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Sec. Nat'l Guar., Inc. v. Monterey Peninsula Water Mgmt. Dist., No. H024969, 2003 Cal. App. LEXIS 12230 (Cal. Ct. App. Dec. 31, 2003)

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The California Court of Appeals first looked to the statute, but found nothing in the language of section 66013 or its legislative history expressing the Legislature's intention to impose a new standard on water rates. Next, the court rejected the Northern Districts' *San Marcos* argument, relying instead on its decision in *Brydon v. East Bay Municipal Utility District*, holding that block water rates levied in accordance with patterned usage and not designed for the purpose of replacing property tax monies lost as a result of the passing of California Constitution, article XIII A ("Proposition 13"), do not constitute special assessments. Finally, the court rejected the Northern Districts' claim that the capital portion is unreasonable because, assuming the capital portion is a capacity charge, under the language of section 66013 a capacity charge does not violate the statute unless it exceeds the cost of providing the service. The Northern Districts, however, presented no evidence that the capital portion exceeded the capital costs of building, maintaining, or improving the aqueduct system.

Because the court concluded that the transportation rate was a charge for the delivery of water, that there was no indication the Legislature intended to change the statutory scheme governing water rates, and that there was no evidence that the capital portion exceeds the capital costs of the aqueduct, it affirmed the lower court's judgment.

Charles P. Kersch, Jr.

Sec. Nat'l Guar., Inc. v. Monterey Peninsula Water Mgmt. Dist., No. H024969, 2003 Cal. App. LEXIS 12230 (Cal. Ct. App. Dec. 31, 2003) (holding the water management district did not deprive a water rights holder of senior water rights in denying a water distribution permit to the water rights holder where water management district followed proper procedures).

In 1998 Security National Guaranty, Inc. ("SNG") obtained approval to construct a resort project on its beachfront property in Sand City under condition that SNG obtain a water distribution permit from the Monterey Peninsula Water Management District ("District"). Pursuant to this arrangement, SNG applied to the District for the permit and the District subsequently denied SNG's request. Following this denial, SNG petitioned the Monterey County Superior Court for a writ of mandate directing the District to grant the petition. The superior court granted the District's demurrer without leave to amend and SNG appealed to the Court of Appeal of California, Sixth Appellate District.

SNG alleged the District did not act pursuant to law, because the District allocated SNG's water rights to California American Water Company. SNG argued it owned overlying water rights in the Seaside Basin and, thus, its claims were paramount to those of other water rights holders. The court rejected this argument, because SNG retained the same water rights that it had prior to the District's decision;

the District's decision only restricted SNG's use of the water to uses that did not require a distribution system.

SNG contended that, because the District did not adopt all findings before voting on SNG's application, the vote was invalid as a matter of law. However, SNG had raised this argument in a previous action and that court found the District acted within the District's rules. Invoking the doctrine of collateral estoppel, the court refused to allow SNG to re-litigate the issue.

SNG claimed insufficient evidence supported the District's findings. The court first reviewed evidence on the question of whether the proposed distribution system would create or exacerbate an overdraft condition. The court determined the evidence showed that pumping would exceed replenishment and create an overdraft condition. Furthermore, the court reasoned this condition would reverse the gradient allowing seawater to mix with groundwater causing an unacceptable degradation of groundwater quality. The court held that, while there was evidence showing there might not be an overdraft, the District reasonably concluded otherwise. There was also evidence SNG did not satisfy the California Environmental Quality Act because SNG changed its proposal after filing the required Environmental Impact Report ("EIR"). Due to the overdraft risk and the inaccuracy of the EIR, the court held the District proceeded properly.

Finally, SNG asserted an inverse condemnation claim for the deprivation of the right to use its property and a claim alleging a violation of SNG's right to substantive due process. The court concluded these claims were not ripe for adjudication because the District, in denying SNG's proposal, had not reached a "final definitive position" regarding all uses of SNG's property. The court thus affirmed the trial court's decision on all counts.

Mark Terzaghi Howe

COLORADO

City of Black Hawk v. City of Central, No. 03SA295, 2004 Colo. LEXIS 691 (Colo. Sept. 13, 2004) (holding the water court did not err in finding Black Hawk satisfied the can and will statute where a nonbinding, general resolution by Central City did not serve as a final denial of access to the reservoir site, and where Central City's expert testimony that the requisite enlargement of the reservoir would be technically challenging and financially burdensome was insufficient to defeat Black Hawk's evidence that the project was technically feasible).

Black Hawk and Central City, two adjacent municipalities in Colorado located within the mountains of Gilpin County and the South Platte River Basin, receive and depend upon water from Chase Gulch Reservoir ("the Reservoir"). The Reservoir had a storage capacity of 602 acre-feet of water. Central City owned the property underlying the