In the

Court of Appeal

of the

State of California

SECOND APPELLATE DISTRICT
DIVISION SIX

GOLDEN STATE WATER COMPANY

Plaintiff/Appellant,

vs.

CASITAS MUNICIPAL WATER DISTRICT,

Defendants/Respondents.

Appeal from the Judgment dated April 29, 2014, Superior Court of California, County of Ventura, The Honorable Kent M. Kellegrew
Case No: 56-2013-00433986-CU-WM-VTA

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; PROPOSED AMICI BRIEF IN SUPPORT OF DEFENDANTS/RESPONDENTS CASITAS MUNICIPAL WATER DISTRICT AND CASITAS MUNICIPAL WATER DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2013-1 (OJAI)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

State Cases

State Statutes

TABLE OF AUTHORITIES
(continued)

Page

Rules

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page

APPLICATION FOR PERMISSION TO FILE AMICI BRIEF

The Association of California Water Agencies ("ACWA"), the League of California Cities ("League"), the California State Association of Counties ("CSAC"), and the California Special Districts Association ("CSDA") (collectively "Amici"), jointly apply to this Court under California Rules of Court, rule 8.212, subdivision (c), for permission to file an amici curiae brief in the above-referenced case. This proposed brief is in support of Defendants/Respondents, Casitas Municipal Water District and Casitas Municipal Water District Community Facilities District No. 2013-1 ("OJAI").

ACWA is a non-profit public benefit corporation organized and existing under the laws of the state of California since 1910. ACWA is comprised of over 450 water agencies, including cities, municipal water districts, irrigation districts, county water districts, California water districts and special purpose agencies. ACWA's Legal Affairs Committee, comprised of attorneys from each of ACWA's 10 regional divisions throughout the State, monitors litigation and has determined that this case involves issues of significance to ACWA's member agencies because the ability to finance public water services and facilities, including the acquisition of water facilities and related and ancillary rights through eminent domain, through all available financing methods is essential to assuring a safe and reliable water supply for all Californians.

The League is an association of 472 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies

those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. Its members are the 58 California counties. CSAC sponsors a Litigation Coordination Program and the County Counsel's Association of California administers the program. CSAC's Litigation Overview Committee, made up of county counsels throughout the state, oversees the program and monitors litigation that is of concern to counties statewide.

CSDA is a California non-profit corporation consisting of in excess of 1,000 special district members throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including water supply, treatment and distribution; sewage collection and treatment; fire suppression and emergency medical services; recreation and parks; security and police protection; solid waste collection, transfer, recycling and disposal; library; cemetery; mosquito and vector control; road construction and maintenance; pest control and animal control services; and harbor and port services. California special districts are empowered by statute to acquire property and facilities by eminent domain. California special districts are also empowered by statute to use the Mello-Roos Community Facilities Act ("Mello-Roos Act") to finance acquisition of property, facilities and services. CSDA monitors litigation of concern to its members and identifies those cases that are of statewide significance.[1]

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[1] No party or any counsel for a party authored the proposed brief, in whole or in part, or made a monetary contribution to fund preparation or submission of the brief. This brief has been prepared entirely on a pro bono basis.

Because the Mello-Roos Act provides a critical and well-established means of financing a wide range of city, county, district, and other public facilities, infrastructure and services throughout California, each of the Amici organizations on behalf of their memberships believe this case has statewide significance warranting their participation as amici.

Amici and their members have a direct interest in the legal issues presented in this case. The Mello-Roos Act is a critical financing instrument for providing public infrastructure owned and operated by water agencies, cities, counties and special districts. It is a widely used tool that has provided billions of dollars toward today's streets, water and sewer services and facilities, parks, and other public facilities, infrastructure and services throughout California. Appellant Golden State Water Company is asserting positions and interpretations of the Mello-Roos Act that, if accepted, would eviscerate the Act. These positions include asserting that the Act does not allow for financing of litigation in general and eminent domain litigation in particular, prohibits the acquisition of tangible property if ancillary intangible property is involved, and prohibits the acquisition of existing water systems. These positions have greater implications regarding the financing of public infrastructure in general and would render much of such financing under the Act impractical. Amici believe that these interpretations are erroneous as a matter of law.

Amici accordingly have a direct stake in the outcome of this case and believe that the brief will assist the Court in ruling on these issues. Amici therefore respectfully request leave to file the attached brief.

Respectfully submitted,

Dated: January 28, 2015 BEST BEST & KRIEGER LLP

By: /s/ Kendall H. MacVey

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I.

INTRODUCTION

This brief will focus on the substantive legal arguments that Golden State Water Company advances in interpreting the Mello-Roos Act (Government Code sections 53311 et seq.).[1]

Golden State's prineipal contentions that this brief will address are:

(1) the Mello-Roos Aet can never be used to finance the acquisition of real and tangible property if ancillary intangible property rights are also involved;

(2) the Mello-Roos Act cannot be used to finance aequisition by eminent domain or contribute finaneially toward litigation generally;

(3) the Mello-Roos Aet cannot be used to finanee the acquisition by a water ageney of an existing water system owned and operated by another water provider.

These interpretations are not merely wrong—they are dangerously wrong and threaten to undermine in certain major respeets the viability of the Act itself. They do so by offering a cramped, strict construetion of the Aet that would undercut its ability to finance right-of-way acquisitions and construetion and operation of public infrastrueture and facilities.

As will be shown, the adoption of these positions will result in eollateral damage to the Mello-Roos Act going beyond the speeifie battle between Golden State and the Casitas Municipal Water District.

Amiei agree with Golden State in one respect. In its briefs it repeats—almost like a mantra—"read the statute." (See. e.g., Opening Brief of Plaintiff and Appellant (Opening Brief), p. 30.)

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[1] Hereafter, all code sections refer to the Government Code unless otherwise stated.

Doing so, carefully, fully in context, will show why this Court should and must reject each and every one of Golden State's contentions.

II.

THE MELLO-ROOS ACT MANDATES THAT IT BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSES

Golden State's contentions rest solely on its interpretation of the Mello-Roos Act. It is imperative, therefore, to know what applicable rules of statutory construction apply. Those rules are provided by the plain language of the statute itself.

Section 53315 states:

> This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this chapter, which does not directly affect the jurisdiction of the legislative body to order the installation of the facility or the provision of service, shall void or invalidate such proceeding or any levy for the costs of such facility or service.

This provision does two things. First, it sets the rules for interpreting the statute. It states: "This chapter shall be liberally construed in order to effectuate its purposes." (Gov. Code, § 53315.) It does not say it shall be strictly construed; it says liberally construed. It does not say only select sections of the Act are to be liberally construed to effectuate its purposes—it says *"this chapter"* shall be liberally construed. (*Ibid.*, emphasis added.) This mandated rule of liberal construction covers every provision in the Act itself. Section 53311 states: "This chapter shall be known and be may be cited as the 'Mello-Roos Community Facilities Act of 1982.'"

Second, the provision makes clear that errors and other irregularities—unless jurisdictional—are to be disregarded for purposes of voiding or invalidating any proceeding under the Act. This is a powerful legislative mandate demonstrating the Legislature's clear and unequivocal intent to give Mello-Roos financings broad sweep and a strong presumption of validity.

This legislative mandate is further underscored by Section 53312.5:

> The local agency may take any actions or make any determinations which it determines are necessary or convenient to carry out the purposes of this chapter and which are not otherwise prohibited by law.

This provision also does two things. First, it establishes a "necessary and convenient" clause for implementing the Act. Second, it establishes that the determinations of what is "necessary and convenient" belongs to the local agency unless prohibited by law. It is not up to another agency or to the courts to second-guess these determinations by the local agency, except to the extent they are otherwise prohibited by law.

A third provision further manifests the unequivocal legislative intent that the Act must be construed in a manner most deferential to allowing financings under the Act. Section 53312 states:

> Any provision in this chapter which conflicts with any other provision of law shall prevail over the other provision of law.

This means, for example, that some other principle of strict construction that otherwise would apply must be disregarded. It means that the provisions of the Mello-Roos Act are at the very apex of the hierarchy of all the other provisions of law.

These sections taken collectively reinforce each other. It is difficult to discern how the Legislature could have made itself any clearer that the Act is to be broadly, not narrowly, construed.

As will be seen, Golden State's arguments flout these rules of statutory construction in defiance of this clear legislative intent and mandate.

III.

THE MELLO-ROOS ACT AUTHORIZES THE FINANCING OF THE ACQUISITION OF ANCILLARY INTANGIBLE PROPERTY; OTHERWISE THE PROVISIONS AND PURPOSES OF THE ACT WOULD BE CONTRADICTED AND DEFEATED

Golden State, in both its opening and reply briefs, makes the blanket assertion that under no circumstances can Mello-Roos be used to finance the acquisition of intangible property. This assertion is based on Golden State's selective reading of Section 53313.5. Instead of quoting only a portion of the first sentence of this section, the whole sentence should be read:

> A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion or rehabilitation of any real or tangible property.

(Gov. Code, § 53313.5.)

Golden State interprets this provision as an exclusive limitation on the ability to use the Mello-Roos Act to finance the acquisition of intangible property. This interpretation contradicts the very provision Golden State relies upon. The provision states a community facilities district "may *also* finance the purchase . . . of any real or tangible

property." (Gov. Code, § 53313.5, emphasis added.) The word "also" makes it very clear that this section is not a limitation, it is an addition of authority.

What Golden State also ignores is that the principal subjeet of the proposed acquisition at issue, a water system, essentially consists of real and tangible property. It is, after all, a physical system with pipelines, reservoirs, wells, water pumps, and real estate. But Golden State argues that because it is possible some "intangible property" may have to be acquired too, none of the acquisition ean be financed. Nothing in the Act suggests such a limitation, and other specific provisions in the statute demonstrate the contrary.

Golden State never defines what it means by tangible and intangible property. The California Supreme Court has defined "tangible property" as referring to "things that can be touched, seen, and smelled." (*Kazi v. State Farm Fire & Casualty Co.* (2001) 24 Cal.4th 871, 880, citing *Warner v. Fire Ins. Exchange* (1991) 230 Cal.App.3d 1029, 1034.)

In *Kazi*, the Court addressed the question whether easements are tangible or intangible property. It held that easements are intangible property: "An easement is therefore an incorporeal or intangible property right that does not relate to physical objects but is instead imposed on the servient land to benefit the dominant tenement land." (*Kazi v. State Farm Fire & Casualty Co., supra,* 24 Cal.4th at p. 881, citations omitted.) It went on to state that "an appurtenant easement is a burden on land that creates a right-of-way or the right to use the land only." (*Id.* at pp. 880-881, citing Civil Code section 801.) It concluded: "As a matter of law, therefore, an easement, representing only a nonpossessory right to use another's property, is not tangible property." (*Id.* at p. 881.)

Yet the Mello-Roos Act clearly authorizes the acquisition of rights-of-way and easements. Section 53317, subdivision (c), dcfines eosts undcr the Act:

> "Cost" means the expense of constructing or purchasing the public facility and of related land, right-of-way, easements, including incidental expenses, and the cost of providing authorized services, including incidental expenses.

Seetion 53345.3 states that "[t]he amount of the proposed bonded indebtedness may include all costs" for acquisition of land and rights-of-way.

Golden State's interpretation that the Mello-Roos Aet cannot finance the acquisition of intangible property contradiets the very terms of the Act. The Act clearly contemplates the financing of the acquisition of intangible property, i.e., easements and rights-of-way. Under basic principles of statutory construction, Golden State's interpretation must be rejected. The statute should be construed to give effect to all of provisions. (*Parris v. Zolin* (1996) 12 Cal.4th 839, 845.)

Golden State's interpretation also would undermine the purposes of the Act. Not even Golden State disputes that the Act can be used to finanee the acquisition of real property. But virtually all aequisitions of real property necessarily involve intangible property interests. Real property may be subject to a lease. It may be subjeet to liens, option agreements, and deeds of trust. Leases, liens, options, deeds of trust, are intangible property—reflecting rights relating to property. Just like easements and rights-of-way, these rights cannot be seen, touched or smelled. Any effective aequisition of real property for publie infrastructure purposes generally must be encumbrance-free to avoid loss of control of the property

used for infrastructure. But encumbrances are intangible by their very nature.

If Golden State's interpretation was to be adopted, it would be practically impossible to use the Mello-Roos Act to fund the acquisition of real property because real property is commonly encumbered, especially when multiple parcels are involved in acquisitions for extended right-of-way corridors for roads and pipelines. But the Act clearly authorizes such financing. (See, e.g., Gov. Code, §§ 53313.5, 53345.3.) The Act must be liberally construed to effectuate its purposes. To adopt Golden State's interpretation would effectively eviscerate if not nullify the purposes of the Act generally and in particular the specific provisions in the Act that Golden State itself acknowledges authorize the financing of the acquisition of real and tangible property. Under the mandates of statutory construction contained in the Mello-Roos Act, Golden State's narrow, selective and strained construction of the statute must be rejected. The acquisition of real and tangible property, and any ancillary intangible property, is well within the purview of the Act.

IV.

THE MELLO-ROOS ACT AUTHORIZES THE FINANCING OF ACQUISITIONS BY EMINENT DOMAIN

Golden State also asserts that the Mello-Roos Act cannot be used to finance acquisitions by eminent domain. It makes multiple arguments, which have been effectively addressed in Respondent's brief. This brief will not repeat the analysis in Respondent's Brief on such topics as how provisions for off-site improvements under the Subdivision Map Act demonstrate that the Mello-Roos Act can be used to finance eminent domain litigation, or how case law and statutes contemplate the terms "purchase" or "acquisition" to be inclusive of eminent domain. Amici, at the same time, do wish to affirm Respondent's contention that the Mello-

Roos Act has been used to finance acquisition by eminent domain. In fact, one of the purposes for filing this brief is to safeguard this financing mechanism for acquisition by eminent domain.

In its zeal for its argument, Golden State even suggests that the Mello-Roos Act cannot be used to fund litigation at all. (See Opening Brief, pp. 12-13.) Does that mean that costs incurred by a community facilities district to bring a validation action regarding a financing under the Act cannot be funded? Does that mean such districts can be sued to extinction without the financial means to defend themselves? This is difficult to square with the statutory mandate that the Act is to be liberally construed to effectuate its purposes or that courts are not to second guess local agencies in their determinations of what are necessary costs. It also contradicts the express and plain language of the Act, which authorizes "costs otherwise incurred in order to carry out the authorized purposes of the district" and "[a]ny other expenses incidental to the construction, completion, and inspection of the authorized work." (Gov. Code, §§ 53317(e)(2), 53317(e)(3).) Furthermore, "[t]he amount of the proposed bonded indebtedness may include *all costs* and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, *including, but not limited to,* . . . architectural, engineering, inspection, *legal*, fiscal, and financial consultant fees . . ." (Gov. Code, § 53345.3, emphasis added.)

In Golden State's more narrow argument that the Mello-Roos Act cannot be used to finance acquisition by eminent domain it once again relies upon Section 53313.5. The first sentence in that section uses the term "purchase" and Golden State contends that the provision is a term of limitation. Golden State argues: "An acquisition by eminent domain is not a 'purchase' within the meaning of the Mello-Roos Act." (Opening Brief, p. 26.) But for the same reasons previously discussed in the section on

intangible property, that interpretation of the section contradicts the very language of the first sentence in Section 53313.5, which uses the word "also," thereby indicating it is a provision of expansion, not limitation.

Most importantly, Golden State never comes to grips with Section 53345.3, which states in pertinent part:

> The amount of the proposed bonded indebtedness may include all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the estimated costs of construction or acquisition of buildings, or both; acquisition of land, rights-of-way . . . architectural, engineering, inspection, legal, fiscal, and financial consultant fees . . .

In other words, this very broad list makes it clear that what can be financed under Mello-Roos includes the costs of *acquisition* of building, land and rights-of-way. An acquisition can be done by eminent domain. Golden State just said so in its brief when it referred to "acquisition by eminent domain" quoted immediately above.

Section 53345.3 also makes it clear that legal expenses can be financed—there is no limitation on what the legal fees are for, which could be for eminent domain purposes.

Golden State, however, contends that the power of eminent domain can never be implied—it has to be expressly authorized by statute and strictly construed. (See Opening Brief, pp. 29-33.)

There are at least three things wrong with this contention. First, it is true, both under statute and case law, that a public entity's power of eminent domain must be expressly authorized by statute. (See, e.g., Code Civ. Proc., § 1230.020.) But to borrow Golden State's terminology from its reply brief, this is a "sleight of hand." (See Reply Brief of Plaintiff and Appellant (Reply Brief), p. 2.) The power of eminent domain must be

expressly authorized by statute and Golden State has acknowledged that Casitas Municipal Water District has that power. (Opening Brief, pg. 3.) If any eminent domain action is to be brought, it will be brought by Casitas Municipal Water District, not the community facilities district. The "sleight of hand" consists in confusing the case law about the authority to condemn with the authority to fund condemnation and saying that an entity that is not doing the condemnation also has to have explicit eminent domain authority. The power to exercise eminent domain and the power to fund are entirely separate.

The plain language of the Mello-Roos Act authorizes the *funding* of property acquisitions. (Gov. Code, § 53345.3.) Mere funding does not and logically cannot constitute the actual exercise of the power of eminent domain. And there is nothing in Section 53345.3 to suggest that funding acquisition of property and rights-of-way is limited to particular modes of acquisition and cannot include acquisition by voluntary purchase, by eminent domain or by other means, such as by a tax, foreclosure, bankruptcy, or estate sale. To the contrary, the Act and its terms are to be liberally construed and the term "acquisition" should be broadly construed to authorize funding for the full spectrum of the modes of acquisition.

In short, given their respective roles—Casitas Municipal Water District as the condemning agency and the Mello-Roos District as a funding entity—the statutory authority for each role is separate, distinct and expressly authorized.

The second problem with this contention is that it attempts to impose a principle of strict or narrow construction on the Mello-Roos Act. (See e.g., Opening Brief, p. 31.) The Act expressly disallows that. Section 53315 says the Act "shall be liberally construed in order to effectuate its purposes." Even if the legal authorities that Golden State cites regarding how the power of eminent domain is to be strictly construed were relevant

(which they are not as previously explained), they still would have to be disregarded. Section 53312 states that "[a]ny provision in this chapter which conflicts with another provision of law shall prevail over the other provision of law."

The third problem with this contention is that, if accepted, it would result in legal absurdities with far-reaching consequences beyond the Mello-Roos Act. Golden State essentially claims that the eminent domain power is so "awesome" that any funding mechanism must have express statutory reference to eminent domain to be used to fund eminent domain proceedings or acquisitions. This means that *every* statutory provision for taxation that a condemning public agency uses to pay its eminent domain lawyers or to pay just compensation to an owner *must* expressly say that it authorizes the use of tax revenues for such eminent domain purposes. This is not borne out by review of statutory provisions authorizing taxation. For example, a computer search of California's Revenue and Taxation Code provisions reveals they are not explicit about authorizing tax powers and revenues to fund eminent domain proceedings. Also, Section 37100.5 of the Government Code gives taxation power to cities and provides no reference to eminent domain. There is not a single statute or case that requires such an absurd result.

Golden State gives another reason why the Mello-Roos Act cannot fund eminent domain acquisitions. It argues it is possible that the eminent domain proceeding could be abandoned and that a Mello-Roos tax could be imposed for nothing. (Opening Brief, pp. 36-38.) But this is true for all projects that may be funded under Mello-Roos. It is always possible that a project may not be completed. If that possibility is enough to prevent funding under the Act, the entire act would be a nullity. At the same time, the Act does expressly allow for funding relating to alternatives and options that may never occur. Section 53321 describes what is to be included in the

resolution of intention to form a community facilities district. Section 53321, subdivision (c), states that a description of the public facilities and services proposed "may be general and may include alternatives and options, but it shall be sufficiently informative to allow a taxpayer within the district to understand what the funds of the district may be used to finance." Abandonment of eminent domain proceedings falls within the category of "alternatives and options."

Golden State's attempt to confine the Mello-Roos Act to funding of property acquisitions to voluntary sales by the owner must fail for another important reason. The Act clearly contemplates property acquisitions for major public infrastructure projects. (See Gov. Code, § 53345.3.) As noted previously, the Act expressly authorizes financing to acquire rights-of-way and easements. These can be rights-of-way for roads, sewers and water lines. There is a reason why the power of eminent domain exists. Rights-of-way for roads or pipelines, for example, can be extensive and involve literally hundreds of parcels. The failure to obtain a single parcel can end a road or pipeline project or require an expensive re-design. Without eminent domain, this would give a single property owner veto power over an entire project. As Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit noted in one of his treatises, there is good economic rationale for the power of eminent domain:

> Once the railroad or pipeline has begun to build its line, the cost of abandoning it for an alternative route becomes very high. Knowing this, people owning land in the path of the advancing line will be tempted to hold out for a very high price—a price in excess of the opportunity cost of the land.

(Posner, Economic Analysis of the Law (3d ed. 1986) p. 49.)

If the Mello-Roos Act cannot be used to finance acquisition by eminent domain, its ability to finance public infrastructure projects involving multiple parcels would be crippled. The Act does not countenance such a result. The Act must be liberally construed to effectuate its purposes.

V.

THE MELLO-ROOS ACT AUTHORIZES FINANCING FOR THE ACQUISITION OF EXISTING WATER SYSTEMS

Golden State further contends that "Mello-Roos cannot be used simply to replace one service provider with another, where no additional services are provided." (Opening Brief, p. 39.) It cites Section 53313, which states:

> A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services shall not supplant services already available within that territory when the district was created.

Golden State contends that the Mello-Roos Act is being used by one service provider to supplant another and that Section 53313 prohibits this result.

Golden State, however, has completely misconstrued Section 53313 and the proposed financing by Casitas. Mello-Roos can be used to finance services and it also can be used to finance the construction and acquisition of facilities. The prohibitions in Section 53313 only apply to the financing of services. The financing here does not contemplate financing services (i.e., water service)—it proposes financing the acquisition of facilities,

which is perfectly permissible under the Act. The last sentence in Section 53345.3 makes this perfectly clear:

> Bonds may not be issued pursuant to this chapter to fund any of the services specified in Section 53313; however, bonds may be issued to fund capital facilities to be used in providing these services.

Contrary to Golden State's contention that the Act does not authorize the financing of the acquisition of existing water systems, it is evident that the Legislature contemplated such financings. Section 53313.5, subdivision (h), states:

> Any other governmental facilities that the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own or, operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (c) and (k), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

Here the Legislature prohibits Mello-Roos financing to obtain ownership of specific utility facilities, i.e., natural gas, telephone service, or electrical energy. Conspicuous by its absence is no prohibition of financing the ownership of any facilities involved in the transmission or distribution of water. This cannot be a coincidence. Under the principle of *inclusio unius est exlusio alterius*, exceptions may not be added where the Legislature has spoken clearly to prescribe a rule and at the same time has narrowly limited any exceptions to the rule. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1514.)

Most importantly, if Golden State's position were upheld it would have grave policy consequences. Throughout California there are "Mom and Pop" water systems that are poorly capitalized and on the verge of

finaneial collapse. In adopting its Water Action Plan that sets policy on water issues, the California Public Utilities Commission observed:

> Smaller water companies often do not have the resources or expertisc to operate in full eompliance with increasingly stringent and complex water quality regulations. Many water companies are too small to be viablc in the long-term, raising questions as to whether they will be able to continue to provide elean and rcliable water in the future. DPH [Department of Public Hcalth] requests Class A utilities (ovcr 10,000 connections) to report on an annual basis which smaller utilities they might consider purchasing.
>
> (California Public Utilities Commission, *2010 Water Action Plan* (Oct. 2010) <http://docs.cpuc.ca.gov/ PUBLISHED/ Graphics/ 125501.PDF> [as of January 25, 2015].)

The Public Water System Investment and Consolidation Act of 1997 added Sections 2718, 2719, 2720 to the Public Utilitics Code. In this Act the Legislature esscntially declared the desirability of acquiring and consolidating marginal water companies.

In faet, Golden State has pending before the California Public Utilities Commission its application to acquire such a marginal water company. In arguing in its application that its acquisition of Rural Water Company is in the public interest, Golden State statcd:

> The Rural Water system is a relativcly small system that has been owncd and opcrated since 1988 by Charles Baker. Mr. Baker, the sole shareholder of Rural, has overseen the growth of the company from 142 customers to 935 customers over a period of 25 years. Due to his advancing age, Mr. Baker has determined that it is in his and his customers' best interest for him to sell the Rural water system. Mr. Baker is

> now over 80 years old and no longer drives, making it difficult if not impossible for him to continue to operate the Rural system. In addition, Mr. Baker does not have any family members that are interested in taking over the operations of the company. Given these circumstances it is appropriate and reasonable for Mr. Baker to sell the Rural water system.
>
> (Rural Water Company & Golden State Water Company, *Application of Rural Water Company and Golden State Water Company for an Order Authorizing Rural Water Company to Sell and Golden State Water Company to Purchase the Public Utility Assets of Rural Water Company, and Request for Expedited, Ex Parte Consideration* (Oct. 10, 2013) <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M079/K258/79258140.PDF> [as of January 25, 2015], citations omitted.)

It is perhaps fortunate for the 935 water customers of Rural Water Company that Golden State as a profit making corporation found it in its economic interest to acquire the company. But what if it didn't? What if no one was interested, except maybe a community seeking assistance through the Mello-Roos Act? Golden State, if it has its way, would say that is not an option. Under its interpretation of the Act, financing to acquire Rural Water Company or other companies like it, would never be allowed—even if fully voluntary. The most Golden State can say to water customers in such circumstances is "good luck."

But fortunately for water customers throughout California, Golden State's interpretation of the Mello-Roos Act is wrong. The Mello-Roos Act remains a tool available to communities to acquire marginal water companies to prevent businesses and residents from being stranded without a reliable supplier of water.

VI.

CONCLUSION

The importance of the Mello-Roos Act is undisputed and recognized in the case law. "The Mello-Roos Act is an important feature of the local fiscal landscape, providing local officials with a key tool for accumulating the public capital needed to pay for the public works projects that make new residential development possible." (*Azusa Land Partners v. Dept. of Industrial Relations* (2010) 191 Cal.App.4th 1, 24, fn. 12, citation omitted.)

This key tool cannot be exercised by mere bureaucratic fiat. The Mello-Roos Act provides the safeguard of elections. It allows qualified voters in local communities to vote on whether to tax their property in order to provide financing for essential public facilities and services. Golden State in its opening brief comes close to expressing a sense of disdain for this electoral process. In downplaying the 87% approval by voters to impose a tax on their property, it says that it is not the job of judges "to count noses." (Opening Brief, p. 42.) It is not the job of judges to disenfranchise voters either. This is in effect what Golden State would have this Court do.

Golden State implores everyone to read the statute. This brief has followed this request by reviewing in detail the language of the Act itself. Golden State's interpretations of the Act are not supported by a fair reading of the Act; in fact, they are refuted. Golden State would interpret the Act in a manner that undermines its objectives, contrary to the crystal clear mandate of the Act itself that it be interpreted to effectuate its objectives. Golden State's approach would effectively repeal provisions of the Act under the guise of interpretation.

The Association of California Water Agencies, the League of California Cities, the California Association of Counties, and the California Special Districts Association respectfully urge this Court to reject Golden

State's statutory interpretations, uphold the trial court's decision and judgment, and re-affirm the Mello-Roos Act as a financing instrument that allows local communities to invest in their future.

Respectfully submitted,

Dated: January 28, 2015

BEST BEST & KRIEGER LLP

By: /Kendall H. MacVey

Kendall H. MacVey
Kira L. Klatchko
Attorneys for Amici Curiae Association of California Water Agencies, League of California Cities, California State Association of Counties, and California Special Districts Association as Amici Curiae on behalf of Defendants and Respondents

CERTIFICATE OF WORD COUNT

The text of this Application For Leave To File Amici Curiae Brief; Proposed Amici Brief In Support Of Defendants/Respondents Casitas Municipal Water District And Casitas Municipal Water District Community Facilities District No. 2013-1 (Ojai) consists of 5589 words as counted by the Microsoft Word 2010 word-processing program used to generate said document.

Dated: January 28, 2015

BEST BEST & KRIEGER LLP

By: /Kendall H. MacVey

Kendall H. MacVey
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PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Riverside County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, California 92502. On January 28, 2015, I deposited with Federal Express, a true and correct copy of the within documents:

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; PROPOSED AMICI BRIEF IN SUPPORT OF DEFENDANTS/RESPONDENTS CASITAS MUNICIPAL WATER DISTRICT AND CASITAS MUNICIPAL WATER DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2013-1 (OJAI)

in a sealed envelope, addressed as follows:

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	13.12, [etc.] 1 copy
Allen R. Ball Law Offices of Ball & Yorke 1001 Partridge Drive, Suite 330 Ventura, CA 93003 (805) 642-5177; (805) 642-4622 fax	*Attorneys for Respondents* Richard H. Hajas, Dale Hanson, Patrick J. McPherson, Robert R. Daddi, Louis Torres, Stanley Greene and Ojai Friends of Locally Owned Water 1 copy
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Clerk of the Court Ventura County Superior Court 800 S. Victoria Ave. Hall of Justice Ventura, CA 93009	1 copy
California Supreme Court 350 McAllister Street San Francisco, CA 94102	(1 copy) – Via Electronic (By submitting an electronic copy of the document(s) listed above on the Court of Appeal will satisfy the requirements for service on the Supreme Court under Rule 8.212.(c)(2)

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 28, 2015, at Riverside, California.

Sylvia Perez