



# News Release

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## **Supreme Court of Virginia Upholds Circuit Court**

For decades, the city of Falls Church has been diverting millions of dollars in annual profits from its water fund for city spending unrelated to operating the water system. Because Fairfax County residents comprise 92 percent of the city's water customers, they have paid the lion's share of that subsidy. Judge Ney concluded in his 10-page opinion on Jan. 6, 2010, that this amounted to an unconstitutional, "extraterritorial" tax on Fairfax County ratepayers, and he ordered the city to stop. Following an appeal by the city of Falls Church, the Virginia Supreme Court yesterday issued an order upholding that ruling, finding that Judge Ney did not commit any "reversible" error.

Phil Allin, Chairman of the Board of Fairfax Water, said, "We are delighted to do our share to help bring tax relief to Fairfax County customers. 'No taxation without representation' still means something in Virginia."

The city must now restore at least \$2.2 million in water monies that it took from the water fund and used for other expenses last year. Allin continued, "We hope that the city will now use the \$2.2 million toward reducing the water rates that it charges to all of its customers, including the 110,000 residents and businesses in Fairfax County."

Judge Ney's Jan. 6, 2010, Final Decree requires the city to comply with its own charter by setting its water rates without building in profits to be transferred to the general fund. The city is currently undertaking a rate study, the results of which are expected later this year.

"A core mission of government should be to provide the best quality water at the lowest price to citizens and businesses," Allin said. "We are glad this litigation is behind us and look forward to restoring the cooperative relationship we enjoyed with the city before it sued us in February 2007."

The city's 2007 lawsuit attempted to prevent Fairfax Water from offering water service to Fairfax County customers historically served by the city. The federal courts dismissed that case. When the city refused to stop claiming an exclusive service area in Fairfax County, Fairfax Water filed suit in December 2008. It argued that the city was seeking to exclude Fairfax Water from the market in order

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to protect Falls Church's ability to profit from the water system. The city filed a countersuit against Fairfax Water and the Board of Supervisors. The countersuit was dismissed on Aug. 14, 2009, as being without merit. On Feb. 25, 2010, the city ultimately agreed to a consent decree that it would no longer claim an exclusive service area in Fairfax County and would not impede customers from choosing to connect to Fairfax Water. The city also paid \$750,000 to Fairfax Water in settlement compensation.

Fairfax Water provides top quality drinking water to nearly 1.7 million Virginians from state-of-the-art treatment plants on the Potomac River and Occoquan Reservoir. Its commodity rate is the lowest in the Washington Metropolitan Area, and Fairfax Water is one of only a few government water utilities nationwide with "triple-A" bond ratings from all three major rating services.

Copies of the court rulings and other papers in the case are available on Fairfax Water's Web site: [www.fairfaxwater.org/current/falls\\_church\\_lit.htm](http://www.fairfaxwater.org/current/falls_church_lit.htm), or by calling 703-289-6291, TTY 711.

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