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April 8, 2016

BY HAND DELIVERY

Clerk of the Board
Casitas Municipal Water District
1055 Ventura Avenue
Oak View, CA 93022

Re: April 13, 2016 Casitas Municipal Water District Hearing
Resolution of Necessity re Golden State Water Company

Dear Clerk of the Board:

As counsel for Golden State Water Company, we have received the document titled "Notice of Hearing to Consider Adoption of Resolution of Necessity to Acquire Certain Real and Incidental Intangible Property and Property Interests By Eminent Domain," dated March 25, 2016 ("the Notice"). The Notice states that the Board of Directors of the Casitas Municipal Water District ("CMWD") will hold a meeting on April 13, 2016, to consider adopting a "resolution of necessity for taking by eminent domain the real and incidental property and property interests described as the 'Subject Property'" in another letter from Jeffrey Oderman to me dated February 26, 2016. This letter constitutes Golden State Water Company's ("Golden State") written request to appear and be heard pursuant to Code Civ. Proc. §1245.235(b)(3).

Golden State objects to CMWD adopting resolutions of necessity as stated in the Notice on, *inter alia*, the grounds stated below. Golden State requests that this letter be made part of the record of proceedings for the hearing referenced in the Notice.

The Notice is Inadequate

The Notice here fails to comply with statutory requirements. Code Civ. Proc. §1240.030 specifically references three matters which must be established in order for the power of eminent domain to be exercised. Specifically, the three matters referred to in Code Civ. Proc. §1240.030 are:

- “(a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

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(c) The property sought to be acquired is necessary for the project.”

Under Code Civ. Proc. §1245.235(a), the governing body of the public entity is required to provide notice and an opportunity to be heard “on the matters referred to in Section 1240.030.” (*See also*, Code Civ. Proc. §1245.235 subdivisions (c) and (b)(2) to the same effect.)

The Notice is improper because it purports to require Golden State to be heard on *more* than “the matters referred to in Section 1240.030.” The Notice recites the three matters “referred to in Section 1240.030,” but then proceeds to add an additional matter not referred to in Section 1240.030 – “(d) Whether the offer required by Section 7267.2 of the California Government Code has been made to the owner of record.” Golden State is not obligated to appear and be heard on matters not referred to in Section 1240.030, such as matter (d) in the Notice.

Any discussion herein regarding factors other than the three matters referred to in Section 1240.030 is not intended to be, and shall not be construed as, a waiver of Golden State’s position that such matters are not proper matters for consideration at the hearing.

In addition, the Notice is required to state “[t]he intent of the governing body to adopt the resolution,” pursuant to Code Civ. Proc. §1245.235(b)(1). The Notice merely states that CMWD’s Board of Directors “will *consider* adopting a resolution of necessity,” but not that CMWD *intends to adopt* a resolution of necessity, which is what the statute requires.

The defective Notice prevents CMWD from adopting a proper resolution of necessity at the hearing.

There Is No Proper Description of the Project

The three matters referred to in Code Civ. Proc. §1240.030 each relate to “the project.” Accordingly, “the project” must be adequately defined so the statutory analysis can properly be performed.

The Notice states that “[t]he purpose of CMWD’s acquisition of the Subject Property is to convert the privately owned, operated, and held Golden State Water Company Ojai service area to public ownership and control by CMWD.” This is not an intelligible description of a project. *See, e.g., City of Stockton v. Marina Towers LLC*, 171 Cal. App. 4th 93, 108 (2009) (“[i]t is inconceivable that the Legislature intended to permit a public entity to circumvent all [] defenses by defining the project in language that is either hopelessly vague or so broad that it encompasses virtually every conceivable public use”). This is a separate basis for why the determinations required by Code Civ. Proc. §§1240.030(a), (b), and (c) cannot be made.

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CMWD has not Certified an Adequate Environmental Impact Report in Compliance with the California Environmental Quality Act ("CEQA") Public Res. C. §§21000-21177.

When a project will arguably have a significant environmental impact, CEQA requires a public agency to prepare an environmental impact report ("EIR") before giving project approval. *No Oil, Inc. v. Los Angeles*, 13 Cal.3d 68, 84 (1974). A valid and comprehensive EIR is necessary to effectuate CEQA's purpose, which "is to compel government to make decisions with environmental consequences in mind." *Golden Gate Land Holdings, LLC v. East Bay Regional Park Dist.*, 215 Cal.App.4th 353, 365 (2013). Thus, the EIR "protects not only the environment but also informed self-government." *Id.* This is why an adequate environmental review process must be completed before adoption of the resolution of necessity. *City of San Jose v. Great Oaks Water Co.*, 192 Cal.App.3d 1005 (1987).

"If an activity is a project as defined by CEQA and not otherwise exempt from CEQA, the agency must conduct an initial study to determine whether the project *may* have a significant effect on the environment." *Burbank-Glendale-Pasadena Airport Authority v. Hensler*, 233 Cal.App.3d 577, 591 (1991) (emphasis added). According to Section 15378 of the CEQA Guidelines, a "Project" is "the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" 14 Cal. Code Regs. §15378.

The CMWD's takeover of Golden State's property is a project that is not exempt from CEQA. CMWD's takeover will result in a shift from a public utility regulated by the California Public Utilities Commission to a utility without CPUC oversight. The change in regulatory framework will likely alter the system's operations and maintenance, which could have significant environmental impacts. Therefore, at a minimum, CMWD must conduct an initial study to determine the project's effects on the environment. Even if that study demonstrates "that the project will not have a significant effect," CMWD must submit a Negative Declaration to that effect. *Id.* CMWD did not conduct an initial threshold study to determine the environmental impacts of CMWD's takeover. Instead, CMWD has concluded, without analysis or explanation, that the Project "does not entail any proposed changes to the physical environment" and, therefore, "the acquisition is not a 'project' subject to CEQA and [CMWD] does not intend to go through a formal CEQA process" CMWD's refusal to conduct even an initial study of the environmental effects of the project, much less an EIR, forecloses it from adopting a proper resolution of necessity or condemning Golden State's property.

CMWD had Predetermined the Outcome of the Hearing on the Resolution of Necessity.

When a public agency predetermines the outcome of a hearing on a resolution of necessity, the agency is not engaged in good faith and judicious consideration of the pros and cons of the issue,

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and the adoption of the resolution is considered a sham. *Redevelopment Agency v. Norm's Slauson*, 173 Cal.App.3d 1121 (1985). There is substantial evidence that CMWD has predetermined the outcome of the resolution of necessity. In January 2013 CMWD initiated a plan to issue \$60 million in bonds to finance the costs of their takeover of Golden State's property. The bond measure authorized use of the funds for litigation expenses related to any eminent domain action, payment of severance damages, and litigation expenses payable to Golden State. Having passed resolutions to finance the takeover of Golden State's property, CMWD is unable now to act as an open-minded agency to consider the pros and cons of the takeover in good faith.

The Public Interest and Necessity Do Not Require the Project

Golden State's property constitutes "electric, gas, or water public utility property," as defined in Code Civ. Proc. §1235.193. Accordingly, if CMWD proceeds to adopt a resolution of necessity to acquire property of Golden State, its resolution of necessity will not conclusively establish the three requirements set forth in Code Civ. Proc. §§1240.030(a) – (c). At most, any adopted resolutions of necessity would create a rebuttable presumption that the three requirements are true, under Code Civ. Proc. §1245.250(b).

Here, the public interest and necessity do not require the project. CMWD has not identified any issues with respect to the quality of the water or service provided by Golden State. CMWD has not established that it can operate the water system more efficiently or cost effectively than Golden State.

Moreover, supplanting the role of the California Public Utilities Commission in the setting of water rates is not a legally cognizable justification for condemnation, as California law requires that the California Public Utilities Commission set rates that are "just and reasonable." (Pub. Util. Code §451.). Therefore, the rates charged by Golden State are just and reasonable as a matter of law.

The Project Does Not Satisfy the Greatest Public Good/Least Private Injury Requirement

Likewise, the project does not satisfy the requirement of Code Civ. Proc. §1240.030(b) that "[t]he project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury." Here, this means that CMWD's planned takeover must be weighed against Golden State's continued operation of its system, and the former must be shown to be superior.

The acquisition of Golden State's property will cause private injury to Golden State, to its employees, and to its customers in the Ojai service area. CMWD has not adequately explained what public good will result from its takeover of Golden State's system. Golden State's water

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rates are “just and reasonable” as a matter of law (Pub. Util. Code §451), and supplanting the role of the California Public Utilities Commission in the setting of water rates is not, as a matter of law, a “public benefit.”

Any public good with respect to future rates is speculative and without foundation. Moreover, CMWD has stated that it will finance the takeover of Golden State’s property using funding from the sale of approximately \$60 million in bonds issued under the Mello-Roos Act (Govt. Code Section 53311 *et. seq.*). The bonds would be repaid by new property taxes levied on every parcel of land in the City of Ojai, secured by tax liens on every parcel. Thus, CMWD and the residents of Ojai are certain to incur a significant cost by acquiring Golden State’s property, which is unlikely to be mitigated by the speculative possibility of future rate savings.

CMWD’s proposed takeover of Golden State’s system is not most compatible with the greatest public good and the least private injury.

The Property Sought to be Acquired is Not Necessary for the Project

The final requirement of necessity is contained in Code Civ. Proc. §1240.030(c) — that “[t]he property sought to be acquired is necessary for the project.” To make this determination requires a clear delineation of the property that CMWD seeks to authorize the taking of, and a clear statement of what “the project” is. As explained more fully below, neither exists here, so the requisite determination cannot be made.

The Project is Not For a More Necessary Public Use

Golden State’s property constitutes “property appropriated for a public use” under Code Civ. Proc. §1235.180. Further, Golden State’s property constitutes “electric, gas or water public utility property” under Code Civ. Proc. §1235.193. As such, CMWD must demonstrate that the use for which it seeks to take Golden State’s property is a more necessary public use than the use to which the property is appropriated. (Code Civ. Proc. §§1240.610, 1240.620.) The fact that CMWD is a public entity and Golden State is not creates only a rebuttable presumption of more necessary public use. (Code Civ. Proc. §1240.650(c).)

Here, the CMWD’s takeover of Golden State’s property does not constitute a more necessary public use. The Legislature’s use of the word “more” is a comparative term that requires a showing of a greater public necessity in CMWD owning the water system as opposed to Golden State continuing to own and operate the system.

CMWD ownership will not improve the quality of water provided; CMWD has no plans to increase the investment in the system; CMWD has no plan as to how it will operate the system; and CMWD’s rates will not be subject to oversight by any other regulatory body. Accordingly,

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the CMWD's planned taking is not for a more necessary public use.

CMWD Has Not and Cannot Establish that It Has Made an Adequate Offer Required by Gov't Code §7267.2

Before adopting a resolution of necessity, CMWD is required to make an offer that complies with Gov't Code §7267.2. CMWD has failed to do so here and it is therefore prohibited from proceeding to adopt the resolution of necessity. The offer submitted by CMWD to Golden State on February 26, 2016 is defective in numerous particulars.

- Failure to Properly Appraise Real Property. CMWD identified certain "properties and easement rights" in Exhibit A to its February 26, 2016 letter, as being owned by Golden State and included within CMWD's purchase offer. Other than providing legal descriptions of the property, CMWD provided no meaningful information regarding how it appraised the value of the property. The only valuation information provided by CMWD is a list of "Comparable Sales Transactions" set forth as Exhibit B to the letter. The "Comparable Sales Transactions" are merely listed without explanation or detail regarding how the transactions were ascertained or utilized to appraise Golden State's property. There is no proper appraisal of the property identified in Exhibit A.
- Failure to Properly Appraise Easements, Franchise Rights, Water Rights, and Similar Interests. The offer is also defective because it purports to include certain "easements, licenses, rights-of-entry, franchise rights, and other similar property interests," as well as "all appropriative water rights, if any, of [Golden State] in and with respect to its Ojai service area" without appraising such interests. For example, the value of Golden State's water rights are not appraised.
- Failure to Provide Detail Sufficient to Indicate Clearly the Basis for the Offer. Government Code §7267.2 requires that CMWD provide "a written statement and summary [which] shall contain detail sufficient to indicate clearly the basis for the offer." The summary must contain "the principal transactions, reproductions or replacement cost analysis, or capitalization analysis, supporting the determination of value." CMWD's offer does not provide a cost analysis, capitalization analysis or any analysis to support the determination of value arrived at by CMWD. CMWD failed to provide any valuation detail to demonstrate how it valued any of the assets owned by Golden State.

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The Description of the Property CMWD Proposes to Condemn is Too Vague to Satisfy Due Process Standards

The Notice provides that the project is “for taking by eminent domain the real and incidental property and property interests described as the “Subject Property” at pages 1 through 5 of the February 26, 2016, letter from Jeffrey M. Oderman to George M. Soneff.” The February 26, 2016 letter purports to specify “the various elements comprising the Subject Property to the best of its ability based on the public resources available to it and, *without limiting CMWD’s right to add (or subtract) [Golden State] property and property interests at a later date.*” (emphasis added). Thus, the property to be acquired is an indefinite work in progress subject to addition or subtraction at any point in the future. Compounding this problem, the February 26, 2016 letter states that the “Subject Property addressed in this purchase offer includes, *but is not limited to*, the following:” (emphasis added). Golden State is entitled to know exactly what components of its property CMWD is seeking to condemn; CMWD cannot maintain a perpetual option to add or subtract from Golden State’s property, at CMWD’s whim.

The February 26, 2016 letter also purports to enumerate specific facilities (such as wells, storage tanks, pumping stations and distribution pipelines) that CMWD wishes to take, but then states “CMWD hereby notifies [Golden State] that it desires to purchase all of [Golden State’s] Ojai facilities (except to the extent expressly excluded from this purchase offer)” This vague assertion renders the entire offer uncertain and leaves Golden State to wonder whether the offer is limited to the items enumerated in the February 26, 2016 letter, or is intended to be a broad offer for “all of [Golden Staes’s] Ojai facilities.”

Golden State’s right to due process is violated by consideration of a resolution of necessity to acquire some of its property without a precise definition and description of exactly what property CMWD will resolve to take.

Conclusion

For the reasons stated above, CMWD may not properly adopt resolutions of necessity to acquire any of Golden State’s property. If it does so, Golden State intends to assert all applicable objections to CMWD’s right to take in any subsequent eminent domain proceeding or as otherwise provided by law.

Golden State has the right (but not the obligation) to address only the matters referred to in Code Civ. Proc. §1240.030 at the hearing, and has neither the right nor the obligation to address any other matters at the hearing. Accordingly, Golden State expressly reserves all applicable objections to the right to take which it may assert in any subsequent eminent domain proceeding or as otherwise provided by law.

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Golden State objects to CMWD considering any written materials or evidence at the hearing which is not provided to Golden State sufficiently in advance of the hearing to allow Golden State a meaningful opportunity to review all such materials or evidence. Therefore, please provide all such materials to us electronically at least three business days before the hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "G. M. Soneff", written over a horizontal line.

George M. Soneff

cc: Jeffrey M. Oderman (by e-mail)