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10 GOLDEN STATE WATER COMPANY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF VENTURA

13 GOLDEN STATE WATER COMPANY, a
14 California Corporation,

15 Petitioner/Plaintiff,

16 vs.

17 CASITAS MUNICIPAL WATER
18 DISTRICT, a quasi-municipal corporation,
19 CASITAS MUNICIPAL WATER
20 DISTRICT COMMUNITY FACILITIES
21 DISTRICT NO. 2013-1 (OJAI), a
22 purported community facilities district,
23 ALL PERSONS INTERESTED IN THE
24 VALIDITY OF CASITAS MUNICIPAL
25 WATER DISTRICT RESOLUTIONS
26 NOS. 13-12, 13-13, AND 13-14 and
27 DOES 1 through 50, inclusive,

28 Respondents/Defendants.

Case No. 56-2013-00433986-CU-WM-VTA

(Case Assigned to Hon. Mark S. Borrell)

**GOLDEN STATE WATER COMPANY'S
EVIDENTIARY OBJECTIONS TO
MATERIALS SUBMITTED BY CASITAS
MUNICIPAL WATER DISTRICT WITH ITS
OPPOSITION BRIEF**

**[FILED CONCURRENTLY WITH GOLDEN STATE'S
REPLY BRIEF]**

Date: June 10, 2013

Time: 8:30 a.m.

Dept.: 43

Case Filed: March 26, 2013

1 **GOLDEN STATE WATER COMPANY'S EVIDENTIARY OBJECTIONS**
2 **TO MATERIALS SUBMITTED BY CASITAS MUNICIPAL WATER DISTRICT WITH**
3 **ITS OPPOSITION BRIEF**

4 Plaintiff/Petitioner Golden State Water Company ("**Golden State**") submits the following
5 objections to the materials submitted by Respondent/Defendant Casitas Municipal Water District
6 ("**Casitas MWD**") with its Reply Brief.

7 **A. Objections to the Entirety of the Additional Evidence Submitted by Casitas MWD**

8 1. **The Additional Evidence Improperly Goes Beyond the Record**

9 This is an action challenging Casitas MWD's enactment of certain resolutions under the
10 Mello-Roos Act. The challenge is properly limited to the record that was before Casitas MWD
11 when it took the challenged actions. A validation proceeding is to be tried based on the record
12 before the public agency. (*Meany v. Sacramento Housing & Redevelopment Agency*, (1993) 13
13 Cal. App. 4th 566, 582-583.) Likewise, in a traditional mandamus action under Code Civ. Proc.
14 § 1085 involving quasi-legislative actions, evidence is limited to the record before the public
15 agency. (*Western States Petroleum Ass'n. v. Superior Court*, (1995) 9 Cal. 4th 559, 576-578.)
16 Casitas MWD's action should be reviewed based on the record of materials before it when it
17 adopted the resolutions, not on the miscellaneous additional material submitted by Casitas MWD
18 here — declarations of its outside counsel, its general counsel, and its General Manager, attaching
19 29 exhibits that were not before Casitas MWD when it made the challenged decisions.

20 2. **The Additional Evidence Is an Effort to Evade the Page Limits**

21 In the Stipulation and Order re Schedule for Briefing and Hearing, filed in this action on
22 May 2, 2013, the parties agreed, and the Court ordered, that opening and reply briefs would not
23 exceed 25 pages. Casitas MWD has tried to evade this page limitation by submitting two
24 declarations, totaling 18 pages in length, in addition to its 25-page opposition brief. The
25 declarations are clearly offered for purposes of additional argument, as demonstrated by Casitas
26 MWD's statement at p. 22 n. 10 of its Opposition Brief: "For a more detailed explanation of why
27 CMWD believes the risk of dismissal/abandonment to be speculative and remote, see the
28 Oderman Decl. attached hereto at ¶¶7-12." The declarations should be disregarded in their
entirety as a transparent effort to evade the agreed-upon and Court-ordered page limits.

1 **B. Objections to Particular Evidence Submitted by Casitas MWD**

2 In addition, Golden State submits the following evidentiary objections to the materials
3 offered by Casitas MWD with its Opposition Brief:

4 **Objections to the Declaration of Jeffrey M. Oderman and Exhibits**

5 1. Oderman Decl. ¶ 2: Mr. Oderman's statement that "this allegation is demonstrably
6 false" is irrelevant. The statement also lacks foundation, is argumentative, and constitutes
7 inadmissible lay and expert opinion testimony under Evid. Code §§800 *et seq.*

8 2. Oderman Decl. ¶ 3: The entire paragraph is irrelevant. Whether or not the San
9 Lorenzo Valley Water District's condemnation of a water utility in Felton was financed with CFD
10 bond proceeds is irrelevant because there is no showing that the issue was ever contested in that
11 matter, and the eminent domain lawsuit settled. Just as "[i]t is axiomatic that cases are not
12 authority for propositions not considered" (*McWilliams v. City of Long Beach*, 56 Cal. 4th 613,
13 626 [2013]), other "instances" of conduct are not probative of anything when the legal issue was
14 not raised and decided.

15 3. Exhibits A, B, and C to Oderman Decl.: These exhibits are irrelevant, and constitute
16 hearsay. These are partial excerpts from documents that are irrelevant for the reasons stated
17 above. Moreover, the excerpts do not recite or demonstrate that Mello-Roos financing was used
18 for an acquisition by eminent domain.

19 4. Oderman Decl. ¶ 4: The entire paragraph is irrelevant for the same reasons as stated
20 above under paragraph 3. Further, the statement offered "on information and belief" (p. 3:22-23)
21 is inadmissible, for affidavits based "on information and belief" are hearsay, must be disregarded,
22 and are "unavailing for any purpose whatsoever." (*Star Motor Imports, Inc. v. Superior Court*, 88
23 Cal. App. 3d 201, 204 [1979].)

24 5. Exhibits D through I to Oderman Decl.: These exhibits are irrelevant, and constitute
25 hearsay — for the same reasons as stated above regarding Exhibits A through C.
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1 6. Oderman Decl. ¶ 6: Irrelevant, hearsay, and improper lay opinion and expert opinion
2 testimony. The "results of [Mr. Oderman's] research" (p. 5:1) is hearsay and argumentative. Mr.
3 Oderman is attempting to offer inadmissible lay or expert opinion testimony under Evid. Code
4 §§800 *et seq.*

5 7. Oderman Decl. ¶ 7: Whether or not Mr. Oderman qualifies as an expert witness as an
6 "eminent domain attorney" is irrelevant because this is not an eminent domain proceeding. While
7 this matter does involve the legal question of whether the Mello-Roos Act may be used to finance
8 an acquisition by eminent domain, it is improper for a lawyer to give an "expert witness" opinion
9 as to the application of law to particular facts; that is the role of the Court. (*Downer v. Bramet*,
10 152 Cal. App. 3d 837, 841-842 [1084].) Further, whether or not Mr. Oderman has experience
11 dealing with real estate appraisers and real estate appraisals is irrelevant. Mr. Oderman is not an
12 appraiser (as he admits, at p. 5:24-25), and only qualified real estate appraisers or owners may
13 give opinion testimony as to the value of property under Evid. Code §813.

14 8. Oderman Decl. ¶ 8. Mr. Oderman attempts to offer inadmissible expert witness
15 testimony on a variety of subjects related to whether an estimated value of \$16 to \$21.4 million
16 for the value of Golden State's assets is "in the ballpark." Mr. Oderman's opinion is irrelevant and
17 it lacks foundation. Mr. Oderman is not an appraiser (as he admits, at p. 5:24-25), and only
18 qualified real estate appraisers or owners may give opinion testimony as to the value of property
19 under Evid. Code §813. Further, it is improper for a lawyer to give an "expert witness" opinion
20 as to the application of law to particular facts; that is the role of the Court. (*Downer v. Bramet*,
21 152 Cal. App. 3d 837, 841-842 [1084].) To the extent Mr. Oderman characterizes or relies on
22 other documentary material, his testimony is hearsay.

23 9. Exhibits J through N to Oderman Decl.: The excerpts from various PUC decisions or
24 orders concerning Golden State's rate setting are irrelevant to any issue before this Court in this
25 proceeding. Statements in court files may be judicially noticed, but are still hearsay when offered
26 for the proof of facts contained in the files, as here. (*In re Vicks*, 56 Cal. 4th 274, 314 [2013].)
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1 10. Exhibits O through Z to Oderman Decl.: The value of the assets of *other* utilities in
2 these *other* matters is irrelevant to any of the issues before the Court in this matter. Further, none
3 of the acquisitions of the assets of the other utilities were acquired by eminent domain. In
4 addition, each of these CPUC decisions constitutes hearsay. Statements in court files may be
5 judicially noticed, but are still hearsay when offered for the proof of facts contained in the files, as
6 here. (*In re Vicks*, 56 Cal. 4th 274, 314 [2013].)

7 11. Oderman Decl. ¶ 9: Mr. Oderman's musings about "an assertion I had heard" (p.
8 11:14-15) and a "rumor/allegation" (p. 11:25) are irrelevant. Once again, Mr. Oderman is
9 attempting to act as an expert on the law, offering his opinions on various issues of law, and his
10 proffered testimony is inadmissible for the reasons stated above concerning paragraph 8 of his
11 declaration.

12 12. Oderman Decl. ¶ 10: Mr. Oderman's testimony is irrelevant, hearsay, and lacks
13 foundation. For example, he states without foundation that he "first determined that there are no
14 adjudicated water rights in the Ojai basin." (P. 12:7-8.) This is improper opinion testimony and
15 improper expert witness testimony. Once again, Mr. Oderman is attempting to act as an expert on
16 the law, offering his opinions on various issues of law, and his proffered testimony is
17 inadmissible for the reasons stated above concerning paragraph 8 of his declaration.

18 13. Oderman Decl. ¶ 11: Mr. Oderman's opinions and legal analysis, offered in a
19 declaration, are irrelevant and constitute hearsay. Once again, Mr. Oderman is attempting to act
20 as an expert on the law, offering his opinions on various issues of law, and his proffered
21 testimony is inadmissible for the reasons stated above concerning paragraph 8 of his declaration.

22 14. Oderman Decl. ¶ 12: Mr. Oderman's opinions and conclusions are irrelevant and
23 constitute hearsay. Once again, Mr. Oderman is attempting to act as an expert on the law,
24 offering his opinions on various issues of law, and his proffered testimony is inadmissible for the
25 reasons stated above concerning paragraph 8 of his declaration.
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Objections to the Declaration of Steven E. Wickstrum

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2 15. Wickstrum Decl. ¶ 4: Mr. Wickstrum's testimony is irrelevant and constitutes
3 hearsay. The water rates charged by Golden State or Casitas MWD are irrelevant to any of the
4 issues before the Court in this matter.

5 16. Exhibit B to Wickstrom Decl: This 57-page document is hearsay. On its face, the
6 document does not reflect its author or the qualifications of its author. Mr. Wickstrum declares
7 that the document was "prepared by Mr. Richard Hajas, an Ojai resident." The document
8 constitutes inadmissible expert opinion as there is no showing of what qualifies Mr. Hajas to
9 perform a "financial feasibility analysis." The document is irrelevant to any issues before the
10 Court.

11 17. Wickstrum Decl. ¶ 5: Golden State's Master Plan, and the nature and extent of
12 recommended capital improvement projects proposed by Golden State, is irrelevant to any issues
13 before the Court. Mr. Wickstrum's testimony regarding future applications of Golden State is
14 speculative. The present or future water rates charged by Golden State or Casitas MWD are
15 irrelevant to any issues before the Court.

16 18. Wickstrum Decl. ¶ 6: The statements purportedly made by Pat McPherson and
17 Richard Hajas constitute hearsay. Their statements are also irrelevant to any issues before the
18 Court. The referenced Feasibility Analysis is also inadmissible, as discussed under Exhibit B
19 above.

20 19. Wickstrum Decl. ¶ 7: The matters stated in this paragraph are irrelevant to any issues
21 before the Court. In addition, what "Ojai Flow stated" (p. 2:28), what other resolutions provided,
22 and what a letter from Ojai Flow stated are all hearsay.

23 20. Wickstrum Decl. ¶ 8: The matters stated in this paragraph are irrelevant to any issues
24 before the Court. The testimony also lacks foundation as to what Casitas MWD supposedly
25 "determined" or how it made those "determinations." (p. 3:15). The testimony is also improper
26 opinion testimony or improper expert witness testimony under Evid. Code §§800 *et seq.*
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1 21. Wickstrum Decl. ¶ 9: The matters stated in this paragraph are irrelevant to any issues
2 before the Court. The testimony also lacks foundation as to what Casitas MWD supposedly
3 "determined" or how it made those "determinations." (p. 4:4). The testimony is also improper
4 opinion testimony or improper expert witness testimony under Evid. Code §§800 *et seq.*

5 Golden State respectfully requests that the Court (1) rule on and sustain each of the
6 evidentiary objections listed above; and (2) decline to consider each of the matters which are the
7 subject of the evidentiary objections listed above in its determination of this matter.

8
9 Dated: June 3, 2013

MANATT, PHELPS & PHILLIPS, LLP

10 By: 
11 George M. Soneff
12 Attorneys for Petitioner/Plaintiff
13 GOLDEN STATE WATER COMPANY

1 **PROOF OF SERVICE**

2 I, Carlyn Falls, declare as follows:

3 I am employed in Los Angeles County, Los Angeles, California. I am over the age of
4 eighteen years and not a party to this action. My business address is MANATT, PHELPS &
5 PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On
6 June 3, 2013, I served the within:

7 **GOLDEN STATE WATER COMPANY'S EVIDENTIARY OBJECTIONS TO
8 MATERIALS SUBMITTED BY CASITAS MUNICIPAL WATER DISTRICT WITH
9 ITS OPPOSITION BRIEF**

10 on the interested parties in this action addressed as follows:

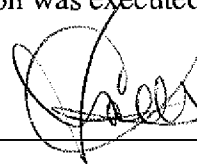
11 See attached Service List

12 X (BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully
13 prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los
14 Angeles, California following ordinary business practice. I am readily familiar with the
15 practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence
16 for mailing with the United States Postal Service, said practice being that in the ordinary
17 course of business, correspondence is deposited in the United States Postal Service the same
18 day as it is placed for collection.

19 (BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope, for
20 collection and overnight mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California
21 following ordinary business practice. I am readily familiar with the practice at Manatt,
22 Phelps & Phillips, LLP for collection and processing of overnight service mailing, said
23 practice being that in the ordinary course of business, correspondence is deposited with the
24 overnight messenger service, FedEx, for delivery as addressed.

25 X (BY ELECTRONIC MAIL) By transmitting such document(s) electronically at ___:___ ___
26 from my e-mail address, cfalls@manatt.com at Manatt, Phelps & Phillips, LLP, Los
27 Angeles, California, to the person(s) at the electronic mail addresses listed above. The
28 transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this declaration was executed on June 3, 2013, at Los
Angeles, California.



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Service List

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