



News Release

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Fairfax Water Agrees to Modify Final Decree Looking Forward to Speedy Conclusion of Litigation

Fairfax Water and the City of Falls Church have reached an agreement to modify the Fairfax County Circuit Court's Final Decree of Jan. 6, 2010, which prohibited the City from transferring water fund surpluses to the City's general fund. Judge R. Terrence Ney's ruling agreed with Fairfax Water that the City has been violating the Virginia Constitution and the City's own charter by designing its water rates to include a subsidy for their general fund. This amounted to an improper tax for the 110,000 residents of Fairfax County who buy their water from the City. In October, after the trial was finished but before the Court had issued its ruling, the City again transferred an additional \$2.2 million in surplus water revenues for Fiscal Year 2009.

The City argued in its post-trial motions that it would suffer financial hardship if ordered immediately to return this money to the water fund. To accommodate the City's immediate cash flow concern, Fairfax Water proposed to suspend the injunction relating to water fund transfers pending the City's appeal, provided that the City agreed to repay the money to the water fund with interest at 6 percent if the City's appeal fails. In agreeing to these terms, the City also agreed to withdraw its emergency appeal to the Supreme Court of Virginia and to pursue an appeal in the ordinary course.

"We were quite surprised that the City made the water fund transfer in October, knowing that it could lose the lawsuit. But we do not want to impose unnecessary financial hardship on the City," said Philip W. Allin, Chairman of Fairfax Water. "We simply wanted to ensure that the City would not continue to use its water customers' money to pay for things entirely unrelated to the water system."

Allin continued, "Our agreement today with the City of Falls Church protects the Fairfax County residents that are water customers of the City. It ensures that the water revenue surpluses in Fiscal Years 2009 and 2010 will be restored to the water fund with interest assuming that the City will not succeed on its appeal."

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The three remaining counts of Fairfax Water's lawsuit are set for trial on Feb.1, 2010, again before Judge Ney. The issue for trial is whether the City has violated the Virginia Antitrust Act and engaged in unfair competition by taking steps to exclude Fairfax Water from providing water service in the eastern portion of Fairfax County.

Chairman Allin observed, "In our view, the large profits that the City has been taking from its water system have been driving efforts to block Fairfax Water from offering water service to the City's Fairfax County customers. We believe that is why the City sued us, unsuccessfully, in federal court to try to establish a legal monopoly, and why it has been taking other steps to keep Fairfax Water out of the market even after it lost that case." Chairman Allin also expressed the hope "that the litigation will be brought to a speedy conclusion so we can get back to what was a good working relationship with our neighbor."

Fairfax Water is Virginia's largest water utility, serving one out of every five Virginians who obtain their water from public utilities. Nearly 1.5 million people in the Northern Virginia communities of Fairfax, Loudoun, Prince William and Alexandria depend on Fairfax Water for superior drinking water.

Chartered in 1957 by the Virginia State Corporation Commission as a public, non-profit water utility, Fairfax Water operates water treatment plants with a combined capacity of 345 million gallons per day.

Fairfax Water is governed by a ten-member Board of Directors comprised of Fairfax County citizens who are appointed by the elected Board of Supervisors of Fairfax County. A General Manager, supported by a senior staff of engineering and business professionals, manages the day-to-day operations of Fairfax Water.

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