



File No. 2736

April 11, 2024

Via Email and U.S. Mail  
(ajacobs@scvwa.org)

**Santa Clarita Valley Water Board**  
**Attn: April Jacobs**  
27234 Bouquet Canyon Road  
Santa Clarita, CA 91350

**RE: WESTRIDGE VALENCIA MASTER HOMEOWNERS ASSOCIATION**  
- ***Draft Ordinance No. XXX***  
- ***Mandatory Use of Recycled Water within Agency's Service Area***  
- ***April 16, 2024 Public Comment***

Dear Ms. Jacobs:

This firm serves as general legal counsel to Westridge Valencia Master Homeowners Association ("Association"). This letter shall be the Association's public comment to the Draft Ordinance No. XXX, entitled Mandatory Use of Recycled Water within Agency's Service Area, that the Santa Clarita Valley Water Board (SCVWB) shall consider on April 16, 2024. The Association strongly opposes the adoption of Draft Ordinance No. XXX because of the significant financial burden it shall place on the Association's residents and due to its impermissible regulatory taking of Association property without just compensation in violation of the Fifth Amendment of United States Constitution.

The Association is a non-profit mutual benefit corporation, organized under the laws of California to manage the Westridge Valencia development. The Association itself is comprised of all its members, who are homeowners in the development. The members of the Association are responsible for collectively paying the Association's operating and maintenance costs through the collection of monthly assessments. The Association's revenue stream is not infinite, nor does it have outside sources. Rather, the Association's members fund actual operating costs that the Association must expend for the maintenance and/or repair of its property.

Here, should SCVWB require the Association to completely overhaul and replace its existing irrigation system to accommodate one that uses recycled water, the Association's members will be burdened with all the associated costs. Each member would be burdened with thousands of dollars in special assessments for the conversion to occur, which SCVWB needs to strongly consider should it mandate the Association to undertake the conversion. It would not be some nameless entity that would cough up the costs to install new irrigation infrastructure,

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but over one thousand residents that make up the Association and the Westridge Valencia development. Families who need to budget in today's economy would be stretched to the wire to fund a mandated irrigation conversion and to replace a completely adequate and operating irrigation system. The financial burdens the Association's members would experience does not justify SCVWB's attempt to mandate the conversion of a completely developed community's irrigation system to accommodate recycled water. SCVWB would be harming the community it serves far more than saving it.

The greatest concern, however, is SCVWB's attempt to take the Association's property without just compensation, in violation of the Fifth Amendment to the United States Constitution. As the Ordinance No. XXX acknowledges, any part of it that is unconstitutional cannot be enforced and must be severed from the ordinance. However, SCVWB does not appear to acknowledge that on its face, Ordinance No. XXX's attempt to mandate the Association to completely reconfigure and reinstall its irrigation system to accommodate recycled water at its sole expense is a taking in violation of the Constitution.

The Takings Clause of the Fifth Amendment prohibits the federal government from taking private property for public use without just compensation. (U.S. Const. amend. V). A "regulatory taking" may occur when government action, although not encroaching upon or occupying private property, "goes too far" and still amounts to a taking. (*Anaheim Gardens v. United States*, 444 F.3d 1309, 1315). Moreover, when there is no direct physical encroachment of private property, a court can use the *Penn Central* balancing factors to determine if a taking occurred. (*Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124). In determining if a taking under the *Penn Central* balancing test occurred, there are "three primary factors weighing in the balance: the regulation's economic impact on the claimant, the regulation's interference with the claimant's reasonable investment-backed expectations, and the character of the government action." (Id. at 124)

Here, SCVWB's mandate for the Association, a private property owner, to entirely fund a conversion of its already approved irrigation system amounts to an impermissible taking because it operates to deprive the Association of its private property and require its replacement at its sole expense. Moreover, under the *Penn Central* balancing test, each factor weighs towards finding that SCVWB's ordinance, if enacted, would constitute a taking. As explained above, Ordinance No. XXX would have a significant financial impact on the Association and its homeowner members that is created by SCVWB's mandate. Then, the mandate completely disregards the Association's reasonable investment-backed expectations of its irrigation system, previously approved by the SCVWB and applicable municipalities, operating long term for its whole useful life. Furthermore, the fact SCVWB is attempting to draft an ordinance to compel the Association's conversion of its irrigation system to accommodate recycled water at the Association's sole expense is exactly the type of action the Constitution prohibits without just compensation. To require the Association to complete the irrigation conversion without any compensation for the reasonable value of the Association's current irrigation system is in violation of the Fifth Amendment of the Constitution and, therefore, cannot be enforced.

Unless SCVWB revises Ordinance No. XXX to provide for just compensation to the Association for conversion of its current irrigation system to a new recycled water irrigation

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system, the Association will continue to oppose Ordinance No. XXX, and, if necessary, will consider commencing litigation against SCVWB to enjoin its enactment. The Association cannot allow SCVWB to enact an unconstitutional ordinance that will detrimentally impact all its members. The Association vows to strongly oppose this ordinance until it is substantially revised or tabled indefinitely.

*Nothing contained herein or omitted from this letter shall be deemed a waiver of any legal rights or remedies, and the Association expressly reserves all of its rights and remedies.*

Thank you for your attention to this matter.

Very truly yours,

**BEAUMONT TASHJIAN**

A handwritten signature in black ink, appearing to read 'J.A. Beaumont', written over a faint, light-colored signature line.

JEFFREY A. BEAUMONT, ESQ.

JAB:km:nc

cc: Board of Directors