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## Not About Water Conmm. v. Solano County Bd. of Supervisors, 116 Cal. Rptr. 2d 526 (Cal. Ct. App. 2002)

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court found “there [was] a huge gap between what is [entitled] and what can be delivered” because the SWP system was never completed.

Newhall’s EIR also failed to include estimates from the Department of Water Resources, the agency that oversees the SWP, projecting how much water could be delivered during wet and dry years. The court held that without projected or actual water supply information the development’s cumulative impact could not be determined.

The court continued to analyze the sufficiency of Newhall’s EIR. It explained that under *Clearly v. County of Stanislaus*, an EIR should include detailed analysis of potential problems and serious issues raised by the public. Newhall’s EIR, however, failed to respond directly to project opponents’ water supply concerns. It also failed to undertake analysis of actual SWP water supplies and improperly relied on information in the administrative record. Accordingly, the court found Newhall failed to demonstrate a sufficient water supply existed for West Creek.

In its defense, Newhall contended the County’s approval of West Creek was final, and therefore, the court could not review new information or reopen the project’s approval process. But the court parched Newhall’s argument and found the SWP’s inability to deliver water entitlements did not constitute new information. Accordingly, the court reversed the trial court’s decision.

*J. Reid Bumgarner*

**Not About Water Comm. v. Solano County Bd. of Supervisors, 116 Cal. Rptr. 2d 526 (Cal. Ct. App. 2002)** (holding that under the United States Constitution and California statutory law, a water district may assign varying weights to participants’ ballots in a vote to assess fees to fund construction of a water delivery system).

Not About Water Committee (“Committee Residents”), a federation of aggrieved parties and residents, filed a mandamus proceeding in the Superior Court of Solano County to challenge plans of the Solano County Board of Supervisors (“Board”) and the Rural North Vacaville Water District (“District”) to form an assessment district which would levy fees to construct a water delivery system. The trial court denied the petition. The Committee Residents appealed the decision to the California Court of Appeal, First District, Division Four. The California legislature had determined that courts would decide such controversies in “validation proceedings” which limited the appeal court’s power to a determination of whether the Committee Residents’ real property would receive a special benefit, proportional to the assessments levied, resulting from the formation of the assessment district. The court held the Committee Residents enjoyed such a benefit, and affirmed the ruling of the superior court.

English Hills, which lay between Sacramento and Silicon Valley, underwent a period of growth in which agricultural lands gradually gave way to residential communities. County officials and certain residents began to explore means of encouraging additional growth by creating a modern water delivery system. The Board endorsed a water district that excluded Committee Residents because they had water wells on their property. According to an engineer's report, the Committee Residents would have no obligation to pay for a water delivery system, as they had no need for one. The county then held a referendum in which the Committee Residents received no opportunity to vote, as their property lay outside the proposed district. The pro-water district forces won the referendum easily.

Over the course of the next two to three years, and after various hearings and engineering studies, the Board voted to establish a "benefit assessment district" to fund the construction of the water delivery system. This vote gave varying weights to the participants' ballots, depending on the financial obligations the assessment would impose upon them. As a result, residents within the water district had as much as eight times the voting power per vote as each committee resident. The vote for the proposed benefit assessment district passed with an overwhelming majority.

In their suit, Committee Residents alleged that the weighted voting scheme denied them due process and amounted to a taking in violation of the Constitution's Fifth Amendment. They further alleged that the vote was a product of a "civil conspiracy" among members of the Board, planning commission, water district, and certain residents. In its defense, the county argued that Proposition 218, amending article XIII of the California Constitution, required the use of a weighted voting scheme.

The court determined that an assessment district is not a legal entity, but rather a group of properties standing to benefit from improvements made as a result of the assessment. Relying chiefly on case law, the court further determined that an assessment is valid unless it is not proportional to the benefits, or that no benefits could accrue to the assessed properties. Finally, the court held that the burden of proof as to the benefits derived from the assessment lay with the agency seeking to levy it. Acknowledging that improvement agencies receive great latitude under California law, the court identified three benefits Committee Residents enjoyed which enabled the Board to meet its burden of proof: (1) potential increases in property values as a result of a reliable water supply for fire suppression; (2) a potential reduction in fire insurance rates; and (3) enhanced security from the ability to suppress fires.

Turning to the issue of the weighted voting scheme, the court found that the United States Supreme Court has long recognized exceptions to the constitutional principle of one person, one vote. Specifically, units of government established to affect definable groups of constituents more than others could apportion votes without offending the constitutional guarantee of equal protection. The

assessment district lacked the indicia of general governmental powers and therefore qualified as the sort of special-purpose unit of government exempt from the one person, one vote standard.

The court also considered whether the particular voting scheme in question—which assigned more weight to those who would pay more if the assessment proposal passed—violated constitutional requirements. Relying on Supreme Court authority indicating that a rational basis standard was appropriate under these circumstances, the court held that it was rational to allocate weight based on potential financial outlay. Having determined that the voting scheme in no way offended the United States Constitution, the court observed that Proposition 218, now articles XIII(C) and XIII(D) of the California Constitution, required the use of weighted voting schemes in all referenda on proposed assessments.

Dealing finally with the issue of civil conspiracy, the court sympathized with the Committee Residents' position, but pointed to a total lack of evidence upon which the court could fashion a remedy.

*Curtis Graves*

**Topsail Court Homeowners Ass'n v. County of Santa Cruz, 116 Cal. Rptr. 2d 145 (Cal. Ct. App. 2002)** (holding a challenge to the legality of land parcels is a challenge to the original parcel map approval, and is therefore subject to the statute of limitations governing such approval; and water treatment facilities are not exempt from city and county zoning laws).

Topsail Court Homeowner's Association ("Topsail") represented three homeowners of adjoining land parcels. Soquel Creek Water District ("SCWD") owned the fourth parcel of land at issue and planned to build a water treatment facility on the property. The County of Santa Cruz ("County") was responsible for approving the initial division of property into parcels. Topsail originally filed for a writ of mandate in the Superior Court of Santa Cruz County to compel the County to issue certificates of compliance for all four parcels of land, and to compel SCWD to comply with all zoning laws with respect to the water treatment facility it planned to build. The trial court issued an alternative writ of mandate compelling the County to issue conditional certificates of compliance for the land parcels, and determined that SCWD's proposed water treatment facility was exempt from zoning laws. The County appealed the trial court's writ of mandate, asserting that the statute of limitations barred Topsail's challenge to the legality of the parcels. Topsail cross-appealed, challenging the trial court's judgment exempting SWCD's proposed water treatment facility from zoning laws. The Court of Appeal of California for the Sixth Appellate District concluded that Topsail's original petition challenging the legality of the four parcels was also a challenge to the County Surveyor's original parcel map approval, and