the
28 period of March 2009 to June 2010.¹⁹ Great Oaks recorded these pump tax payments as
29 operating expenses.²⁰ As discussed in Section III, Great Oaks’ has filed a series of
30 lawsuits in Santa Clara County Superior Court against the pump tax charges levied by

¹⁶ See letter to SCVWD dated September 23, 2010, Attachment C.

¹⁷ See SCVWD’s reconciliation of the balance due for Great Oaks, Attachment E.

¹⁸ Decision No. 50185 on June 29, 1954 and modified by Decision No. 57578 on November 10, 1958.

¹⁹ See SCVWD letter to Great Oaks dated August 13, 2010, Attachment A.

²⁰ A.09-09-001, pp. 3-7.

1 SCVWD. The court ruled against the SCVWD on these pump tax charges. However
2 SCVWD appealed the court's decision. The court has not yet ruled on SCVWD's appeal.
3 Great Oaks should have disclosed the withholding of the pump tax payments, the reason
4 why they were withhold these pump tax charges, the accounting treatment of these pump
5 tax charges, the ruling on the court decision and the pending appeal for the Commission
6 and its staff to consider all information pertinent to the GRC. Great Oaks' failure to
7 disclose this information violated USOA Sections 2.A and 2.B.²¹

8 **V. GREAT OAKS VIOLATED THE COMMISSION'S RATE CASE**
9 **PLAN FOR CLASS A WATER COMPANIES**

10 The Commission's Rate Case Plan for Class A Water Companies, D.07-05-062,
11 requires a utility to list the major controversial issues included in its GRC filing.²² The
12 Rate Case Plan also requires the utility to include the dollar impact of such controversial
13 issues, and a brief summary of the utility's rationale on this subject.²³

14 The Santa Clara County Superior Court has ruled that the pump taxes levied
15 during the 2005-2006 fiscal year violated Proposition 218 by not securing proper voter
16 approval. The court also ruled SCVWD violated the District Act by improperly
17 calculating groundwater charges (pump taxes) and spending inappropriately. CPSD
18 believes that this should have been reported as a controversial issue pursuant to the
19 Commission's Rate Case Plan.

20 The withholding of the pump tax from SCVWD accrued interest at one percent
21 (1%) per month and continued to accrue interest at a rate of one percent (1%) on the
22 delinquent amount due each month.²⁴ The accumulation of interest on the unpaid balance
23 due SCVWD could have resulted in increase costs to Great Oaks' ratepayers. Prior to
24 DRA's motion to reopen the GRC evidentiary record and before D.10-11-034 was issued,
25 DRA did not have the information in the record to ensure that Great Oaks' ratepayers

²¹ D.10-11-034, Appendix D, p 10.

²² D.07-05-062, Appendix A, p A-22.

²³ D.07-05-062, Appendix A, p A-22.

²⁴ See letter to Great Oaks from SCVWD dated August 13, 2010, Attachment A.

1 would not be liable for these non-utility charges. There was no mechanism in place to
2 ensure that these interest charges would be kept out of Great Oaks’ operating expenses in
3 future GRCs before the discovery of this expense. D.10-11-034 required that Great
4 Oaks’ shareholders be solely responsible for all interest, penalties, and legal expenses
5 associated with the nonpayment of groundwater production charges.²⁵

6 **VI. GREAT OAKS VIOLATED PUBLIC UTILITIES CODE SECTION**
7 **451**

8 Public Utilities Code Section 451 states that:

9 “All charges demanded or received by any public utility, or
10 by any two or more public utilities, for any product or
11 commodity furnished or to be furnished or any service
12 rendered or to be rendered shall be just and reasonable.
13 Every unjust or unreasonable charge demanded or received
14 for such product or commodity or service is unlawful.”

15
16 “All rules made by public utility affecting or pertaining to its
17 charges or service to the public shall be just and reasonable.”

18
19 Great Oaks collected pump taxes from its ratepayers. Great Oaks should have
20 disclosed in its GRC Application that it was withholding these payments and listed as a
21 controversial issue its decision to withhold these payments. These withheld pump taxes
22 were incurring interest and penalty charges. Great Oaks’ failure to report its withholding
23 of pump taxes in its GRC Application precluded the Commission from considering all
24 facts in determining reasonable test year and escalation years expense for its pump tax.²⁶
25 Therefore, Great Oaks violated PU Code Section 451.

26 **VII. GREAT OAKS VIOLATED PUBLIC UTILITIES CODE SECTION**
27 **794**

28 PU Code Section 794 states that:

²⁵ Decision 10-11-034, p. 81.

²⁶ D.10-11-034, Appendix D, p. 11.

1 “The commission may, after notice, and hearing if requested
2 within 15 days after receipt of notice, prescribe by order the
3 accounts in which particular outlays and receipts shall be
4 entered, charged, or credited. Where the commission has
5 prescribed the forms of accounts, records, or memoranda to
6 be kept by any public utility for any of its business, it is
7 unlawful for such public utility to keep any accounts, records,
8 or memoranda for such business other than those so
9 prescribed, or those prescribed by or under the authority of
10 any other state or of the United States, except such accounts,
11 records, or memoranda as are explanatory of and
12 supplemental to those prescribed by the commission.”

13
14 The Commission exercised that authority for Class A Water Utilities in its
15 establishment and adoption of the USOA for Class A Water Utilities on June 29, 1954,
16 pursuant to D.50185 (53 CPUC, at 258, identified but not reported). That USOA for
17 Class A Water Utilities was incorporated into DWA’s Standard Practice U-38-W. Great
18 Oaks, being a Class A Water Utility, is required to maintain its accounting records in
19 conformance with the adopted USOA for Class A Water Utilities.

20 Great Oaks recorded the pump tax collected from its ratepayers in Groundwater
21 Charges, Account 700. This account is under Operating Expenses other than Payroll.
22 The USOA provides a list of valid accounts for operating expenses.²⁷ Great Oaks should
23 have used an account prescribed by the USOA in the 700 series or created a sub-account
24 within one of the 700 series accounts in the USOA. Account 700 is not an account
25 prescribed by the USOA for Class A Water Utilities; therefore, Great Oaks violated PU
26 Code Section 794.

27 **VIII. GREAT OAKS DID NOT VIOLATE RULE 1.1 OF THE**
28 **COMMISSION’S RULES OF PRACTICE AND PROCEDURE**

29 Rule 1.1 of the Commission’s Rules of Practice and Procedure states that

30 “Any person who signs a pleading or brief, enters an
31 appearance, offers testimony at a hearing, or transacts
32 business with the Commission, by such act represents that he
33 or she is authorized to do so and agrees to comply with the

²⁷ USOA, pp. 90-91.

1 laws of this State; to maintain the respect due to the
2 Commission, members of the Commission and its
3 Administrative Law Judges; and never to mislead the
4 Commission or its staff by an artifice or false statement of
5 fact or law.”

6 As described in Sections IV, V, VI, and VII, Great Oaks’ accounting for its
7 ratepayer provided pump tax funds and its withholding of the pump tax payments to
8 SCVWD violated the USOA for Class A Water Companies, the Rate Case Plan, and PU
9 Code Sections 451 and 794.

10 Pursuant to D.07-05-062, Great Oaks submitted the required minimum data for
11 Class A Water Utilities General Rate Applications. The balance sheet and/or income
12 statement are not included in the items required to be submitted as part of the GRC
13 application. A partial balance sheet for 2009 would have revealed the pump tax
14 withholding as discuss in Section III of this report. CPSD could find no evidence that
15 DRA requested this additional information in the GRC. While Great Oaks’ decision not
16 to disclose information relating to its treatment of the pump tax revenues it was
17 withholding from SCVWD is questionable, CPSD does not believe Great Oaks violated
18 Rule 1.1 because it filed the required minimum data.

19 **IX. THE COMMISSION SHOULD OPEN AN ORDER INSTITUTING**
20 **INVESTIGATION TO CONSIDER IMPOSING FINES ON GREAT**
21 **OAKS FOR THE ACTIONS DESCRIBED IN THIS REPORT**

22 PU Code Section 2107 specifies that:

23 “Any public utility which violates or fails to comply with any
24 provision of the Constitution of this state or of this part, or
25 which fails or neglects to comply with any part or provision
26 of any order, decision, decree, rule, direction, demand, or
27 requirement of the commission, in a case in which a penalty
28 has not otherwise been provided, is subject to a penalty of not
29 less than five hundred dollars (\$500), nor more than twenty
30 thousand dollars (\$20,000) for each offense.”

31
32 PU Code Section 2108 specifies that:

1 “Every violation of the provisions of this part or any part of
2 any order, decision, decree, rule, direction, demand, or
3 requirement of the commission, by any corporation or person
4 is a separate and distinct offense, and in the case of a
5 continued violation, each day’s continuance thereof shall be a
6 separate and distinct offense.”

7
8 As described in Sections IV, V, VI, and VII, CPSD found Great Oaks’ accounting
9 for its ratepayer provided pump tax funds and its withholding of the pump tax payments
10 to SCVWD violated the USOA for Class A Water Companies, the Rate Case Plan (D.07-
11 05-062), and PU Code Sections 451 and 794. Pursuant to D.10-11-034, Ordering
12 Paragraph 12, CPSD recommends the Commission open an OII based on CPSD’s
13 findings and order Great Oaks to show cause as to why penalties should not be imposed
14 for any violations found.

Lead Sheet – Great Oaks Water Company

Attachment

- A Letter from SCVWD to Great Oaks dated August 13, 2010
- B Letter from Great Oaks to SCVWD dated August 19, 2010
- C Letter from Great Oaks to SCVWD dated September 23, 2010
- D Copy of check dated September 23, 2010
- E SCVWD's reconciliation of the balance due for Great Oaks

ATTACHMENT A

Letter from SCVWD to Great Oaks dated August 13, 2010

This attachment is the letter from SCVWD to Great Oaks informing them of the balance due and of the interest accruing at one percent (1%) per month on the unpaid outstanding balance.



5750 ALMADEN EXPWY
SAN JOSE, CA 95118-3686
TELEPHONE (408) 265-2600
FACSIMILE (408) 266-0271
www.valleywater.org
AN EQUAL OPPORTUNITY EMPLOYER

August 13, 2010

Great Oaks Water Company
P O Box 23490
San Jose CA 95153

Subject: Delinquent Invoices

Dear Gentlemen:

Please see the attached list of all outstanding invoices from the Santa Clara Valley Water District. Copies of the invoices are also enclosed. These invoices were first mailed to you on May 15, 2009 and as of August 13, 2010 all of the invoices remain unpaid. The total amount now due is \$6,481,420.13.

Please remit the total outstanding balance of \$6,481,420.13 by August 31, 2010 in order to avoid additional interest accruing at one percent (1%) per month.

If you have any questions, please contact Susan Oneal at (408) 265-2607 extension 2558 or e-mail her at soneal@valleywater.org.

Sincerely,

Cindy Jacinto
Hydrologic Systems Analyst II
Financing and Revenue Collection Unit

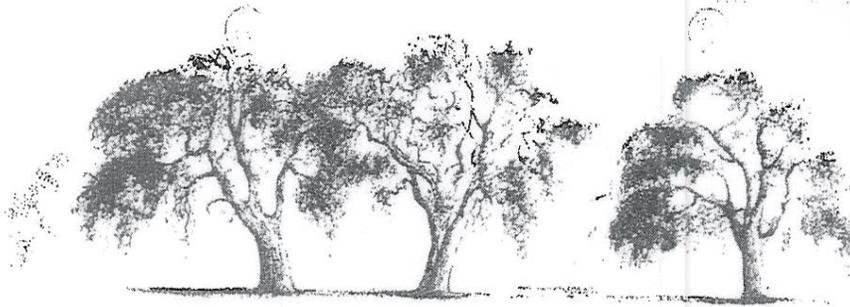
Enclosures

cc: Division of Ratepayer Advocates, Attn: Danilo Sanchez, 505 Van Ness Avenue, San Francisco, CA 94102

ATTACHMENT B

Letter from Great Oaks to SCVWD dated August 19, 2010

This attachment is the letter from Great Oaks to SCVWD informing them of the reason for withholding payments dues to a series of lawsuits filed in Santa Clara County Superior Court regarding the pump tax charges levied on Great Oaks.



GREAT OAKS WATER COMPANY

P. O. Box 23490
San Jose, California 95153
(408) 227-9540

August 19, 2010

Santa Clara Valley Water District
Attention: Cindy Jacinto
5750 Almaden Expressway
San Jose, CA 95118-3686

RE: California Public Utilities Commission
Division of Ratepayer Advocates

Dear Ms. Jacinto:

As you know, Great Oaks Water Company ("Great Oaks") and the Santa Clara Valley Water District ("District") are in a dispute over the constitutionality and legality of the groundwater charges levied by the District. If you are in some way unaware of this legal dispute, please contact Emily Cote in your legal department.

I note that you have copied the California Public Utilities Commission, Division of Ratepayer Advocates ("DRA"), on your August 13, 2010 letter to Great Oaks Water Company. Please provide me with any authority under which you have provided the information in such letter to DRA, including copies of any applicable documentation supporting your claim of authority.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. Guster".

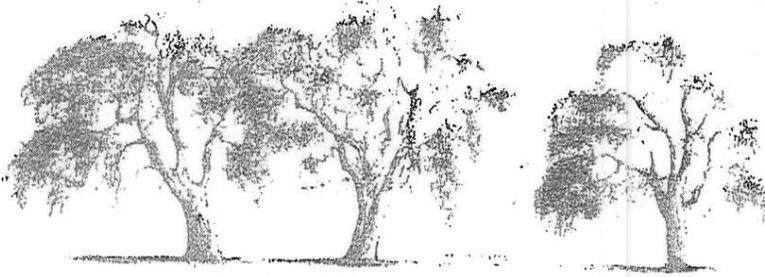
Timothy S. Guster
Vice President and General Counsel
Legal and Regulatory Affairs

cc: Emily Cote

ATTACHMENT C

Letter from Great Oaks to SCVWD dated September 23, 2010

This attachment is the letter from Great Oaks to SCVWD informing them of the unresolved court ruling against SCVWD. The payment of \$5,880,991.24 enclosed with the letter is remitted under protest and is not to be applied to interest.



GREAT OAKS WATER COMPANY

September 23, 2010

P. O. Box 23490
San Jose, California 95153
(408) 227-9540

Hand-Delivered

Stanly T. Yamamoto, Esq.
District Counsel
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

120084

RE: Great Oaks Water Company
Groundwater Charges

Dear Mr. Yamamoto:

Enclosed you will find a check payable to the Santa Clara Valley Water District ("District") in the amount of \$5,880,991.24, representing payment of groundwater charges for the period of time from March, 2009, through June, 2010. The entire payment is to be applied to the groundwater charges; no amounts are to be applied to interest or penalties, which remain in dispute.

This payment is made under protest, as the groundwater charges levied against Great Oaks Water Company ("Great Oaks") represented by this payment were illegal and in violation of the California Constitution, all as more fully alleged in Great Oaks' lawsuits against the District for the time periods covered by this payment. Great Oaks will continue with its litigation and, should a full refund be ordered by the courts, Great Oaks will expect payment of the full refund, plus interest at the legal rate.

Great Oaks is making this payment for a number of reasons, including, but not limited to, certain statements by the District pertaining to its financial condition and ability to pay judgments against the District arising from Great Oaks' groundwater charges lawsuits. These recent statements partially address Great Oaks' concerns raised during the trial court proceedings in Case No. 105CV05142, the case now on appeal (Sixth Appellate District Court of Appeal Case No. H035260).

During the proceedings in the trial court in Case No. 105CV05142, the District, through trial counsel, indicated that the District would consider bankruptcy rather than paying judgment amounts to Great Oaks. Great Oaks believed (and still does believe) that such action would be irresponsible, contrary to the law and against the public interest. To protect Great Oaks against such action, and because groundwater charges being levied by the District do not comply with the requirements of Article XIII D of the California Constitution, Great Oaks withheld payment of groundwater charges beginning in April, 2009.

Recently, the District has provided the sworn statement of Joseph Atmore, dated April 20, 2010, stating: "Both long-term and short-term financial forecasts indicate that no insolvency is near in the short or long-term." In addition, Mr. Atmore stated: "During the Fiscal Year ending June 2009, the Water Utility Enterprise had net assets of \$639M including cash reserves in excess of \$100M."

Great Oaks is relying upon the sworn statements of Mr. Atmore with respect to the financial condition of the District. I have already requested that the District advise Great Oaks immediately in the event that the statements made by Mr. Atmore are no longer true as they relate to the District's financial condition and ability to pay judgments to Great Oaks. Now that you are on notice that Great Oaks is relying upon the continuing truth of Mr. Atmore's statements, I expect you will comply with my request.

The District also recently took action to address the potential financial impact of the judgment issued in favor of Great Oaks in the matter now under appeal. First, the District chose to withhold payment of the judgment entered in favor of Great Oaks, resulting in the continuing accrual of interest on the judgment amount. Then, as noted in the Consolidated Annual Financial Report for 2009 ("CAFR 2009"), the District decided to accrue a liability in the amount of \$5.9 million with respect to the judgment issued in Case No. 105CV05142 by the Santa Clara County Superior Court.

11.0080

As noted above, the accrued liability established by the District for Case No. 105CV05142 does not include the interest accruing on the judgment during the District's appeal. In the event that the appeal is not decided within one year of the judgment, an event made more likely due to the current briefing schedule, the accrued liability will be insufficient to pay the judgment, plus interest, by nearly \$600,000. That deficiency will grow with the passage of time, causing the District's financial reports to become correspondingly more inaccurate. Great Oaks recommends that the District regularly update and revise the accrued liability, as well as establish accrued liabilities for the other pending cases, as discussed below.

Great Oaks agrees that the District must recognize the potential financial impact of the groundwater charge litigation with Great Oaks so as to present a true and accurate disclosure of its financial situation. The establishment of the accrued liability referenced above is a good first step, but it is only that.

In order to provide a true and accurate financial disclosure upon which the District's creditors can rely, Great Oaks believes that the District should apply the same accounting standard for contingencies (litigation claims) to the other Great Oaks' lawsuits pending against the District based upon the same essential legal causes of action, especially considering the District's acknowledgement that the outcome of the pending appeal will likely dictate the outcome in the other pending cases. If the District does not establish contingencies for the other Great Oaks' groundwater charge cases, it will be applying the accounting standard differently to contingencies with the same degree of legal risk, without explanation or notation in its financial disclosures.

In addition to the already established contingency for Case No. 105CV05142, the District should establish an accrued liability for all groundwater charges paid by Great Oaks, plus interest, subject to Great Oaks' litigation claims. Any other action would be inconsistent with proper accounting and disclosure requirements.

Lastly, on this point, please note I requested that the District Board of Directors look into this inconsistent accounting practice at the District specifically related to Great Oaks' pending litigation claims at a Board meeting on August 24, 2010. Now that the matter is of record, the District cannot claim lack of knowledge or notice of this serious issue.

Another action taken by the District with respect to the groundwater charges paid with this letter is its attempt to collect these funds through coercion and threats of penalties and interest on the unpaid charges. Great Oaks withheld payment, in part, because the District levied the groundwater charges in violation of Article XIII D of the California Constitution. By withholding payment, Great Oaks was exercising its rights secured by the Constitution against unlawful taxation without voter consent. The District responded to Great Oaks' assertion of its Constitutional rights with repeated threats of monetary penalties and interest charges, all in violation of the Civil Code. Great Oaks considers each assessment of penalties and interest to be a separate violation. Great Oaks is considering its legal options to address these District actions.

The District has made other threats of a non-monetary nature related to groundwater charges, including specific threats that the District will not meet its statutory requirements to properly manage the water supplies of Santa Clara County and not properly recharge groundwater supplies. The threatened result of this action would be to intentionally cause the water table in the areas where Great Oaks' wells are located to decline to levels that would affect Great Oaks' water supply. Such threats are decidedly against the public interest and applicable law, and now with Great Oaks' remittance of all amounts demanded by the District, I trust you will not permit such unlawful action to occur.

Finally, over the last couple of months I have spoken with you briefly and suggested that the District and Great Oaks should be able to work better together. This is not the first time I've approached the District's legal department and made this suggestion, but in the past, the District completely rejected or ignored Great Oaks' efforts. Perhaps under your leadership the District's approach will be different. Having taken the initiative, I believe the next move is yours.

Very truly yours,



Timothy S. Guster
General Counsel

Enclosure: Waddell & Reed Check No. 23478313

ATTACHMENT D

Copy of check dated September 15, 2010

This attachment is the copy of the check for the pump tax payment to SCVWD for the period of time from March 2009 through June 2010.

Attachment D

10 1381

A12203508

Ivy Funds
Waddell & Reed Advisors Funds
Waddell & Reed InvestEd Portfolios
6300 Lamar
Overland Park, KS 66202

Account
Number

Fund
Number

Date
09/15/2010

Check
Number
23478313

Pay to the Order of

SANTA CLARA VALLEY WATER DIST.
C/O VICKI MORSE / GREAT OAKS
20 GREAT OAKS BLVD STE 120
SAN JOSE CA 95119-1368

AMOUNT
\$**5,880,991.24

LB

void after 90 days

* FIVE MILLION EIGHT HUNDRED EIGHTY THOUSAND NINE HUNDRED NINETY ONE AND 24/100 DOLLARS *



PAYMENT MADE
UNDER PROTEST

UMB BANK, N.A.
ST. JOSEPH, MISSOURI 64507

[Signature]
AUTHORIZED SIGNATURE

⑈023478313⑈ ⑆101219017⑆ ⑈5008003106⑈

LR
110060
9/24/10

SEP 24 10 PM 3:40

ATTACHMENT E

SCVWD's reconciliation of the balance due for Great Oaks

This attachment is SCVWD's reconciliation of the balance still owed to SCVWD for the period March 2009 through June 2010. The calculation is through April 30, 2012.

Great Oaks Water Company Reconciliation 9/28/10

Statement #	Date	AF reported	AF determined	\$ amount	penalty	Interest thru 9/30/10	total due to District
Payment \$5,880,991.24 9/23/2010							
GM008989							
ag	Mar-09	4.08	4.08	\$ 67.32			
non-ag	Mar-09	116.75	116.75	\$ 60,710.00	\$ -	\$ 10,332.09	
GM008990							
ag	Mar-09	20.18	20.18	\$ 332.97			
non-ag	Mar-09	576.92	576.92	\$ 158,653.00	\$ -	\$ 25,437.76	
Total				\$ 219,763.29	\$ -	\$ 35,769.85	\$ 255,533.14
GM009037							
ag	Apr-09	15.32	15.32	\$ 252.78			
non-ag	Apr-09	448.95	448.96	\$ 233,459.20	\$ -	\$ 37,393.92	
GM009038							
ag	Apr-09	18.79	18.83	\$ 310.70			
non-ag	Apr-09	551.79	551.75	\$ 151,731.25	\$ -	\$ 24,326.72	
Total				\$ 385,753.93	\$ -	\$ 61,720.64	\$ 447,474.57
GM009085							
ag	May-09	26.39	26.39	\$ 435.44			
non-ag	May-09	646.86	646.86	\$ 336,367.20	\$ -	\$ 50,520.45	
GM009086							
ag	May-09	22.97	22.96	\$ 378.84			
non-ag	May-09	562.66	562.66	\$ 154,731.50	\$ -	\$ 23,266.50	
Total				\$ 491,912.98	\$ -	\$ 73,786.95	\$ 565,699.93
GM009132							
ag	Jun-09	32.27	33.27	\$ 548.96			
non-ag	Jun-09	707.72	707.73	\$ 368,019.60	\$ -	\$ 51,599.66	
GM009133							
ag	Jun-09	25.86	25.90	\$ 427.35			
non-ag	Jun-09	550.92	550.88	\$ 151,492.00	\$ -	\$ 21,268.66	
Total				\$ 520,487.91	\$ -	\$ 72,868.32	\$ 593,356.23
GM009178							
ag	Jul-09	35.43	35.43	\$ 584.60			
non-ag	Jul-09	884.89	884.9	\$ 460,148.00	\$ -	\$ 59,895.29	
GM009179							
ag	Jul-09	22.05	22.03	\$ 363.50			
non-ag	Jul-09	550.07	550.09	\$ 151,274.75	\$ -	\$ 19,712.94	
Total				\$ 612,370.85	\$ -	\$ 79,608.23	\$ 691,979.08

GM009224										
ag										
non-ag	Aug-09	0.28	28.09 \$	463.49						
	Aug-09	885.72	857.91 \$	446,113.20 \$	- \$				53,589.24	
GM009225										
ag	Aug-09	46.68	18.82 \$	310.53						
non-ag	Aug-09	547.02	574.89 \$	158,094.75 \$	- \$				19,008.60	
Total			\$ 604,981.97 \$		- \$				72,597.84 \$	677,579.81
GM009271										
ag	Sep-09	16.79	16.81 \$	277.37						
non-ag	Sep-09	677.88	677.86 \$	352,487.20 \$	- \$				38,804.15	
GM009272										
ag	Sep-09	13.1	13.11 \$	216.32						
non-ag	Sep-09	528.74	528.73 \$	145,400.75 \$	- \$				16,017.87	
Total			\$ 498,381.64 \$		- \$				54,822.02 \$	553,203.66
GM009318										
ag	Oct-09	2.6	2.59 \$	42.74						
non-ag	Oct-09	389.35	389.3 \$	202,436.00 \$	20,247.87 \$				20,247.90	
GM009319										
ag	Oct-09	2.6	3.68 \$	60.72						
non-ag	Oct-09	389.35	554.35 \$	152,446.25 \$	15,250.70 \$				15,250.70	
Total			\$ 354,985.71 \$		35,498.57 \$				35,498.60 \$	425,982.88
GM009366										
ag	Nov-09	0	0.02 \$	0.33						
non-ag	Nov-09	0	314.38 \$	163,477.60 \$	16,347.79 \$				14,713.02	
GM009367										
ag	Nov-09	0	0.03 \$	0.50						
non-ag	Nov-09	0	486.86 \$	133,886.50 \$	13,388.70 \$				12,049.83	
Total			\$ 297,364.93 \$		29,736.49 \$				26,762.85 \$	353,864.27
GM009413										
ag	Dec-09	0	0 \$	-						
non-ag	Dec-09	0	84.38 \$	43,877.60 \$	- \$				3,510.24	
GM009414										
ag	Dec-09	0	0.01 \$	0.17						
non-ag	Dec-09	0	576.78 \$	158,614.50 \$	- \$				12,689.20	
Total			\$ 202,492.27 \$		- \$				16,199.44 \$	218,691.71
GM009460										
ag	Jan-10	0	0 \$	-						
non-ag	Jan-10	0	35.48 \$	18,449.60 \$	- \$				1,291.50	

Totals \$ 5,879,867.51 \$ 65,235.06 \$ 593,526.24 \$ 6,538,628.81

Total late filing penalties \$ 5,879,867.51
 Total interest charges \$ 5,222,229.94
 payment applied to P&I \$ 593,526.24
 payment remaining for principle \$ 658,761.30
 Total of principle \$ 5,222,229.94

payment remaining applied to principle
 balance of principle due
 1% interest for October 2010 \$ 657,637.57
 Total due thru 10/31/10 \$ 664,213.95
 1% interest for November 2010 \$ 6,576.38
 Total due thru 11/30/10 \$ 670,790.33
 1% interest for December 2010 \$ 6,576.38
 Total due thru 12/31/10 \$ 677,366.71
 1% interest for January 2011 \$ 6,576.38
 Total due thru 1/31/11 \$ 683,943.09

overpayment applied from GM009993 1/11

Balance remaining \$ 1,375.00
 1% interest due for February 2011 \$ 682,568.09
 Total due thru 2/28/11 \$ 6,576.38
 1% interest due for March 2011 \$ 689,144.47
 Total due thru 3/31/11 \$ 6,576.38
 1% interest due for April 2011 \$ 695,720.85
 Total due thru 4/30/11 \$ 6,576.38
 1% interest due for May 2011 \$ 702,297.23
 Total due thru 5/31/11 \$ 6,576.38
 1% interest due for June 2011 \$ 708,873.61
 Total due thru 6/30/11 \$ 6,576.38
 1% interest due for July 2011 \$ 715,449.99
 Total due thru 7/31/11 \$ 6,576.38

1% interest due for August 2011 \$ 722,026.37
 Total due thru 8/31/11 \$ 6,576.38
 1% interest due for September 2011 \$ 728,602.75
 Total due thru 9/30/11 \$ 6,576.38
 1% interest due for October 2011 \$ 735,179.13
 Total due thru 10/31/11 \$ 6,576.38
 1% interest due for November 2011 \$ 741,755.51
 Total due thru 11/30/11 \$ 6,576.38
 1% interest due for December 2011 \$ 748,331.89
 Total due thru 12/31/11 \$ 6,576.38
 1% interest due for January 2012 \$ 754,908.27
 Total due thru 1/31/12 \$ 6,576.38
 1% interest due for February 2012 \$ 761,484.65
 Total due thru 2/29/12 \$ 6,576.38
 1% interest due for February 2012 \$ 768,061.03

applied against interest

1% interest due for March 2012
Total due thru 3/31/12
1% interest due for April 2012
Total due thru 4/30/12

\$ 6,576.38
\$ 774,637.41
\$ 6,576.38
\$ 781,213.79