**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

SCOPE (SANTA CLARITA ORGANIZATION FOR PLANNING AND THE ENVIRONMENT), a California Non-Profit Corporation,

Plaintiff and Petitioner,

v.

CASTAIC LAKE WATER AGENCY, BOARD OF DIRECTORS OF THE CASTAIC LAKE WATER AGENCY, VALENCIA WATER COMPANY, a California Corporation, BOARD OF DIRECTORS OF THE VALENCIA WATER COMPANY, NEWHALL LAND AND FARMING COMPANY, a California Limited Partnership, STEVENSON RANCH VENTURE LLC, a Delaware Limited Liability Company, KEITH ABERCROMBIE, an individual, ALL PERSONS INTERESTED IN THE MATTER OF CONTRACTS RELATING TO THE ACQUISITION OF DEFENDANT VALENCIA WATER COMPANY BY DEFENDANT CASTAIC LAKE WATER AGENCY, DOES 1-100,

Defendants, Respondents & Real Parties in Interest.

Case No. BS141673

RULING RE: PETITION FOR A WRIT OF MANDATE

The Court notes that Petitioner's opening brief has several references to the December 12 and December 19 "transcripts" which the Court had denied being added to the record. Accordingly, the Court does not use these citations in its evaluation.[1]

The standard of review is not *de novo* in the way asserted by Petitioner (p. 5, Opening Brief). Rather, as this Court previously ruled, the case is challenging a quasi-legislative action. (November 5, 2013 Court ruling on demurrer, etc.) Essentially, the Court reviews the "record" and determines if Respondent abused its discretion or failed to follow the law (*Klajic I*, 995-996). Of course, questions of law, i.e., regarding legal issues are judged independently.

Respondents' and Petitioner's Requests for Judicial Notice are unchallenged and the Court accepts the documents as judicially noticed.

Petitioner's first cause of action for inverse validation (CCP 863) and the second cause of action for traditional mandate (CCP 1085) seek to invalidate the subject settlement agreement based on the assertion that the agreement was an "ultra vires" act because it violates Water Code § 12944.7 and California Constitution Articles XVI, § 17 (Opening Brief, p. 5, line 22 through p.6, line 30).[2]

Petitioner seeks (1) a writ of mandate pursuant to California Code of Civil Procedure section 1085, (2) a judicial declaration that the Settlement Agreement is void under a reverse validation action, and (3) a declaration that the Agency's acquisition of Valencia constituted a waste of public funds. Each of these claims depends on a finding that the acquisition of Valencia by the Agency was prohibited by law. Therefore, the Court will first consider whether the Agency's acquisition of Valencia was illegal.

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[1] Petitioner's Motion to Augment had not been ruled on at the time of the filing of the opening brief. It was not helpful to present argument relying on matters not in the record. Accordingly, the Court strikes from Petitioner's Opening Brief in this mandate proceeding (filed 12/24/14) those lines cited on lines 9-10, p.10 and lines 3-4, p. 12, of Respondents' opposition to Motion to Augment filed 1/26/15.

[2] The 2/27/14 PUC decision (14-02-041) relied on by Petitioner is not final and is subject to a pending rehearing application. In addition, that decision is not binding on the courts.

1. Whether the Agency was prohibited from acquiring Valencia's stock by California Constitution, Article XVI § 17

Petitioner argues that the Agency's acquisition of Valencia was prohibited by Article XVI, § 17 of the California Constitution, which states:

> "The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held."

Cal. Const. art. XVI, § 17 ("Section 17").

Under this article, the state (including political subdivisions, etc.) cannot hold shares in a corporation unless it is a "mutual water company or corporation" and the stock is held for the purpose of supplying water for public, municipal or governmental purposes. Petitioner argues that only a mutual water company or a mutual water corporation may be acquired in a manner consistent with Section 17. A mutual water company is a "private corporation or association organized for the purposes of delivering water to its stockholders and members at cost...", Pub. Util. Code § 2725.

Petitioner argues that the Agency has acquired the stock of a corporation that is **not** a mutual water company or a mutual water corporation in direct violation of the California Constitution. The Agency responds that, based on its interpretation of the Constitution, there is no prohibition on acquiring Valencia's stock. According to the Agency, Section 17 allows the state to acquire any corporation, so long as it is "acquired or held for the purpose of furnishing

a supply of water for public, municipal, or governmental purposes." Because Valencia is a water provider and because the stock in Valencia was acquired to provide water to the public, the acquisition of Valencia did not violate Section 17. The Agency also argues that this precise issue was decided in its favor by the Court of Appeals in *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987 *(Klajic I)*.

To resolve this matter, the Court must consider the correct interpretation of Article XVI, § 17 of the California Constitution. Specifically, the Court must determine whether that section prohibits the acquisition of a for-profit water corporation by a state agency. The correct interpretation of Section 17 is a question of law that the Court reviews *de novo. Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd.*, (2010) 181 Cal.App. 4th 915, 919.

*a. The Proper Interpretation of Section 17 Was Not Decided by Klajic I*

The Agency argues that the court in *Klajic I* already determined that Section 17 does not prohibit acquisition of a water company. It also argues that collateral estoppel prevents Petitioner from re-arguing its position that Section 17 bars the acquisition of a water company. Neither contention has merit.

*Klajic I* dealt with the Agency's acquisition of the Santa Clarita Water Company. (2001) 90 Cal.App.4th 987, 991-992. After acquiring Santa Clarita, the Agency absorbed the water company and sold water at retail pursuant to a contract that it signed with Santa Clarita on the same date that it acquired the company. *Id.* at 994-95. A group of local residents, including the President of Petitioner herein, SCOPE, Lynne Plambeck, filed an action challenging the acquisition for violating Water Code section 12944.7. *Id.* at 993. The trial court found that the transaction did not violate the Water Code and denied the petition. *Id.* at 995.

The *Klajic I* petitioners appealed, and the court of appeals remanded the matter after finding that the trial court had failed to consider whether the Agency's absorption of Santa Clarita nullified the retail water contract mandated by Water Code section 12944.7 *Id.* at 1000. Along the way, the court of appeal stated that "We do not disagree with the Agency that it was lawfully empowered to acquire the [Santa Clarita Water Company] (Cal. Const., art. XVI, §

17)..." *Id.* This is the only time that the opinion mentions Section 17, other than another passing reference in the statement of facts.

Simply put, the ability of the Agency to acquire a water company under Section 17 was not at issue in *Klajic I.* The vast majority of the opinion addressed the main point on appeal; whether the Agency violated Water Code section 12944.7. Both the court and, it appears, the parties, argued that the Water Code prohibited the transaction at issue and it was to decide this question that the court of appeals remanded the case to the trial court. The Agency argues that the constitutionality of the acquisition is implicit in the decision to remand the matter rather than to dismiss it outright, but the petitioners in *Klajic I* do not appear to have raised that argument on appeal, which is probably why the court did not consider it. Because the court in *Klajic I* did not decide the constitutionality of the Agency's acquisition of a company other than a mutual water company, that case is not binding precedent. *Silverbrand v. County of Los Angeles,* (2009) 46 Cal.4th 106, 127 ("It is axiomatic that cases are not authority for propositions not considered,")

For the same reason the *Klajic I* decision does not preclude Petitioner from arguing that Section 17 prohibits the Agency's acquisition of anything other than mutual water companies or mutual water corporations. Collateral estoppel will prevent a litigant from re-raising an argument already decided when: "(1) the issue is identical to that decided in a former proceeding; (2) the issue was actually litigated and (3) necessarily decided; (4) the doctrine is asserted against a party to the former action or one who was in privy with such a party; and (5) the former decision is final and was made on the merits." *McCutchen v. City of Montclair,* (1999) 73 Cal.App.4th 1138, 1144. As already discussed, *Klajic I* did not have the occasion to consider the exact issue being raised here. Therefore, factors (1)-(3) are not present and collateral estoppel does not apply.

Having found that the interpretation of Section 17 has not been determined by binding precedent and that the issue is properly before this Court, the Court will consider the proper interpretation of Section 17.

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*b. The Rules of Statutory Interpretation*

When a court is tasked with the proper interpretation of a statute or constitutional provision, it relies upon well settled principles of statutory construction. The purpose of statutory construction "is to ascertain the Legislature's intent so as to effectuate the purpose of the law." *Hunt v. Superior Court,* (1999) 21 Cal.4th 984, 1000. To determine intent, the court looks "first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, the inquiry ends and the plain meaning of the statute controls." *Id.* "The words must be construed in context and in light of the nature and obvious purpose of the statute where they appear" and must be given "a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the Legislature...." *Klajic v. Castaic Lake Water Agency,* (2001) 90 Cal.App.4th 987, 997. "Only when the language of a statute is susceptible to more than one reasonable construction is it appropriate to turn to extrinsic aids, including the legislative history of the measure to ascertain its meaning." *Diamond Multimedia Systems, Inc. v. Superior Court,* (1999) 19 Cal.4th 1036, 1055.

*c. Section 17 Does Not Prohibit the Agency's Acquisition of Valencia*

At the outset, it is noted that Valencia is not a mutual water company. Pub. Util. Code § 2725. It sells water at retail for a profit and is not organized to deliver water to its stockholders and members at cost. However, Valencia does provide water "for public, municipal, or governmental purposes" within the Agency's area of operation. Therefore, the acquisition of Valencia is only constitutional if Section 17 allows the state to acquire any type of corporation, whether a mutual water company or otherwise, so long as the acquisition is done for the purposes of furnishing water to the public.

A plain reading of Section 17 resolves the question in favor of the Agency. The Court finds that it allows the state to acquire the shares of any type of corporation, including a mutual water company, for the purpose of providing water for public, municipal or government purposes. Section 17 allows the state to acquire the capital stock of a "mutual water company *or* corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes..." Cal. Const. Art. XVI, § 17. Use of the

word "or" indicates that there is more than one category of entities in which the state can obtain capital stock. One category is a mutual water company. The other is a corporation, without any limitations as to form or composition. The stock of either can be held so long as the state acquired the stock for the purpose of providing water for the public. If the drafters of the amendment had intended to limit the types of entities that the state could acquire they could have accomplished this by making the statute read "mutual water compan*ies and* corporation*s*" or some other combination of the words indicating a clear intent to limit the scope. They chose not to do so, and the Court assumes that this was intentional. The provision is unambiguous and comports with the apparent intent of the section; to allow the state to acquire sources of water for public, municipal or government purposes.

While Petitioner's argument that the provision is ambiguous because it could also mean that the state can only acquire a mutual water company or mutual water corporation, this interpretation depends on an examination of the legislative history of the ballot measure that resulted in the amendment to the Constitution. An inquiry into the legislative history is not appropriate where the plain meaning of the provision is apparent from giving words their ordinary effect. *Diamond Multimedia Systems v. Superior Court,* (1999) 19 Cal.4th 1036, 1055. Because the Court does not find any ambiguity in the meaning of Section 17, it declines to interpret the provision in light of the legislative history.

Even if the Court did consider the legislative history, however, it would not alter the conclusion herein.[3] First, Petitioner's interpretation would render the word "corporation" meaningless because, by definition, a mutual water company includes a corporation providing water to its members at cost. Pub. Util. Code § 2725 ("As used in this chapter, 'mutual water company' means any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost..."). So a mutual water corporation would be covered by the amendment even if the word "corporation" was entirely absent from

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[3] The Court has read and considered the decision by the Public Utilities Commission of the State of California that came to the opposite conclusion that the Court reaches herein. As noted in the PUC's opinion, that body's reasoning is not binding on the courts.

the amendment. See *Klajic I,* (2001) 90 Cal.App.4th 987, 997 (reciting usual rule of statutory interpretation that, to the extent possible, all words in a statute should be given meaning and not treated as surplusage); see also *Delaney v. Superior Court,* (1990) 50 Cal.3d 785, 798-99.

Second, the ballot pamphlet that Petitioner cites as evidence of an intent to limit the effect of the amendment is unpersuasive. The ballot pamphlet stated that:

> "The constitutional amendment would authorize the State, and each political subdivision, district, municipality, and the public agency thereof to acquire and hold, in the same manner as other stockholders, shares of capital stock in a mutual water company acquired for the purpose of furnishing a supply of water for public, municipal, or government purposes."
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> 1965 Prop. 15 Ballot Pamphlet, p. 19, RJN Ex. 3, p. 3.

While it is true that this description does not mention ordinary corporations, it does not answer the question of why the word "or corporation" was inserted into the actual amendment. And as already noted, there is no need to add the word "or corporation" to the amendment if the intent is to make sure that mutual water companies are included; by definition, a mutual water corporation is included as a subset of mutual water companies. The "or corporation" language was a part of the amendment that was adopted by the voters, and the Court gives the use of this language meaning.

Having determined that Section 17 allows the state to acquire any corporation for the purpose of providing water to the public, The Court concludes that the Agency's acquisition of Valencia was not unconstitutional. Valencia is a retail water supplier that was acquired by the Agency for the stated purpose of furnishing a supply of water for the public. See Resolutions 2890 and 2893. Accordingly, the Agency could acquire Valencia in accordance with the California constitution.

2. Whether the Agency's ownership and control of Valencia violates Water Code § 12944.7

The Agency's general powers are limited to offering water for sale at wholesale.

Cal. Water Code § 103-15 (stating that the Agency can "provide, sell and deliver ... water *at wholesale* only..." (emphasis added). A state agency that is restricted to selling water at wholesale can only sell water at retail pursuant to a limited exception contained in Water Code § 12944.7:

> "...if the principal act of the public agency restricts the agency to the wholesale distribution of water, the right to sell water directly to consumers may be exercised by the agency only pursuant to written contract with...a water corporation, if any exists, subject to regulation by the Public Utilities Commission and serving water at retail within the area in which the consumer is located."
>
> Water Code § 12944.7

Accordingly, an agency that cannot sell water at retail under its principal act can only sell water at retail pursuant to: 1) a written contract; 2) with a water corporation that i) is subject to regulation by the Public Utilities Commission, and ii) is serving water at retail within the area in which the consumer is located.

Petitioner argues that the Agency is acting without authority by selling water at retail through Valencia. According to Petitioner, the Agency is the alter-ego of Valencia and is selling water at retail without authority in violation of Water Code section 12944.7. The Agency only addresses the argument that Valencia is its alter-ego, apparently because it believes that if Valencia is an independent entity then it can continue to sell water at retail without obstruction.[4]

*a. Whether Valencia is the alter-ego of the Agency*

- Elements of alter-ego: (1) such unity of interest and ownership that the individuality, or separateness of the owner and the corporation has ceased; and (2) that there would be an inequitable result if the acts in question were treated as those of the corporation alone. *Zoran Corp. v. Chen* (2010) 1185 Cal.App.4th 799, 811.

[4] The parties have stipulated that there is no "written argument " between the Agency and Valencia as described (see "Stipulated Facts") in Water Code § 12944.7.

- 8 factors considered: 1) commingling of assets; 2) holding out by shareholder that he or she is personally liable for the debts of the corporation; 3) failure to maintain minutes or other corporate records; 4) failure to adequately capitalize the corporation; 5) use of the same office and the same employees for multiple entities; 6) identical equitable ownership in the two entities, with the same persons exercising domination and control; 7) concealment of the identity of those responsible for the management of the corporation, and 8) formation of the corporation as a shield to avoid personal liability.

- Allegations of alter-ego:
  - Statements made by Agency's board members during acquisition re: combination of Agency and Valencia, settlement agreement requiring all Valencia directors to resign so that Agency could appoint new ones, and statements that the Agency intends to merge with Valencia after the litigation ends. Also, bad faith/fraud by intent to make an end run around the prohibition on the Agency's retail sale of water. See Opening Brief p. 11-12; Reply p. 4-7.

Ownership of all of the stock of the corporation does not automatically make for alter-ego status. *Hollywood Cleaning & P. Co.* 217 Cal. 124, 129; *Erkenbrecher v. Grant,* 187 Cal. 7, 10, 11; *Leek & Cooper*, 194 Cal.App.4th 395, 451. Nor does appointing the water company's directors and stockholders make it an alter-ego of the agency. Also, there is insufficient evidence establishing a merger or fraud by an artificial separation. Nor is there evidence interlocking directors and officers.

*b. Whether the Agency may sell water at retail through a wholly-owned for-profit corporation*

Petitioner's claims are mere conclusive allegations without factual support. Petitioner does not provide sufficient authority or convincing argument that the sale of water by the for profit corporation may not sell water.

3. Whether the Agency's acquisition of Valencia's stock was a waste of public funds

Petitioner also argues that the Settlement Agreement should be enjoined as a waste of public funds. Code Civ. P. § 526a. Petitioner argues that the agreement was a waste of public funds because: 1) it was illegal under Cal. Constitution and Water Code § 12944.7; 2) it caused the public to assume potentially large liabilities; and 3) the agreement granted Newhall substantial preferential water rights without disclosure or public hearing.

The Agency did not waste funds and Petitioner is just second guessing the expenditures of a state agency. A waste claim requires a factual basis and does not necessarily address discretionary conduct.

Petitioner argues Agency is prohibited from exercising water authority outside the AB 134 boundaries. The parties stipulated that Valencia provides water to those outside AB 134 boundaries ("Stipulated Facts" filed September 8, 2014).

Agency argues that Valencia, as a subsidiary, can sell water outside AB 134 boundaries and Petitioner fails to show otherwise.

4. Whether the Agency improperly delegated negotiation of the Settlement Agreement

The Petition and Opening Brief take issue with the fact that the Agency's board delegated broad negotiation powers to its general manager in connection with the acquisition of Valencia. The Agency's opposition points out that the Board adopted resolutions outlining the specific deal points that the general manager was authorized to accept. Petitioner does not address Respondents' counter-arguments in its opposition. The improper delegation argument is without merit. The Petition is denied.

DATE: 3-10-15

ROBERT H. O'BRIEN
Judge of the Superior Court

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SCOPE vs. Castaic Lake Water Agency, et al., Ruling re: Petition for a Writ of Mandate 3-10-15