



City of Falls Church

Office of the City Attorney

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July 15, 2011

VIA E-MAIL AND U.S. MAIL

Stuart A. Raphael, Esquire
Hunton & Williams
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102

Re: Final Decree Entered in Fairfax County Water Authority v. City of Falls Church, CL-2008-16114; Water Rate Increase Proposed by City of Falls Church

Dear Stuart:

As you are aware, the City of Falls Church is in the process of considering the adoption of an 8% increase in its water rate. At your request, several weeks ago I provided you with a copy of the final report prepared by the City's consultant, Municipal & Financial Services Group ("MFSG"), which supports the proposed rate increase. As you know, the Final Decree entered on January 6, 2010, by Judge Ney regarding Count V in the above-referenced case ("Final Decree") enjoins the City from taking certain actions with regard to its operation of the City's water system. We believe the adoption of the proposed rate increase would be fully in conformance with the Court's Final Decree. Last Monday night, after the City Council conducted a public hearing on the proposed water rate increase, Council deferred its decision on the matter until September 12, 2011, in order to enable me to request Fairfax Water's concurrence that the adoption of the proposed rate increase would comply with the Final Decree, as well as entry of a decree from the Court to that effect.

The Final Decree enjoined the City from transferring any money from its water system to its general fund for purposes unrelated to the water system, including what was referred to in the past as the "management fee" transfer. The adoption of the proposed rate increase does not constitute and will not result in any transfer of funds to the City's general fund for purposes unrelated to the water system, and it would not involve or constitute any "management fee" transfer as that term was used in the Final Decree. The Final Decree specifically provides that the City is allowed to transfer from the water fund to the general fund an amount that corresponds to compensation of the City for "reasonable direct and indirect costs associated

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with operating the water system,” and that is all that would be done by the City here if the proposed rate increase were approved.

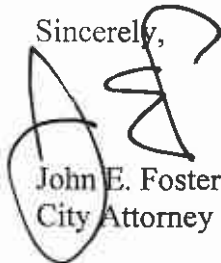
The Final Decree also provides that the City must comply with Section 13.09 of the City Charter “in setting water rates that, in the judgment of the City Council, will result in receipts equal to expense (including any future expense of the water system).” The proposed rate increase is expected to result in receipts of the water system equal to expense, including any future expense of the water system. As a result, this rate increase, if adopted, would also be in compliance in this regard with the Final Decree.

Finally, the Final Decree also states that “[i]n setting its water rates, the City may not include as an ‘expense’ any surplus to be transferred to the general fund in violation of paragraph 2 of this Decree.” The proposed rate increase does not include in any respect an “expense” that is comprised of any surplus or return on equity to be earned or transferred by the City to its general fund.

Well over a month ago, I sent you MFSG’s water rate study and requested Fairfax Water’s comments and input regarding the study. Fairfax Water responded in a letter dated June 14, 2011, arguing on several grounds that the City should not adopt the proposed water rates based on the rate study. Significantly, however, Fairfax Water did not indicate that the adoption of the proposed rate increase would violate the Final Decree in any respect. Fairfax Water also sent a second response on this matter on July 8, 2011, that does not express any belief that the proposed rate increase would contravene the Final Decree.

Given the deferral approved by the City Council, I would like to bring this matter before the Fairfax County Circuit Court for a ruling that the proposed rate increase is in conformance with the Final Decree. I would like to be able to represent to the Court that Fairfax Water concurs with the City’s position. In this regard, I would appreciate it if you would present this matter to Fairfax Water to seek its concurrence on this point. I recognize that Fairfax Water may oppose the proposed rate increase on other grounds, but the sole issue here is whether it is in conformance with the Final Decree. It is on this narrow point that we request the agreement of your client and endorsement of the enclosed Consent Decree. Please let me know as soon as possible, but no later than Friday, July 22, 2011, whether Fairfax Water is willing to join the City in securing the entry of the enclosed decree finding the proposed rate increase in conformance with the Final Decree.

Sincerely,



John E. Foster
City Attorney

Enclosure

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cc: Mayor and Members of Council
Wyatt Shields, City Manager
J. Patrick Taves, Esquire

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FAIRFAX COUNTY WATER AUTHORITY,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF FALLS CHURCH,)
)
 Defendant.)

No. 2008-16114

CONSENT DECREE

THIS ACTION came before the Court on the request of the Defendant City of Falls Church for the entry of a decree that a proposed water rate increase under consideration by the Falls Church City Council is in conformance with the Final Decree on Count V Concerning the City's Water Rates and Water Fund Transfers, which was entered by this Court on January 6, 2010 ("the Final Decree"); and

IT APPEARING TO THE COURT that the City has conducted two public hearings on a proposed 8% water rate increase and wishes to consider adoption of the proposed rate increase; and

IT FURTHER APPEARING TO THE COURT that the Final Decree imposes certain constraints on the City in this case with regard to its water system; and

IT FURTHER APPEARING TO THE COURT that the City Council has deferred its decision on the proposed rate increase until September 12, 2011, in order to provide sufficient time for this Court to determine whether the proposed rate increase, if adopted, would conform with the Final Decree; and

IT FURTHER APPEARING TO THE COURT that the Final Decree enjoined the City from transferring any money from its water system to its general fund for purposes unrelated to

the water system, including what was referred to in the past as the “management fee” transfer or a return on equity, and that the proposed water rate increase would not result in a transfer by the City of any money from its water system to its general fund for purposes unrelated to the water system, including what was referred to in the past as the “management fee” transfer or a return on equity; and

IT FURTHER APPEARING TO THE COURT that the Final Decree also required the City to comply with Section 13.09 of the City Charter “in setting water rates that, in the judgment of the City Council, will result in receipts equal to expense (including any future expense of the water system);” that the proposed rate increase is expected to result in receipts of the water system equal to expense, including any future expense of the water system; and that, as a result, this rate increase, if adopted, will also comply in this regard with the Final Decree; and

IT FURTHER APPEARING TO THE COURT that the Final Decree also states that “[i]n setting its water rates, the City may not include as an ‘expense’ any surplus to be transferred to the general fund in violation of paragraph 2 of this Decree,” and that the proposed rate increase does not include in any respect an “expense” that is comprised of any surplus or return on equity to be earned or transferred by the City to its general fund; and

IT FURTHER APPEARING TO THE COURT, based on the endorsement below of counsel for Plaintiff Fairfax County Water Authority (“Fairfax Water”), that Fairfax Water agrees that the adoption of the proposed rate increase by the City would conform with the terms and conditions of the Final Decree; now, therefore, it is hereby

ADJUDGED AND DECREED that, in the event the City adopts the proposed rate increase, such action will conform with the terms and conditions of the Final Decree.

ENTERED on this ____ day of _____ 2011.

R. Terrence Ney, Judge
Fairfax County Circuit Court

WE ASK FOR THIS:

CITY OF FALLS CHURCH

By: _____
J. Patrick Taves (VSB No. 18610)
T. David Stoner (VSB No. 24366)
Michael W.S. Lockaby (VSB No. 74136)
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Counsel for City of Falls Church

SEEN AND CONSENTED TO:

FAIRFAX COUNTY WATER AUTHORITY

By: _____
Stuart A. Raphael (VSB No. 30380)
HUNTON & WILLIAMS LLP
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McLean, Virginia 22102
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Counsel for Fairfax County Water Authority