

No. B255408

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SIX

GOLDEN STATE WATER COMPANY,
Plaintiff and Appellant,

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,
Defendants and Respondents.

On Appeal from the Ventura County Superior Court
No. 56-2013-00433986-CU-WM-VTA
The Honorable Kent M. Kellegrew

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF IN SUPPORT OF APPELLANT
GOLDEN STATE WATER COMPANY
AND
AMICUS CURIAE BRIEF OF PARK WATER COMPANY
IN SUPPORT OF APPELLANT
GOLDEN STATE WATER COMPANY**

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Park Water Company

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IN SUPPORT OF APPELLANT
GOLDEN STATE WATER COMPANY**

Park Water Company ("Park Water"), through its attorneys and pursuant to the California Rules of Court, Rule 8.200, subdivision (c), respectfully applies for leave to file the following *amicus curiae* brief in support of Appellant Golden State Water Company ("Golden State").

1. Identity and Interest of *Amicus Curiae*

Park Water is an investor-owned water utility service provider subject to the jurisdiction of the California Public Utilities Commission ("CPUC"). As a water service provider whose prospective business interests may be impaired by an order of this court

sustaining the decision of the trial court in this case, Park Water has a unique interest in the issues in this case and seeks to assist in the proper resolution of this case by informing the court of its support for the arguments presented in Appellant's Opening Brief, filed with this court on September 25, 2014. Park Water has a unique interest in the issues as they relate to the valuation of an ongoing business. Park Water values its business enterprise as a going concern and not simply the sum of the value of its tangible assets. The court should consider that perspective in assessing the legal issues in this case.

Park Water is familiar with the facts of this case, the questions involved, and the scope of parties' presentations to date, and is qualified to assist the court in determining whether the Casitas Municipal Water District ("Casitas MWD"), a public water agency, by creating a community facilities district pursuant to Government Code § 53311 *et seq.* (the "Mello Roos Act"), is authorized to acquire all of the assets of a public water system serving the City of Ojai that is owned and operated by Golden State, which is an issue presented in the above-referenced case before this honorable court.

2. Funding and Authorship

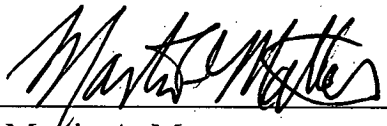
Pursuant to California Rules of Court, rule 8.200, subdivision (e)(3), Park Water asserts that no party or counsel for a party in the pending appeal authored this proposed *amicus* brief, or any part of it, nor did they make any monetary contribution to fund the preparation or submission of the brief. Park Water is the only entity that funded the preparation and submission of this application and proposed *amicus* brief.

3. Conclusion

For the reasons set forth above, *amicus curiae*, Park Water, respectfully requests that the court accept the brief below for filing and consideration in this appellate proceeding.

Dated: January 28, 2015

NOSSAMAN LLP

By: 

Martin A. Mattes

Attorneys for *Amicus Curiae*
Park Water Company

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***AMICUS CURIAE* BRIEF OF PARK WATER COMPANY
IN SUPPORT OF APPELLANT
GOLDEN STATE WATER COMPANY**

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I. INTRODUCTION

Amicus curiae is Park Water Company (“Park Water”), an investor-owned water utility subject to the jurisdiction of the California Public Utilities Commission (“CPUC”). Since 1937, Park Water has worked to provide safe, reliable water service to its customers, through what are now 28,000 service connections provided by three water systems in the Compton/Willowbrook, Lynwood/Rancho Dominguez and Bellflower/Norwalk communities of Los Angeles County. Park also wholly owns two subsidiary water utilities: Apple Valley Ranchos Water Company, located in California’s San Bernardino County, and Mountain Water Company, serving Missoula, Montana. For decades, Park Water has built and maintained a first-rate water service operation within the communities it serves. From its investment in providing quality service to its customers at reasonable rates, Park Water has created a valued business enterprise.

Given this decades-long investment and commitment to its water systems and services, Park Water is concerned about the implications of the trial court’s interpretation of the Mello-Roos Act, Government Code § 53311 *et seq.* (the “Act”) as authorizing the use of financing under the Act to condemn an operating public water system.

II. ARGUMENT

The trial court’s interpretation of the Mello-Roos Act as allowing bond funding under the Act to purchase intangible property – including Golden State’s water rights, business goodwill and other valuable assets – is contrary to the plain words of the statute and the Legislature’s intent. Moreover, the use of Mello-Roos Act funding to effectuate a forced acquisition by eminent domain of property and finance the resulting litigation are

not the type of expenditures – “incidental” or otherwise – contemplated by the Act.

The trial court mistakenly allowed “the will of the electorate” to guide its application of the statute. Park Water urges this court to reverse that error and instead, to adhere to the well-established canons of statutory construction to conclude that the Mello-Roos Act may not be used to finance the condemnation of an operating public water system. On the other hand, sustaining the trial court’s decision would have the effect of undermining how a business enterprise targeted for condemnation is valued. As an ongoing business enterprise, Park Water’s utility operation is worth much more than the simple sum of its pipes, tanks and wells. This court should recognize that fact, and the corollary that Mello-Roos funding is not available to acquire such intangible assets.

III. CONCLUSION

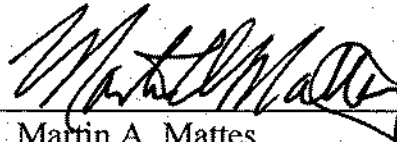
For the reasons above and those stated in Appellant’s Opening Brief, Park Water respectfully requests this court to reverse the decision of the court below.

January 28, 2015

Respectfully submitted,

NOSSAMAN LLP

By



Martin A. Mattes

Attorneys for *Amicus Curiae*
Park Water Company

RULE 8.204(C)(1) CERTIFICATION

As required by Rule 8.204(c)(1) of the California Rules of Court, I certify that this document is at 13 point font and contains 412 words. In making this certification, I have relied upon the word count function of Microsoft Word, the computer program used to prepare the brief.

Date: January 28, 2015

NOSSAMAN LLP

By: 
Martin A. Mattes

Attorneys for *Amicus Curiae*
Park Water Company

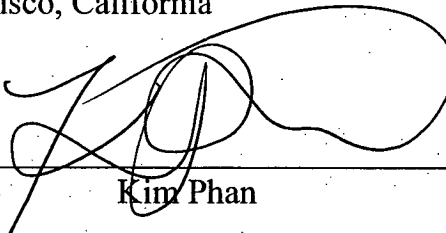
PROOF OF SERVICE

I am a citizen of the United States, over 18 years of age, employed by Nossaman LLP, and not a party to the subject cause. My business address is 50 California Street, 34th Floor, San Francisco, CA 94111.

On January 28, 2015, I served the following: **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT GOLDEN STATE WATER COMPANY** on the parties to these actions by causing a true copy thereof to be mailed by first class mail to all parties listed on the attached service list.

I declared under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2015 at San Francisco, California



Kim Phan

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