

1 GARY B. WESLEY
2 Attorney at Law (#84745)
3 707 Continental Circle #424
4 Mountain View, CA 94040
5 (408) 882-5070
6 Email: gary.wesley@yahoo.com

ENDORSED

2016 OCT 25 P 2: 18

7 Attorney for Petitioner
8 CHERIEL JENSEN

Sharon Ulleselt
DEPUTY CLERK

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11 CHERIEL JENSEN,

12 Petitioner,

Case No. **16CV301658**

13 vs,

14 SANTA CLARA VALLEY
15 WATER DISTRICT and its
16 current CEO NORMA CAMACHO,

PETITION FOR WRIT OF MANDATE
PROHIBITING EXPENDITURES ON
FLUORIDATION AS UNAUTHORIZED
BY LAW (Taxpayer Lawsuit, California
Code of Civil Procedure Section 526a)

17 Respondents.
18)

19 1. Petitioner CHERIEL JENSEN is, and was at all times relevant, a resident of Saratoga,
20 California who, within the last year, paid taxes as a ratepayer and real property owner to the
21 Santa Clara Valley Water District (Respondent), and continues to pay such taxes. Petitioner sues
22 individually and as a trustee of the family trust in which her residence in Saratoga is titled.

23 2. Respondent SANTA CLARA VALLEY WATER DISTRICT (hereinafter "DISTRICT")
24 is, and was at all times relevant, a special district in Santa Clara County established by state law .

25 3. Respondent NORMA CAMACHO is the current CEO of the DISTRICT.

26 4. The principal state law that controls the operation of the DISTRICT is the special
27 "Santa Clara Valley Water District Act" referenced on the agency's website. It is contended
28 that nothing in the District Act authorizes the DISTRICT to add fluoride to the water it provides.

5. Attached as **EXHIBIT 1** is a copy of a July 26, 2015 email to the DISTRICT (and to the
Health Officer of Santa Clara County).

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6. The email avers (correctly) that the law cited by the DISTRICT as authority for fluoridating was **California Health and Safety Code section 116415(f) (EXHIBIT 1)**.

7. However, as the email also avers and Petitioner contends, that authority to fluoridate only extends to a *“public water system”* which is defined in **section 116275(h)** as a *“system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly services at least 25 individuals daily at least 60 days out of the year.”*

8. Petitioner contends that the DISTRICT was and remains a wholesaler of water - not a retailer - and did and does not have *“15 or more service connections or regularly services at least 25 individuals daily at least 60 days out of the year.”*

9. Moreover, Petitioner contends, as the email indicates, that unlike a municipality which has implied “police power” to act in (its view of) the public interest, this special district has no such broad power.

10. Petitioner contends that the DISTRICT is not an entity authorized by the state fluoridation law or any other law to fluoridate its water.

11. Attached as **EXHIBIT 2** is a copy of an October 9, 2015 email confirming that no response to **EXHIBIT 1** had been received.

12. Available on the DISTRICT’S website is a September 22, 2016 letter indicating that the DISTRICT plans to start fluoridating as soon as December 5, 2016. (**Copy attached as EXHIBIT 3** - see fourth paragraph).

13. Attached as **EXHIBIT 4** is a copy of the email Petitioner sent to the DISTRICT on October 6, 2016, asking for a record *“showing the date(s) planned for the addition of the fluoride compound and the release of such fluoridated water”* and objecting.

14. Attached as **EXHIBIT 5** is a copy of the email response Petitioner received pointing out that the *“target date to add fluoride to the treatment plants (sic) water is December 5, 2016.”*

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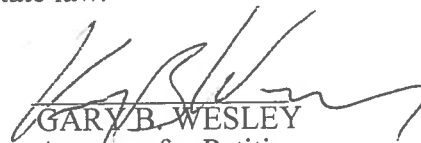
15. It is alleged on information and belief that the actual commencement and subsequent operation of the DISTRICT's fluoridation plan would cost the DISTRICT money on such items as fluoride purchases and employee time.

16. It is contended that the planned expenditures of money to fluoridate the water is unauthorized and therefore "illegal" within the meaning of **California Code of Civil Procedure section 526a**. A copy of **CCP section 526a** is attached as **EXHIBIT 6**.

17. It is alleged on information and belief that Respondent NORMA CAMACHO is the highest ranking official in the employ of the DISTRICT and has the authority within the organization to direct that the planned expenditures challenged herein not be made.

WHEREFORE, Petitioner seeks a writ of mandate (or injunction, if no writ is issued) which prohibits the DISTRICT and its CEO from spending money on fluoridation unless and until such expenditures are authorized by a change in state law.

Date: October 25, 2016.


GARY B. WESLEY
Attorney for Petitioner
Cheriel Jensen

VERIFICATION

I declare under penalty of perjury that I am the Petitioner, have read this Petition and know its factual averments to be true of my own knowledge except insofar as an averment is made on information and belief, and as to such averment, I believe it is true.

Executed on October 25, 2016 in Santa Clara County, California.


CHERIEL JENSEN
Petitioner

(C-15-0164)

From: WOUTER DITO [mailto:wouter.dito@yahoo.com]

Sent: Sunday, July 26, 2015 8:21 PM

To: phinternet@phd.sccgov.org; Communications Unit; claudia.ericksen@cco.sccgov.org; boardoperations@cob.sccgov.org

Subject: AUTHORITY TO FLUORIDATE, PREMATURE FILING OF NOTICES OF EXEMPTION AND DUTIES OF DR. SARA CODY

To: Santa Clara Valley Water District and Dr. Sara Cody, Health Officer, Santa Clara County:

In 2011, the Board of Directors of the Santa Clara Valley Water District (hereinafter referred to as "Water District) adopted a policy which called for fluoridation of its water supplies.

On the June 9, 2015 agenda of the Board of Directors was a project including the building of two fluoridation facilities. Prior to the June 9 meeting, I objected to the project in writing on the basis that the Water District had not complied with CEQA because the District's claim of exemption (in the staff report) appeared untrue. Merely building facilities would have little impact on the environment; however, the broader plan to fluoridate water destined for the San Francisco Bay would have widespread environmental effects. It was not clear whether the agenda item was just to build facilities and not to provide fluoridated water.

After the Board of Directors approved the "project" on June 9, I requested a copy of certain public records - including any (prior) CEQA claim of exemption. I was given a copy of a claim of exemption for a project consisting of three fluoridation facilities (including the two approved on June 9). That claim of exemption had been filed with the Santa Clara County Recorder's Office on October 9, 2013 at time when none of the three fluoridation facilities had been approved.

The STATE regulations concerning a notice of exemption under CEQA provide that such a notice "shall be filed, if at all, after approval of the project" (Title 14, Section 15062(a)). The California Court of Appeal has held that a notice of exemption filed before a project has been approved is unlawful and does not start the time for suing under CEQA (Coalition for Clear Air v. City of Visalia (2012) 209 Cal.App.4th 408, 423). Why was the claim of exemption filed in disregard of California law? Is the Water District continuing to prematurely file notices of exemption and, if so, why?

While I considered suing under CEQA, there was and is uncertainty concerning what was approved. Moreover, I discovered what appears to be a more fundamental problem with the Water District's fluoridating its water supplies. Unlike a city for example, which may possess general "police power" extending to fluoridation (see, Coshov v. City of Escondido (2005) 132 Cal.App.4th 687, 705), the Water District appears to have far more limited powers that do not include the authority to fluoridate.

In support of the adoption of a policy on fluoridation in 2011, the Water District explained that it was voluntarily complying with a state law (Health and Safety Code 116415(f)); however, that code section only permits fluoridation by a "public water system with less than 10,000 service connections." "Public water system" is defined for purposes of the chapter in Health and Safety Code Section 116275(h) to

mean "a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly services at least 25 individuals daily at least 60 days out of the year..." How does the Water District come within the statutory definition of a "public water system" that is permitted to fluoridate? Does the Water District claim any other legal basis for fluoridating its water?

At the June 9, 2015 meeting of the Water Board, Dr. Sara Cody, the County of Santa Clara's health officer, spoke in favor of fluoridating. Dr. Cody has been the County's health officer for several years and evidently has spent much of her career in the same office.

California Health and Safety Code Section 104830, et seq. provides for reducing cavities other than by fluoridating the public's drinking water. The law requires a program in each county by which school children in "public and private elementary schools" are "provided the opportunity to receive within the school year the topical application of fluoride or other tooth-inhibiting agent to the teeth in a manner approved by the (state health) department (quotations from Section 104830). Section 104840 provides:

The county health officer of each county shall organize and operate a program so that treatment is made available to all persons specified in Section 104830. He shall also determine how the cost of such a program is to be recovered. To the extent that the cost to the county is in excess of that sum recovered from persons treated, the cost shall be paid by the county in the same manner as other expenses of the county are paid.

My question for Dr. Cody is why she has not even attempted to organize or operate a program for the topical application of tooth-inhibiting agents in schools in Santa Clara County. No such program exists. Is it because the state health department has not adopted necessary regulations or for some other reason?

While I understand that the Water District and Dr. Cody are not required by law to respond to the questions raised in this email, in the absence of prompt and satisfactory responses, I could be left to file a lawsuit.

Sincerely,

Wouter Dito
1301Lassen Avenue
Milpitas, CA 95035
wouter.dito@yahoo.com

EXHIBIT 2

From: WOUTER DITO <wouter.dito@yahoo.com>;
To: Board of Directors <board@valleywater.org>;
Cc: wouter.dito@yahoo.com <wouter.dito@yahoo.com>;
Subject: Re: AUTHORITY TO FLUORIDATE, PREMATURE FILING OF NOTICES OF EXEMPTION AND DUTIES OF DR. SARA CODY
Sent: Mon, Sep 7, 2015 3:33:36 AM

Santa Clara Valley Water District:

This will confirm that I have received no response from the District to my July 26 email except the August 6 note shown below.

Wouter Dito

From: Board of Directors <board@valleywater.org>
To: "wouter.dito@yahoo.com" <wouter.dito@yahoo.com>
Cc: Board of Directors <board@valleywater.org>
Sent: Thursday, August 6, 2015 11:56 AM
Subject: RE: AUTHORITY TO FLUORIDATE, PREMATURE FILING OF NOTICES OF EXEMPTION AND DUTIES OF DR. SARA CODY

Sent on behalf of Chair Kremen:

Dear Mr. Dito,

We are in receipt of your email, dated July 26, 2015, regarding drinking water fluoridation at our three water treatment plants. Your letter has been shared with the Board of Directors.

Thank you for your interest in the District.

Sincerely,

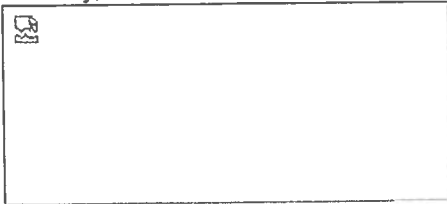




EXHIBIT 3

SANTA CLARA VALLEY WATER DISTRICT FLUORIDATION OF DRINKING WATER



DEPARTMENT OF PUBLIC HEALTH
KAREN L. SMITH, MD, MPH
Director & State Health Officer

COUNTY OF SANTA CLARA
SARA H. CODY, MD
Health Officer & Public Health Director

DATE: September 22, 2016

TO: HEALTH CARE PROVIDERS (PHYSICIANS, NURSE PRACTITIONERS,
PHYSICIAN ASSISTANTS, DENTISTS, AND PHARMACISTS)

SUBJECT: SANTA CLARA VALLEY WATER DISTRICT
FLUORIDATION OF DRINKING WATER NOTIFICATION

In November of 2011, the Santa Clara Valley Water District (SCVWD) Board of Directors decided to provide optimal levels of fluoride at its three water treatment plants. In August 2014, a Planning Study Report was completed for two of the fluoridation projects, Penitencia Water Treatment Plant and Santa Teresa Water Treatment Plant.

Pursuant to Title 22, Section 64433.7 of the California Code of Regulations, this letter serves as official notice that SCVWD will begin to increase the fluoride content of the treated water it supplies to some customers in Santa Clara County on December 5, 2016. This means that some areas of the county that were previously receiving non-fluoridated water will now receive water that is fully or partially fluoridated.

Implementation of fluoridation is expected to be completed in 2017 for eastern Santa Clara County, and in 2020 for western Santa Clara County.

The California Department of Public Health (CDPH) recommends suspending prescription fluoride supplements (drops and tablets/lozenges) for one year in areas served by the SCVWD that are fully or partially fluoridated. An updated table is attached with the recommendation for all Santa Clara County zip codes regarding fluoride supplementation. This should serve as a reference starting December 5, 2016 for 12 months.

Prescribing fluoride supplements is at the professional discretion of health providers, based on factors such as the current level of fluoride in the local public water system, as well as a patient's age and overall risk for tooth decay. Information from the American Dental Association is available at <http://www.ada.org/en/member-center/oral-health-topics/fluoride-supplements>. Halting supplements during this one-year period will help ensure that consumers do not receive more fluoride than is necessary and will not have an effect on tooth formation in children. This will allow the local public water systems

FLUORIDATION OF DRINKING WATER NOTICE
Page 2

time to record average fluoride levels in the water and accurately determine who continues to require fluoride supplements.

After one year, and thereafter, we recommend that you resume verifying the fluoride level of your local public water system using the "*Fluoridation by Public Water Systems*" website (link below). This will help guide you in providing updated fluoride supplement prescriptions to patients. If the average fluoride level of the local public water system where your patient resides is 0.6 ppm (mg/L) or greater, CDPH and the U.S. Centers for Disease Control and Prevention suggest that you discontinue fluoride supplements for your patients.

To review fluoride levels in California public water systems, please refer to "*Fluoridation by Public Water Systems*" on the California State Water Resources Control Board website at:

http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Fluoridation.shtml

For questions about water fluoridation in Santa Clara County, please direct inquiries to (toll-free) 1-844-435-8420. See additional resources as attached.

Sincerely,



Jayanth V. Kumar, DDS, MPH
State Dental Director
California Department of Public Health

Sincerely,



Sara H. Cody, MD
Health Officer & Public Health Director
County of Santa Clara

Attachments

FLUORIDATION OF DRINKING WATER NOTICE

Page 3

Attachment I

Additional Resources:

For questions about water fluoridation in Santa Clara County, please direct inquiries to (toll-free) 1-844-435-8420.

Centers for Disease Control and Prevention (CDC) on infant formula

http://www.cdc.gov/fluoridation/safety/infant_formula.htm

CDC Community Water Fluoridation

<http://www.cdc.gov/fluoridation/factsheets/index.htm>

California State Water Resources Control Board:

http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Fluoridation.shtml

AAP Campaign for Dental Health:

<http://ilikemyteeth.org/>

Santa Clara Valley Water District (SCVWD)

<http://www.valleywater.org/EkContent.aspx?id=182&terms=service+area> ,

SCVWD Frequently Asked Questions about Water Fluoridation

<http://www.valleywater.org/services/fluoridation.aspx>

San Jose Water Company:

https://www.sjwater.com/for_your_information/education_safety/frequently_asked_questions/fluoride

San Jose Municipal Water System:

<http://www.sanjoseca.gov/index.aspx?nid=1583>

City of Milpitas:

http://www.ci.milpitas.ca.gov/pdfs/ENG_WaterQualityReport2015.pdf

FLUORIDATION OF DRINKING WATER NOTICE

Page 4

Attachment II

Fluoridation Notification for Santa Clara County – Zip Codes

Commencing December 2016 with additional fluoridation in Santa Clara County by the SCVWD, there should be a 12-month moratorium on prescribing fluoride supplements (**fluoride supplements should not be prescribed**) in the following zip codes:

Fully or partially fluoridated Zip Codes in Santa Clara County:

94022	94024	94028	94040	94041
94043	94085	94086	94089	94301
94303	94304	94305	94306	95002
95008	95032	95035	95054	95111
95112	95116	95118	95120	95121
95122	9513	95124	95125	95127
95131	95132	95133	95134	95135
95136	95138	95148		

Based on information provided by the SCVWD, the public drinking water will remain un-fluoridated in the following zip codes in Santa Clara County, and daily fluoride supplements may be prescribed for children from age six months to 16 years at high caries risk according to the schedule at:

http://www.aapd.org/media/policies_guidelines/g_fluoridetherapy.pdf and
<http://www.ada.org/en/member-center/oral-health-topics/fluoride-supplements>

Non-fluoridated Zip Codes in Santa Clara County:

94087	95013	95014	95020	95030
95037	95046	95050	95051	95053
95070	95110	95113	95117	95119
95126	95128	95129	95130	95139
94550	95023	95033	95140	95141

Daily Dietary Fluoride Supplement Schedule:

Age	<i>Fluoride concentration of drinking water at child's residence</i>		
	Less than 0.3 ppm F (not fluoridated)	0.3 – 0.6 ppm F (not in Santa Clara County)	Greater than 0.6 ppm F (fluoridated)
Birth – 6 months	0	0	0
6 months – 3 years	0.25 mg F	0	0
3 years – 6 years	0.50 mg F	0.25 mg F	0
6 years – 16 years	1.00 mg F	0.50 mg F	0

From: Cheriell Jensen [mailto:cherielj@earthlink.net]
Sent: Thursday, October 06, 2016 2:44 PM
To: Board of Directors
Subject: California Public Records Request

Cheriell Jensen
13737 Quito Road, Saratoga, CA 95070
408 379-0463
cherielj@earthlink.net

October 6, 2016

Santa Clara Valley Water District Board and Staff

Board@valleywater.org

Dear Board Members and Administrative Staff,

This is a California Public Records Act request for documents. Please provide the documents described according to the timing set forth in the California Public Records Act. Please provide these records by email to: cherielj@earthlink.net

When the District proposed to add fluoridation facilities to existing structures, it was pointed out that:

(1) the District appeared to lack the legal authority to fluoridate and

(2) actual fluoridation of the water to be released to customers and the San Francisco Bay would still require CEQA review and Board of Directors approval.

If the District plans to proceed to actually add and release a fluoride compound without further action by the Board, I object and hereby request a copy of a District record (or records) showing the date(s) planned for the addition of the fluoride compound and the release of such fluoridated water to customers.

Yours truly,

Cheriell Jensen

EXHIBIT 5

Subject: Fw: RE: California Public Records Request (RfPr #2016-3330) Response
From: Cheriell Jensen (cherielj@earthlink.net)
To: gary.wesley@yahoo.com; angelofsuccess2002@yahoo.com;
Date: Friday, October 14, 2016 12:11 PM

-----Forwarded Message-----

From: Roberta Stewart
Sent: Oct 14, 2016 10:35 AM
To: "cherielj@earthlink.net" , PublicRecords
Subject: RE: California Public Records Request (RfPr #2016-3330) Response

Good Morning,

District staff has informed us that the target date to add fluoride to the treatment plants water is December 5, 2016. We encourage you to please refer to our web page regarding fluoride which will provide you with a lot of information.

Also, we recommend that you contact Bruce Macler is a toxicologist with the U.S. Environmental Protection Agency. The USEPA is the primary regulatory body for drinking water in the U.S.

His contact information is below.

Bruce A. Macler, PhD
Water Division Toxicologist
USEPA Region 9
75 Hawthorne St, WTR-3-1
San Francisco, CA 94105
415 972-3569

Should you have any request for records, please submit them to PublicRecords@valleywater.org or call us at the phone numbers provided below.

Kind Regards,

ROBERTA STEWART



Code: Section: ⓘ

[Up^](#) [<< Previous](#) [Next >>](#)

[cross-reference chaptered bills](#)

[PDF](#) | [Add To My Favorites](#)



CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.20] (Part 2 enacted 1872.)

TITLE 7. OTHER PROVISIONAL REMEDIES IN CIVIL ACTIONS [501 - 574] (Heading of Title 7 added by Stats. 1974, Ch. 1516.)

CHAPTER 3. Injunction [525 - 534] (Chapter 3 enacted 1872.)

526a. An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.

An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(Amended by Stats. 1967, Ch. 706.)

1 GARY B. WESLEY
Attorney at Law (#84745)
2 707 Continental Circle #424
Mountain View, CA 94040
3 (408) 882-5070
Email: gary.wesley@yahoo.com

4 Attorney for Petitioner
CHERIEL JENSEN

6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF SANTA CLARA

9 CHERIEL JENSEN,

10 Petitioner,

Case No. 16CV301658

11 vs,

PETITIONER'S NOTICE OF EX PARTE
APPLICATION TO SET DEADLINES
AND HEARING

12 SANTA CLARA VALLEY
13 WATER DISTRICT and its
14 current CEO NORMA CAMACHO,

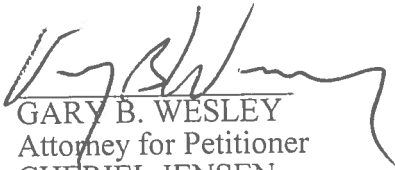
Date: November 1, 2016
Time: 8:30 a.m.

15 Respondents.

Address: 191 N. First Street, San Jose

16 NOTICE IS HEREBY GIVEN that Petitioner shall apply, ex parte, for an order setting
17 deadlines and a hearing date in this case on Tuesday, November 1, 2016 at 8:30 a.m. The
18 particular courtroom will be assigned by the court clerk on the first floor (law and motion)
19 as early as 8:15 a.m. Petitioner shall seek a deadline for the filing of an answer by the
20 Respondents, a briefing schedule and a hearing date -keeping in mind that the District has
21 stated that fluoridation could begin as soon as December 5, 2016. The entire application shall
22 be emailed to the District's in-house attorney unless another attorney is earlier designated.

23
24 Date: October 25, 2016.


GARY B. WESLEY
Attorney for Petitioner
CHERIEL JENSEN