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24 October 1993

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Board of Directors
Volcano Community Services District
P. O. Box 72
Volcano, CA 95689

Subject: Participation Fee Study

As you requested, I have conducted a participation fee study for the Volcano Community Services District (VCSD) water system.

Municipal water system rate structures are designed to provide sufficient total revenue to cover all operating costs of the utility. Rates must not only be adequate to meet normal ongoing operation and maintenance expenses but also to finance facilities replacement costs and construction of future water supply facilities. Rate structures are generally comprised of three types of charges:

Service Charge - a monthly charge related to the fixed cost of providing water service without regard to the amount of water used.

Commodity Charge - a monthly charge related to the amount of water actually used.

Participation Fee - a one-time charge for new customers related to the cost of providing water supply facilities with adequate capacity to meet peak water demands, including water production and treatment facilities, storage reservoirs, and pipelines.

This study addresses the VCSD participation fee, with the results presented in the following sections:

1. Water Use
2. Water Storage Needed
3. Water Production Needed
4. Water System Improvements
5. Recommended Participation Fee

Water Use

For the purpose of this study, it is assumed that there are 58 water users on the existing VCSD water system. Based on recent water use data, it is estimated that the existing annual metered water use is about 5.5 million gallons per year (Average Day use of 260 gallons per day (gpd) per connection). Assuming that 20 percent of the water produced by the well is not metered, that is, it is "unaccounted for water", the estimated existing annual water production is about 6.9 million gallons. Assume that the Maximum Day water demand is 2.0 times the Average Day demand (2.0 times 260 gpd = 520 gpd per connection), and that the Peak Hour water demand flow rate is 2.0 times the Maximum Day demand (2.0 times 520 gpd = 1040 gpd = 0.72 gallons per minute (gpm) per connection).

Based on review of the VCSD boundaries and historical and recent new water service connections, it is estimated that future connections within and immediately adjacent to the VCSD boundaries will add 32 new connections, for a total of 90 connections served by the VCSD. Estimated existing and future water demands are therefore as shown in Table 1.

Table 1

ESTIMATED EXISTING AND FUTURE WATER DEMANDS

Description	Existing	Additional Future	Total Future
Number of Connections	58	32	90
Metered Water Use			
Avg. Day @ 260 gpd/conn.	15,080 gpd	8,320 gpd	23,400 gpd
Max. Day @ 520 gpd/conn.	30,160 gpd	16,640 gpd	46,800 gpd
Peak Hour @ 0.72 gpm/conn.	42 gpm	23 gpm	65 gpm
Well Production Required			
Max. Day (20 % unacc.)	37,700 gpd	17,800 gpd	58,500 gpd
24 hour pumping rate	26.2 gpm	14.4 gpm	40.6 gpm

Water Storage Needed

Water distribution system storage consists of three components:

Operational Storage - Operational storage is the volume of water required to balance out, or average, the variations in customer water consumption during a 24-hour period. Use of operational storage in the VCSD's two existing redwood tanks (capacities of 36,000 gallons in the "old" tank and 70,000 gallons in the "new" tank) enables the VCSD to operate the water supply well at a relatively constant rate over a 24-hour period to meet the Maximum Day water demand. Water delivered into the tanks during the night as operational storage flows out of the tanks during the daytime to help the well meet the Peak Hour water demand. Studies on water systems similar to the VCSD system have shown that operational storage equal to about 30 percent of the Maximum Day water demand is required.

Fire-Flow Storage - The Insurance Services Office recommends that water utilities provide fire-flow storage in addition to other water storage requirements to ensure that water is available for fire fighting. The recommended fire flow rate and duration for residential areas is 1000 gpm for two hours, equivalent to a volume of 120,000 gallons. The minimum fire flow rate and duration is 500 gpm for two hours, equivalent to 60,000 gallons.

Emergency Storage - Emergency storage is the volume of water which would be required as a temporary replacement in the event that water delivery from the well is interrupted due to failure of the production facilities, a break in the delivery pipeline, or a power outage. It is assumed that emergency storage equal to two days of Average Day water demand would provide sufficient time to correct the problem or arrange an alternative temporary water supply.

Based on the above criteria, the water storage volumes needed for the existing and future VCSD water system are shown in Table 2. Operational and emergency water storage requirements are distributed between existing and future water users based on the estimated water use shown in Table 1 for the two groups of customers. The fire-flow water storage requirement is distributed between existing and future customers based on the number of customers in each group. The 58 existing customers, representing 64 percent of the estimated future 90 customers, were allocated 64 percent of the fire-flow storage requirement. Similarly, the 32 future customers were allocated 36 percent of the fire-flow storage requirement.

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Table 2

WATER STORAGE REQUIREMENTS
(gallons)

Storage Component	Existing	Additional Future	Total Future
Operational Storage	11,300	6,300	17,600
Fire-Flow Storage 1000 gpm for 2 hrs.	76,800	43,200	120,000
Emergency Storage	37,700	20,800	58,500
Total	125,800	70,300	196,100

The two existing VCSD water storage tanks total 106,000 gallons. In order to meet the total future recommended water storage requirements, the VCSD needs an additional 90,100 gallons of water storage. Future customers should pay for 70,300 gallons of that additional storage, or 78 percent, while the existing customers should pay for the remaining 22 percent (19,800 gallons).

Water Production Needed

The present VCSD water system operates with a well production capacity of about 35 gpm. The estimated existing Maximum Day water demand is 26.2 gpm with the well running 24-hours. The existing production capacity is thus about 134 percent of the existing water demand. This is a desirable arrangement as it allows some excess capacity for future growth or emergencies. More importantly, the arrangement also allows the well pump some "resting" time rather than having to pump continuously. It is recommended that the VCSD water system relied upon to meet future water demands have similar extra well pump capacity. In order to meet the future Maximum Day water demand of 40.6 gpm with 24-hour pumping, production capacity of 134 percent of 40.6, equal to 54.4 gpm, is recommended. The VCSD will need to install new larger production facilities (well pump/motor, filters, etc.) to meet the additional future water demands imposed by new customers. The future customers should pay 100 percent of the costs of installing the larger capacity facilities.

Water System Improvements

In addition to the water storage and water production facilities needed as described in the previous two sections, it is recommended that an new 6-inch diameter pipeline be installed to deliver water to anticipated new customers in the northwest portion of the VCSD service area. The new pipeline would connect to an existing 8-inch diameter pipeline at a point near the 70,000 gallon storage tank, would pass between the two cemeteries to the north end of Church Street, and would connect to the north end of the existing pipeline on Emigrant Street. The total length of the new 6-inch diameter pipeline would be about 1,000 feet. The pipeline should be paid for by future customers.

The estimated costs of the water system improvements needed to provide water service to future VCSD customers are presented in Table 3.

Table 3

ESTIMATED COSTS OF WATER SYSTEM IMPROVEMENTS
TO SERVE FUTURE CUSTOMERS

Description	Percent Paid By Future Customers	Estimated Cost Total	Estimated Cost Paid By Future
Additional Water Storage (90,100 gallons)	78%	\$72,000	\$56,000
Increase Production Capacity (to 54 gpm)	100%	20,000	20,000
Install 6-Inch Pipeline (1,000 feet)	100%	18,000	18,000
Subtotal		\$110,000	\$94,000
Plus 20% for Contingencies, Administration, & Engineering		22,000	18,800
Total		\$132,000	\$112,800

Recommended Participation Fee

The estimated cost of providing water system facilities to serve the projected 32 additional future VCSD customers is \$112,800, equivalent to about \$3,500 per new connection. It is therefore recommended that the VCSD adopt a participation fee of \$3,500 as an appropriate and equitable charge for new connections to the water system. I further recommend that the participation fee be adjusted annually to account for inflation in construction costs. The annual increase in the participation fee could be based on a cost index, such as the Consumer Price Index, or, alternatively, you may wish to adopt a schedule of increases based on a reasonable estimate of construction cost inflation. I recommend that the VCSD adopt a schedule of increases based on a 3 percent annual escalation in costs as follows:

Date	Participation Fee
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Upon Implementation	\$3,500
1 July 1994	3,605
1 July 1995	3,715
1 July 1996	3,825
1 July 1997	3,940
1 July 1998	4,055
1 July 1999	4,180
1 July 2000	4,305

The above recommended participation fee schedule covers the costs of overall system improvements to meet the water demands imposed on the VCSD water system by future new customers. The participation fee does not cover the costs of extending water service to the place of use (the customer's meter). Except in unusual cases, the new customer should be required to pay all costs involved in extending water service to the new customer's meter.

I plan to attend the VCSD's 1 November 1993 Board meeting to present the results of my study and to answer any questions. Feel free to call me in the meantime, however, at 296-5739 if you wish to discuss the participation fee study.

Sincerely yours,

William J. Bardin
 William J. Bardin, P.E.

VCSDPART.FEE/ WJB ACWA



respective publication dates not counting such publication dates," in the second sentence; and (2) substituted "at the end of the fifty-sixth day, including therein the first day" for "on the day following the last day of publication" at the end of the third sentence.

Cross References:

Publication of summons pursuant to this section: CCP § 751.06.

Collateral References:

Cal Practice Rev Ch 14:102 Issuance and Service of Process.

Law Review Articles:

Selected 1957 code legislation. 32 St BJ 597.

§ 6066. Publication once a week for two weeks

Publication of notice pursuant to this section shall be once a week for two successive weeks. Two publications in a newspaper published once a week or oftener, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the fourteenth day, including therein the first day.

Added Stats 1951 ch 61 § 1; Amended Stats 1957 ch 1670 § 5; Stats 1959 ch 954 § 7.

Amendments:

1957 Amendment: Substituted (1) "in a newspaper published once a week or oftener" for "whether in a daily or weekly" in the second sentence; and (2) "on the day following the last day of publication" for "at the end of the second week thereafter" at the end of the section.

1959 Amendment: (1) Added ", with at least five days intervening between the respective publication dates, not counting such publication dates," in the second sentence; and (2) substituted "at the end of the fourteenth day, including therein the first day" for "on the day following the last day of publication" at the end of the third sentence.

Cross References:

Publication of notice inviting bids for lease of county property: § 25351.3.

Publication of notice of district reorganization: § 56083.

Publication of notice of hearing on formation of community services district: § 61105.

Publication of notice of election for formation of community services district: § 61122.

Publication of notice of hearing on issuance of bonds by community services district: § 61651.

Resolution as election notice: § 61660.

Notice of hearing on petition or resolution for establishment of zones: § 61773.

Notice of hearing on proposed charges by sanitation and sewer systems: H & S C § 5473.1.

Formation of improvement district: H & S C § 6550.3.

Notice of special election in recreation and park district: Pub Res C § 5780.21.

Notice of hearing on formation of zones in recreation and park district: Pub Res C § 5788.5.

Collateral References:

Witkin Summary (8th ed) p 1837.

Cal Jur 3d Dedication § 26, Pollution and Conservation Laws § 181.

[Civ. No. 69299. Second Dist., Div. Six. Jan. 24, 1984.]

CAVALIER ACRES, INC., Plaintiff and Respondent, v.
SAN SIMEON ACRES COMMUNITY SERVICES DISTRICT,
Defendant and Appellant.

SUMMARY

A developer which paid a community services district a sewer and water connection fee under protest sued and won judgment for recovery of the fee, even though in filing a claim for recovery of the fee prior to suing the developer did not set forth factual circumstances adequate to support some of the pertinent allegations in the complaint, as required by the claims statute (Gov. Code, § 53051, re- Code, § 900 et seq.) The district had failed to comply with Gov. Code, § 53051, requiring the governing board of each public agency to file information concerning the public agency and members of the governing board. Moreover, it had increased the fees for water and sewer connections by means of a resolution. (Superior Court of San Luis Obispo County, No. 56933, Harry E. Woolpert, Judge.)

The Court of Appeal affirmed. The court held that the developer was not barred from suit for recovery of the fee, despite its failure to comply with the claims statute, since the district's failure to comply with Gov. Code, § 53051, exempted the developer from the claim filing requirements. It also held that the district could not validly increase its fees by means of a resolution, but was required by Health & Saf. Code, § 5471, and Gov. Code, § 61621.5, to adopt increases by ordinance only. (Opinion by Abbe, J., with Stone, P. J., and Gilbert, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

- (1) **Government Tort Liability § 18—Claims—Excuse or Relief From Necessity of Filing Claim—Failure of Public Agency to File Required Information.**—A developer which paid a community services district a sewer and water connection fee under protest was not barred

from suit for recovery of the fee, even though in filing a claim for recovery of the fee prior to suing the developer did not set forth factual circumstances adequate to support some of the pertinent allegations in the complaint, as required by the claims statute (Gov. Code, § 900 et seq.). The district's failure to comply with Gov. Code, § 53051, requiring the governing board of each public agency to file information concerning the public agency and members of the governing board, made the claim procedures inapplicable and superfluous.

[See Cal.Jur.3d, Government Tort Liability, § 100; Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 680 et seq.]

- (2a-2c) **Waters § 156—Irrigation Districts and Similar Organizations—Powers and Liabilities—Property and Water Rights—Charges for Water—Enactment of Ordinance.**—A community services district could not validly increase its charges for water and sewer connections by means of a resolution. Although Gov. Code, § 54992, subd. (b), specifies that increases of fees or charges by local agencies shall be taken "only by ordinance or resolution," the more specific provisions of Health & Saf. Code, § 5471 (requiring ordinance for setting of sewer rates), and Gov. Code, § 61621.5 (requiring community service district to adopt fee increases by ordinance), prevail.

- (3) **Municipalities § 52—Ordinances, Bylaws, and Resolutions—Validity.**—Where a public entity is required to take action by ordinance it cannot validly accomplish the same results through adoption of a resolution.

- (4) **Public Funds § 1—Fees and Service Charges—Increases.**—The clear legislative intent of Gov. Code, § 54992, subd. (b), which provides that any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution, is to prohibit public entities from adopting fee increases by methods other than resolution or ordinance.

- (5) **Statutes § 48—Construction—Reference to Other Laws.**—A specific provision of a code relating to a particular subject will govern in respect to that subject as against a general provision, although the latter standing alone would be broad enough to include the subject to which the more particular provision relates.

COTSELL

Paul A. Geiths and John A. Geiss for Defendant and Appellant.

Roger C. Lyon, Jr., and Lyon, Miller & Waller for Plaintiff and Respondent.

OPINION

ABBE, J.—Respondent Cavalier Acres, Inc. (Cavalier) filed this action to recover the sum of \$7,590 paid by it on February 9, 1982, to appellant, San Simeon Acres Community Services District (District), for an additional sewer and water connection fee for 22 motel units being constructed by respondent. In May 1979 Cavalier had paid District the sum of \$6,710, the then full amount of the sewer and water connection fee for the motel units. Cavalier commenced construction prior to January 6, 1982. On January 6, 1982, District adopted resolution number 102, modifying the charges for water and sewer connections, which had the effect of increasing the fee for Cavalier by \$7,590. Cavalier paid the additional charges under protest, sued, and recovered judgment for the additional fee on its motion for summary judgment. We affirm.

Appellant raises two points on appeal. (1) That its affirmative defense of the failure of Cavalier to comply with the appropriate claims statute respecting the bringing of a lawsuit against a public entity was valid. (2) That the District may adopt a sewer and water connection fee increase by use of resolution rather than by ordinance. We find neither contention to have merit.

(1) Pursuant to the California claims statute (Gov. Code, § 900 et seq.), Cavalier filed a timely claim for recovery of the additional fee paid. We consider the factual circumstances set forth in the claim as inadequate to support some of the pertinent allegations in the complaint. Cavalier contends this is immaterial as it is exempt from filing a claim because of District's admitted failure to comply with Government Code section 53051 requiring the governing board of each public agency to file information concerning the public agency and members of the governing board. In *Lopez v. Southem Cal. Permanente Medical Group* (1981) 115 Cal.App.3d 673 [171 Cal.Rptr. 527], the court pointed out that a complaint filed against a public entity may not allege a cause of action not mentioned in the claim. Although the claim may have been defective here, *Wilson v. San Francisco Redevel-*

opment Agency (1977) 19 Cal.3d 555 [138 Cal.Rptr. 720, 564 P.2d 872] teaches us that a public agency's failure to comply with Government Code section 53051 entitles claimants to ignore the claim filing requirement entirely. In *Helzer v. North San Diego County Transit Dev. Bd.* (1980) 112 Cal.App.3d 708, 711 [169 Cal.Rptr. 416], the court held that even if a timely but inadequate claim is filed, the public agency's failure to comply with the requirements of Government Code section 53051 made the claim presentation procedures inapplicable and superfluous. We hold Cavalier's complaint is not barred by failure to comply with the California claims statute.

Health and Safety Code section 5471 provides in pertinent part: "Any entity shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges, including sewer standby or immediate availability charges, for services and facilities furnished by it, either within or without its territorial limits, in connection with its sanitation or sewerage system; . . ." In *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030 [184 Cal.Rptr. 417], the City of Oxnard contended that it could increase sewer and water connection fees by ordinance or by resolution under Government Code section 38900 which provides: "A city legislative body may construct, establish, and maintain drains and sewers." The *Pinewood* court held that the city had the authority to raise sewer connection fees, but only by complying with the ordinance requirement of Health and Safety Code section 5471 in that a resolution, which by its very nature is adopted without the formality required of an ordinance, cannot be deemed an ordinance or its legal equivalent. The *Pinewood* court further held that the more specific provisions of Health and Safety Code section 5471 prevail over Government Code section 38900 and the more general police power authority.

(2a) This is an even stronger case than *Pinewood* for concluding that the fee increase must be by ordinance. The enabling legislation for appellant, the Community Services District Law (Gov. Code, § 61000 et seq.) provides in section 61621.5 as follows: "Except as otherwise provided in this section, a district may by ordinance adopt regulations binding upon all persons to govern the construction and use of its facilities and property, including regulations imposing reasonable charges for the use thereof. . . ."

(3) Where a public entity is required to take action by ordinance it cannot validly accomplish the same results through adoption of a resolution. (*City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565-566 [90 Cal.Rptr. 843].)

(2b) Government Code section 54992, subdivision (b) provides: "Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution." Appellant misconstrues this section. It does not provide authority for a public entity, already bound by statutory requirements such as Health and Safety Code section 5471 and Government Code section 61621.5 to adopt fee increases by ordinance, to ignore such limitations and adopt increases by resolution. (4) The clear legislative intent of Government Code section 54992, subdivision (b) is to prohibit public entities from adopting fee increases by methods other than resolution or ordinance. (5) As was pointed out in *Kennedy v. City of Ukiah* (1977) 69 Cal.App.3d 545 [138 Cal.Rptr. 207], a specific provision of the code relating to a particular subject will govern in respect to that subject as against the general provision, although the latter standing alone would be broad enough to include the subject to which the more particular provision relates. (2c) Government Code section 54992, subdivision (b) is a generalized statute applied to a broad range of public entities and to a number of different fee increases other than sewer and water connections. Government Code section 61621.5 applies to only community service districts such as appellant herein and Health and Safety Code section 5471 applies only to water and sewer connection fees and must, therefore, be found to be the specific provisions prevailing over the broader provisions.

We deem it not necessary to consider respondent's other arguments in favor of supporting the judgment in view of our rulings on appellant's contentions.

The judgment is affirmed.

Stone, P. J., and Gilbert, J., concurred.

Appellant's petition for a hearing by the Supreme Court was denied March 14, 1984.

[Crim. No. 6459, Fifth Dist. Feb. 6, 1984.]

THE PEOPLE, Plaintiff and Respondent, v.
 TERRY J. PRICE, Defendant and Appellant.

[Opinion certified for partial publication.]

SUMMARY

Defendant was convicted of two counts of robbery and of multiple violent sex offenses against one victim on one occasion. Defendant was also found to have used a knife in the commission of the various offenses. At the sentencing hearing, the trial court noted as factors in aggravation the fact that the sex crimes were a "violent, vicious attack upon a totally defenseless young woman"; "there was a threat of great bodily injury"; "reprehensible things were perpetrated upon" the victim; and "she was required to participate in totally repugnant acts to her person". The trial imposed aggravated, consecutive prison terms on defendant pursuant to Pen. Code, § 667.6, subd. (c), for the sex offenses and concurrent prison terms on the robbery convictions. It also imposed a three-year enhancement on each conviction for weapon use, but stayed all the enhancements except for one. (Superior Court of Fresno County, No. 275398-6, Robert L. Martin, Judge.)

The Court of Appeal affirmed the judgment but remanded the matter to the trial court for resentencing. It held a trial court may use the same fact to impose more than one aggravated term, provided the fact is reasonably related to the particular count and is otherwise available, and the court states its reasons for each aggravated term in sufficient detail to permit meaningful review. The court held the trial court's statements of its reasons were inadequate, since they did no more than invoke what is inherent in any multiple violent sex crime situation, and failed to specify in what respect any one or more of the crimes was distinctively worse than the average violent sex crime committed at the same time as other offenses, and since the suggestion the victim was particularly vulnerable was not supported by the evidence. The court also held the trial court erred in failing to impose a consecutive sentence as to one of the robberies, since once it elected to treat

¹Parts VII and VIII are not published, as they do not meet the standards for publication contained in rule 976(b), California Rules of Court.