Blogs
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California Land Use & Development Law Report

# Mello-Roos Financing May Be Used to Acquire a Private Water Utility Through Eminent Domain.

An agency may acquire the assets of a private utility through condemnation using Mello-Roos bond financing, including intangible property incidental to the real or tangible property being acquired. *Golden State Water Co. v. Casitas Municipal Water District*, 235 Cal. App. 4th 256 (2015). Upon petition by the City of Ojai, the Casitas Municipal Water District elected to acquire all of the assets of Golden State Water Company, a private utility, and take over Golden State's water service in Ojai. Casitas formed a Mello-Roos Community Facilities District (CFD) to finance the purchase, and took steps to acquire the assets through eminent domain. Golden State filed a reverse validation action seeking to invalidate the resolutions forming the CFD and authorizing the bond financing. It argued that Mello-Roos financing cannot be used to finance acquisition of property by eminent domain or to acquire intangible assets such as goodwill and contractual water rights. The Court of Appeal rejected the challenge, finding no support for the proposition that Mello-Roos cannot be used to acquire property through eminent domain. Observing that the Act states that its provisions shall be liberally construed, the court found that the word "purchase" in the Act connoted acquisition in exchange for compensation regardless of whether the property was being acquired voluntarily. In an acquisition by condemnation, the court noted, the public entity must pay the same price the owner would have received in an arm's length transaction. Given the obvious practical need in certain circumstances to use condemnation powers, the court concluded that the word "purchase" was properly construed to include taking by eminent domain upon payment of just compensation. As to acquisition of intangible business assets, the court acknowledged that the Act authorizes only purchase of "real or other tangible property with an estimated useful life of five years or longer," and hence that a CFD may not directly purchase intangible property. However, the Act also authorizes financing of "costs . . . incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred." The court interpreted this language to reasonably include intangible property rights -- such as goodwill and water rights -- that were "closely connected with the acquisition of its facilities for delivering water." Finally, the court dismissed the argument that Mello-Roos financing was being improperly used to fund services that were already being provided, a use expressly prohibited by the Act. The Mello-Roos funds were being used for acquisition of facilities and incidental costs, the court said, not for provision of services.

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