IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT,

DIVISION SIX

GOLDEN STATE WATER COMANY, Plaintiff and Appellant, vs. CASITAS MUNICIPAL WATER DISTRICT, et. al. Defendants and Respondents.	)	Appeal No. B 255 408

On Appeal from the Judgment of the
Superior Court of the State of California, County of Ventura
Ventura County Superior Court Case No. 56-2013-00433986-CU-WM-VTA
The Honorable Kent M. Kellegrew, Judge Presiding

RESPONDENTS' BRIEF

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GOLDEN STATE WATER COMANY, Plaintiff and Appellant, vs. CASITAS MUNICIPAL WATER DISTRICT, et. al. Defendants and Respondents.	)	Appeal No. B 255 408 ***CERTIFICATE OF INTERESTED PERSONS OR ENTITIES (Cal.Rules.Ct., rule 8.208.)***

In addition to the parties named in the above caption and to those identified in the Certificates included in the Briefs filed by those parties, Defendants and Respondents, Ojai Friends of Locally Owned Water; and individuals Richard H. Hajas, Dale Hanson, Patrick McPherson, Robert R. Daddi, Louis Torres and Stanley Greene know of the following persons or entities with a financial interest in the outcome of this litigation:

(1) Members of the certified class of all account holders with Golden State Water located in the Ojai Service Area.

Dated: October 27, 2014

Esther R. Sorkin, Esq.
Attorney for Respondents
Ojai Friends of Locally Owned Water; and individuals Richard H. Hajas, Dale Hanson, Patrick McPherson, Robert R. Daddi, Louis Torres and Stanley Greene

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INTRODUCTION

Ojai Friends of Locally Owned Water ("Ojai FLOW") and individuals Richard H. Hajas, Dale Hanson, Patrick McPherson, Robert R. Daddi, Louis Torres, and Stanley Greene (hereafter, collectively, "the Class") are affected by, and therefore, are interested parties in, this litigation. The individuals are also the class representatives of the certified class of all account holders with Golden State Water in the Ojai Service Area (6 AA 1465m 1512, entry nos. 58 to 62 and 1513, entry nos. 65, 66, 72 and 76.)

The individuals are also the volunteers who organized Ojai FLOW to seek a solution to the increasing costs of Golden State Water's services to customers in the Ojai area. They did not form Ojai FLOW until numerous efforts to redress their grievances through the California Public Utilities Commission (CPUC) had failed. (6 AA 1426-1428 and 1437-1440.)

The Class consists of customers of Golden State Water's Ojai Service Area. They voted – overwhelmingly -- to create a Community Facilities District to improve the water services provided to the Ojai area. This includes approval of additional taxes on the properties that class members own located inside the proposed Community Facilities District. (6 AA 1340-1344, 1472.)

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STATEMENT OF JOINDER

Members of the Class filed their own answer to the initial petition before certification of the class. (6 AA 1338-1339 and 1512, entry nos, 58 to 62 and 1513, entry nos. 65, 66, 72 and 76.)

The Class responds to the appellate brief filed by plaintiff and appellant Golden State Water Company (hereafter, "Golden State") as follows:

1 The Class joins in both the description of the facts and of the proceedings below, as set forth in the Statement of Facts and the Proceedings Below sections of the Respondents' Brief filed by Casitas Municipal Water District (hereafter, "Casitas");

2 The Class joins in all arguments for affirmance presented in the Respondents' Brief filed by Casitas; and

3 The Class wishes to present and emphasize the following arguments.

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ARGUMENT

I) Golden State's theory that Mello-Roos cannot be used to finance a potential taking by eminent domain violates the rules governing statutory construction.

The cardinal rule of statutory construction is to avoid absurd results. Courts even are allowed to "reject a literal construction [of a statute] that would lead to absurd results. [Citation deleted]" (*Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 27.)

Eminent domain and the Mello-Roos Act have the same general purpose of ensuring that local governmental entities may provide necessary services. (3 AA 635-638, 689 [intent behind Mello-Roos]; *Kelo v. City of New London* (2005) 545 U.S. 469, 497-498 and 512 [125 S.Ct. 2655, 2673 and 2681, 162 L. Ed.2d 439, 463 and 472] dis. opn. of O'Connor, J [services that may be provided by eminent domain].) It would be absurd to say that the two methods of accomplishing the same purpose cannot be used together.

Mello-Roos allows acquisition of property by annexation (3 AA 701, see Gov't Code § 53339) as well as by purchase. The word "purchase" includes eminent domain; "[w]hen the public took property ... it took it as an individual buying property from another ..." (*Kelo v. City of New London*, *supra*, 545 U.S. at 510 [125 S.Ct. at 2680, 162 L. Ed.2d at 471] dis. opn. of O'Connor, J].)

At the very least, any ambiguity in the word "purchase" should be liberally construed to include eminent domain. (Gov't Code § 53315.) There simply is no statutory basis for Golden State's theory that there is an eminent domain exception to the Mello-Roos Act.

II) Casitas MWD's Authority to Tax Under Mello-Roos, and Authority to Acquire Property Under Mello-Roos Should Not Be Strictly Construed.

The Mello-Roos Facilities Act of 1982, section 53315, states plainly that, "This chapter shall be liberally construed in order to effectuate its purposes." However, Golden State argues the opposite is true based on the theory that any grant of taxation power must be strictly construed.

Golden State argues that, "The power to tax is a serious grant of an awesome governmental power that must be carefully confined." (Appellant's Opening Brief, p. 20 ¶ 2). Golden State goes on to cite Mr. Chief Justice Marshall as saying, "the power to tax is the power to destroy." (Appellant's Opening Brief, p.20, fn. 8). But, unlike Mello-Roos taxes, Golden State's water rates are not subject to a two thirds (2/3) vote of the public who is paying them. The tax authority granted under Mello-Roos *is* carefully confined via the "check and balance" of a super majority vote of the public. (Gov. Code § 53355).

Similar to taxes, crippling water rates imposed on a community have the power to destroy, and the residents of Ojai are feeling the squeeze. Currently, the difference in water rates between Casitas and Golden State is approximately $3.4 million, up from $3.14 million at the time of the election. The Ojai Service Area only has approximately 2,900 connections to the water system. The difference breaks down to about $100 extra per month per connection to the system.

Golden State relies on *Mulville v. City of San Diego* (1920) 183 Cal. 734, (Appellate's Opening Brief, p.19, ¶ 1), as authority for the strict construction of statutes empowering taxation. In that case, San Diego had created an improvement district to raise taxes to construct a pier that was outside its borders. The case is distinguishable, in part, due to the fact Casitas is not attempting to tax anyone outside its borders, nor construct anything outside of its borders.

Mullville is distinguishable for another reason. The *Mullville* Court states that the case is, "an inquiry into the power of special taxation, which was in danger of running wild by insensible degrees, and leading, before we had become aware of it, into the exercise of a bastard power, dangerous to the right of private property, and violative of the provision in the Bill of Rights, placed there for its protection." (Id. at 740.)

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The key difference between the special taxation of *Mullville*, and the special taxation of Mello-Roos in our present case, is there is no current fear of it "running wild" because it is subject to a 2/3 public vote. The voting requirement of Mello-Roos puts the final decision of taxation into the hands of the actual individuals being taxed. That was not the case at the time of *Mullville*.

The residents of the Community Facilities District do not feel the taxing agency (Casitas) is "running wild by insensible degrees." Rather it is the opposite. The residents feel it is Golden State who is "taxing" the community through their exorbitant water rates. Instead of a member of the public fighting against the taxation, as was the case in *Mullville*, the public overwhelmingly approved taxing themselves and asked Casitas to acquire Golden State, as evidenced by the eighty seven point four percent (87.4%) vote in favor of Measure V.

In our situation, it is Golden State who is fighting the taxation under the guise of protecting the public from Casitas' alleged abuse of power. The public petitioned Casitas for help, the public funded their own campaign, the public agreed to tax themselves to fund the acquisition, and the public wants Golden State gone. In the meantime, the public is continuing to fill Golden State's pockets with profits while this case is pending.

III) The Community Facilities District Was Formed to Improve the Services Provided to the Ojai Service District and Not to Simply "Supplant Services Already Available Within That Territory When the District Was Created."

A) Golden State's Argument That Casitas Is Violating Government Code § 53313 By Planning to "Supplant Services Already Available Within [The CFD] Territory When the District Was Created" Was Never Raised at the Trial Court.

Golden State never raised the issue of supplanted services under Gov. Code §53313 in the Trial Court. There are few facts in the record to defend this claim as it was never addressed previously. This argument should be disallowed in its entirety. However, should this Appellate Court decide to allow this argument, we shall use the record to our best ability to defend this claim.

B) Cost of Service is an Improvement to the Services Provided.

The residents of the Community Facilities District did not vote to tax themselves to simply have the same services provided. The cost of those services is a huge factor ignored by Golden State.

Services provided at a much lower cost are not "services already available within" the District, but are a substantial improvement of the services currently rendered by Golden State. Golden State does not argue anywhere that they can operate the Ojai Service Area at equal or lower cost than Casitas.

Golden State does not bother to argue that water rates will be the same under Casitas, but they do state, "Casitas MWD had the support of the local electorate which apparently accepted the idea that by simply substituting a nearby water district as water supplier in place of the regulated public utility that had served the City for the past century, water rates would fall...." This statement greatly over simplifies the electorate, which Golden State argues should be ignored completely.

Ojai FLOW engaged in a campaign to educate the electorate that it was feasible to acquire Golden State and save more money on water costs than the cost associated with the proposed bond. (6 AA 1436-1461). Ojai FLOW prepared a "Feasibilty Study," which meticulously analyzed the associated costs of acquisition and projected the overall water cost savings if acquired by Casitas. (4 AA 809.) Casitas analyzed the situation and came to the same conclusion. (4 AA 809-813.) In the trial court's ruling on this case, Judge Kellegrew states, "The public has been fully informed of the financial risks associated with Casitas acquiring Golden State." (6 AA 1496.)

The public did not simply accept the idea of a nearby water district coming in and saving money. The risks and the rewards were balanced by the public, and after extensive education, they overwhelmingly agreed to tax themselves to acquire Golden State. Golden State is right about one thing, Casitas did have the support of the local electorate, their overwhelming support at 87.4%. But it was not because the electorate accepted the idea that by simply substituting a nearby water district as water supplier in place of the regulated public utility that had served the City for the past century, water rates would fall…in reality, they accepted the idea that the extra $3.14 - $3.4 million per year that they pay Golden State for water was more than enough to fund a $60 million bond over 30 years and still save money, plus receive the improved services of Casitas.

C) Casitas Does Contemplate Additional Capital Improvements to the Community Facilities District.

Golden State argues that, Casitas has "No plan for construction of improvements was proposed by Casitas MWD." (Appellant's Opening Brief, p. 39, ¶ 3.) This is contrary to what is included in the Community Facilities District Report, under the heading, "Post-Acquisition Costs."

The report states that, "bond financed proceeds would be made available to fund additional *capital improvements* to Golden State Water Company's existing water system after its acquisition by the District, as may be determined necessary and appropriate by the Board." (Emphasis added). (2 AA 385.) Casitas has made clear they plan to upgrade the existing water system with bond proceeds that are projected to be additional to the acquisition costs.

D) Other New Improvements Associated with Casitas Operating the Ojai Water System

Additional improvements to the services provided by Golden State were also contemplated by the electorate. The following is a list of some of the improvements the CFD residents expect to realize as a result of Casitas management:

1) Local control of water rates including public oversight under Proposition 218.

2) Improved management of water system infrastructure

3) Locally elected officials, Local meetings

4) Not-for-profit public agency versus a for-profit corporation

5) Improved fire readiness

6) Casitas is subject to the Brown Act and Public Records Act

7) No longer having to deal with the CPUC system and distance

8) Not being subjected to WRAM[1] charges. (6 AA 1448-1449).

E) Improved Services Based on Golden State Malfeasance.

In June of 2011, Golden State settled with the CPUC Division of Water and Audits agreeing to refund $986,463 to Ojai Service District customers, reduce its rate base by $250,651, and pay a $1 million fine to the State of California, for violating contract procurement rules resulting in inflated water rates. (6 AA 1456-1459.) These violations are substantial in value when measured against the Ojai Service District's roughly 2,900 total connections to the Ojai water system.

In addition to the settlement amount and the fine, the CPUC had strong words for the conduct of Golden State. At a hearing regarding the settlement, Commissioner Timothy Allen Simon stated that Golden State has a corporate, "culture of deceit, a culture of less than transparent operations." (6 AA 1430.)

There is a direct improvement of services to the Community Facilities District by having Casitas operate the water system, rather than a company who has been deceitful and immoral. If a restaurant is caught inflating tabs at the end

[1] WRAM charges are used by Golden State to increase current water rates based on lower than projected water usage in the past, subject to CPUC approval. Casitas does not have a similar policy.

of dinners, no one would continue to patronize that restaurant. The public would choose somewhere else to eat.

However, this is water and the consumers have no other option when they turn on the faucet. The public chose to get rid of Golden State because Casitas is a better, cheaper, more reliable, more moral, more accountable and infinitely more trustworthy than Golden State. There is no resource more important than water, and there is no question Casitas is an improvement over Golden State.

CONCLUSION

Golden State understands the stakes are high in this litigation. While this case may only be dealing with the small Ojai Service Area, the precedent this case could set will undoubtedly have an effect throughout California. The legal certainty to utilize Mello-Roos for the acquisition of any part of the Golden State Water Company is a huge empowerment to the numerous communities throughout California who are embarking on the same process Ojai FLOW began years ago.

For the Ojai community, the voters understood that the risks associated with the Casitas plan are minimal compared to the risk allowing Golden State to remain as the water purveyor. The savings are so significant, and the cost of water from Golden State is so high, that an overwhelming eighty seven point four percent (87.4%) of voters agreed to tax themselves to get rid of Golden State.

A decision invalidating the use of Mello-Roos in this case will have the effect of handcuffing many communities who want to control their own water destiny. Water is too important. The public must be empowered to decide who operates their water resources.

For these reasons, the judgment appealed from should be affirmed in full.

Respectfully submitted,

Dated: October 27, 2014

Law Office of BALL & YORKE

By: Esther R. Sorkin

Esther R. Sorkin, Esq.

Dated: October 27, 2014

RYAN BLATZ LAW

By:

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Certificate of Word Count

Pursuant to the California Rules of Court, rule 8.204, subdivision (c)(1), I certify that this Respondent's Brief contains approximately 2,618 words, including this certificate, but excluding the exhibits as counted by the Microsoft Word version 2000 word processing program used to generate this brief.

Respectfully submitted,

Dated: Oct 27, 2014

Law Office of BALL & YORKE

By: Esther R. Sorkin

Esther R. Sorkin, Esq.
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PROOF OF SERVICE
[C.C.P. §1013a, subd. (3)]

I am over the age of 18 years and am employed in Ventura County, California; I am readily familiar with my employer's business practice for the collection and processing of correspondence for mailing within the United States Postal Service; and I am not a party to the within action. My business address is 1001 Partridge Drive, Suite 330, Ventura, California 93003.

On October 28th, 2014, I served the foregoing document described as: **RESPONDENT'S BRIEF** on all interested parties in said action by placing [x] a true copy [ ] the original of the foregoing document(s) addressed as follows:

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State [X] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 28th day of October, 2014, at Ventura, California.

Rachael Kimball

Rachael Kimball, Declarant

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