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**John E. Brown**  
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File No. 02335.0273A

March 26, 2015

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Scott D. Levine  
Silldorf & Levine, LLP  
5060 Shoreham Place  
Suite 115  
San Diego, CA 92122

Re: Government Claim for Damages Against Elsinore Valley Municipal  
Water District by Canyon Lake Property Owners Association

Dear Mr. Levine:

NOTICE IS HEREBY given that the claim ("Claim") which you presented to the Elsinore Valley Municipal Water District ("District") on behalf of the Canyon Lake Property Owners Association ("CLPOA"), dated February 17, 2015 and presented on February 18, 2015, was rejected by the District's Board of Directors ("Board") on March 26, 2015, pursuant to California Government Code section 912.6, subdivision (a)(1). This notice is being directed to your attention as the lawyer for and representative of CLPOA designated in the Claim.

**WARNING**

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6. Your time for filing in federal court may be less than six (6) months.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

In addition to the notice and warning detailed above, we also provide an initial response to the five claims you have raised. We hope that the CLPOA will carefully consider the points made herein.



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The Lease Payments are not a "Tax"

The Claim alleges that CLPOA's payments to the District under the Railroad Canyon Reservoir Lease Agreement, as amended ("Lease"), are an unconstitutional "tax." Specifically, the Claim alleges that every payment made by CLPOA under the Lease since the effective date of Proposition 26 is an unconstitutional tax because the payments were not submitted to, nor approved by, a majority of the electorate making the payments. CLPOA's claim is without merit.

As you must know, California Constitution article XIII C governs the imposition of taxes by local governments. Proposition 26 was approved by the voters in 2010 and amended Article XIII C of the California Constitution to provide a definition of the term "tax." Under this definition, a fee or charge imposed by a local government is a tax unless it meets one of seven exceptions. As noted below, a fee or charge paid for the use of government property pursuant to a lease (i.e., lease payments) are one of the seven specified exceptions to the definition of the term "tax" and for that reason CLPOA's Lease payments are not a "tax." Article XIII C, section 1, subdivision (c)(4) reads as follows:

"(e) As used in this article [XIII C], "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: ...

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property. ..."

Further, there are no other limitations on the fees and charges public agencies may impose for the use of government property under a lease. Rather, a local government may charge whatever the market will bear. (*City of Oakland v. Burns* (1956) 46 Cal. 2d 401, 407)

As you are aware, under the Lease, CLPOA's rights to use the District's reservoir are expressly restricted to: the rights to use the reservoir for boating, swimming, fishing, and water sports (Lease, § 4); to construct and maintain docks, sea walls, bulkheads, launching ramps, bathing beaches and similar improvements in furtherance of CLPOA's surface recreational rights (Lease, § 5(a)); to excavate, dredge, cut fill, or otherwise alter the shoreline of the reservoir and its bottom (Lease, § 5(b)); and to maintain and operate rental boats upon the reservoir surface for specified purposes (First Amendment to Lease, § 4). In other words, CLPOA's payments to the District under the Lease are charges imposed by a lease for the use of District property, namely the District's reservoir and lake bottom, adjacent shoreline property, and the water impounded in the reservoir under the District's recognized water rights.



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By the express terms of California Constitution Article XIII C, section 1, subdivision (e)(4), the payments by CLPOA under the Lease are not a "tax" because the Lease payments fall under an express exception to the definition of "tax." CLPOA's Lease payments are fees paid for the right to use the District's property and are not property-related fees that are imposed for the ongoing delivery of a service to specific properties (e.g., water, sewer, and solid waste service fees). Because the payments made by CLPOA to the District are not a "tax," there is no requirement that the Lease payments be submitted to, nor approved by, a majority of the electorate making the payments. As such, the District does not owe CLPOA reimbursement of any amount of the Lease payments made from the years 2010-2011 forward, as alleged in the Claim. It is distressing to me that the CLPOA would make such a claim, let alone publicize such an erroneous interpretation of California law.

The Remedy of Reformation of the Lease is not Permitted

CLPOA alleges that reformation of the Lease is necessary to ensure that CLPOA does not pay the District more than the costs necessary to cover the reasonable costs of the District's governmental activity for the rest of the term of the Lease. Again, this argument does not account for the simple fact that the CLPOA is leasing District property. As such, the Lease payments are not a tax and therefore there is no requirement that such payments bear any relation to the District's costs.

In addition, the contractual remedy of reformation is reserved for when the parties to a contract come to an agreement, but by mistake or fraud the written instrument does not express their agreement correctly. (*See* Cal. Civ. Code §§ 3399 & 3401; *see also* *Stafford v. California Canning Peach Growers* (1938) 11 Cal. 2d 212, 218.) The Lease was originally executed in 1968 by the predecessors of both the District and CLPOA and has subsequently been amended four times in 1969, 1970, 1974, and 1989. In the 45+ years of the Lease's existence, no party to the Lease has claimed that the terms of the Lease and its amendments are not an accurate reflection of the agreement of the parties that existed when the contract was executed. To the extent the CLPOA wants the Lease reformed to comply with Proposition 26, there can be no "mutual mistake" for a proposition enacted 40 years after the Lease was originally signed.

Lease Payments to Escrow are a Breach of the Lease

Per the Lease, CLPOA is required to make its payments to the District. There are no provisions in the Lease that allow for such payments to be made into escrow. However, CLPOA states in the Claim that, "[i]n an effort to avoid continuing overpayment," CLPOA has elected to deposit future payments into an escrow account for such payments to be released only "upon a finding of what is actually due from Canyon Lake Property Owners Association to Elsinore Valley Municipal Water District in accordance with the California Constitution." These statements are made notwithstanding the fact that the Lease, by its own terms, sets forth the



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procedures for challenging alleged overpayments under the Lease. Such procedures do not allow for CLPOA to deposit payments into an escrow. As such, any CLPOA failure to make such payments directly and timely to the District, as provided by the Lease, each constitute a breach of the Lease and will be treated as such by the District.

Should you or your client wish to withdraw this claim based upon the information set forth in this letter, please feel free to contact me. In addition, I would be happy to discuss each and every aspect of this claim with you further in hopes of avoiding the possibility that once the Lease terminates it may no longer be possible, as a matter of law and public policy, to continue to permit the CLPOA, as well as the members of its Homeowner's Association, to make use of Canyon Lake. My contact information is located at the top of this correspondence.

Sincerely,

John F. Brown  
of BEST BEST & KRIEGER LLP  
General Counsel for the Elsinore Valley Municipal  
Water District

cc: John Vega, District's General Manager, Elsinore Valley Municipal Water District  
(via e-mail only)

Canyon Lake Property Owners Association, Inc.  
Board of Directors  
c/o Chris Mitchell, General Manager  
31512 Railroad Canyon Road  
Canyon Lake, CA 92587 (via U.S. Mail)