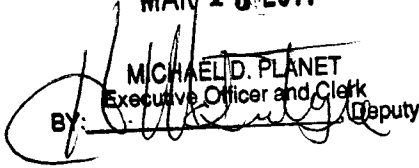


VENTURA
SUPERIOR COURT
FILED

MAR 13 2014

MICHAEL D. PLANET
Executive Officer and Clerk
Deputy
BY: 

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

GOLDEN STATE WATER COMPANY,

Petitioner,

vs.

CASITAS MUNICIPAL WATER DISTRICT;
CASITAS MUNICIPAL WATER DISTRICT
COMMUNITY FACILITIES DISTRICT NO
2013.1 OJAI, ALL PERSONS INTERESTED
IN THE VALIDITY OF CASITAS
MUNICIPAL WATER DISTRICT
RESOLUTIONS NOS 13.12, 13.13 AND
13.14, et al.,

Respondents.

Case No.: 56-2013-00433986-CU-WM-VTA
RULING ON PETITION FOR WRIT OF
MANDATE

The Court, having previously taken the Petition for Writ of Mandate on February 24,
2014 under submission, now rules as follows:

Procedural Background

Petitioner, Golden State Water Company (Golden State), commenced this action in
March 2013 against Casitas Municipal Water District (Water District) and Casitas Municipal
Water Community Facilities District No. 2013-1 (CFD). Golden State is a private water
company operating in, and providing water to, the City of Ojai. The Water District is a municipal
water district. The Water District has proposed acquiring Golden State's assets by eminent

1 domain. Golden State opposes the Water District's plan.

2 The principal issue raised by Golden State's petition is the validity of resolutions of the
3 Water District establishing the CFD as a community facilities district under the Mello-Roos
4 Community Facilities Act of 1982 (Mello-Roos Act or Act) for the purpose of financing the
5 acquisition costs through the issuance of bonds to be repaid by a special tax. Golden State asks
6 for a judicial declaration that the implementing resolutions are invalid and for injunctions
7 preventing the Water District and CFD from issuing the related bonds.

8 This court initially determined that the issues raised by Golden State's petition could not
9 be resolved until the special election had taken place and the measure authorizing the issuance of
10 the bonds and the levy of the special tax was approved by the voters. The court stayed this action
11 so that the election could go forward.

12 In August 2013, the voters of Ojai approved the measure by well over the two-thirds
13 majority required by the Act. After public notice of the action was published, additional parties
14 joined the litigation as defendants. These new parties include six individual defendants (Hajas,
15 Hanson, McPherson, Daddi, Torres, and Greene) and a registered political committee, Ojai
16 Friends of Locally Owned Water (OJAI FLOW). Each of the individual defendants is a resident
17 of Ojai and a present customer of Golden State. The interests of these newly added defendants
18 align with those of the Water District in opposing Golden State's petition.

19 In addition, these new defendants seek "a determination that Code of Civil Procedure §
20 526b applies to this Action . . . or an award of 'all costs, damages and necessary expenses
21 resulting [to Defendants individually and on behalf of the residents of the Community Facilities
22 District] by reason of [Golden State's] filing of [this suit],' pursuant to Code of Civil Procedure §
23 526b." (Bracketed language in original.) Specifically, the defendants, if successful in opposing
24 Golden State in this action, hope to rely on Section 526b as a way of obtaining reimbursement
25 from Golden State of (1) the difference between what each pays Golden State for water after the
26 commencement of this action and what each would have theoretically paid to the Water District
27 for the same services had the Water District's take-over of Golden State's assets not been delayed
28

1 by this suit; and (2) the legal fees and expenses incurred in opposing Golden State in this action.
2 Section 526b damages, however, may only be claimed by the defendants if they prevail in this
3 action (i.e., Golden State's challenge to the resolutions is defeated).

4 ***Brief Statement of Salient Facts***

5 In early 2011, some residents of Ojai expressed the view that Golden State's rates were
6 too high. In response to these concerns, the Water District developed a plan to acquire the assets
7 of Golden State by eminent domain and to fund the acquisition costs through the issuance of
8 bonds. This plan contemplated the creation of a community facilities district to issue the bonds,
9 in an amount not to exceed \$60 million, pursuant to the Mello-Roos Act. (Gov. Code, § 53311, *et*
10 *seq.*) To repay these obligations, the community facilities district would levy a special tax to be
11 secured by a lien against all non-exempt property within its territory. (See Gov. Code, § 53320.)
12 The board of the Water District adopted a resolution (No. 13-08) on January 29, 2013, stating an
13 intention to form CFD as a community facilities district.

14 On March 13, 2013, the board of the Water District, after conducting a public hearing,
15 adopted the three resolutions at issue here. Resolution No. 13-12 generally authorized the
16 establishment of CFD as a community facilities district. (See § Gov. Code, §3325.1.) Resolution
17 No. 13-13 authorized CFD to issue bonds and levy a special tax, subject to voter approval. The
18 final resolution, No. 13-14, called for a special election. (See Gov. Code, § 53326.) (Resolution
19 No. 13-14 was subsequently amended by Resolution No. 13-16.)

20 In August 2013, voters in Ojai approved Measure V, which authorized and directed the
21 CFD to issue bonds of up to \$60 million to finance the acquisition of Golden State's assets and to
22 impose special taxes on properties to be serviced by those assets to retire the debt. The measure
23 passed with 87% of the ballots in favor.

24 ***Mello-Roos Funding for Intangible Assets***

25 Golden State argues that Mello-Roos defines facilities to be “real or other tangible
26 property with estimated useful life for five years or longer.” (Government Code §53313.5)
27 Golden State asserts that Casitas seeks to finance “all costs incurred by Casitas Water District to
28

1 acquire the real, personal, and **intangible property and property rights** owned or held by
2 Golden State Water Company.” (Emphasis added.) Golden State argues that neither the taking
3 of its water rights nor the taking of the company’s business goodwill can be considered the
4 taking of physical objects and therefore, under Mello Roos, neither can be financed by a
5 Community Facilities District (“CFD”).

6 This court rejects Golden State’s analysis. In order to effectuate the purchase of public
7 works facilities, Mello Roos must allow for the purchase of intangible property. To demonstrate
8 this point, assume that Golden State has a contract with a third party for a future supply of water.
9 That future water is an intangible asset in the sense that Golden State has a contractual right to
10 the water, but not the actual water itself at this time. For Casitas Springs, that third party
11 contract could be an important feature to Golden State’s overall water system. Were Golden
12 State correct on their argument, Casitas would have to fund the acquisition of the intangible
13 portions of Golden State’s water system through another source of funding. Such a result would
14 be extraordinarily inefficient and without any real purpose. A public works (like any business)
15 consists of both tangible and intangible assets.

16 While Golden State is correct that the Legislature’s focus in enacting Mello Roos was to
17 authorize the purchase of “facilities” that had a useful life of 5 years or longer, the Legislature
18 had to assume that the physical facilities would include the purchase of the various intangible
19 assets that are critical to the operation of the facility targeted for purchase.
20

21 On the subject of purchase, Golden State asserts that exercise of the power of eminent
22 domain is not a purchase. The Court rejects Golden State’s argument. Broadly speaking, the
23 power of eminent domain comes in two phases. First is the condemnation or taking. Second is
24 the requirement that just compensation be provided to the party whose property is condemned.
25 While the court acknowledges that the eminent domain process does not involve a “willing”
26 seller, the absence of willingness does not defeat the purchase. This Court concludes that the
27 payment of just compensation in exchange for the acquisition of property is a purchase.

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1 ***Mello Roos Funding of Litigation Expenses***

2 Golden State argues that Mello Roos funding cannot be used to cover the cost of
3 litigation expenses because litigation expenses are intangible. However, legal fees are allowed
4 under Mello Roos. “The amount of the proposed bond indebtedness may include all costs and
5 estimated costs *incidental* to or connected with the accomplishment of the purpose for which the
6 proposed debt is to be incurred, including ... legal fees.” (Emphasis added.) (Government Code
7 §53313.5)

8 Incidental costs for purposes of Mello Roos are defined in Government Code
9 §53317(e)(2) as, “The costs associated with the creation of the district, issuance of bonds,
10 determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise
11 incurred in order to carry out the authorized purposes of the district.” Government Code
12 §53317(e)(2) clearly contemplates the costs of anticipated litigation associated with the
13 acquisition of property required for a CFD.

14 ***The Legislature Has Not Specifically Declared That Mello Roos Cannot Be Used In a***
15 ***Eminent Domain Action***

16 There is no question that Mello-Roos does not include the term “eminent domain.” As a
17 consequence, the Government Code does not expressly authorize the Mello-Roos procedures to
18 be used to fund eminent domain actions. The absence of a reference to eminent domain in the
19 Mello-Roos Community Facilities Act cuts both ways. The corollary is also true. The
20 Government Code does specifically preclude Casitas from using the Mello-Roos procedures.

21 What then is the appropriate response for the judiciary when the Legislature is silent on
22 the subject of Mello-Roos financing for eminent domain actions? It is without dispute that
23 Casitas is authorized by the Water Code to exercise the power of eminent domain. The public
24 has been fully informed of the financial risks associated with Casitas acquiring Golden State.
25 The voters have approved the Mello-Roos funding procedure by a margin of 87%. In the
26 absence of clear direction from the Legislature, this Court concludes that the will of the
27 electorate must control. The Court declines to use its authority to thwart the actions of the
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1 Casitas Municipal Water District.

2 Accordingly, this Court **denies** Golden States' petition for a peremptory writ seeking to:

3 1. Vacate Resolutions No. 13-12, 13-13 and 13-14 passed on March 13, 2013.

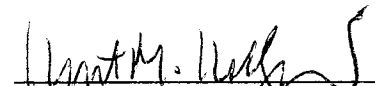
4 2. Dissolve Casitas Municipal Water District Community Facilities District No. 2013-1
5 (Ojai)

6 3. Declare Casitas Municipal Water District's Resolutions Nos. 13-12, 13-13 and 13-14
7 to be invalid.

8 4. Enjoin Casitas Municipal Water District and Casitas Municipal Water District
9 Community Facilities District No. 2013-1 (Ojai) from incurring a bonded indebtedness to
10 finance to CFD as provided in Casitas Municipal Water District Resolution 13-13 and 13-14.

11 The clerk is directed to give notice.

12
13 March 13, 2014


KENT M. KELLEGREW
Judge of the Superior Court

1 **PROOF OF SERVICE**
2 **C.C.P. §1010.6(a) et seq. and 1013 (a) et seq.**

3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF VENTURA)

6 Case Number: **56-2013-00433986-CU-WM-VTA**
7 Matter of: **Golden State Water Company v. Casitas Municipal Water District, et al.**

8 I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a
9 party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009.
10 On the date set forth below, I served the within:

11 **RULING ON PETITION FOR WRIT OF MANDATE**

12 On the following named party(ies)

13 George Soneff/Edward G. Burg
14 11355 West Olympic Blvd.
15 Los Angeles, California 90064-1614

Jeffrey Oderman
611 Anton Blvd, Suite 1400
Costa Mesa, California 92626-1931

Joseph Jones/Allen Ball
1001 Partridge Drive, Suite 330
Ventura, California 93003

Ryan Blatz
530 West Ojai Avenue, Suite 207
Ojai, California, 93023

Dennis LaRoche
300 Esplanade Drive, Suite 2100
Oxnard, California 93036

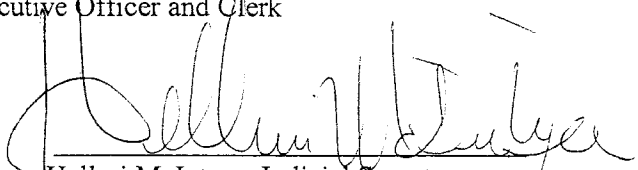
18 **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be hand delivered to the
19 interested party at the address set forth above.

20 x **BY MAIL:** I caused such envelope to be deposited in the mail at Ventura, California. I am
21 readily familiar with the court's practice for collection and processing of mail. It is deposited with the
22 U.S. Postal Service on the dated listed below.

23 and **BY FACSIMILE:** I caused said documents to be sent via facsimile to the interested party at the
24 facsimile number set forth above at from telephone number .

25 I declare under penalty of perjury that the foregoing is true and correct and that this document is executed
26 on **March 13, 2014** at Ventura, California.

27 MICHAEL D. PLANET, Superior Court
28 Executive Officer and Clerk

By: 
Hellmi McIntyre, Judicial Secretary