

TABLE OF CONTENTS

NOTICE	1
I. INTRODUCTION	3
II. COMMENTS	4
a. UAFCB’s Goal 2 Differs from the Ruling’s Directives and UAFCB’s Own Written Objectives of its Special Review	4
b. A Portion of UAFCB’s Verification Findings Under Goal 1 Are Outside of the Scope of the Ruling	6
c. UAFCB’s Comments Regarding Investment Risk Are Inaccurate, Misleading and Outside the Scope of the Ruling	7
d. UAFCB’s Comments Regarding Reconciliation of Deposits to the Waddell & Reed Groundwater Charge Account to Amounts Collected from Great Oaks’ Customers Are Outside the Scope of the Ruling	8
e. The Verification Predictably Was Unable to Confirm Assertions Never Made by Great Oaks	10
f. UAFCB’s Inability to Verify that SCVWD Interest and Penalty Charges Are Not Included in A.09-09-001 Is Factually Incorrect	11
g. The Verification Erroneously Represents that UAFCB Inquired of Great Oaks Regarding the Applicability of Public Utilities Code Section 453(a) and “Commission D.50185.”	12
h. UAFCB’s Conclusions Regarding Great Oaks’ Compliance with U-38-W are Clearly Erroneous	13
i. UAFCB Erroneously Applied D.04-06-018, Rather than D.07-05-062 ..	17
j. UAFCB Made Factual and Legal Errors to Conclude that Great Oaks Was Not in Compliance with D.04-06-018’s Reporting Requirements	17
k. The Verification Erroneously Found that Great Oaks Was Not in Compliance with the “Contentious Issue Reporting Requirement.”..	19
l. The Verification Erroneously Addresses Legal Issues Outside the Scope of the Ruling	21

m. UAFCB’s Conclusion that Great Oaks Was Not in Compliance with Public Utilities Code §451 is Clearly Erroneous	22
n. UAFCB’s Verification Recommendations Are Erroneous and Moot ..	24
o. Great Oaks Has Not Violated Public Utilities Code Section 794	26
III. CONCLUSION	27
Verification	28
Certificate of Service	29
Great Oaks Water Company Service List	30

and always will be fatally flawed. As a result, it is increasingly unlikely that Great Oaks will receive a fair hearing on the issues raised by the Division of Ratepayer Advocates (“DRA”) in its Motion to Reopen the Proceedings.

Other factors involved in Great Oaks’ decision include an ongoing risk assessment by Great Oaks of legal issues involved in multiple lawsuits, the legal and financial issues involved with the payment or nonpayment of groundwater charges, SCVWD’s statements of financial condition, questions of SCVWD solvency or insolvency, prejudgment interest rates on paid groundwater charges and more. Based upon this ongoing risk assessment, Great Oaks will continue to make groundwater charge payments under protest and will not withhold payments without first notifying the Commission.

Notably, DRA has placed great reliance upon SCVWD’s statements of financial solvency to make its arguments, suggesting that there is no risk that SCVWD will not pay groundwater charge refunds, if ordered by the courts. Of course, at no time has SCVWD actually stated that it will pay or be able to pay any judgment awarding groundwater charge refunds. Instead, SCVWD has stated that loss of groundwater charge revenues would not result in insolvency for the District.¹ The real question is whether SCVWD’s solvency would be affected by the combined loss of groundwater charge revenues and the issuance of multiple judgments refunding millions of dollars of illegal groundwater charges, plus interest, to Great Oaks and others.

¹ Declaration of Joseph Atmore, Attachment C to Reply of Division of Ratepayer Advocates to the Response of Great Oaks Water Company to DRA’s Motion to Reopen the Record.

Finally, Great Oaks' payment of groundwater charges renders moot the patently absurd notion that groundwater charges payable to SCVWD should not be included in rates under A.09-09-001.

I. INTRODUCTION

In the Assigned Commissioner and Administrative Law Judge's Ruling Addressing the Motion of the Division of Ratepayer Advocates to Reopen the Record and Issue an Order to Show Cause ("Ruling"), the following ruling was made:

2. The Commission's DWA [Division of Water and Audits] is directed to verify Great Oaks' assertion that the ratepayer provided funds are being held in a separate bank account and that the provisions of the account require approval by the Court for any of these funds to be dispensed to an entity other than the SCVWD [Santa Clara Valley Water District]. Further, DWA should verify that Great Oaks' accounting entries reflect the utility's assertions that ratepayers are not liable for late payment interest and penalty charges relating to the withheld payments. In reviewing Commission filed reports, we request DWA pay particular attention to the reporting of accumulated interest expense liability on past due payments to SCVWD in Great Oaks' 2009 Annual Report. Finally, DWA should determine whether Great Oaks [sic] failure to inform DRA [Division of Ratepayer Advocates] and the Commission of its actions in withholding the funds from SCVWD violates any GAAP or Commission accounting or reporting requirements.²

Pursuant to this directive, DWA assigned its Utility, Audit, Finance and Compliance Branch ("UAFCB") to conduct the verification. Kayode Kajopaiye of UAFCB managed the audit engagement and, on August 20, 2010, issued its Financial & Compliance Verification of Great Oaks Water Company (WTA-162) for the Period March 1, 2009 through June 30, 2010 ("Verification").

Great Oaks hereby submits its Comments to UAFCB's Verification in compliance with the Ruling authorizing parties to comment within ten days of filing.³

² Ruling, at pp. 11-12.

³ *Id.*, at p. 4.

II. COMMENTS

a. UAFCB's Goal 2 Differs from the Ruling's Directives and UAFCB's Own Written Objectives of its Special Review.

The Ruling directed UAFCB to verify certain “assertions” allegedly made by Great Oaks.⁴ UAFCB's June 22, 2010 letter to Great Oaks stating UAFCB's objectives of its special review also referred to “assertions” allegedly made by Great Oaks.⁵ However, when UAFCB listed its Verification Goals, UAFCB deviated from the Ruling's directives and its own stated objectives, and instead of reviewing and verifying alleged “assertions” made by Great Oaks, UAFCB instead established a goal of verifying that the requirements of the account holding the groundwater charges are different than those actually asserted by Great Oaks.

Had UAFCB followed the Ruling's directive and its own stated objectives, UAFCB would have revealed that Great Oaks' actual assertions regarding the terms and conditions of the groundwater charge account were different than those summarized in the Ruling. In short, the Ruling inaccurately summarized Great Oaks' sworn statements on the account terms and conditions. This is important, as any effort to verify assertions never made by Great Oaks would be specifically designed to fail, to the prejudice of Great Oaks. UAFCB's Goal 2 was improperly designed to hold Great Oaks' accountable for assertions never made by Great Oaks.

The fact that the Ruling inaccurately summarized Great Oaks' assertions was made known to UAFCB prior to the initiation of UAFCB's audit, and UAFCB

⁴ *Id.*, at pp. 11-12.

⁵ A copy of Mr. Kajopaiye's June 22, 2010 letter is not attached, as a copy of such letter has already been provided to ALJ Walwyn.

acknowledged those concerns.⁶ Great Oaks never asserted that the groundwater charge account required approval of the Santa Clara County Superior Court before disbursement of funds to an entity other than SCVWD.

Great Oaks reminded UAFCB of the discrepancies between what Great Oaks actually asserted in the Declarations submitted with Great Oaks' Response and the Ruling's summary of those assertions when Great Oaks responded to UAFCB's Data Request No. 1-GO-June 28, 2010.⁷ In Great Oaks' response to Data Request No. 1-GO-June 28, 2010, as to the "special agreements, requirements and restrictions imposed by this bank account," Great Oaks responded:

The restrictions on the account are not provided by the account itself, but are instead based upon the instructions from Great Oaks' Chief Executive Officer, to Great Oaks' Chief Financial Officer, Vicki Morse, to open the account for the purpose of depositing and securely holding groundwater charges imposed by the Santa Clara Valley Water District until a legal determination is made on the disposition of funds. No withdrawals are permitted or have been made from the account under those instructions.⁸

UAFCB Goal 2 and the UAFCB Verification, however, inexplicably contain none of this information. The Verification must be corrected to accurately state the Ruling's directives as part of UAFCB Goal 2 so that the truth of Great Oaks' actual assertions will be properly and appropriately verified, rather than the inaccurate summary of such assertions contained in the Ruling.

⁶ See email exchange between Timothy S. Guster of Great Oaks and Kayode Kajopaiye of UAFCB attached hereto as Exhibit A.

⁷ See July 6, 2010 letter attached as Exhibit B. Note that the voluminous attachments to the letter are not provided here.

⁸ Exhibit B, at pp. 2-3.

b. A Portion of UAFCB’s Verification Findings Under Goal 1 Are Outside of the Scope of the Ruling.

No portion of UAFCB Goal 1 (or the Ruling) required UAFCB to compare the terms and conditions of the separate groundwater charge account established by Great Oaks with *other* escrow-type accounts. Yet, UAFCB reported that the information provided by Great Oaks could not be used to “verify that the money market account is in fact an escrow account in terms of how such accounts are normally structured...”⁹

The fact is that Great Oaks directly provided UAFCB with all information necessary to verify Great Oaks’ assertions about the account and it’s effort to compare the account established by Great Oaks with other, unspecified escrow accounts is outside the scope of the Ruling. The Ruling did not direct UAFCB to verify if the account was structured “in terms of how such accounts are normally structured,” yet UAFCB commented on this topic, acting outside the scope of its authority and without providing reference for its comments regarding *normal* account structures.

While seemingly ignoring the information provided by Great Oaks regarding the terms and conditions of the account, it appears that UAFCB also did not inquire of Waddell & Reed, the financial institution holding the account, about the asserted terms and conditions of the account. Instead, in a letter prepared by Fred E. Tamse, Senior Financial Examiner of UAFCB, to be signed by Great Oaks, UAFCB merely asked for information regarding when the account was opened and by whom, the type of account and interest rate and signatories and those with authority to terminate the account.¹⁰

⁹ Verification, at p. 4.

¹⁰ See July 26, 2010 letter written by Mr. Tamse and signed by Timothy S. Guster of Great Oaks attached as Exhibit C.

UAFCB did not inquire of Waddell & Reed regarding Great Oaks' assertions regarding the terms and conditions of the account.

As a matter of undisputed fact, the Declarations of Vicki Morse and John W.S. Roeder filed with Great Oaks' Response provided the information on the terms and conditions of the account into which groundwater charges are and have been deposited.¹¹ UAFCB's inability to verify the terms and conditions of the account, therefore, are more reflective of UAFCB's abilities, rather than any shortcoming of Great Oaks. The Verification under UAFCB Goal 1 must be corrected to comply with the Ruling and reflect that the assertions made by Great Oaks regarding the account are and were true.

c. UAFCB's Comments Regarding Investment Risk Are Inaccurate, Misleading and Outside the Scope of the Ruling.

The only question of risk UAFCB was directed to verify was whether "Great Oaks' accounting entries reflect the utility's assertion that ratepayers are not liable for late payment interest and penalty charges relating to the withheld payments."¹² While UAFCB did verify this assertion by Great Oaks,¹³ UAFCB also chose to comment upon whether the principal amount in the Waddell & Reed groundwater charge account is subject to investment risk and maintenance fees.¹⁴ Unfortunately, UAFCB's statements in this regard are both inaccurate and misleading, in addition to being outside the scope of the Ruling.

¹¹ See Declaration of Vicki Morse filed with Great Oaks' Response ("Morse Declaration"), at paragraph 4; Declaration of John W.S. Roeder filed with Great Oaks' Response ("Roeder Declaration"), at paragraphs 3 and 4.

¹² Ruling, at p. 12.

¹³ Verification, at p. 6.

¹⁴ *Id.*, at p. 4.

UAFCB's comments are inaccurate and misleading in that they relate generally to "investment products" offered by Waddell & Reed and not the specific account established by Great Oaks. Contrary to UAFCB's Verification, the specific money market account established by Great Oaks has never experienced a loss of principal and no commissions or maintenance fees are or will be assessed with respect to this account.¹⁵

While Great Oaks does not know the reason for such mistakes by UAFCB, Great Oaks is unaware of any effort by UAFCB to verify its own conclusions regarding the account with either Great Oaks or Waddell & Reed. None of UAFCB's data requests to Great Oaks nor its information request to Waddell & Reed asked about risk to principal and maintenance fees for the account. It appears that UAFCB conducted its own incomplete research on the issues and included the flawed results of that research in its Verification, forming the basis for its inaccurate and misleading comments.

In addition to the inaccurate and misleading nature of UAFCB's comments, it is also of note that such comments are outside the scope of the Ruling. The Verification should be corrected to reflect that the Waddell & Reed account presents no risk to the principal and charges no maintenance fees.

d. UAFCB's Comments Regarding Reconciliation of Deposits to the Waddell & Reed Groundwater Charge Account to Amounts Collected from Great Oaks' Customers Are Outside the Scope of the Ruling.

The Ruling and none of UAFCB's "goals" require or relate to reconciling deposits into the Waddell & Reed groundwater charge account with funds collected by Great Oaks

¹⁵ See letter from Waddell & Reed attached hereto as Exhibit D. In the event DRA objects to this letter, it should be noted that if UAFCB had asked for this information from Waddell & Reed, rather than trying and failing to gain the information on its own, there would be no need for Exhibit D.

from its customers for water service (also known as water service revenues), yet UAFCB provided its commentary on this subject.¹⁶ Unfortunately, again, however, UAFCB's comments are both nonsensical and outside the scope of the Ruling.

The Verification is correct in stating that amounts deposited by Great Oaks into the Waddell & Reed groundwater charge account “were based on its Well Meter Reports rather than on funds actually collected from its customers,” and that “the deposits were supported by Great Oaks’ Well Meters [sic] Reports.”¹⁷ Groundwater charges are based upon the volume of water pumped, not on water sales to customers.

After stating the obvious, however, UAFCB then commented that it was unable “to reconcile the deposits in the W&R escrow-type account to the amounts collected from [Great Oaks’] customers.”¹⁸ Such reconciliation would, of course, require UAFCB to examine the Great Oaks’ rates authorized by the Commission and develop an understanding of authorized elements of such rates, including groundwater charges. UAFCB apparently was unable to perform this basic function, despite having all information necessary to do so. This inability on the part of UAFCB is inexplicable and not due to any failure on the part of Great Oaks to provide information to UAFCB.

The Verification should be corrected, removing comments regarding reconciliation of deposits to the Waddell & Reed to payments to Great Oaks by its customers for water service as being outside the scope of the Ruling.

¹⁶ Verification, at p. 4.

¹⁷ *Id.*

¹⁸ *Id.*

e. The Verification Predictably Was Unable to Confirm Assertions Never Made by Great Oaks.

As noted above, in Section II.a., the Ruling directed UAFCB to verify statements never made by Great Oaks. For example, Great Oaks did not at any time assert: “the provisions of the account require approval by the Court for any of these funds to be dispensed to an entity other than the SCVWD.”¹⁹ It therefore comes as no surprise that UAFCB “was not able to verify that the trust-type account has a provision that requires approval of the Superior Court of the County of Santa Clara before any of the funds can be dispensed to an entity other than SCVWD.”²⁰

The Commission is respectfully requested to note that Great Oaks expressed its concern that the Ruling directed UAFCB to verify assertions attributed to Great Oaks that were in fact never made. It should also be noted that Great Oaks’ assertions regarding the account, as provided in its Declarations accompanying Great Oaks’ Response, are not among the documents and sources of information reviewed by UAFCB in its undertaking. This begs the rhetorical question: How can assertions made by Great Oaks be verified without actually examining those assertions?

A simple reading of Great Oaks’ Response, including the Morse and Roeder Declarations filed therewith, clearly reveals the discrepancy between Great Oaks’ actual assertions and the Ruling’s erroneous summary of those assertions.

The Verification should be required to include a factual finding that the Ruling’s summary of Great Oaks’ assertions regarding the account was inaccurate and that Great Oaks truthfully and accurately asserted that the groundwater charge account was

¹⁹ Ruling, at pp. 11-12.

²⁰ Verification, at p. 6.

established “for the purpose of depositing and securely holding groundwater charges imposed by the Santa Clara Valley Water District until a legal determination is made on the disposition of the funds.”²¹ No evidence exists to support a finding that Great Oaks’ assertions on this point are not fully and completely truthful and accurate.

f. UAFCB’s Inability to Verify that SCVWD Interest and Penalty Charges Are Not Included in A.09-09-001 Is Factually Incorrect.

That “UAFCB was unable to verify the interest and penalty charges for 2009 and 2010 in the 2009 GRC application documents, or if they were in fact excluded from operating expenses”²² is incredible and factually incorrect. UAFCB has full access to all Great Oaks’ filings with the Commission, including all filings associated with current and past ratemaking proceedings. UAFCB was also provided with Great Oaks’ Updated and Corrected Workpapers (“Exhibit 3”) admitted into evidence for A.09-09-001. Exhibit 3 contains no interest or penalty charges assessed against Great Oaks in operating expenses for any year, including 2009 and 2010. Clearly, SCVWD interest and penalties are not now and never have been included among operating expenses, historical or projected, in any Great Oaks ratemaking proceeding, including A.09-09-001. UAFCB’s inability to verify this fact is inexplicable and incorrect.

In light of the clear evidence showing that Great Oaks has not in any way included SCVWD interest and penalties in any ratemaking proceeding, including A.09-09-001, it is difficult to explain or understand UAFCB’s inability to verify this fact. UAFCB should be instructed to review the available documentation and provide a report that is factually correct – it is simple to verify that SCVWD interest and penalty charges

²¹ Morse Declaration, at paragraph 4; Roeder Declaration, at paragraph 3.

²² Verification, at p. 7.

are not included as operating expenses in any rates authorized, charged or requested by Great Oaks.

g. The Verification Erroneously Represents that UAFCB Inquired of Great Oaks Regarding the Applicability of Public Utilities Code Section 453(a) and “Commission D.50185.”

The Verification states that UAFCB initially “found that PUC Sections 453(a) and 794 and Commission D.50185 were relevant in determining whether any such accounting or reporting violation occurred,” and that UAFCB inquired of Great Oaks “seeking reasons why its failure to disclose its withholding of pump tax payments did not violate those Commission authoritative pronouncements, as detailed in Appendix D.”²³ UAFCB did inquire of Great Oaks regarding Public Utilities Code Section 794, but did not inquire of Great Oaks about the applicability of Public Utilities Code Section 453(a) or Commission D.50185. Notably, UAFCB also did not inquire of Great Oaks regarding the applicability of Public Utilities Code Section 451 or Commission Decision D.04-06-018, both now considered by UAFCB to be relevant to the pump tax issue.²⁴

Great Oaks does not know why UAFCB would represent that it sent a data request to Great Oaks requesting reasons why Great Oaks did not violate Public Utilities Code Section 453(a) or Commission D.50185, especially when UAFCB’s own July 22, 2010 data request refutes its representation. Yet, such is the case.

Looking to those cited “authoritative pronouncements,” first, Public Utilities Code Section 453(a) relates to a prohibition against public utilities granting preferences or advantages to any corporation or person and has no application whatsoever to the

²³ Verification, at p. 8.

²⁴ *Id.*; see also Appendix D to Verification.

issues subject to the Ruling. Second, the citation to “Commission D.50185” appears to be inaccurate as well, since no such decision can be found using that designation.

It is both inconsistent and revealing that UAFCB would ask Great Oaks about the applicability of certain Public Utilities Code sections and Commission decisions, but not those determined by UAFCB to actually apply to the issues at hand. Any initial fairness in UAFCB’s approach evidenced by its July 22, 2010 data request inquiring regarding the applicability of portions of DWA Standard Practice U-38-W (“U-38-W”) and Public Utilities Code Section 794 has been overcome by UAFCB’s subsequent decision not to inquire of Great Oaks about these arguably relevant authorities. In summary, Great Oaks was asked by UAFCB about Public Utilities Code sections having no applicability to the issues, but Great Oaks was not asked about any “authoritative pronouncements” now deemed (erroneously) by UAFCB to apply. This sort of conduct supports the belief that Great Oaks cannot and will not receive a fair hearing on the issues.

h. UAFCB’s Conclusions Regarding Great Oaks’ Compliance with U-38-W are Clearly Erroneous.

The Verification states:

The UAFCB has concludes [sic] that Great Oaks pump tax accounting is not in compliance with the USOA cost definition, disclosure procedure and interpretation...²⁵

UAFCB’s conclusions regarding the cost definition and disclosure procedures contradict the specific language of U-38-W and are clearly erroneous. As discussed below, Great Oaks has fully complied with the requirements of U-38-W for maintaining accounts, including Account 230 – Other Current and Accrued Liabilities, where “Pump

²⁵ Verification, at p. 9. Note that the Verification includes footnote 10 thereof commenting on “Account 700,” which, as will be explained below, is also erroneous.

taxes payable” are fully disclosed. UAFCB has also inaccurately summarized the “Disclosure Procedure” specified in U-38-W, Sections 2.A. and 2.B. of the Instructions – General, and has based its conclusions on that inaccurate summary. In addition, UAFCB has applied an incorrect interpretation of U-38-W general instruction 4 to reach its erroneous conclusions.

1. UAFCB’s Application of the Definition of “Costs” is Erroneous.

After summarizing the definition of “Cost,” as provided in U-38-W, at page 6, UAFCB then jumps to the conclusion that Great Oaks accounted for unpaid groundwater charges as costs.²⁶ This is completely untrue. Instead, the 2009 Annual Report of Great Oaks Water Company for the year ended December 31, 2009, Great Oaks accounted for the unpaid groundwater charges in Account 230 – Other Current and Accrued Liabilities as “Pump taxes payable.”²⁷ Moreover, this is the same accounting treatment Great Oaks has applied to accrued, but unpaid pump taxes every year in its annual report filings.²⁸ In fact, upon review of Great Oaks’ annual reports since pump taxes were first levied in the 1960’s, Great Oaks has consistently reported unpaid pump taxes in exactly the same manner as it does now.

UAFCB also noted that Great Oaks records paid pump taxes in its Account 700 and then commented that UAFCB was unable to find any Commission authority permitting Great Oaks to maintain its accounts in this manner.²⁹ It should be noted that

²⁶ Notably, UAFCB failed to identify even one instance where Great Oaks accounted for unpaid groundwater charges as “costs.”

²⁷ Great Oaks Water Company 2009 Annual Report, at p. 34, Schedule A-30, Account 230; *see also* p. 14, Schedule A, line number 35 (Account 230).

²⁸ *See, e.g.*, 2005, 2006, 2007 and 2008 Great Oaks Annual Reports, at Schedule A-30, Account 230.

²⁹ *See* footnote 10 on page 9 of the Verification.

for as long as Great Oaks has paid pump taxes, it has accounted for paid pump taxes in its annual report filings with the Commission in the same way as it does now. The Commission is requested to review the selected pages from a sampling of Great Oaks' annual reports dating back to 1964, all of which support Great Oaks' accounting treatment of paid pump taxes.³⁰ The Verification should be corrected in this regard, and if the Commission desires a different accounting treatment to be applied now after more than four decades, some guidance on the desired accounting treatment should be provided.³¹

As shown, Great Oaks has accounted for and reported this fact consistently in its filings with the Commission, including its annual report filings, which, since 2005, have been sent directly to Kayode Kajopaiye, the author of the Verification.³² It is inconceivable that Mr. Kajopaiye would be unaware of Great Oaks' accounting of pump tax payables, yet that somehow appears to be the case.

UAFCB's use of the cost definition in U-38-W is obviously incorrect, as is the conclusion then drawn by UAFCB that Great Oaks is not in compliance with U-38-W in accounting for unpaid pump taxes. The Verification needs to be corrected in this regard.

2. UAFCB Inaccurately Summarized and Applied the Record Keeping Instructions of U-38-W.

For reasons Great Oaks cannot explain, UAFCB inaccurately summarized U-38-W general instructions 2.A. and 2.B. in its Verification and then concluded that Great

³⁰ See Exhibit E hereto, containing pages from Great Oaks' 1964, 1966, 1973, 1977, 1983, 1993, 1998 and 2009.

³¹ It would be helpful to know, for example, where, other than Account 700, Great Oaks should account for and record paid pump taxes.

³² *Id.*

Oaks was not in compliance with UAFCB's inaccurate version of those instructions. A simple reading of the actual language of such instructions reveals UAFCB's errors.

General Instruction 2 of U-38-W is entitled "Records" and provides:

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

B. The books and records referred to herein include not only accounting records in a limited technical sense but all other records such as minute books, stock books, reports, correspondence, memoranda, and the like, which may be useful in developing the history of or facts regarding any transactions.³³

Rather than cite specific language of these instructions, UAFCB chose instead to summarize the instructions, inaccurately, before apply them to its analysis. For example, UAFCB summarized Instruction 2 as "disclosure" requirements, rather than the record keeping instructions that they truly are.

Rather than address whether Great Oaks' records are kept in compliance with the instructions of U-38-W, UAFCB instead concluded that Great Oaks "recording of pump taxes as operating expenses while withholding payments is relevant information that needs to be disclosed for the Commission to consider whether Great Oaks [sic] recorded pump tax expenses are reasonable." This is untrue, as Great Oaks has always accounted for unpaid pump taxes under Account 230 - Other Current and Accrued Liabilities, and not as operating expenses.³⁴ UAFCB's conclusions are clearly erroneous in this regard.

³³ U-38-W, at p. 8-9.

³⁴ See discussion in Section II.h.1., immediately above.

3. UAFCB's Interpretation and Application of Instruction 4 of U-38-W is Erroneous.

UAFCB next repeats its earlier mistake of stating that Great Oaks records unpaid pump taxes in its accounts as operating expenses to reach another erroneous conclusion – that Great Oaks should have brought the question before the Commission under Instruction 4 of U-38-W.³⁵ As shown, Great Oaks has always recorded unpaid pump tax liabilities in its Account 230 - Other Current and Accrued Liabilities, not as operating expenses. With respect to U-38-W, this is and always has been the correct accounting treatment, and the Commission has never questioned this accounting or suggested that unpaid pump taxes should be accounted for in some other manner. The Verification must be corrected to confirm that the proper accounting for unpaid pump taxes is to record such amounts in Account 230 - Other Current and Accrued Liabilities.

i. UAFCB Erroneously Applied D.04-06-018, Rather than D.07-05-062.

Like DRA before it, UAFCB erroneously applied superseded D.04-06-018 to its verification process, rather than the current rate case plan for Class A water utilities set forth in D.07-05-062. Essentially, UAFCB has applied an outdated and superseded set of rate case application requirements to its undertaking. This error renders all portions of the Verification relying upon D.04-06-018 invalid.

j. UAFCB Made Factual and Legal Errors to Conclude that Great Oaks Was Not in Compliance with D.04-06-018³⁶'s Reporting Requirements.

As has been well documented, Great Oaks has challenged the legality of the groundwater charges levied and collected by SCVWD. The first legal challenge was for

³⁵ Verification, at p. 10.

³⁶ D.04-06-018 has been superseded by D.07-05-062, issued May 24, 2007. Interestingly, this is the same mistake made by DRA throughout the proceedings on A.09-09-001.

the July 1, 2005 – June 30, 2006 time period (“FY 2005-2006”), and subsequent challenges have been made for each year thereafter.

To date, the only judicial decision on the legality of SCVWD’s groundwater charges is the February 2010 Judgment of the Santa Clara County Superior Court in Case No. 105CV053142 relating to FY 2005-2006 groundwater charges.³⁷ This decision is presently on appeal by SCVWD.

No decision has yet been rendered declaring groundwater charges subject to the Ruling, the Verification or the rates to be determined in A.09-09-001 to be illegal. In fact, those cases have been stayed pending resolution of SCVWD’s appeal of the FY 2005-2006 groundwater charge case.

The Verification is clearly erroneous when it states that Great Oaks’ forecasts of pump tax operating expenses in A.09-09-001 “were not tailored to match anticipated cost charges because they were based on recorded pump tax operating expenses that Great Oaks knew were deemed illegal by the Superior Court of Santa Clara County and subject to further litigation.”³⁸ The truth is that the Santa Clara County Superior Court has not yet ruled on the legality of the pump tax operating expenses forecast by Great Oaks in A.09-09-001. The evidence is that Great Oaks disputes the legality of the groundwater charges³⁹ and SCVWD continues to assert that the groundwater charges due for the period of time covered by the Verification and A.09-09-001 are legal, due and owing.

³⁷ See Notice of Appeal filed by SCVWD attached hereto as Exhibit F.

³⁸ Verification, at p. 10. See also footnote 11, also on p. 10.

³⁹ Procedural changes by SCVWD since FY 2005-2006 in levying groundwater charges have not overcome the failure of SCVWD to obtain voter consent as required under Proposition 218.

The Ruling did not direct UAFCB to make legal findings, and UAFCB is not competent to do so, as demonstrated by this obviously erroneous legal conclusion. Unless and until this erroneous legal conclusion and finding by UAFCB is corrected, Great Oaks will be prejudiced in this ratemaking proceeding.

k. The Verification Erroneously Found that Great Oaks Was Not in Compliance with the “Contentious Issue Reporting Requirement.”

It is difficult to believe that the Commission’s own Utility Audit, Finance and Compliance Branch is unaware of the Commission’s 2007 Opinion Adopting Revised Rate Case Plan for Class A Water Utilities (D.07-05-062), yet that is the case. Incredibly, UAFCB erroneously applied the language of D.04-06-018 in its Verification and found that Great Oaks was not in compliance with the outdated and superseded “contentious issue reporting requirement.”⁴⁰ Great Oaks was mildly surprised when DRA applied the same outdated decision during the proceedings on A.09-09-001, but Great Oaks did expect the Commission’s auditors to be more current in the tools of the trade, including the applicable general rate case application and minimum data requirements. The Verification must be corrected to reflect that D.04-06-018 does not apply to Great Oaks’ A.09-09-001 and that all of UAFCB’s findings with regard to D.04-06-018 are erroneous.

The Commission is requested to note at this time that it would be erroneous to simply shift UAFCB’s conclusion under the outdated D.04-06-018 requirements to a conclusion under D.07-05-062. The fact is that UAFCB did not apply the correct general rate case requirements in its undertaking and the Commission is without authority to change that fact.

⁴⁰ Verification, at p. 11.

It should also be noted that in making its erroneous finding, UAFCB used a partial quotation from D.04-06-018, rather than the complete language of section entitled “List of Contentious Issues.” The full text of this section is as follows:

List all issues on which a different outcome is sought on an issue previously addressed by the Commission for this utility, or in a reported Commission decision for another water utility, and all significant issues not previously addressed by the Commission. Include the dollar impact of these issues, and a brief summary of the utility’s rationale with cross-references to supporting testimony.⁴¹

The requirements of the current rate case plan are different than those relied upon by UAFCB. D.07-05-062 provides under the heading, “Issues of Controversy,” the following:

List the major controversial issues included in the GRC filing. Include the dollar impact of these issues, and a brief summary of the utility’s rationale on this subject.⁴²

UAFCB compounded its error in using the outdated D.04-06-018 requirements when it further erred in concluding that the ruling by the Santa Clara County Superior Court on FY 2005-2006 groundwater charges is a final determination of illegality of the groundwater charges in A.09-09-001. As discussed above, UAFCB is clearly wrong in its conclusion. To this day, no final judicial determination has been made on the legality of groundwater charges levied by SCVWD pertinent to A.09-09-001.

Great Oaks properly accounted for unpaid groundwater charges in Account 230 – Other Current and Accrued Liabilities in its U-38-W records. Great Oaks projected groundwater charges accurately in A.09-09-001, despite DRA’s false accusations that

⁴¹ D.04-06-018, Appendix, p. 6 (underlined portions show UAFCB quote).

⁴² D.07-05-062, at p. A-22.

interest charges on unpaid groundwater charges are included in requested rates.⁴³ Any controversy over groundwater charges has been manufactured by DRA and arose long after Great Oaks filed A.09-09-001 and associated supporting documents.

The Verification must be corrected to find that Great Oaks complied with the applicable rate case requirements in submitting A.09-09-001.

I. The Verification Erroneously Addresses Legal Issues Outside the Scope of the Ruling.

The Ruling directed DWA to verify assertions made by Great Oaks regarding how and under what conditions withheld groundwater charge payments are being held and to verify that Great Oaks' ratepayers are not liable for late payment interest and penalty charges relating to withheld groundwater charge (pump tax) payments.⁴⁴ DWA was also instructed to pay particular attention to how Great Oaks reported accumulated interest expense liability on the withheld groundwater charges in its 2009 Annual Report and to "determine whether Great Oaks [sic] failure to inform DRA and the Commission of its actions in withholding the funds from SCVWD violates any GAAP or Commission accounting or reporting requirements."⁴⁵ DWA was not instructed to make legal findings and conclusions or to verify or otherwise report upon legal compliance with statutory requirements of the Public Utilities Code.

⁴³ Great Oaks has learned that the contact was made with DRA by SCVWD in an effort to turn DRA into an advocate for SCVWD. Whether DRA knew it was being manipulated is unknown, but what is clear is the DRA played the part without conducting any investigation whatsoever, all leading to the present situation.

⁴⁴ Ruling, at pp. 11-12.

⁴⁵ *Id.*, at p. 12.

In evidenced by its Verification, UAFCB strayed outside the Ruling’s directive and made several findings and conclusions on legal issues, all of which are clearly erroneous and contrary to law and are discussed immediately below.

m. UAFCB’s Conclusion that Great Oaks Was Not in Compliance with Public Utilities Code §451 is Clearly Erroneous.

UAFCB erroneously found and concluded that Great Oaks’ treatment of pump tax funds was not in compliance with Public Utilities Code §451.⁴⁶ In particular, UAFCB stated: “Great Oaks is not in compliance with this code section because it withheld information necessary for the Commission to establish fair and reasonable recovery of pump tax operating expenses.”⁴⁷

This conclusion assumes that Great Oaks has, in some way, failed to comply with the requirements of D.07-05-062 in presenting A.09-09-001 and the data required by that decision. No such finding, however, has been made by UAFCB. Instead, UAFCB applied D.04-06-018, a standard no longer applicable to Great Oaks or to any other Class A water utility.

Even if UAFCB had applied the proper rate case application and disclosure requirements of D.07-05-062, UAFCB’s conclusion would still be erroneous. Public Utilities Code §451 states, in pertinent part:

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

⁴⁶ *Id.*, at pp. ii, 1 and 11.

⁴⁷ *Id.*, at p. 11.

Under Generally Accepted Accounting Principles (“GAAP”)⁴⁸ and U-38-W⁴⁹, Great Oaks properly accounted for and reported unpaid groundwater charges as accrued liabilities. No legal determinations have been made declaring future groundwater charges projected in A.09-09-001 to be anything other than legitimate operating expenses of Great Oaks, so under D.07-05-062, Great Oaks properly projected groundwater charges as operating expenses. DRA’s accusations that Great Oaks’ customers are at risk of paying for SCVWD interest and penalties have been proven false.⁵⁰ And, no finding has been made that Great Oaks has demanded or received any “unjust or unreasonable charge”⁵¹ for water service. Based upon these truths, UAFCB’s legal analysis of and conclusions pursuant to Public Utilities Code Section 451 fail.

UAFCB concluded: “Great Oaks is not in compliance with this code section because it withheld information necessary for the Commission to establish fair and reasonable recovery of pump tax operating expenses.”⁵² This conclusion is erroneous in that it incorrectly assumes Great Oaks’ withholding payment of pump taxes to SCVWD due to pending legal disputes has an effect on ratemaking. This assumption, first made by DRA and now seemingly embraced by UAFCB, has never been true. Neither DRA nor UAFCB have ever offered any legal support for the assumption, and none exists. Accepting UAFCB’s Verification on this point would be clearly erroneous and without factual and legal support.

⁴⁸ UAFCB found that Great Oaks was in compliance with applicable GAAP standards. *See Verification*, at pp. 7-8.

⁴⁹ *See Section II.h.*, above.

⁵⁰ *Verification*, at pp. 6-7.

⁵¹ Public Utilities Code §451.

⁵² *Verification*, at p. 11.

n. UAFCB’s Verification Recommendations Are Erroneous and Moot.

UAFCB’s first recommendation is to require Great Oaks to “provide the Commission’s DRA’s with the conditions, requirements, agreements, instructions, etc. for the separate escrow-type account opened with W&R which Great Oaks was not able to provide during UAFCB’s verification fieldwork.”⁵³ Strangely, at no point in the Verification itself did UAFCB indicate what information “Great Oaks was not able to provide during UAFCB’s verification fieldwork.” The Verification does not list any information requested from Great Oaks that Great Oaks was unable to provide, and UAFCB never notified Great Oaks of any failure to provide requested information. In short, this Verification recommendation makes no sense and has no factual support.

UAFCB’s second recommendation is to require Great Oaks to “transfer the entire balance in its W&R escrow-type account into a secured and separate “bank escrow” account or to a regular standard bank account.”⁵⁴ Once again, this makes no sense. Presumably, this recommendation is based upon UAFCB’s erroneous conclusions regarding risk to principal and maintenance fees, but even that is unclear. Regardless, however, this recommendation is moot in light of Great Oaks decision to pay the groundwater charges held in the account to SCVWD.

UAFCB’s third recommendation is for Great Oaks to propose in its next rate case a method to separate the pump tax component of operating expenses (apparently from other operating expenses), “if pump tax is still an operating expense.”⁵⁵ Amazingly, this

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

reveals that UAFCB is unaware that total pump taxes are already separately listed among all other operating expenses in rate case submissions.

UAFCB next recommends that a specific withdrawal provision be established for the groundwater charge account maintained by Waddell & Reed that “must require an approval of the Superior Court of Santa Clara County or the Commission” before any withdrawals are made to entities other than SCVWD.⁵⁶ Again, it seems UAFCB knows nothing about legal matters, as one cannot simply require the Superior Court of Santa Clara County (or any other court) to approve of account withdrawals for an account not in fact already supervised by the Court. First, there must be a properly asserted legal right to establish an account to be supervised by a court and, then, the court must issue appropriate orders establishing the account and the terms and conditions of the account.

Obviously, in such a case, Great Oaks, SCVWD and the Commission would have to be parties to that legal proceeding and a decision from the court would be binding upon all parties, including the Commission. While Great Oaks’ payment of groundwater charges to SCVWD renders moot any groundwater charge ratemaking issue in this proceeding, any future issues pertaining to groundwater charges will be brought before the courts for proper adjudication.

UAFCB’s final recommendation to have Great Oaks propose accounting treatment of “pump tax revenues, expenses, cash, receivables, and payables in compliance with USOA,”⁵⁷ also makes no sense. Great Oaks already accounts for these financial items in accord with U-38-W, just as it has for over forty years since pump tax was first levied by SCVWD.

⁵⁶ *Id.*

⁵⁷ *Id.*, at p. 12.

o. Great Oaks Has Not Violated Public Utilities Code Section 794.

Finally, it deserves note that the Independent Verification Opinion on page ii of the Verification states:

In UAFCB’s opinion, Great Oaks’ treatment of its pump tax funds was not in compliance with Public Utilities Code §§ 451 and 794, the Commission Uniform System of Accounts for Class A Water Utilities, and Commission Decision D.04-06-018.”

Great Oaks has already addressed the errors committed by UAFCB with respect to Public Utilities Code Section 451, the Uniform System of Accounts (U-38-W) and Commission Decision D.04-06-018, but not yet Public Utilities Code Section 794.

Turning to that Code section, Great Oaks first notes that it has already addressed the applicability of Public Utilities Code Section 794 in its July 27, 2010 Response to Data Request No. 2 – GO – July 22, 2010.⁵⁸ In that response, Great Oaks correctly pointed out that the Code section has no application to any issue related to Great Oaks or to the Ruling.

The Verification does not indicate the nature of the alleged violation of Public Utilities Code Section 794. However, to the extent that this alleged violation relates to the U-38-W accounting requirements, Great Oaks has already addressed these requirements at length.⁵⁹ The Verification must be corrected to reflect that based upon the facts, including Great Oaks’ accounts listed in its annual reports, no violation of Public Utilities Code Section 794 has occurred.

If UAFCB and the Commission desire for Great Oaks to account differently for unpaid groundwater charges than as accrued liabilities, the opportunity to express this

⁵⁸ See Appendix E to the Verification.

⁵⁹ See Section II.h., above.

Great Oaks Water Co.
Service List

Municipal Water System
City of San Jose
3025 Tuers Road
San Jose, CA 95121

County Clerk
County of Santa Clara
70 W. Hedding Street
San Jose, CA 95110

Safe Drinking Water Office
Department of Water Resources
1416 9th Street, Room 804
Sacramento, CA 95814

Office of Regulatory Affairs
California Water Service Company
1720 North First Street
San Jose, CA 95112

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Raminder Kahlon
Division of Water and Audits
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Danilo E. Sanchez
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Ting-Pong Yuen
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Hani Moussa
Division of Ratepayer Advocates
California Public Utilities Commission
320 West 4th Street, Ste. 500
Los Angeles, CA 90013

Pat Esule
Division of Ratepayer Advocates
California Public Utilities Commission
320 West 4th Street, Ste. 500
Los Angeles, CA 90013

The Honorable Christine M. Walwyn
Administrative Law Judge
California Public Utilities Commission
Division of Administrative Law Judges
Room 5008
505 Van Ness Avenue
San Francisco, CA 94102-3214

Commissioner John Bohn
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214

Legal Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214

Linda Barrera, Esq.
Legal Counsel
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102