



**FILED**

02-06-13

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**SANTA CLARITA ORGANIZATION FOR  
PLANNING THE ENVIRONMENT**, a  
California non-profit corporation, and  
**FRIENDS OF THE SANTA CLARA RIVER**, a  
California non-profit corporation  
  
Complainants  
  
vs.  
  
**VALENCIA WATER COMPANY**, a  
California corporation (PUC #U342W) and  
**CASTAIC LAKE WATER AGENCY**,  
as Valencia Water Company's sole  
shareholder  
  
Defendants

Case No. \_\_\_\_\_  
C1301005

Have you tried to resolve this  
matter informally with the  
Commission's Consumer Affairs  
Staff? No - Not Applicable

**COMPLAINT**

**Facts**

The Complaint of Santa Clarita Organization for Planning the Environment, a California non-profit corporation with charitable tax exempt status under the U.S. Internal Revenue Code ("**SCOPE**"), whose mailing address is P.O. Box 1182, Canyon Country, California 91386-1182, with telephone number (661) 255-6899 and an email address at [exec@scope.org](mailto:exec@scope.org) and Friends of the Santa Clara River, a California non-profit corporation ("**Friends**"), whose mailing address is 660 Randy Drive, Newbury Park, California 91320, with a telephone number of (805) 498-4323 and an email address at [bottorffm@verizon.net](mailto:bottorffm@verizon.net) (collectively "Complainants") respectfully shows that:

1. Complainant SCOPE is a 25+ year old community-based organization whose purpose is to protect the natural and human environment in the Santa Clarita Valley ("**SCV**"), including protecting the health, safety and welfare of taxpayers and utility company rate payers in the community. One of SCOPE's purposes is to protect those taxpayers and rate payers from the public health consequences of Santa Clarita Valley water wholesalers and water retailers being so undercapitalized, or so driven by the undue political influence of housing tract builders and commercial real estate developers, as to render the SCV water wholesalers

and water retailers unable or unwilling to constantly (as opposed to quarterly or annually) test and remediate the drinking water supply to insure that it is clean, non-toxic and quantitatively adequate to provide potable water service to residents of the Santa Clarita Valley.

2. Complainant Friends is an environmental advocacy organization part of whose mission is to protect the natural environment, flora, fauna, water quantity and quality and manner of water flow of the Santa Clara River, which has its headwaters in the San Gabriel Mountains north of Pasadena, Arcadia and Bradbury, which flows north west into the unincorporated territories of the County of Los Angeles known as Agua Dulce, Acton and Canyon Country, into the center of the City of Santa Clarita, out of the City of Santa Clarita into an unincorporated territory of the County of Los Angeles sometimes known as Newhall Ranch, into the Ventura County communities of Piru, Fillmore and Ventura, reaching the Pacific Ocean. The Santa Clara River and its tributaries is the last natural, free flowing river in Los Angeles County. As part of its work to protect the Santa Clara River's natural environment, Friends pays particular attention to ground water pumping by wholesale and retail water agencies which would reduce the quantity, quality and flow of the river and its tributaries to the detriment of the river's natural environment.

3. Defendant Valencia Water Company, a California for-profit corporation ("**Valencia**"), is a public utility and water *retailer* subject to regulation by the California Public Utilities Commission ("**PUC**") as public utility No. U342W. Defendant Valencia has as its office and mailing address 24631 Ave. Rockefeller, Valencia, CA 91355-3907 and as its telephone number (661) 294-0828. Defendant Valencia has a precisely defined *retail* water purveyor *territory* limiting the locations of the retail customers it can serve, previously approved by the PUC in its prior decisions concerning Defendant Valencia. Defendant Valencia's *retail* water purveyor/public utility territory is located in parts (but not all) of the City of Santa Clarita, California and located in parts (but not all) of the unincorporated territory of the County of Los Angeles in the Santa Clarita Valley generally north and west of the City of Santa Clarita.

4. The gravamen of this Complaint is the acquisition, sale and transfer of *all* of the outstanding shares of *common* stock in Defendant Valencia without the prior written consent of the California Public Utilities Commission as required under Public Utilities Code Section 854, under the contract attached hereto as **Exhibit "D"** (the "**Contract**") which was executed by the parties on December 17, 2012. Paragraph 1.1 of the Contract plainly states:

"1.1 Purchase and Sale of Shares. Upon the terms and subject to the conditions set forth in this Agreement, and pursuant to the Stipulated Judgment, Agency hereby

agrees to purchase from Newhall and Newhall agrees to sell, transfer, assign, convey and deliver the Shares to Agency, on the Closing Date (as defined below), free and clear of any and all liens, encumbrances, security interests, pledges, options, charges, and restrictions (collectively the "Liens").

That acquisition, sale and transfer of *all* of the *common* shares in Defendant Valencia occurred in a secretive, lightening fast procedure orchestrated by the President and Executive Vice President of the General Partner in Valencia's sole shareholder, the individual Orange County resident who is the principal in the limited liability company manager of the parent company of Valencia's sole shareholder, Valencia's General Manager and the General Manager of the buyer of that *common* stock. The Board of Directors of the buyer of the shares did not even see the Contract until after the buyer's General Manager signed the Contract, subjecting the buyer and the public to grave consequences should the Contract be subjected to a reverse validation proceeding on issues unrelated to the PUC. These events were, in fact, the second time since 1999 the entity which is the buyer of that *common* stock violated California law in doing a transfer of all of the stock of a public utility without the prior written consent of the PUC. Defendant Valencia, and its direct and indirect owners, were and are bound to a PUC Order in D.10-2-015 specifically relating to future unauthorized sales or transfers of the stock in Defendant Valencia. In its ORDER approving the transfer of indirect control of Valencia in that case, the PUC established conditions upon the transfer of control which were and are binding on Defendant Valencia and its then-owners:

"Decision 10-02-015 February 25, 2010...

#### **ORDER**

IT IS ORDERED that:

1. Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC, and LandSource Holding Company, LLC are authorized to acquire indirect ownership and control over Valencia Water Company subject to the conditions set forth in the Conditions of Approval of Transfer of Control and the Affiliated Interest Rules set forth in Appendices B and C to this decision, respectively and subject to the condition contained in Ordering Paragraph 2.
2. The authority granted by Ordering Paragraph 1 shall not be effective until Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC, LandSource Holding Company, LLC, and Valencia Water Company each file **written notice of their agreement**, evidenced by a duly authenticated resolution of their respective Boards of Directors, Boards of Managers, or the equivalent authority, **to the Conditions of Approval of Transfer of Control** and the Affiliated Interest Transaction Rules set forth in Appendices B and C to this decision, respectively....

This order is effective today.

Dated February 25, 2010, at San Francisco, California.

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#### **Appendix B**

## Conditions of Approval of Transfer of Control

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2. **Valencia shall comply with all applicable California and federal laws and administrative regulations.**

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10. **Operational control of Valencia shall continue to be exercised by Valencia's board of directors and management."**

5. Among the provisions of the California Public Utilities Code which the parties involved violated in acquiring, buying and selling all of the stock in Valencia without the PUC's prior written consent were the following:

**California Public Utilities Code Section 854** which provides in relevant parts: "854. (a) No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section. [Emphasis added]..."

(d) When reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal."

**California Public Utilities Code Section 816** provides in relevant part, with respect to actions following an unauthorized acquisition of stock in a public utility:

"The power of public utilities to issue stocks and stock certificates or other evidence of interest or ownership and bonds, notes, and other evidences of indebtedness and to create liens on their property situated within this State is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes."

**California Public Utilities Code Section 825** provides in relevant part: "All stock and every stock certificate or other evidence of interest or ownership, and every bond, note, or other evidence of indebtedness, of a public utility, issued without an order of the commission authorizing the issue thereof then in effect or not conforming in its provisions to any of the provisions which it is required by the order of authorization to contain, is void...."<sup>1</sup>

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<sup>1</sup> Similarly, California Public Utilities Code Section 818 provides in relevant part, with respect to actions following an unauthorized acquisition of stock in a public utility, such as issuance of replacement stock certificates to the new owner:

When the PUC issued its decision and Order approving the acquisition of control of the current seller of the Valencia *common* stock, in D.10-02-015 dated February 25, 2010, the PUC Order recited that pursuant to Public Utilities Code Section 854, “the Commission has broad authority to approve or deny applications for transfers of utility ownership or control. Implicit in that authority is the right to place reasonable conditions upon the transferor or the transferee, should the need for such conditions, or conditions” exist. Here, by presenting the PUC with the sale of the Valencia *common* stock as a *fait accompli* the seller and buyer have maneuvered to attempt to deny the Commission the opportunity to impose conditions on the seller of the stock in the public utility, and conditions on the seller’s right to receive payment of its sale price, as well as denying the PUC the opportunity to disapprove withdrawals of funds from Defendant Valencia’s operating accounts for disbursement to the seller, presumably leaving Defendant Valencia short of capital it was required to maintain under Appendix B to D. 10-02-14, as well as denying the PUC the opportunity to reject, on behalf of the rate-payers of the public utility onerous contractual terms for the benefit of the seller of the stock and its corporate affiliates<sup>2</sup>, which at the very least are costly and which may in fact be unlawful. Under Public Utilities Code Section 854(a) the primary standard used by the Commission to determine if a transfer should be authorized under Section 854(a) is whether the transaction

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“No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.”

<sup>2</sup> Such as a broad indemnity to the seller and its affiliates in the event of any claims that Defendant Valencia has purveyed contaminated ground water containing chemicals, such as VOCs, which the PUC has forbidden to be served, and such as a broad release (including a “1542 waiver”) so that neither Defendant Valencia nor the buyer of the stock may ever bring an action against the seller for actions such as misrepresentation or fraud. Those provisions of the Contract are why the PUC has historically scrutinized the terms of the sale of stock in a public utility which benefit the seller to the detriment of the economic, public health or public safety of the public utility’s customers.

will adversely affect the public interest.

**California Public Utilities Code Section 2101** provides in relevant part:

“The commission shall see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefore recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county shall aid in any investigation, hearing, or trial had under the provisions of this part, and shall institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof.”

**California Public Utilities Code Section 856** provides in relevant part:

“Every officer, agent, or employee of a public utility, or of a subsidiary or affiliate of, or a corporation holding a controlling interest in, a public utility, and every other person subject to the requirements of this article, who violates or fails to comply with, or procures, aids, or abets any violation of, this article is guilty of a misdemeanor.”

**California Public Utilities Code Section 827** provides in relevant part:

“Every officer, agent, or employee of a public utility, and every other person is guilty of a felony who does any of the following acts:

(a) Knowingly authorizes, directs, aids in, issues, or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, in nonconformity with the order of the commission authorizing the issue, or contrary to the provisions of this part or of the Constitution of this State....

(d) Directly or indirectly, knowingly applies, or causes or assists to be applied any part of the proceeds from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, to any purpose not specified in the commission’s order, or to any purpose specified in the commission’s order in excess of the amount authorized for such purpose.”

6. Pursuant to specially written California legislation described in detail, below, the Public Utilities Commission has not lost jurisdiction over Defendant Valencia by virtue of all of its common stock having been sold, and instead the California Legislature has specifically required that Public Utilities Commission’s jurisdiction over defendants like Defendant Valencia be maintained, because of the prior unlawful acts of the new owner of all of Defendant Valencia’s common stock.

7. Defendant Castaic Lake Water Agency (“**Agency**”) has as its mailing address 27234 Bouquet Canyon Road, Santa Clarita, CA 91350, and telephone number (661) 297-1600. Defendant Agency is Defendant Valencia’s new “sole shareholder”, and pursuant to provisions of California statutes set forth below, Defendant Agency is obligated to continue to operate Defendant Valencia as an independent public utility regulated by the PUC, and not as an *alter ego* of Defendant Agency and not as a merged-in subsidiary of Defendant Agency. Defendant

Agency is a regional water *wholesaler*, created by a special act of the California Legislature<sup>3</sup>. The Legislature requires that Defendant Agency may *only* operate a water *retailer*, like Defendant Valencia, under two circumstances:

(i) A water retailer may be directly operated as a division of the Agency, as long as water is only sold at retail within the specific metes and bounds delineated boundaries set forth in Section 3 of Assembly Bill 134, 2001-2002 Legislative session (“**A.B. 134**”) attached hereto as **Exhibit “A”** and incorporated herein by this reference, or

(ii) Pursuant to California Water Code Section 12944.7(b), as modified by A.B.134 concerning Defendant Agency, which provides:

“(a) Notwithstanding any other provision of law, except as specified in subdivision (b), any public agency that has executed a contract with the state for a water supply pursuant to Section 12937 may sell any water available to that agency directly to any ultimate water consumer within the agency.

(b) Notwithstanding subdivision (a), 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** (1) a wholesaler, if any exists, to which the water would otherwise be sold and (2) a public entity water purveyor, if any exists, serving water at retail within the area in which the consumer is located or **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.**”

With regard to that second scenario, where Defendant Agency may wish to provide retail water service by contracting with a public utility as permitted in Water Code Section 12944.7(b) quoted above, in Section 3(f) of A.B. 134 the Legislature provided *an even further limitation* on Defendant Agency’s water retailing activities: “**(f) Nothing in this section authorizes the agency to provide retail water service outside the boundaries of the agency.**” In essence, even though a PUC regulated public utility water company may exist which wishes to contract with Defendant Agency under Section 12977.4(b) to provide water services at retail, Defendant Agency cannot provide that service outside the boundaries of its own territory established by the Legislature. Reinforcing that point, Section 3(b) of A.B. 134 provides:

**“(b) The agency may not exercise retail water authority outside the boundaries described in paragraph (1) of subdivision (a).<sup>4</sup> Any expansion of retail water**

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<sup>3</sup> Castaic Lake Water Agency Law. (72A West's Ann. Wat.--Appen. (1999 ed.) § 103-1 et seq., p. 487 et seq.

<sup>4</sup> The description referred to in clause (b) quoted above is a metes and bounds

**authority outside the boundaries described in paragraph (1) of subdivision (a) shall require authorization by statute.”**

To that end, in enforcing the Legislature’s requirement in enacting Section 3 of A.B. 134, if the PUC ultimately chooses not to void the sale of the common stock in Defendant Valencia to Defendant Agency, and instead to approve Defendant Agency’s becoming the owner of all of the common stock in Defendant Valencia, despite Defendant Agency having violated Public Utilities Code Sections 854 and the PUC’s prior decisions and orders binding on Defendant Valencia’s shareholders and their controlling parties, Complainants request that the PUC establish a condition of approval of that stock transfer that Defendant Valencia must be required to operate entirely independently of influence, directive, pressure or threat from Defendant Agency’s Directors, General Manager, officers, employees, agents or attorneys, that Defendant Valencia’s Board of Directors be composed of people who are not Directors or officers or senior employees of Defendant Agency (a “badge of alter ego” status), that Defendant Agency not be allowed to recoup the purchase price it paid for Defendant Valencia from Defendant Valencia’s ratepayers, that the PUC specifically establish a condition of approval of that stock transfer which forbids the operation of Defendant Valencia in any manner which would render it an *alter ego* of Defendant Agency, or vice versa, that Defendant Agency not be allowed to recoup the purchase price it paid for Defendant Valencia from Defendant Valencia’s ratepayers and that the PUC impose conditions upon Defendant Valencia’s continued operations which are like those shown on Appendix B to D.10-02-015.

8. The Second District Court of Appeal has also twice considered where, and under what circumstances, Defendant Agency could operate another public utility, Santa Clarita Water Company, which simply rejected PUC’s jurisdiction once Defendant Agency acquired that public utility’s stock: “The Agency was created by the Legislature in the Castaic Lake Water Agency Law. (72A West’s Ann. Wat.—Appen. (1999 ed.) § 103-1 et seq., p. 487 et seq., hereinafter the Agency Act.) Section 103-15 of the Agency Act describes the Agency’s purpose: to “acquire water and water rights . . . and provide, sell, and deliver that water *at wholesale only* . . . through a transmission system to be acquired or constructed by the agency.” (Agency Act, § 103-15, p. 500, italics added.) Operating in the Santa Clarita Valley area of Los Angeles County (*id.*, § 103-2, pp. 487-490), the Agency provides water to four

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description of the territory of Santa Clarita Water Company, which was once a public utility regulated by the PUC. See A.B. 134 attached as Exhibit “A” for that metes and bounds description.

local water utilities...” Klajic v. Castaic Lake Water Agency 90 Cal. App. 4<sup>th</sup> 987 (2001 2<sup>nd</sup> Dist.) (“**Klajic I**” herein, attached hereto as **Exhibit “B”**).

9. Defendant Agency has a prior history of buying all of the stock in a PUC regulated public utility water *retailer*, Santa Clarita Water Company, and taking operational control of that PUC regulated water *retailer*, but refusing to comply with Water Code 12944.7(b)'s requirement that the Agency or its subsidiary/alter ego **only sell water at retail through a contract with an independent PUC regulated water retailer**. (See text of Water Code Section 12944.7 indented at pages 7-8 above.) Between September 1999 and December 2001 Defendant Agency unlawfully ignored Water Code Section 12944.7, refusing to acquiesce in the PUC's continuing power to regulate the target of the Agency's first public utility water *retailer* acquisition, Santa Clarita Water Company. Instead, in an attempt to negate the effect of the Court of Appeals decision in *Klajic I*, Defendant Agency found a legislative sponsor, from outside of the Santa Clarita Valley, for A.B. 134, a bill draft which *initially* would have give Defendant Agency the power to sell water at *retail* virtually *anywhere*. However, through the legislative process in 2001, the Legislature's final version of A.B. 134 (**Exhibit “A” attached**) limited Defendant Agency's ability to directly operate a water *retailer* only within a specific territory described by metes and bounds, i.e. the PUC-designated territory of Santa Clarita Water Company control of which Defendant Agency gained by stock purchase from that public utility's shareholders in 1999.

10. Section 15.1(b) of the Agency Act, forming a part of A.B. 134, Section 3, specifically provided: “**(b) The agency may not exercise retail water authority outside the boundaries described in paragraph (1) of subdivision (a). Any expansion of retail water authority outside the boundaries described in paragraph (1) of subdivision (a) shall require authorization by statute.** As to the Agency's other aspirations to be a water *retailer* as well as a water wholesaler, Section 15.1(f) of the Agency Act, forming a part of A.B. 134, Section 3, also specifically provided: “**(f) Nothing in this section authorizes the agency to provide retail water service outside the boundaries of the agency.**”<sup>5</sup>

11. The Second District Court of Appeal explained in its opinion in Klajic v. Castaic

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<sup>5</sup> Defendant Agency has violated Section 15.1(f) of the Agency Act in making promises to Newhall Partnership and its affiliates in the Contract, concerning the provision of water service outside of the Agency's boundaries, but that is not an issue for the PUC...yet.

Lake Water Agency 121 Cal. App. 4<sup>th</sup> 5 (2004 2<sup>nd</sup> Dist.) (“**Klajic II**”) attached hereto as **Exhibit “C”**:

“The Agency sponsored Assembly Bill No. 134 (2001–2002 Reg. Sess.). Of particular importance to this appeal is section 3 of Assembly Bill No. 134, which added section 15.1 to the Agency Enabling Act. Section 15.1 reads in pertinent part: “Notwithstanding subdivision (b) of Section 12944.7 of the Water Code [analyzed in Klajic I] and Section 15 of this act [authorizing the Agency to sell water at wholesale only], **but subject to paragraph (2), the agency may exercise retail water authority only within the [specified] boundaries... .**” (Agency Enabling Act, 72A West’s Ann. Wat.—Appen. (2004 Supp.) § 103-15.1, subd. (a)(1), p. 4, italics added.) The statute then defines the boundaries by reciting specific metes and bounds.”<sup>6</sup>

“The crucial language before us is that of section 15.1, subdivision (a)(1) of the Agency Enabling Act. It provides, “Notwithstanding subdivision (b) of Section 12944.7 of the Water Code [construed in Klajic I to require a contract and PUC oversight] and Section 15 of this act [granting the Agency right to sell water at wholesale only], but subject to paragraph (2), **the agency may exercise retail water authority only within the following boundaries ... .**” (Ibid., italics added.)”

“Hence, section 15.1, subdivision (a)(1) is a grant of retail water authority within specific geographical boundaries, independent of the prerequisites of section 12944.7, subdivision (b) and the limitation of section 15 of the Agency Enabling Act, but subject to the rights of the Newhall County Water District as set out in paragraph (2).”

12. In purchasing all of the outstanding stock in Defendant Valencia, in secret, without the PUC’s prior written consent, Defendant Agency begins to travel its familiar path down the same road of ignoring what the Legislature has said Defendant Agency can and cannot do. One of the purposes of this Complaint is to cause the PUC to order that Defendant Valencia is still a public entity, regulated by the PUC under the Public Utilities Code and the PUC’s regulations, rules and precedential decisions. As the Second District Court of Appeal said in Klajic 1:

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<sup>6</sup> From the Legislative Counsel’s Digest for the final, enacted version of A.B. 134 (Exhibit “A” attached): “This bill would authorize the agency to exercise retail water authority within a specified area, in accordance with the County Water District Law and as otherwise specified. The bill, with a certain exception, would prohibit the agency from exporting groundwater produced within that specified area. The bill would require the agency, during any rolling average 5-year period, to use imported water for not less than 50% of the water supply demand within that specified area, thereby imposing a state-mandated local program. The bill would require the agency to prepare a groundwater management plan, thereby imposing a state-mandated local program. The bill would require the agency, prior to formulating or adopting the plan, to form a representative advisory council, comprised as specified, and to consult with the council regarding all aspects of any proposed groundwater management plan.”

“At issue...is the interpretation and application of Water Code section 12944.7.<sup>7</sup> That section allows a wholesale water agency to sell water at retail ‘only pursuant to written contract with . . . a water corporation . . . subject to regulation by the Public Utilities Commission. . . .’ The Agency contends that the retail sales contract it executed in connection with its purchase of the [PUC regulated Santa Clarita Water Company] complies with section 12944.7. Petitioners contend, as the result of the Agency’s purchase of the Water Company, that the latter has become the alter ego of the Agency. Thus, they argue, the contract does not satisfy the requirements of the statute and so the Agency remains limited to selling water at wholesale.”

“Here, the Agency Act restricts the Agency to the wholesale distribution of water.

(Agency Act, § 103-15, pp. 600-504.) Therefore, to sell water at retail, the Agency must comply with the second sentence of section 12944.7. At issue is the meaning of the word “contract” in that second sentence. This is a legal question over which we exercise our independent judgment. ( Kreeft v. City of Oakland, supra, 68 Cal. App. 4<sup>th</sup> at p. 53, 80 Cal. Rptr. 2d 137.) Petitioners contend that the contract contemplated by the Legislature in section 12944.7 is similar to a lease for use of the retail purveyor’s facilities to sell water directly to retail consumers. Based on the challenged transaction here, under which the Agency took the Water Company by eminent domain, petitioners argue that the Retail Service Agreement does not satisfy the statute’s contract requirement. By contrast, the Agency takes the position that it complied with every condition of section 12944.7. The Agency asserts it (1) had a contract—the Retail Service Agreement--(2) with a water company (3) that was subject to PUC regulation at the time the Retail Service Agreement was entered into. The Agency, however, omits to discuss the nature of the entire challenged transaction. That is, the Agency offered no analysis about whether the transaction is actually a merger or, as a result of the deal, whether the Water Company has become the alter ego of the Agency, and what effect that transformation might have on the Retail Service Agreement.”

13. Here, in 2012-2013, notwithstanding the passage of A.B. 134 at Defendant Agency’s request which became effective in 2002, Defendant Agency does not get to simply blow off the PUC’s enforcement of Public Utilities Code Section 854 as to Defendant Valencia,

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<sup>7</sup>California Water Code Section “**12944.7 (a)** Notwithstanding any other provision of law, except as specified in subdivision (b), any public agency that has executed a contract with the state for a water supply pursuant to Section 12937 may sell any water available to that agency directly to any ultimate water consumer within the agency. **(b)** Notwithstanding subdivision (a), 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 (1) a wholesaler, if any exists, to which the water would otherwise be sold and (2) a public entity water purveyor, if any exists, serving water at retail within the area in which the consumer is located or 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.**”

as it did in 1999 as to another public utility, Santa Clarita Water Company. Pursuant to *the amendments* to Defendant Agency's enabling legislation enacted in A.B. 134 Section 3 enacted by the Legislature and chaptered in the year 2001 (attached hereto as **Exhibit "A"**) Defendant Agency *may not* directly operate Defendant Valencia as a retail water purveyor subsidiary or alter ego, because:

(a) Defendant Agency or its alter ego retail water purveyor can only provide service only in a narrowly proscribed territory set forth in A.B. 134, which is the territory of Santa Clarita Water Company ("**SCWC**") which was formerly a public utility regulated by the PUC which Defendant Agency unlawfully directly operated as its alter ego between 1999 and the end of 2001 <sup>8</sup>...a circumstance not applicable to Defendant Agency's operation of Defendant Valencia, because Defendant Valencia's PUC-approved territory is not within that metes and bounds description of Santa Clarita Water Company's former territory, and

(b) Water Code Section 12944.7(b) still requires that any retail water purveyor operated by Defendant Agency be a public utility regulated by the PUC, with whom Defendant Agency has a written contract, and the public utility may provides retail water service only in areas outside the narrowly proscribed territory of SCWC described in A.B. 134, Sections 1 and 3.<sup>9</sup>

#### **Facts Concerning Closing of Sale of All Common Stock in Defendant Valencia in Violation of Public Utilities Code Section 854 Requiring PUC's Prior Written Consent**

14. On information and belief, during the period between 2004 or earlier and December 20, 2012, all of the *common* shares of stock in Defendant Valencia had been and were owned by The Newhall Land and Farming Company, L.P., a special purpose limited partnership ("**Newhall Partnership**") among many entities with similar names involved in the real estate development of communities in the Santa Clarita Valley known as "Valencia", "Stevenson Ranch" and "Newhall Ranch". On information and belief, at some unknown date in 2012, Defendant Agency and Newhall Partnership began to secretly negotiate the sale of Defendant Valencia to Defendant Agency, by way of the sale of all of the outstanding shares of stock in Defendant Valencia. On information and belief, many of the publicly elected members of

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<sup>8</sup> See "Klajic 1" at Exhibit "B" and A.B. 134 Section 3(b) (Exhibit "A"). "**Any expansion of retail water authority [for the Agency] outside the boundaries described in paragraph (1) of subdivision (a) shall require authorization by statute.**"

<sup>9</sup> See "Klajic 2" at Exhibit "C" and A.B. 134 Section 3 (Exhibit "A")

Defendant Agency were not even told of those negotiations.

15. On information and belief, in addition to not filing a proper application with the PUC for approval of the sale of the *common* stock in Defendant Valencia by Newhall Partnership to Defendant Agency, Defendant Agency gave no reasonable opportunity to Defendant Valencia's rate payers to comment on the sale of their drinking water purveyor, in that Defendant Agency, Defendant Valencia and Newhall Partnership negotiated the "Contract" described below in absolute secret. The General Manager of Defendant Agency gave only 24 hours notice to its Board of Directors and to the public in Santa Clarita that Defendant Agency would hold a closed session meeting, on December 12, 2012, where its Board of Directors would be asked to vote to acquire all of the shares of stock of Defendant Valencia as a means of ownership and control of Defendant Valencia, and where its Board of Directors would delegate all of their authority to approve the terms of the purchase and sale, and the content of the "Contract", to Defendant Agency's General Manager, who is both the *former* General Manager of a water utility which served land owned by Newhall Partnership's affiliate in Goleta, CA and who is the *former* General Manager of Defendant Valencia and along time friend to senior employees of Newhall Partnership.

16. Newhall Partnership has not been made a party to this proceeding because Newhall Partnership is no longer the owner of the shares of *common* stock in Defendant Valencia, and Newhall Partnership has been released from all liability to Defendant Valencia or Defendant Agency, on any matter, because on December 17, 2012 Newhall Partnership, Defendant Valencia and Defendant Agency entered into a "**Contract**" attached hereto as **Exhibit "D"** in which Newhall Partnership *agreed to sell* and Defendant Agency *agreed to buy* all of the issued and outstanding shares of *common* stock in Defendant Valencia for the consideration to Newhall Partnership and its affiliate Stevenson Ranch Venture ("**SRV**") set forth in the Contract, and to settle a newly filed Los Angeles Superior Court action, described in Exhibit "A" (of the Agreement), wherein Defendant Agency filed a Complaint in eminent domain seeking non-expedited judgment of that court authorizing condemnation of ownership of all outstanding shares of *common* stock in Defendant Valencia, which were until a date on or about December 20, 2012 owned by Newhall Partnership.

17. As more particularly described in Exhibit "D", **after having signed the Contract with the language of sale from its Paragraph 1.1 quoted in Paragraph 4 of this Complaint**, above, on December 18, 2012 Defendant Agency and Newhall Partnership

caused the Los Angeles Superior Court to enter a stipulated judgment for condemnation of all of the *common* stock in Defendant Valencia and that case was closed by the Superior Court. On information and belief, the use of a stipulated judgment for condemnation is an artifice envisioned by counsel for Defendant Agency, attempting to avoid the application of Public Utilities Code Section 854. However, that artifice fails because Newhall Partnership, Defendant Valencia and Defendant Agency signed the Contract for the purchase and sale of the *common* stock in Defendant Valencia *before* that stipulated judgment was entered. The “litigation” over ownership of the *common* stock in Defendant Valencia was no more a fight between Defendant Agency and Newhall partnership than the stunt fighting seen on televised WWE wrestling matches. California courts look at substance, not artifice, in evaluating the true structure of a purchase and sale transactions.

18. On Complainant’s information and belief, based upon the content of Paragraph 2.4 on Page 4 of the Contract, Exhibit “D” attached hereto, in December 2012 Defendant Valencia used more than \$1.2 Million in cash, presumably comprised of Defendant Valencia’s revenues derived from its rate payers, to pay Newhall Partnership to redeem all of the issued and outstanding shares of *preferred* stock in Defendant Valencia owned by Newhall Partnership, including payment by Defendant Valencia to Newhall Partnership of accrued and unpaid “guaranteed” preferred dividends on that *preferred* stock, so that on December 20, 2012 only shares of *common* stock in Defendant Valencia were issued and outstanding. On information and belief, that cash redemption of the *preferred* shares of stock in Defendant Valencia was done, using Defendant Valencia’s cash derived from rate payers, without the prior written consent of the PUC to allow deviation from the terms of the *preferred* stock’s preferential treatment of its holders, because PUC has regulatory control over the time and effective rates of return paid on preferred stock in public utilities.

19. On Complainant’s information and belief, on or about December 21, 2012 Newhall Partnership as “seller” and Defendant Agency as “buyer” held a “Closing” as more particularly described in the Contract, Exhibit “D”, wherein:

(A) Newhall Partnership delivered or constructively transferred and delivered to Defendant Agency the original stock certificates for all of the issued and outstanding shares of *common* stock in Defendant Valencia, so that Defendant Agency became Defendant Valencia’s sole owner and sole shareholder;

(B) All of Defendant Valencia’s Directors (elected by the limited liability

companies which are parent company owners of Newhall Partnership's general and limited partners) resigned on or about December 21, 2012, thereby completely eliminating any control of Defendant Valencia by Newhall Partnership or by the subsidiary of Lennar Corporation and other indirect owners of Defendant Valencia as described in D.0-02-015 dated February 25, 2010. On information and belief, Defendant Agency thereupon acted by way of a document signed by Defendant Agency's President to install four (4) of its own employees and the general manager of Defendant Valencia as the Board of Directors of Defendant Valencia, effectuating a change in control of Defendant Valencia without the PUC's prior written consent.

© Defendant Agency paid, from its own funds, the approximate sum of \$73.8+ Million for the shares of *common* stock in Defendant Valencia, on information and belief those funds being used to pay:

(1) Approximately \$24 Million to an unnamed lender to Defendant Valencia, as more particularly described in Paragraph 2.2.2© on Page 3 of the Contract, Exhibit "D", which on information and belief may have been one of a series of corporate financing transactions approved in D.09-03-008 dated March 12, 2009, and Complainant is unaware whether that un-named lender released its security interests on the assets of Defendant Valencia in return for that repayment;

(2) Approximately \$50 Million to Newhall Partnership as consideration for the sale of its *common* shares in Defendant Valencia to Defendant Agency;

(3) Approximately \$2 Million to Newhall Partnership as part of a proration of the value of cash assets and accounts receivable of Defendant Valencia pursuant to Paragraph 2.2.2(b) on Page3 of the Contract (Exhibit "D")..

20. Defendant Valencia, Defendant Agency and Newhall Partnership effectuated the sale of *all* of the *common* shares of stock in Defendant Valencia, and transfer of *control* of Defendant Valencia to Defendant Agency in the manner set forth in paragraphs above, without the prior written consent of the California Public Utilities Commission as required under Public Utilities Code Section 854. That "transfer of ownership and control" without the PUC's consent was done in disregard of the PUC's written requirements for public utilities to obtain PUC's prior written consent to such transfers of ownership and control of public utilities, which are found in the conditions to ownership, operation and control of Defendant Valencia which the PUC set forth in Appendix B Condition 2 of D.10-02-015 dated February 25, 2010 and Appendix B of D.07-09-026 dated September 21, 2007.

21. Despite the prohibitions in said Appendices B Condition 2, on information and belief, Defendant Valencia's senior managers of its financial operations specifically participated in and coordinated the mechanics of that un-approved transfer of ownership and control of itself, as demonstrated by the carefully detailed accounting disclosures and agreements for prorations of some but not all assets and liabilities of Defendant Valencia as set forth in Article II and Sections 3.1.7, 3.1.11, 3.1.12, 3.1.21 and 3.3 of the Contract (Exhibit "D" hereto).

22. In the Contract (Exhibit "D" hereto), Newhall Partnership contradicts its binding promise to the PUC, as discussed above, that Defendant Valencia and Newhall Partnership will be bound by the terms of Appendix B to D.10-2-015, by Newhall Partnership reciting in the Contract, at Paragraph 3.1.6:

"The execution, delivery, and performance of this Agreement by Newhall or the Company [Valencia], as applicable, will not result in any of the following, the occurrence of which would have a material adverse effect on the ability of Newhall or the Company [Valencia] to perform their obligations under this Agreement...(a) A violation of, or conflict with, the Articles of Incorporation, Bylaws or other *governing documents* of Newhall or the Company [Valencia]." Presumably Newhall Partnership and Defendant Valencia did not consider themselves governed by Appendix B to D.10-2-015."

Similarly, in Contract Paragraph 3.1.18 Newhall Partnership represents:

"Execution and delivery of this Agreement by Newhall, and consummation of the transactions contemplated hereby, by Newhall, do not and will not require, as of the Closing Date, any authorization, registration, or filing with, or consent or approval that has not been obtained of any person, including without limitation: (I) any federal, state or other governmental authority or regulatory body..."

23. In the Contract (Exhibit "D" hereto), Defendant Agency ignores its own governing statutes its senior management knows so well, and ignores Defendant Valencia's and Newhall Partnership's promise to the PUC, as discussed above, that Defendant Valencia and Newhall Partnership will be bound by the terms of Appendix B to D.10-2-015, by Defendant Agency reciting in the Contract, at Paragraph 4.1.4:

"The execution, delivery, and performance of this Agreement by Agency will not result in any of the following, the occurrence of which would have a material adverse effect on the ability of the Agency to perform its obligations under this Agreement...(a) A violation of, or conflict with, the Agency's enabling act, California Stats. 1962, 1<sup>st</sup> Ex. Sess., ch. 28, p. 208 (West's California Water Code Appendix, Chapter 103);" ....Clearly ignoring the fact that A.B. 134 amended that law effective January 1, 2002.

Similarly, in Contract Paragraph 4.1.17 Defendant Agency ignores its statutory obligation

under Water Code 12944.7(b)(2) to operate Defendant Valencia in compliance with Public Utility Code 854 and Appendix B to D.10-2-015, in Defendant Agency representing:

“Execution and delivery of this Agreement by the Agency and consummation of the transactions contemplated hereby by the Agency do not and will not require, as of the Closing Date, any authorization, registration, or filing with, or consent or approval that has not been obtained of any person, including without limitation: (I) any federal, state or other governmental authority or regulatory body...”

24. Defendant Agency’s intentions to completely evade compliance with Public Utilities Code Section 854 and the requirements of Appendix B to D.10-2-015 concerning Defendant Valencia’s and its successors obligation to obtain written PUC approval prior to the purchase and sale of the *common* stock in Defendant Valencia are made equally clear by Defendant Agency’s ambiguous promise in Paragraph 16.1 of the Contract (Exhibit “D”) to take limited action with respect to the PUC:

“On the Closing Date, Agency shall notify the PUC, in writing, that it has obtained the Shares through settlement of an eminent domain proceeding and that the Company intends to continue operating under its existing certificate and tariffs.

That sentence makes it clear that Defendant Agency has no intention, whatsoever, to apply for the PUC’s approval of its purchase of all of the *common* stock in Defendant Valencia or to subject itself to the all-important to rate-payers-protective conditions of approval and conditions of continued operation of the public utility as are found in Appendix B to D.10-2-015. Appendix B is not a certificate or a tariff.

25. Notwithstanding the Legislature’s careful crafting of the legislative structure for regulation of Defendant Agency’s activities in the area of *retailing of potable water to the public*, on information and belief, at the public session of the Board of Directors of Defendant Agency held on December 19, 2012, Defendant Agency’s principal attorney boasted, publicly, that Defendant Agency and Defendant Valencia “would be rid of the Public Utilities Commission” 75 days after the date of that meeting.<sup>10</sup>

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<sup>10</sup> The facts driving Defendant Agency’s desire to be “rid of the Public Utilities Commission” are well known to Complainants and Defendants. There is a plume of contaminated ground water flowing from the “Whittaker Bermite Property” owned by Santa Clarita, LLC (not a party to this case) discovered within the last 24 months, which has now traveled approximately 2 miles west north-westward from that Whittaker Bermite Property, causing the closure of 3 drinking water wells owned by Defendant Valencia, in addition to 2 other Valencia wells previously closed due to Whittaker Bermite related contamination. That groundwater contamination was the subject of litigation which began in 2000, when Defendant Valencia and Defendant Agency, among others, filed a U.S. District Court for the Central District of California action

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under CERCLA captioned Castaic Lake Water Agency et al v. Whittaker Corp. et al CV00-12613AHM. In 2003, the U.S. District Court, in its order granting in part and denying in part, on cross-motions for partial summary judgment, the U.S. District Court judge presiding over the case discussed at length, in Docket # 391 at pages 30 to 50, entered 7/15/03 the court found that Valencia, among other plaintiffs in that Federal action, could be found to have caused the spread of the contaminant plume(s) in the ground water by continued drinking water well pumping after realizing the existence of the contaminant plume(s), i.e. pulling the plume(s), rendering Valencia a "potentially responsible party" for spreading the ground water contamination throughout Santa Clarita's drinking water supply near Valencia's wells. On information and belief, as of this year, as the plume or plumes of VOC and ammonium perchlorate contamination in the ground water have spread west north-westward they have flowed beneath third parties' real estate, located between the Whittaker Bermite property and the western most of Defendant Valencia's recently closed wells, or beyond, giving property owners whose land was contaminated by the "pulled by pumping plume(s)" potential causes of action against Defendant Valencia. Under the terms of the Contract at issue in this Complaint, at Paragraph 4.2, page 14, Defendant Agency agrees for itself, and presumably for its new "subsidiary" Defendant Valencia **that Newhall Partnership and its affiliates** (including but not limited to those named in D.07-09-026 and D.10-02-015 ) will not be held responsible for any liability whatsoever, for those hazardous substances in the ground water, or for purveying them to Defendant Valencia's customers, **and that that Newhall Partnership and its affiliates will be indemnified and held harmless in all matters relating to those hazardous substances.** Compounding the cost to Defendant Valencia and Defendant Agency of that broad indemnity, at Paragraph 4.3 of the Contract, Newhall Partnership is also fully released (with a CCP 1542 waiver) from any further responsibility for any matter, including Newhall Partnership's operation of Defendant Valencia (including issues of ground water contamination spreading as set forth in this footnote above). Newhall Partnership's off-loading of liability arising from its ownership of the stock of Defendant Valencia is compounded by yet another indemnity provision at Paragraph 9.2 on page 28 of the Contract and yet another disavowal of indemnity obligations on the part of Newhall Partnership at Paragraph 9.3 of the Contract. The expensive mechanics of the indemnities of Newhall Partnership and its affiliates, at public expense, are detailed in Paragraphs 9.4 through 9.7 of the Contract. **It is just this sort of off-loading of liability by a seller of a public utility or a public utility's stock which PUC has the discretion to evaluate and limit under Public Utilities Code Section 854, if the PUC is properly notified of the pending sale of a public utility's stock, by seller and by buyer, through PUC's formal transfer application process required to be undertaken before the transfer of the public utility's stock actually occurs. The brutally one sided nature of the indemnities, releases, hold harmless and "as is" clauses in the Contract benefiting only Newhall Partnership and its affiliates are exactly why the PUC is statutorily entitled to review public utility stock sale transactions before they occur and permanently, economically harm the public interest.**

A further indication of the Agency's intent to not submit to any regulatory authority or abide by laws of the PUC and State of California is indicated by the statement found on page 25 of the "Contract" (**Exhibit "D"**):

"Notwithstanding any contrary rule, regulation, policy, resolution, or ordinance of the Agency, the Company, the PUC or LA FCO, upon assignment or conveyance by Newhall, the Agency shall hold in trust for Newhall or its designee, all rights and water supplies described in this Section 6.8 that are needed to provide water service to the Newhall Ranch Specific Plan, and all associated rights thereto, until such rights or water supplies are required to meet the actual demands for the Newhall Ranch Specific Plan."

26. On information and belief, after many years of dealing with Defendant Agency and Defendant Valencia, Complainant SCOPE's Directors and Officers believe that those defendants "want to be rid of the California Public Utilities Commission" as a regulator of the operation of Defendant Valencia for four principal reasons:

(a) As an affiliate of a group of limited liability companies and corporations doing business in the Santa Clarita Valley developing land for homebuilding, as discussed in detail at in the PUC's files which led to D.10-2-015 and D.07-09-026, and in prior PUC proceedings concerning Defendant Valencia, on information and belief Defendant Valencia was under constant pressure to over-state its water supply to the County of Los Angeles, contrary to the general requirements of the PUC, so that its corporate affiliates could continue to obtain County of Los Angeles approvals of subdivisions of their land for building of new housing, while on information and belief, at the same time conserving Defendant Valencia's potable water supply by denying water connection service to at least one other large scale land developer which is not an affiliate of Defendant Valencia;

(b) In its prior decisions concerning Defendant Valencia, including but not limited to Appendices B to D.10-2-015 and D.07-09-026 , the PUC has required that Defendant Valencia remediate ammonium perchlorate contamination of potable water wells owned by Defendant Valencia and used by Defendant Valencia to provide drinking water to its rate-payers;

(c) On information and belief, Defendant Valencia has failed to disclose to the PUC that within the period of 2011 through 2012, the California Department of Health Services ("**DHS**") required that Defendant Valencia keep closed and or close two (2) MORE of Defendant Valencia's water wells which were contaminated, or at risk of contamination, by unlawful quantities of ammonium perchlorate **and volatile organic compounds** in the ground water supply from which Defendant Valencia draws potable well water, and logic dictates that

the PUC would require remediation of volatile organic compounds from Defendant Valencia's water sources in a manner similar to the PUC's requirements as set forth in previous PUC decisions and orders, including Appendix B to D.10-2-015 and D.07-09-026. Defendant Valencia's general manager, consultants and attorneys have known about the presence of volatile organic compounds in the ground water beneath Defendant Valencia's service territory since 2007 or earlier<sup>11</sup>;

(d) On information and belief, both Defendant Valencia and Defendant Agency have failed to pursue their sole remaining remedy against Whittaker Corp. and its insurers for, in particular, '**past and further well contamination with volatile organic compounds**' provided in the settlement agreement in their CERCLA litigation captioned Castaic Lake Water Agency et al v. Whittaker Corp. et al, U.S. District Court for the Central District of California Case No. CV00-12613AHM<sup>12</sup>, as to Defendant Valencia's one (1) ground water well which

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<sup>11</sup> At the 12/12/12 public meeting of Defendant Agency, Defendant Agency's civil engineer (and "appraiser" for the purchase of the common stock in Defendant Valencia) Mr. Lynn Takaichi publicly insisted that there was no VOC contamination of any Valencia ground water wells, when Defendant Agency public voted to enter into the Contract and purchase the common shares in Defendant Valencia. Yet in 2007 Defendant Agency's civil engineer Mr. Lynn Takaichi executed a Declaration under penalty of perjury, filed as Docket #t 554 in U.S. District Court Case No. CV00-12613AHM, CLWA et al v. Whittaker Bermite Corp. et al. Mr. Takaichi's Declaration was entitled "Declaration of Lynn Takaichi in Support of Plaintiff's Motion for Declaratory Relief and Partial Summary Judgment Regarding Defendant's CERCLA Liability **for Recently Impacted Wells** and Plaintiff's Motion for Declaratory Relief and Partial Summary Judgment Regarding Defendant's CERCLA Liability **for Volatile Organic Chemical Contamination**." Simultaneously with the filing of Mr. Takaichi's Declaration in that U.S. District Court case, Declarations under penalty of perjury on the same topic with the same title as Mr. Takaichi's Declaration were signed by witnesses whose names Defendant Valencia's and Defendant Agency's management will recognize: Professor E. John List, expert witness for Valencia and all other plaintiffs in the Whittaker litigation (Doc. 553), William Manetta, former General Manager of Defendant Agency's Santa Clarita Water Division (Doc. 556), Robert DiPrimio, former General Manager of Defendant Valencia (Doc. 557), and Phylis Stantin, expert witness (Doc. 558) all of which Declarations were filed with the District Court, along with Document 550, a Notice of Motion and Motion for Declaratory Relief and Partial Summary Judgment Regarding Defendants' CERCLA Liability for Volatile Organic Compound Contamination, filed by the Nossaman Firm as counsel for Castaic Lake Water Agency, Valencia Water Agency, Santa Clarita Water Company and Newhall County Water District.

<sup>12</sup> The U.S. District Court Settlement Agreement between Agency, Valencia and others on the one hand, and Whittaker Corp. and its insurer on the other hand is not a public document in that case, but is a public document in the U.S. Bankruptcy Court for

was closed due to ground water contamination during or prior to 2000 (V157). In addition, CLWA has not sought compensation for detections of VOCs in its two polluted Saugus aquifer wells, (Saugus Wells 1 and 2), closed due to ground water contamination before 2004, where during a limited period of time under that U.S. District Court case's settlement agreement Defendant Valencia and Defendant Agency may commence a "reference proceeding" under California Code of Civil Procedure Sections 638 through 645.1 against Whittaker Corp. and its liability insurers to be compensated for (and thereby spare the water rate-paying public the cost of) remediation of volatile organic compounds from the ground water surrounding those wells, remediation of the 2 Valencia wells and the 2 Agency/SCWC wells which were not the subject of that Federal settlement agreement with respect to VOC contamination, or for replacement wells if any productive location with clean ground water can be found to replace those contaminated, closed wells.<sup>13</sup>

In essence, Defendant Valencia "being rid of the PUC" would allow Defendant Valencia, and its new owner, Defendant Agency, to evade PUC regulation of the quality, quantity and retail price of drinking water sold to Defendant Valencia's rate-payers.

### **Grounds for Complaint Against Defendant Valencia and Defendant Agency**

27. Defendant Valencia and its senior officers and employees orchestrated and facilitated the sale and transfer of ownership and control of Defendant Valencia without the prior written consent of the PUC, in violation of California Public Utilities Code Section 854 and prohibitions against such violation of law contained in prior PUC decisions concerning

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the State of Arizona, Case No.2:04-bk-10486-CGC, In re RFI Realty LLC (concerning the current owner of the Whittaker Bermite property) to which Complainants can provide the PUC access, if it so desires.

<sup>13</sup> It is not a stretch in logical thinking to believe that Defendant Valencia's parent, grandparent, great-grandparent and great-great grandparent companies did not want Defendant Valencia to pursue that "reference proceeding" against Whittaker Corp. and its insurers because the existence of that litigation, while those affiliates of Defendant Valencia are trying to sell house-lots and tract homes in the service territory of Defendant Valencia, because of the "black eye effect" of ever-worsening drinking water aquifer contamination to the detriment of marketing residential developments as "safe suburban family neighborhoods". Defendant Valencia's non-pursuit of that "reference proceeding" to recover its damages from ground water contamination, and to apply such a monetary recovery to reduce the ground water contamination related costs of operation of the public utility, shows a clear violation of the Affiliated Transaction Rules attached as Appendix C to D.10-2-015 and D.07-09-026 pertaining to Defendant Valencia and its affiliates.

Defendant Valencia: PUC Proceeding A0910024 which led to D.10-02-015 dated February 25, 2010 and PUC Proceeding A0702019 which led to D.07-09-026 dated September 21, 2007.

28. In taking the action set forth in Paragraphs 14 through 26 above, and in using its own cash to pay to redeem the *preferred* stock of its sole shareholder, Newhall Partnership, in the manner set forth above, Defendant Valencia attempted to escape scrutiny, by the PUC's staff, Administrative Law Judges and Commissioners, of whether Defendant Valencia as an operating public utility continues to be sufficiently capitalized with cash and cash equivalents in order to **(a)** discharge its obligations to its rate-payers to provide high quality water service to them, **(b)** regularly maintain and replace its water system, **(c)** remediate plumes of contaminated ground water which, by 2010-2012, have surrounded two (2) of Defendant Valencia's potable water wells used to serve rate-payers, causing the California Department of Health Services ("**DHS**") to order the non-re-opening of those two (2) ground water wells owned by Defendant Valencia due to the presence of unacceptable measurements of ammonium perchlorate and the carcinogenic volatile organic compounds TCE, PCE and daughter products from their break down. On information and belief, this caused Defendant Valencia to withdraw from service one (1) additional potable water well, Well 205, owned by Defendant Valencia as required by DHS when those chemicals reached levels in excess of the maximum contaminant level (MCL) as established by the State of California, and to proceed with further studies conducted by the US Army Corps of Engineers to investigate whether the pumping of that Well 205 is "pulling the plume" of contaminants towards other potable water wells currently used by Defendant Valencia to serve rate-payers<sup>14</sup>, **(d)** to finance a further "reference proceedings" before a retired judge to obtain compensation for the costs of installing remediation equipment to ameliorate the loss of the three (3) or more potable water wells, pursuant to a Contract executed by Defendant Valencia with Contract Corp. and its liability insurers and **(e)** to have sufficient capital to *promptly* repair Defendant Valencia's public water system in the event of an earthquake or other catastrophic damage to the public water system.

29. In the Contract, at Paragraph 3.2 Page 11, Defendant Agency acknowledges

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<sup>14</sup> The two (2) closed potable water wells (V201 and V205) owned by Defendant Valencia and referred to above are in addition to the one (1) closed potable water well (V157) owned by Defendant Valencia which was one of the subjects of litigation in the U.S. District Court for the Central District of California case captioned Castaic Lake Water Agency et al. v. Contract Corp. et al of which the PUC is already aware.

having conducted extensive due diligence before entering into the Contract and purchasing the *common* stock of Defendant Valencia, and as a consequence Defendant Agency is chargeable with knowledge of both Public Utilities Code Section 854 and the Public Utilities Commission's decisions D.10-02-015 dated February 25, 2010 and D.07-09-026 dated September 21, 2007 both of which contain an Appendix B, governing the operations of Defendant Valencia, which at Condition 2 specifically require Defendant Valencia to comply with all laws, regulations and PUC decisions pertaining to its operations, obviously including Public Utilities Code Section 854 which prohibits transfer of ownership or control of Defendant Valencia, without the PUC's prior written consent. Pursuant to Public Utilities Code Section 854, the Commission has broad authority to approve or deny applications for transfers of utility ownership or control. Implicit in that authority is the right to place reasonable conditions upon the transferor or the transferee, should the need for such conditions, or conditions with respect to the continued operation of the public utility retail water purveyor (in the nature set forth in the PUC's decisions D.10-02-015 and 07-09-026 concerning Defendant Valencia's then-new controlling parties) be necessary in the opinion of the Commission. Under Public Utilities Code Section 854(a) the primary standard used by the Commission to determine if a transfer of ownership should be authorized under Section 854(a) is whether the transfer will adversely affect the public, i.e. the public utility's rate-payer customers. Here, the facts set forth in Paragraphs 2 through 26 above speak for themselves, that Defendant Agency sought to obtain ownership and control of the water supplied to Defendant Valencia's customers, and ownership and control of the stock in Defendant Valencia, *without subjecting itself, Newhall Partnership or Defendant Valencia* to the Commission's evaluation of whether the sale of Newhall Partnership's *common* stock in Defendant Valencia, the transfer of control of Defendant Valencia, and the terms and conditions of the Contract, would adversely affect the public interest. In failing to file an application for PUC approval of Defendant Agency's operation of Defendant Valencia, which is required under Water Code Section 12944.7(b) as to Defendant Agency, and in seeking to present the Public Utilities Commission with a *fait accompli*, Defendant Agency sought to avoid the imposition of conditions to protect the public interest by the PUC pursuant to Public Utilities Code Section 854.

### **SCOPING MEMO INFORMATION**

A. The proper category for the Complaint is adjudicatory because intentional violations

of Public Utilities Code Section 854 by the Defendants and their general managers, directors, officers, employees and agents are alleged by Complainants.

B. Hearings are needed.

C. The issues to be considered are:

(1) Should the PUC void Defendant Agency's acquisition of the Valencia stock?

(2) Should the PUC void any part of the Contract as being "not in the public interest" as to the rate payers of Defendant Valencia and the taxpayers of Defendant Agency?

(3) Should the PUC refer the Defendants, their officers, employees and agents for violation of Public Utilities Code 854, and other related code sections cited in this Complaint for prosecution of a misdemeanor or a felony?

(4) Should discovery be conducted so that the PUC is fully informed about the worsening ground water contamination plume(s) in Defendant Valencia's service territory?

(5) Should the PUC examine copies of DHS' records, or hear testimony of a percipient witness DHS employee, concerning the presence of volatile organic compounds in the ground water contamination plume(s) in Defendant Valencia's service territory?

(6) If Defendant Agency's acquisition of the Valencia stock is not voided by the PUC, should the PUC examine the question of whether Defendant Valencia is still properly capitalized given (a) Newhall Partnership's withdrawals of cash from Defendant Valencia for the various purposes set forth in the Contract and (b) Defendant Valencia's costs to remediate its ground water?

(7) If the answer to question (6) is "yes" that Defendant Valencia is no longer properly capitalized, who should the PUC require to recapitalize Defendant Valencia, and how much money is required to be contributed to Defendant Valencia so that it is properly recapitalized?

(8) If Defendant Agency's acquisition of the Valencia stock is not voided, what conditions should be placed in an Appendix, similar to Appendices B for D.10-02-015 and D.07-09-026, regulating Defendant Agency's operation of Defendant Valencia as a public utility?

(9) If Defendant Agency's acquisition of the Valencia stock is not voided, what conditions should be placed in an Appendix to insure that Defendant Valencia is not operated as an alter ego of Defendant Agency, but is, instead, an independently managed public utility as required by Water Code 12944.7(b) and A.B. 134 which require the PUC to maintain

jurisdiction over Defendant Valencia if its stock is to be owned by Defendant Agency?

(10) Should the Complainants be awarded “intervenor fees” in the nature of attorneys’ fees, paralegal’s fees, copying and postage costs, travel reimbursement for attendance at live hearing(s) in San Francisco, and expert witness fees?

D. The proposed schedule for resolving the Complaint is 12 months.

E. A pre-hearing conference should be set 30 to 40 days from the date of filing of the Complaint.

F. The hearing before the Administrative Law Judge should be 180 days from the date of filing of the Complaint, in order for the parties to have time to conduct discovery, and in order for the PUC staff to have time to conduct any financial or ground water toxics investigation (from other state agencies, not independently) which the PUC may desire.

### **Request for Order/Remedies**

Complainants request that the PUC order:

1. Defendant Agency to operate Defendant Valencia as an independently managed public utility, pursuant to conditions in the nature set forth in Appendices B to D.10-02-015 and D.07-09-026, as re-written by the Commissioners to address the unique facts of this case, with Defendant Valencia perpetually having a Board of Directors not including any employee of Defendant Agency, any Director of Defendant Agency, or any employee of Defendant Valencia who was employed while Newhall Partnership owned the common and preferred stock in Valencia, and that all such Board of Directors members of Defendant Valencia actually reside in the territory of Defendant Valencia.

2. That Defendant Valencia and Defendant Agency immediately institute and aggressively prosecute, through unbiased counsel other than counsel listed in the “Contract” referred to herein, the “reference proceeding” described in the settlement agreement in the U.S. District Court case captioned Castaic Lake Water Agency et al v. Whittaker Corporation et al so that the public may be protected from having to bear the entire cost of remediating the ground water contamination plumes which have been discovered by DHS and Defendant Valencia, as to all Valencia drinking water wells closed after 2004, including seeking payment by Whittaker Corp. and its insurers of:

A. The costs of such preventative measures to stop the flow of the plume(s) as may be advised by Defendants’ independent experts other than Kennedy Jenks (who was an

aider and abettor of the violation of Public Utilities Code Section 854 described in this Complaint),

B. The costs of installing “well head treatment” on closed, contaminated wells, and

C. The costs of drilling and equipping new drinking water wells up-gradient from the source of the ground water contamination plume;

That Defendant Agency be encouraged by the PUC to also pursue its similar claims in the reference proceeding, because the locations of Defendant Agency’s contaminated/closed potable wells are up gradient from the wells of Defendant Valencia, and

That the terms of the settlement or settlements of those reference proceeding(s) be approved by the PUC, in order to protect the interests of Defendant Valencia’s rate payers, before those settlements become effective, with the PUC’s approval or disapproval being based upon the adequacy of the settlement dollar amounts payable to Defendant Valencia and Defendant Agency in contrast with expert witness testimony as to the likely costs of remediation and installation and operation and later replacement of equipment which must be in place for many years to remediate the contamination plumes;

3. That the PUC strike and void as unconscionable all of the indemnity, release, payment for defense and control of defense provisions in the Contract which were written for the benefit of Newhall Partnership and its direct and indirect owners, in that neither the rate payers of Defendant Valencia nor the rate payers and taxpayers of Defendant Agency should be responsible to bear the costs associated with litigating and settling third party claims arising out of the alleged purveying of drinking water contaminated with ammonium perchlorate, volatile organic chemicals or other contaminants found in the ground water which was purveyed by Defendant Valencia;

4. That the PUC order that section 6.8 of the Contract (Exhibit “D”) and particularly the part cited in numbered paragraph 25 of the complaint, be declared null and void.

5. That the persons signatory to the “Contract” on behalf of Newhall Partnership, Defendant Valencia and Defendant Agency, and the persons named in the notice provision of the Contract at its pages 31 and 32, forever be barred from working in any capacity as an employee or independent contractor or agent of a PUC regulated public utility which is a water purveyor, as a sanction for having directed, aided and abetted the violation of Public Utilities Code Section 854 and such other provisions of the Public Utilities Code as the Commission

shall identify.

6. That all persons identified by the PUC as having planned, aided or abetted the evasion of Public Utilities Code Section 854, or having undertaken activities on behalf of Newhall Partnership, Defendant Valencia or Defendant Agency volatile of Public Utilities Code Sections 827 and 856 be referred to the Attorney General of California and the District Attorney of Los Angeles County pursuant to Public Utilities Code Section 2101 for potential prosecution under Public Utilities Code Sections 827 and 856.

7. For intervenors' fees and costs.

8. Such other and further relief and orders as the Commissioners deem just and proper to protect the public interest.

Executed at Santa Clarita, California on January 3<sup>rd</sup>, 2013

**Santa Clarita Organization for Planning the Environment,**

a California non-profit corporation

By: /s/ David Lutness,

Secretary of the Board,

(an Officer of Complainant),

Santa Clarita Organization for Planning the Environment

PO Box 1182

Canyon Country, CA 91386

661 255-6899

[exec@scope.org](mailto:exec@scope.org)

“Complainant”

Executed at Ventura County, California on January 3<sup>rd</sup>, 2013

**Friends of the Santa Clara River,**

a California non-profit corporation

By: /s/ Marion Bottorff,

Chairman,

(an Officer of Complainant),

Friends of the Santa Clara River

660 Randy Dr.

Newbury Park, CA 91320

805 498-4323

[bottorffm@verizon.net](mailto:bottorffm@verizon.net)

“Complainants” Verifications

**VERIFICATION**

I am an officer of the complaining corporation herein, **Santa Clarita Organization for Planning the Environment**, a California non-profit corporation, and am authorized to make this verification in its behalf. The statements in the foregoing document are true to my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed at Santa Clarita, California on January 3rd, 2013

/s/ David Lutness.

Secretary of the Board,

(an Officer of Complainant),

Santa Clarita Organization for Planning the Environment

PO Box 1182

Canyon Country, CA 91386

661 255-6899

[exec@scope.org](mailto:exec@scope.org)

**VERIFICATION**

I am an officer of the complaining corporation herein, **Friends of the Santa Clara River**, a California non-profit corporation, and am authorized to make this verification in its behalf. The statements in the foregoing document are true to my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed at Ventura County, California on January 3rd, 2013

/s/ Marion Bottorff.

Chairman,

(an Officer of Complainant),

Friends of the Santa Clara River

660 Randy Dr.

Newbury Park, CA 91320

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**“Exhibit “A”**

BILL NUMBER: AB 134    CHAPTERED  
BILL TEXT

CHAPTER 929  
FILED WITH SECRETARY OF STATE OCTOBER 14, 2001  
APPROVED BY GOVERNOR OCTOBER 14, 2001  
PASSED THE ASSEMBLY SEPTEMBER 12, 2001  
PASSED THE SENATE SEPTEMBER 10, 2001  
AMENDED IN SENATE SEPTEMBER 6, 2001  
AMENDED IN SENATE AUGUST 30, 2001  
AMENDED IN SENATE AUGUST 21, 2001  
AMENDED IN SENATE JULY 9, 2001  
AMENDED IN SENATE JUNE 28, 2001  
AMENDED IN SENATE JUNE 11, 2001  
AMENDED IN ASSEMBLY APRIL 18, 2001  
AMENDED IN ASSEMBLY MARCH 12, 2001

INTRODUCED BY Assembly Member Kelley

JANUARY 23, 2001

An act to amend Sections 12944.7 and 31633 of the Water Code, and to add Sections 15.1 and 16.1 to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 134, Kelley. Water resources.

(1) The California Water Resources Development Bond Act authorizes the Department of Water Resources to enter into contracts for the sale, delivery, or use of water or power, or for other services and facilities, made available by the State Water Resources Development System (State Water Project) with public or private corporations, entities, or individuals, as prescribed. Existing law authorizes any public agency that has executed a contract with the state for a water supply to sell any water available to that agency directly to any ultimate water consumer within the agency, subject to certain limitations.

The Castaic Lake Water Agency Law authorizes the Castaic Lake Water Agency to acquire water and water rights, including water from the State Water Project. The agency law authorizes the agency to

provide, sell, and deliver water at wholesale for municipal, industrial, domestic, and other purposes.

This bill would authorize the agency to exercise retail water authority within a specified area, in accordance with the County Water District Law and as otherwise specified. The bill, with a certain exception, would prohibit the agency from exporting groundwater produced within that specified area. The bill would require the agency, during any rolling average 5-year period, to use imported water for not less than 50% of the water supply demand within that specified area, thereby imposing a state-mandated local program. The bill would require the agency to prepare a groundwater management plan, thereby imposing a state-mandated local program. The bill would require the agency, prior to formulating or adopting the plan, to form a representative advisory council, comprised as specified, and to consult with the council regarding all aspects of any proposed groundwater management plan.

(2) The County Water District Law prohibits the Coachella Valley Water District from imposing a replenishment assessment within an area of benefit that exceeds the sum of prescribed costs.

This bill would include within those prescribed costs the cost of recharging the groundwater basin with imported water from the State Water Project.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 12944.7 of the Water Code is amended to read:

12944.7. (a) Notwithstanding any other provision of law, except as specified in subdivision (b), any public agency that has executed a contract with the state for a water supply pursuant to Section 12937 may sell any water available to that agency directly to any ultimate water consumer within the agency.

(b) Notwithstanding subdivision (a), 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 (1) a

wholesaler, if any exists, to which the water would otherwise be sold and (2) a public entity water purveyor, if any exists, serving water at retail within the area in which the consumer is located or 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.

**SEC. 2.** Section 31633 of the Water Code is amended to read:

31633. The amount of any replenishment assessment levied within an area of benefit shall be established at the discretion of the board, except that no assessment shall exceed the sum of the following costs and charges:

(a) Those charges imposed under the contract between the district and the state for an imported water supply from the State Water Resources Development System consisting of all of the following:

(1) The variable operation, maintenance, power, and replacement component of the transportation charge.

(2) The off-aqueduct power facilities component of the transportation charge.

(3) The delta water charge.

(4) Any surplus water or unscheduled water charge.

(5) Sums paid by the district to the Desert Water Agency for payment of similar charges under a similar contract the agency has with the state as provided in the water management agreement of July 1, 1976, as amended.

(b) The cost of recharging the groundwater basin with imported water from the State Water Resources Development System not included in subdivision (a).

(c) The cost of importing and recharging water from sources other than the State Water Resources Development System.

(d) The cost of treatment and distribution of reclaimed water for recharge or for direct use in lieu of groundwater.

(e) The cost of programs providing incentives to use reclaimed water or Colorado River water in place of groundwater.

**SEC. 3.** Section 15.1 is added to the Castaic Lake Water Agency Law

(Chapter 28 of the Statutes of 1962, First Extraordinary Session),  
to read:

Sec. 15.1. (a) (1) Notwithstanding subdivision (b) of Section 12944.7 of the Water Code and Section 15 of this act, but subject to paragraph (2), the agency may exercise retail water authority only within the following boundaries:

Beginning at the southwest corner of Section 6, Township 3 North, Range 14 West, S.B.M.; thence northerly along the westerly boundary of said Section 6 thereof to the northwest corner of said Section 6, thence westerly along the prolongation of the northerly boundary of Section 6 to the southwestern corner of Section 31, Township 4 North, Range 14 West, S.B.M.; thence northerly along the westerly boundaries of Sections 31 and 30 to the northwest corner of Section 30, thence easterly along the northerly boundary of Section 30, Township 4 North, Range 14 West, S.B.M. to the southeast corner of the southwest quarter of Section 19, Township 4 North, Range 14 West, S.B.M.; thence northerly to the northeast corner of the northwest quarter of Section 19; thence easterly along the northerly boundary of Section 19 to the southeast corner of Section 18, Township 4 North, Range 14 West, S.B.M.; thence northerly along the easterly boundary of said Section 18 and prolongation thereof to the northeast corner of Section 31, Township 5 North, Range 14 West, S.B.M.; thence westerly along the northerly boundary of said Section 31 and prolongation thereof to the southwest corner of the southeast quarter of Section 27, Township 5 North, Range 15 West, S.B.M.; thence northerly along the easterly boundary of the west one-half of Section 27 to the northerly boundary of Section 27; thence westerly along said northerly boundary to the northwest corner of Section 28, Township 5 North, Range 15 West, S.B.M.; thence southerly along the westerly boundary of said Section 28 to the northwest corner of the southwest quarter of Section 28; thence westerly to the northwest corner of the southeast quarter of Section 29, Township 5 North, Range 15 West, S.B.M.; thence southerly along the westerly boundary of said southeast quarter to the southwest corner of the southeast quarter of Section 29, thence westerly along the southerly boundary of said Section 29 and prolongation thereof to the southwest corner of Section 35, Township 5 North, Range 16 West, S.B.M.; thence southerly along the westerly boundary of said Section 35 and prolongation thereof to the southerly right-of-way of that certain street in the City of Santa Clarita known as "Lyons Avenue"; thence westerly along said southerly right-of-way to the intersection of said southerly right-of-way and the easterly right-of-way of the public right-of-way known as "Interstate 5"; thence southeasterly along said right-of-way until intersecting with the prolongation of the southerly boundary of Section 6, Township 3 North, Range 14 West;

thence easterly along said prolongation thereof to the point of beginning.

(2) (A) Any area within the area described in paragraph (1) that is also within the boundaries of the Newhall County Water District, and not served by the Santa Clarita Water Company on September 2, 1999, may not be served by the agency unless the Newhall County Water District has granted approval.

(B) Nothing in this section prohibits the Newhall County Water District from exercising any authority conferred by other law for the purpose of providing retail water service within the area described in paragraph (1).

**(b) The agency may not exercise retail water authority outside the boundaries described in paragraph (1) of subdivision (a). Any expansion of retail water authority outside the boundaries described in paragraph (1) of subdivision (a) shall require authorization by statute.**

(c) Except during a water emergency declared by the board pursuant to Chapter 3 (commencing with Section 350) of Division 1 of the Water Code, the agency may not export groundwater produced within the area described in paragraph (1) of subdivision (a) outside of that area.

(d) During any rolling average five-year period, the agency shall use water imported by the agency for not less than 50 percent of the water supply demand within the area described in paragraph (1) of subdivision (a).

(e) (1) On or before February 1, 2002, the agency shall commence the preparation of a groundwater management plan that meets the requirements of Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code.

(2) (A) Prior to the formulation or adoption of a groundwater management plan, the agency shall form a Groundwater Management Plan Advisory Council consisting of one representative from each retail water purveyor within the agency's jurisdiction, and one representative from each groundwater producer who produced more than 100 acre-feet of water in the preceding water year within the agency's jurisdiction. The agency shall regularly consult with the council regarding all aspects of the proposed groundwater management plan. No groundwater management plan shall be submitted to the agency's board of directors for consideration without the board first having forwarded a copy of the proposed plan to the council for review and

having received the council's timely comments to the plan.

(B) All members of the council, or their representatives, shall receive written notice with regard to, and may attend, all meetings of any board, program committee, advisory or technical body, interagency group, or any other group formulating, reviewing, evaluating, or otherwise working on any aspect of the groundwater management plan as described in paragraph (1).

(3) The agency shall complete the groundwater management plan on or before February 1, 2004, except that the agency may extend the completion date for the period of time in which any court issues an injunction that impairs the ability of the agency to complete the groundwater management plan in accordance with this subdivision.

(4) If the agency fails to commence the preparation of a groundwater management plan in accordance with paragraph (1) or fails to complete a groundwater management plan in accordance with paragraph (2), any interested party may seek a writ of mandamus to compel the agency to prepare a groundwater management plan in accordance with this subdivision.

(5) The water quality and quantity data gathered pursuant to the memorandum of understanding between the Santa Clara River Valley Upper Basin Water Purveyors and the United Water Conservation District, effective August 20, 2001, shall be made available to the agency for purposes of preparing and updating the groundwater management plan.

**(f) Nothing in this section authorizes the agency to provide retail water service outside the boundaries of the agency.**

SEC. 4. Section 16.1 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 16.1. The agency may exercise the authority granted by Section 15.1 in accordance with the County Water District Law as set forth in Division 12 (commencing with Section 30000) of the Water Code.

SEC. 5. The Legislature finds and declares that because Sections 1, 3, and 4 of this act, which amend Section 12944.7 of the Water Code and the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), are prospective, the Legislature expresses no opinion with regard to any court actions filed prior to July 1, 2001.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

**Exhibit “B”**

**“Klajic I”**

**JILL KLAJIC** et al., Plaintiffs and Appellants, v. **CASTAIC LAKE WATER AGENCY**, Defendant and Respondent.

No. B137258.

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

90 Cal. App. 4th 987; 109 Cal. Rptr. 2d 454; 2001 Cal. App. LEXIS 556; 2001 Cal. Daily Op. Service 6194; 2001 Daily Journal DAR 7567

July 20, 2001, Decided

SUBSEQUENT HISTORY: Review Denied October 24, 2001, Reported at: 2001 Cal. LEXIS 7520.

PRIOR-HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles County. Super. Ct. Nos. BS058871 and BC215578. Dzintra I. Janavs, Judge.

COUNSEL: Jennifer Kilpatrick for Plaintiffs and Appellants.

Robert H. Clark; Kane, Ballmer & Berkman, and R. Bruce Tepper, Jr., for Defendant and Respondent.

JUDGES: Opinion by Aldrich, J., with Klein, P. J., and Croskey, J., concurring.

OPINION BY: ALDRICH

OPINION

ALDRICH, J.

INTRODUCTION

Petitioners, 1 water users in the Santa Clarita Valley area, appeal from the judgment of the trial court denying their petition for writ of mandate. Petitioners sought to compel respondent Castaic Lake Water Agency (the Agency) to divest itself of its ownership of all of the stock of respondent Santa Clarita Water Company (the Water Company), and to comply with its own enabling statute, which limits the Agency to the wholesale distribution of water.

FOOTNOTES

1 Petitioners are Jill Klajic, Lynn Plambeck, Joan Dunn, and Jackie Bettencourt.

At issue in this appeal is the interpretation and application of Water Code 2 section 12944.7. That section allows a wholesale water agency to sell water at retail "only pursuant to written contract with . . . a water corporation . . . subject to regulation by the Public Utilities Commission. . . ." The Agency contends that the retail sales contract it executed in connection with its purchase of the Water Company complies with section 12944.7. Petitioners contend, as the result of the Agency's purchase of the Water Company, that the latter has become the alter ego of the Agency. Thus, they argue, the contract does not satisfy the requirements of the statute and so the Agency remains limited to selling water at wholesale.

## FOOTNOTES

2 Hereinafter, all statutory references shall be to the Water Code, unless otherwise stated.

We hold, as a matter of law, that the contract contemplated in section 12944.7 is one between the Agency and a separate entity, for the Agency's use of that entity's facilities. We further conclude that the entity must remain both separate and subject to regulation by the Public Utilities Commission during the life of the contract. In denying the writ petition here, the trial court failed to determine whether, at the close of the stock purchase transaction, the Water Company remained separate from the Agency so that the section 12944.7 contract could endure. Accordingly, we reverse the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

1. The parties.

The Agency was created by the Legislature in the Castaic Lake Water Agency Law. (72A West's Ann. Wat.--Appen. (1999 ed.) § 103-1 et seq., p. 487 et seq., hereinafter the Agency Act.) Section 103-15 of the Agency Act describes the Agency's purpose: to "acquire water and water rights . . . and provide, sell, and deliver that water at wholesale only . . . through a transmission system to be acquired or constructed by the agency." (Agency Act, § 103-15, p. 500, italics added.) Operating in the Santa Clarita Valley area of Los Angeles County (*id.*, § 103-2, pp. 487-490), the Agency provides water to four local water utilities, the largest of which was the Water Company.

Until the transaction here at issue, the Water Company was a for-profit California corporation and a public utility subject to regulation by the Public Utilities Commission (the PUC). As a water "purveyor,"<sup>3</sup> its purpose was to distribute and sell water to its 21,000 domestic, industrial, and commercial accounts within the Agency's boundaries. In addition to its purchases of water from the Agency, the Water Company owned 15 water wells and had access to two freshwater aquifers in the eastern groundwater basin of the Santa Clara River with the ability to extract 15,000 acre/feet of water yearly.

## FOOTNOTES

3 Section 103-4.8, page 492 of the Agency Act defines "purveyor" as "a retail water distributor which has facilities connected to the agency's water transmission system on April 15, 1986, or is under contract with the agency for water on that date."

Petitioners are property owners, residents, and taxpayers in the area covered by the Agency who claim to be beneficially interested in the issuance of a writ because, if the Agency suffers adverse financial consequences from its purchase of the Water Company, petitioners' water rates will increase; and if water must be rationed, they will suffer greater adverse consequences than they would if the Water Company remained a separate purveyor.

## 2. The challenged transaction.

The challenged transaction between the Agency and the Water Company involved two inextricably connected parts. In the contract portion, the Water Company and Agency executed an agreement to permit the Agency to sell water directly to consumers (hereinafter the Retail Service Agreement). In the condemnation proceeding, the Agency concurrently took by eminent domain all of the outstanding stock of the Water Company in order to give the Agency complete control of the Water Company.

Specifically, on August 11, 1999, the Agency approved the Retail Service Agreement. That agreement recites that it was made on August 31, 1999, and that "as a part of a possible settlement of the Agency Condemnation Action, [the Water Company] agreed to contract with the Agency to grant to the Agency the right to sell water directly to consumers within the area in which [the Water Company] operates." (Italics added.) The Retail Service Agreement further recites that "The Agency and [Water Company] intend that this grant to the Agency shall satisfy the requirements of Section 12944.7 . . . and [shall] be liberally construed to effect the purposes of Section 12944.7. . . ."

Simultaneously, the Agency's directors passed Resolution No. 2065 to effectuate the condemnation portion of the transaction. Resolution No. 2065 authorized the condemnation of all of the issued and outstanding capital stock of the Water Company. (Agency Act, § 103-15, subd. (g), p. 501.) The resolution declared that public interest and necessity require the acquisition of the Water Company's capital stock "to advance the business and statutory purposes of the Agency, including, but not limited to, providing, delivering and selling wholesale water within the Agency's jurisdiction as well as providing retail service pursuant to Water Code section 12944.7 . . . ." (Italics added.)

The Agency planned to finance this two-part transaction by issuing up to \$ 70 million in retail system revenue certificates of participation through an installment purchase agreement with its own financing corporation.

On August 12, 1999, the Agency filed its complaint to condemn and acquire all of the issued and outstanding capital stock of the Water Company. 4 (Castaic Lake Water Agency v. Santa Clarita Water Co. (Super. Ct. L.A. County, No. BC215065).)

## FOOTNOTES

4 On August 25, 1999, petitioners filed a notice of related cases in the condemnation proceeding, notifying the court of the pending petition for writ of mandate and the complaint for injunctive and declaratory relief. On September 14, 1999, 12 days after judgment was entered in the condemnation action, the trial court entered an order finding that the condemnation action was not related to the mandamus actions under the Superior Court of Los Angeles County, Local Rules, rule 7.3.

### 3. The writ petition.

On August 23, 1999, after the above resolutions were passed and the Retail Service Agreement was signed, but before the final judgment was issued in the condemnation action and before the transaction was closed, petitioners filed their petition "for peremptory writ of mandate or prohibition." ( Code Civ. Proc., §§ 1085, 1086, 1102, 1103.) The amended petition 5 alleged that the Agency's condemnation of the Water Company stock and retail sale of water violates the Agency Act. (Agency Act, § 103-15, pp. 500-504.) Petitioners also challenged as ultra vires the terms and conditions of the financing arrangement. Petitioners requested that the trial court issue a writ of mandate or prohibition to require the Agency and the Water Company to cease violating the language of the Agency Act, which limits the Agency to selling water "at wholesale only," and to cease its attempt to acquire the Water Company. 6

### FOOTNOTES

5 The petition was amended on September 1, 1999.

6 Concurrently, petitioners filed a complaint for declaratory and injunctive relief seeking a declaration that the structure of the financing scheme for the Agency's acquisition of the Water Company's stock violated sections 103-15 and 103-28, pages 500-504, 516-517, of the Agency Act. Petitioners dismissed the declaratory relief action on October 18, 1999.

### 4. The challenged transaction closes.

A week after the petition was filed, on September 1, 1999, the Agency executed a new stock purchase agreement to purchase the Water Company's stock for \$ 63 million in cash, averting the financing arrangement challenged in the petition.

The next day, on September 2, 1999, a stipulation for judgment for \$ 63 million was entered in the eminent domain action. The judgment stated that the Agency was authorized by the provisions of section 12944.7 to enter, and did enter, into written contracts with retail water purveyors to sell water to any ultimate water consumer within the Agency's jurisdiction. The judgment also recited that the Agency was empowered by article 16, section 17 of the California Constitution to acquire shares of a water company for the purpose of furnishing water for public purposes.

On September 3, 1999, the consideration of \$ 63 million in cash was transmitted to the shareholders of the Water Company, the Retail Service Agreement was delivered, and the court executed a final order condemning in favor of the Agency all rights, title, and interest in the Water Company's outstanding shares.

Thereafter, in connection with the stock purchase, the Water Company issued a number of resolutions designed to wind up the Water Company's business, dissolve the corporation, distribute its remaining assets to the Agency, and accept the resignation of three of the Water Company's directors and its secretary. 7

FOOTNOTES 7 The record does not contain executed versions of these resolutions.

## 5. The ruling on the petition.

At the hearing, originally scheduled to consider petitioners' motion for a stay of the transaction, petitioners cited the legislative history of section 12944.7 to argue that the effect of the transaction was to merge the Water Company with the Agency so that the two organizations would "be[] operated as a unified entity," one becoming the alter ego of the other. Additionally, petitioners argued, whatever company existed after the merger would no longer be regulated by the PUC. The net result of the transaction, petitioners claimed, is that the Retail Service Agreement does not comply with section 12944.7, and the Agency may not sell water at retail.

In its defense, the Agency argued that the language of the statute is clear, precluding resort to its legislative history, and that the Retail Service Agreement is a contract that complies with the letter of section 12944.7. The Agency never addressed the effect of the transaction on the Water Company, i.e., after the transaction closed, what form the Water Company took and whether the Water Company even continues to exist as an ongoing concern, separate from the Agency. Although the Agency asserted that "the water company is subject to PUC regulations" (*italics added*), it flatly disagreed that section 12944.7 requires the Water Company to remain subject to PUC control during the life of the contract in order for the Retail Service Agreement to comply with the statute. Counsel for the Agency argued, "You don't see any continuing obligation to be regulated by the PUC in 12944.7. . . ."

The court admitted into evidence the legislative history of section 12944.7, and ruled "it does appear . . . that 12944.7 is sufficiently clear and is applicable here, and it does override Section [103-]15" of the Agency Act limiting the Agency to wholesale water distribution. (Agency Act, § 103-15, pp. 500-504.) The court denied the writ petition and petitioners' appeal ensued.

## DISCUSSION

### 1. Writ of mandamus and standard of review.

(1) (See fn. 8.) (2) A traditional writ of mandate under Code of Civil Procedure section 1085 8 is a method for compelling a public entity to perform a legal and usually ministerial duty. ( *Kreeft v. City of Oakland* (1998) 68 Cal. App. 4th 46, 53 [80 Cal. Rptr. 2d 137].) The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. ( *Kreeft*, *supra*, at p. 53; *Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal. App. 3d 368, 387 [146 Cal. Rptr. 892].) "Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. [Citation.]" ( *Helena F. v. West Contra Costa Unified School Dist.* (1996) 49 Cal. App. 4th 1793, 1799 [57 Cal. Rptr. 2d 605].)

## FOOTNOTES

8 Code of Civil Procedure section 1085 states in pertinent part, "A writ of mandate may be issued by any

court, except a municipal court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station. . . ."

The Agency contends that the petition should have been denied on the procedural ground that petitioners' attack on the transaction could have been brought as a validation action under Code of Civil Procedure section 860 et seq. Hence, the Agency argues, where petitioners had a remedy at law, the mandamus action could not lie. The Agency is wrong.

Section 103-19, page 507, of the Agency Act states, "An action to determine the validity of any bonds, warrants, promissory notes, contracts, or other evidences of indebtedness of the kinds authorized by subdivision . . . (o) . . . of Section 15, may be brought pursuant to [Code of Civil Procedure section 860]." This section allows for a validation action whenever a challenge is made to the validity of financing. The action is to determine the validity of "bonds, warrants, . . . contracts, or other evidences of indebtedness." (Agency Act, § 103-19, p. 507, italics added.) Because all of the items enumerated in section 103-19 refer to forms of financing, under the principle of *ejusdem generis*, "contracts" in this context necessarily refers to contracts for financing. ( *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters* (1979) 25 Cal. 3d 317, 331, fn. 10 [158 Cal. Rptr. 370, 599 P.2d 676].) Once the Agency restructured the transaction here to be an all-cash deal, the petition no longer attacked the financing scheme, and a validation action concerning financing no longer provided petitioners with an adequate remedy at law by which to challenge the Agency's statutory authority to sell water at retail. Therefore, the petition for writ of mandate/prohibition was properly brought.

(3) "In reviewing a trial court's judgment on a petition for writ of ordinary mandate, we apply the substantial evidence test to the trial court's factual findings." ( *Kreeft v. City of Oakland*, supra, 68 Cal. App. 4th at p. 53.) Thus, foundational matters of fact are conclusive on appeal if supported by substantial evidence. ( *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1169-1170 [56 Cal. Rptr. 2d 223].) However, we exercise our independent judgment about legal questions. ( *Kreeft*, supra, at p. 53; *Saathoff v. City of San Diego* (1995) 35 Cal. App. 4th 697, 700 [41 Cal. Rptr. 2d 352].) With these rules in mind, we turn to the question of the meaning of section 12944.7.

2. Section 12944.7 contemplates the Agency will contract with an entity that will remain separate from the Agency for the duration of the contract period.

Section 12944.7 states in relevant part: "Notwithstanding any other provisions of law, any public agency which has executed a contract with the state for a water supply . . . may sell any water available to that agency directly to any ultimate water consumer within the agency. 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." (Italics added.)

(4a) Here, the Agency Act restricts the Agency to the wholesale distribution of water. (Agency Act, § 103-15, pp. 600-504.) Therefore, to sell water at retail, the Agency must comply with the second sentence of section 12944.7. At issue is the meaning of the word "contract" in that second sentence. This is a legal question over which we exercise our independent judgment. ( *Kreeft v. City of Oakland*, supra, 68 Cal. App. 4th at p. 53, 80 Cal. Rptr. 2d 137.)

Petitioners contend that the contract contemplated by the Legislature in section 12944.7 is similar to a lease for use of the retail purveyor's facilities to sell water directly to retail consumers. Based on the challenged transaction here, under which the Agency took the Water Company by eminent domain, petitioners argue that the Retail Service Agreement does not satisfy the statute's contract requirement. By contrast, the Agency takes the position that it complied with every condition of section 12944.7. The Agency asserts it (1) had a contract--the Retail Service Agreement--(2) with a water company (3) that was subject to PUC regulation at the time the Retail Service Agreement was entered into. The Agency, however, omits to discuss the nature of the entire challenged transaction. That is, the Agency offered no analysis about whether the transaction is actually a merger or, as a result of the deal, whether the Water Company has become the alter ego of the Agency, and what effect that transformation might have on the Retail Service Agreement.

a. The rules of statutory interpretation.

In determining the nature of the contract required by section 12944.7, we apply the usual rules of statutory interpretation. (5) "The fundamental rule of statutory construction is to ascertain the intent of the Legislature in order to effectuate the purpose of the law. . . . In doing so, we first look to the words of the statute and try to give effect to the usual, ordinary import of the language, at the same time not rendering any language mere surplusage. The words must be construed in context and in light of the nature and obvious purpose of the statute where they appear. . . . The statute ' "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the Legislature, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity. . . . ' ' " ( *Kotler v. Alma Lodge* (1998) 63 Cal. App. 4th 1381, 1390-1391 [74 Cal. Rptr. 2d 721], citations omitted.) (6) "[The] language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend." [Citations.] ( *People v. Pieters* (1991) 52 Cal. 3d 894, 898 [276 Cal. Rptr. 918, 802 P.2d 420].) "If the language of a statute is clear, we should not add to or alter it to accomplish a purpose which does not appear on the face of the statute or from its legislative history. . . ." ( *Kotler v. Alma Lodge*, *supra*, at p. 1391, citations omitted.) "Thus, 'the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.]" ( *People v. Pieters*, *supra*, at p. 899.)

b. Section 12944.7 plainly contemplates an arm's-length contract for use.

(4b) The language of the statute is clear on its face. Section 12944.7 grants the agency the right to sell water at retail "only pursuant to written contract with" another entity. (§ 12944.7, italics added.) It is so elementary that it hardly need be stated that " 'there must be at least two parties to a contract. . . . ' " (1 *Witkin*, *Summary of Cal. Law* (9th ed. 1987) *Contracts*, § 7, p. 44; *Civ. Code*, §§ 1550, 1556.) An interpretation which allows the Agency here to enter into a contract with itself would render the contract a nullity ( *Luis v. Orcutt Town Water Co.* (1962) 204 Cal. App. 2d 433, 444 [22 Cal. Rptr. 389]), defeat the plain meaning of the word "with," and would be neither a reasonable nor a common sense interpretation of the requirement that the Agency have a contract to sell water at retail.

It is further manifest that the two parties to the contract must maintain their separate existences during the life of the contract, or at any time that the agency seeks to sell water at retail. Otherwise, the italicized language that the right to sell at retail is made "only pursuant to written contract with" would be rendered superfluous. Stated differently, the Legislature could have granted the wholesaler Agency

the absolute right to sell water at retail without requiring a contract, and so its inclusion of the second sentence in section 12944.7 clearly manifests the Legislature's intent there be a contract, which a fortiori, must be between two separate parties, each time the Agency sells water at retail.

Therefore, to comply with section 12944.7, whenever a wholesaler agency sells water directly to the consumer, it must be doing so pursuant to a contract with a water company that exists as an entity, be it a wholly owned subsidiary or otherwise, independent from the wholesaler agency.

For these same reasons, we also conclude that a water company, with whom the wholesaler-agency contracts, must remain subject to PUC regulation throughout the life of the contract. The Agency argued that there is no "continuing obligation to be regulated by the PUC" once the transaction is closed. We reject this "nanosecond" argument because it renders section 12944.7's requirement of PUC regulation pointless and surplusage. ( *Kotler v. Alma Lodge*, supra, 63 Cal. App. 4th at pp. 1390, 1391.)

Our interpretation of the statute comports with the legislative history of Assembly Bill No. 2827, 9 which became section 12944.7. As explained by a proponent, the Department of Water Resources, in its enrolled bill report, "before the wholesale agency could make retail sales in its service area, it would need to make a contract allowing the retail sales with the public or private entity that would normally make the retail sales." (Dept. of Water Resources, Enrolled Bill Rep. on Assem. Bill No. 2827, supra, at p. 1, italics added.) Continuing, the enrolled bill report summary states, "to protect the current retailers, the bill would require [the Agency] to make a contract with the retailer before making the retail sales. In negotiating the contracts, the respective agencies would be able to work out their various interests." (Dept. of Water Resources, Enrolled Bill Rep. on Assem. Bill No. 2827, supra, at p. 3, italics added.)

#### FOOTNOTES

9 The Agency sponsored section 12944.7 through Senator Kelley in response to then recent changes to the federal tax law to allow the Internal Revenue Service to tax the municipal bonds of a water wholesaler who sold at retail. (Dept. of Water Resources, Enrolled Bill Rep. on Assem. Bill No. 2827 (1989-1900 Reg. Sess.) Aug. 28, 1990, signed by David Kennedy, Dept. Head, p. 2.)

Indeed the record indicates the Department of Water Resources put Assembly Bill No. 2827 forward expecting that it "would authorize State Water Project contractors which are wholesale agencies to provide retail service by contract with the entities which are empowered to sell water at retail. Such retail entities could 'rent' distribution capacity to a State Water Contractor, and would bill the consumer much in the same fashion as your local telephone company bills for the benefit of both itself and the long-distance carriers with which its customers also have a contractual relationship. [P] Current retail water purveyors ought not to oppose this bill, inasmuch as it can be implemented only pursuant to contract." (Proposed Legislation to Preserve Historical Tax-Exempt Financing Option of State Water Contractor Agencies, attached to letter to Steven Macola, Consultant to the Senate Agriculture and Water Resources Committee, from David N. Kennedy, Director, Department of Water Resources, dated June 28, 1990, underline in original, italics added.)

We hold that in enacting section 12944.7, the Legislature contemplated a contract, entered into after arm's-length negotiations, granting the Agency the permission to use--as opposed to take over and own--the Water Company's facilities. The Water Company could, for example, be a wholly owned subsidiary of, or wholly separate from, the Agency; but whatever form it takes, it must be distinct from

the Agency and remain subject to PUC regulation to comply with the statute.

Turning to the judgment here under review, the trial court correctly concluded as a matter of law that section 12944.7 "override[s]" the portion of section 103-15, pages 500-504 of the Agency Act that limits the Agency to wholesale distribution of water. That is the purpose behind the statute. The ruling that section 12944.7 can authorize the Agency to sell water at retail, however, only addresses half of the question raised by the writ petition. Omitted from the judgment below is whether, as the result of the challenged transaction, the Water Company continues to exist as an entity sufficiently separate from the Agency and continues to be subject to PUC regulation in order to enable the contract to endure.

### 3. The case must be remanded.

Petitioners argued at length before the trial court that, as the result of the challenged transaction, the Water Company was dissolved, the two companies merged, and the Water Company became the Agency's alter ego, with the result that the contract could not satisfy section 12944.7. The Agency responds by suggesting that the condemnation portion of the challenged transaction, by which it acquired all of the Water Company's stock, is legal but irrelevant, and that the Retail Service Agreement, standing alone, satisfies the contract requirement of section 12944.7.

We do not disagree with the Agency that it was lawfully empowered to acquire the Water Company (Cal. Const., art. XVI, § 17) and that it has the authority to exercise the right of eminent domain to take property for any facility reasonably required for the importation and transmission of water. (Agency Act, § 103-15, subds. (e) & (g), p. 501.) However, we reject the Agency's argument that the challenged transaction can be separated into discrete, unrelated parts and still comply with section 12944.7.

A case in point is *Luis v. Orcutt Town Water Co.*, supra, 204 Cal. App. 2d 433. To recover his losses after his store was destroyed by fire, the plaintiff sued the Orcutt Town Water Company, which supplied water to the town, and Union Oil Company, a private water company, which also supplied water to the town. The complaint alleged that contracts between the defendants obligated them to provide water in case of emergencies. (*Id.* at pp. 436-437.) The complaint further alleged that Union owned all of the stock of and managed and operated the water company so that the water company was the alter ego of Union. In affirming the sustaining of the defendants' demurrers without leave to amend, the appellate court held, inter alia, "if the alter ego theory were pleaded effectively and if the doctrine is applied, it pleads the contract upon which plaintiff relies out of existence; with only one entity to consider the contract becomes a nullity because it is impossible for a legal entity to contact with itself." (*Id.* at p. 444, first italics original, second italics added.)

As in *Luis*, if at any point the Agency actually merged with the Water Company or the Water Company became the alter ego of the Agency, then the Retail Service Agreement, intended to comply with section 12944.7, "becomes a nullity because it is impossible for a legal entity to contact with itself." (*Luis v. Orcutt Town Water Co.*, supra, 204 Cal. App. 2d at p. 444.) In that case, the Agency would no longer have a contract pursuant to section 12944.7 by which it could sell or deliver water at retail without violating its own enabling act. Logically, if as the result of the challenged transaction, a merger did occur, or the Water Company did become the alter ego of the Agency on September 3, 1999, then the Retail Service Agreement existed for at most four days.

(7) The question of whether the corporation exists as a separate corporate entity under the alter ego doctrine, "is one for the trier of fact and is reviewed on appeal according to the usual standards for

sufficiency of the evidence to support the conclusion. [Citation.]" ( *Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal. App. 4th 1205, 1213 [11 Cal. Rptr. 2d 918].) (4c) Here, the trial court did not address this issue, notwithstanding that petitioners raised it and supplied exhaustive evidence in support of their alter ego contention. The form the Water Company has taken, and will ultimately take as the result of the challenged transaction, is central to resolving the issue properly raised in the writ, namely whether the Agency is authorized by section 12944.7 to sell water at retail. It is a factual question premised in the first instance on whether the Water Company became the alter ego of the Agency, whether the corporate veil must be pierced, and if so, whether, in fact, the companies are one and the same. ( *Mid-Century*, supra, at p. 1213.) Until such factual questions are resolved by the trial court, we may not review this question. ( *Kreeft v. City of Oakland*, supra, 68 Cal. App. 4th at p. 53.) 10

#### FOOTNOTES

10 The Agency argues that the relief petitioners seek is ineffective because the transaction that petitioners want to prohibit has already been consummated. The argument is unavailing because at the time petitioners filed their writ petition, the transaction had not been closed. Just two weeks after the writ petition was filed and one week after the petition was amended, the Agency arranged to pay cash for its transaction and rapidly entered into a stipulation for judgment in the condemnation action. The Agency cannot be heard to complain because it assumed the risk of hurriedly closing the all-cash transaction seemingly to avoid the consequences of the writ petition's allegations. ( *Gogerty v. Coachella Valley Junior College Dist.* (1962) 57 Cal. 2d 727, 732 [21 Cal. Rptr. 806, 371 P.2d 582].)

#### DISPOSITION

The judgment is reversed and remanded for further proceedings consistent with this opinion. Respondent to pay costs of appeal.

Klein, P. J., and Croskey, J., concurred.

Respondent's petition for review by the Supreme Court was denied October 24, 2001.

**Exhibit “C”**

“Klajic II”

**JILL KLAJIC** et al., Plaintiffs and Respondents, v. **CASTAIC LAKE WATER AGENCY** et al., Defendants and Appellants.

B161069 c/w B163110

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

121 Cal. App. 4th 5; 16 Cal. Rptr. 3d 746; 2004 Cal. App. LEXIS 1243; 2004 Cal. Daily Op. Service 6840; 2004 Daily Journal DAR 9291

July 29, 2004, Filed

PRIOR-HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles County, No. BS058871, David P. Yaffe, Judge.

HEADNOTES-1

**CALIFORNIA OFFICIAL REPORTS HEADNOTES**

Classified to California Digest of Official Reports

CA(5)(5) Waters § 183—Public Utilities Selling Water—Special Districts—Castaic Lake Water Agency—Sale of Water at Retail.—Newly enacted section 15.1 of the Agency Enabling Act authorized the Castaic Lake Water Agency to sell water to the ultimate consumer within a specified geographic area notwithstanding or despite the prerequisites to that authority in Wat. Code, § 12944.7, subd. (b), and the prohibition in section 15 of the Agency Enabling Act. As a later enacted statute that included the phrase “notwithstanding subdivision (b) of Section 12944.7,” section 15.1 of the Agency Enabling Act necessarily controlled over Wat. Code, § 12944.7, subd. (b).

COUNSEL: Horvitz & Levy, Barry R. Levy; The Hancock Law Office, William N. Hancock; McCormick, Kidman & Behrens, Russell G. Behrens, David D. Boyer; and R. Bruce Tepper for Defendants and Appellants.

Jennifer Kilpatrick; Kearney Alvarez, Thomas A. Kearney and Paul Alvarez for Plaintiffs and Respondents.

JUDGES: Aldrich, J., with Klein, P. J., and Croskey, J., concurring.

OPINION BY: ALDRICH

## OPINION

ALDRICH, J.—

### INTRODUCTION

We are asked by the Castaic Lake Water Agency (the Agency) to construe section 15.1 of its enabling act, effective January 2002. (Stats. 2001, ch. 929, § 3, 72A West's Ann. Wat.—Appen. (2004 Supp.) § 103–1 et seq., p. 487 et seq., hereinafter the Agency Enabling Act.) The Agency has appealed from the judgment of the trial court ordering the issuance of a writ of mandate that prohibits the Agency from selling drinking water directly to consumers. The court ruled that section 15.1 of the Agency Enabling Act is not an independent grant of authority, and to sell water directly to the consumer, the Agency must first comply with the requirements of Water Code section 12944.7, subdivision (b). 1

### FOOTNOTES

1 Hereinafter, all statutory references are to the Water Code, unless otherwise noted.

On appeal, the Agency contends section 15.1 of the Agency Enabling Act authorizes it, a water wholesaler, to sell water at retail independent of section 12944.7, subdivision (b). We hold the Agency correctly construes the introductory phrase in section 15.1 of the Agency Enabling Act. Accordingly, we reverse the judgment and the award of attorney fees. 2

### FOOTNOTES

2 For purposes of clarity we refer to appellants as the Agency. Along with the Agency, appellants include the Castaic Lake Water Agency Financing Corporation and the Santa Clarita Water Company.

### FACTUAL AND PROCEDURAL BACKGROUND

1. The factual predicate.

Created by the Legislature, the Agency is a special district whose purpose, according to section 15 of the Agency Enabling Act, is to “acquire water and water rights ... and provide, sell, and deliver that water at wholesale only ... .” (Agency Enabling Act, § 103–15, p. 500, italics added; *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 991 [109 Cal. Rptr. 2d 454], hereinafter *Klajic I.*) The Agency operates in the Santa Clarita Valley in Los Angeles County. It provides water to four local water utilities, including the Santa Clarita Water Company (the Water Company) and the Newhall County Water District.

Beginning in 1999, the Agency commenced efforts to sell water directly to consumers. It did so by relying on section 12944.7, subdivision (b). That statute allows a wholesale water agency to sell water at retail “only pursuant to written contract with ... a water corporation ... subject to regulation by the Public Utilities Commission [PUC] and serving water at retail within the area in which the consumer is

located.” 3 (§ 12944.7, subd. (b).) Accordingly, the Agency entered into a transaction with the Water Company. (Klajic I, supra, 90 Cal.App.4th at pp. 991–992.)

#### FOOTNOTES

3 Section 12944.7 states in subdivision (b): “Notwithstanding subdivision (a), 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 (1) a wholesaler, if any exists, to which the water would otherwise be sold and (2) a public entity water purveyor, if any exists, serving water at retail within the area in which the consumer is located or 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.”

Before the transaction was closed, however, respondents, 4 property owners, residents, and taxpayers located in the area covered by the Agency, sought a peremptory writ of mandate to force the Agency to comply with section 12944.7, subdivision (b). (Klajic I, supra, 90 Cal.App.4th at p. 993.) Respondents argued, inter alia, that section 12944.7, subdivision (b) authorized the retail sale of water only pursuant to a contract with an independent water retailer which is subject to PUC regulation. According to respondents, the net effect of the Agency's transaction with the Water Company would be a merger of those two entities into a single unified company that would not be subject to PUC regulation and hence, would not comply with section 12944.7, subdivision (b). (Klajic I, supra, at p. 994.)

#### FOOTNOTES

4 Respondents are Jill Klajic, Lynne Plambeck, Joan Dunn, and Jackie Bettencourt, representing taxpayers and voters in the territory of the Agency, and representing retail water customers of the Santa Clarita Water Company.

#### 2. The first appeal.

In Klajic I, we held that section 12944.7, subdivision (b) granted a water wholesaler, such as the Agency, the right to sell water at retail but “ ‘only pursuant to written contract with’ ” a separate entity that is subject to PUC regulation. (Klajic I, supra, 90 Cal.App.4th at p. 997.) We explained that section 12944.7, subdivision (b) “clearly manifests the Legislature's intent there be a contract, which a fortiori, must be between two separate parties, each time the Agency sells water at retail.” (90 Cal.App.4th at p. 998.) That is we explained, the two parties to the contract under section 12944.7, subdivision (b) must maintain their separate existences and must be subject to PUC regulation during the life of the contract, or at any time the Agency seeks to sell water directly to the consumer. (90 Cal.App.4th at p. 998.) We reversed the judgment and remanded to the trial court to determine whether, as the result of the challenged transaction, the Water Company continued to exist as an entity separate from the Agency, and continued to be subject to regulation by the PUC, so as to satisfy the requirements of section 12944.7, subdivision (b). (90 Cal.App.4th at pp. 1000–1001.)

#### 3. Passage of Assembly Bill No. 134.

While Klajic I was pending, the Agency sought a legislative solution. The Agency sponsored Assembly Bill No. 134 (2001–2002 Reg. Sess.). Of particular importance to this appeal is section 3 of Assembly Bill No. 134, which added section 15.1 to the Agency Enabling Act. Section 15.1 reads in pertinent part: “Notwithstanding subdivision (b) of Section 12944.7 of the Water Code [analyzed in Klajic I] and Section 15 of this act [authorizing the Agency to sell water at wholesale only], but subject to paragraph (2), the agency may exercise retail water authority only within the [specified] boundaries... .” (Agency Enabling Act, 72A West’s Ann. Wat.—Appen. (2004 Supp.) § 103-15.1, subd. (a)(1), p. 4, italics added.) The statute then defines the boundaries by reciting specific metes and bounds. 5

#### FOOTNOTES

5 The Agency informs us that the metes and bounds in section 15.1 correspond to the Water Company’s service area on September 2, 1999, the day before the Agency acquired the Water Company.

Paragraph 2 of section 15.1 then grants the Newhall County Water District authority over geographical areas that were not served by the Water Company on September 2, 1999, and protects all of the Newhall County Water District’s existing water rights within the Water Company’s geographic boundaries. (Agency Enabling Act, § 103-15.1, subd. (a)(2)(A), p. 5.) 6 Subdivision (b) precludes the Agency from exercising retail water authority outside the boundaries described in paragraph (1) of subdivision (a), without statutory authorization. (Agency Enabling Act, § 103-15.1, subd. (b).)

#### FOOTNOTES

6 Paragraph 2 states: “(A) Any area within the area described in paragraph (1) that is also within the boundaries of the Newhall County Water District, and not served by the Santa Clarita Water Company on September 2, 1999, may not be served by the agency unless the Newhall County Water District has granted approval. [¶] (B) Nothing in this section prohibits the Newhall County Water District from exercising any authority conferred by other law for the purpose of providing retail water service within the area described in paragraph (1).” (Agency Enabling Act, § 103-15.1, subd. (a)(2)(A) & (B).)

Section 15.1 of the Agency Enabling Act was enacted in 2001, while Klajic I was pending. The statute became effective on January 1, 2002, not long after the trial court regained jurisdiction upon issuance of the remittitur in Klajic I.

#### 4. Trial.

Returning to the trial court upon our remand, respondents renewed their contention that the events that occurred during and after the Agency’s transaction with the Water Company brought about a de facto merger of the two entities. As a result, they argued, no contract existed that complied with section 12944.7, subdivision (b). Respondents noted they have already received rate increases not approved by the PUC or the Water Company’s board.

Rather than to dispute the merger issue, the Agency pointed to Assembly Bill No. 134 (2003–2004 Reg. Sess.). The Agency argued that Assembly Bill No. 134 added section 15.1 to the Agency Enabling Act to allow the Agency to sell water at retail within the Water Company’s service area without complying with

section 12944.7, subdivision (b). Passage of section 15.1, the Agency argued, rendered irrelevant the question of whether it had a contract with a separate entity retailer subject to PUC regulation.

The trial court disagreed. The court ruled that Assembly Bill No. 134 (2001–2002 Reg. Sess.) was a further limitation upon the right granted by section 12944.7, subdivision (b). The court construed Assembly Bill No. 134 to mean that the Agency could sell water directly to the ultimate consumer only pursuant to contract with a water company that is subject to PUC regulation pursuant to section 12944.7, subdivision (b), and only within specific territorial boundaries described by the metes and bounds in Assembly Bill No. 134.

Accordingly, the trial court ordered the issuance of a writ of mandate prohibiting the Agency and the Water Company, as an alter ego of the Agency, from selling water at retail, until such time as the Agency entered into a bona fide contract. The trial court awarded respondents attorney fees and costs in the amount of \$ 202,721.80 pursuant to Code of Civil Procedure section 1021.5. The Agency's appeal followed.

## CONTENTION

The Agency contends the trial court erred in construing section 15.1 of the Agency Enabling Act.

## DISCUSSION

### 1. Standard of review.

The Agency does not challenge the trial court's finding that the Agency and the Water Company have merged precluding compliance with section 12944.7, subdivision (b). Instead, the Agency contends on appeal that the passage of Assembly Bill No. 134 (2001–2002 Reg. Sess.) renders *Klajic I* and the subsequent trial court judgment irrelevant. They reason that as of January 2002, section 15.1 of the Agency Enabling Act authorizes the Agency to sell water at retail regardless of whether it has entered into a contract that conforms with section 12944.7, subdivision (b).

Our task in this second appeal is to interpret section 15.1 of the Agency Enabling Act and apply it to the facts here. As we explained in *Klajic I*, “A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. [Citations.] ‘Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. [Citation.]’ [Citation.]” (*Klajic I*, supra, 90 Cal.App.4th at p. 995, fn. omitted.)

On appeal from a judgment on a petition for writ of ordinary mandate, “we exercise our independent judgment about legal questions. [Citations.]” (*Klajic I*, supra, 90 Cal.App.4th at p. 996.)

2. Section 15.1 of the Agency Enabling Act grants the Agency independent authority to sell water at retail without the necessity of a contract pursuant to section 12944.7, subdivision (b).

The trial court construed section 15.1 of the Agency Enabling Act to limit the retail rights that would otherwise be available to the Agency if it complied with section 12944.7, subdivision (b). That is, the court read Assembly Bill No. 134 (2001–2002 Reg. Sess.) to mean that section 15.1 of the Agency Enabling Act, in conjunction with section 12944.7, subdivision (b), requires the Agency to obtain a contract with a separate entity regulated by the PUC (§ 12944.7, subd. (b)) before it could sell water at retail to the ultimate consumer, and then only within the specified geographical boundaries.

The Agency contends that section 15.1 is an entirely new, independent grant of authority to it to sell water at retail, limited only by geography, and irrespective of section 12944.7, subdivision (b). We agree with the Agency.

a. The rules of statutory interpretation.

In determining under what conditions the Agency is authorized to sell water to the ultimate consumer, “[i]f the language is clear and unambiguous[,] there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . .” [Citation.] If the language permits more than one reasonable interpretation, however, the court looks ‘to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’ [Citation.]” (Wilcox v. Birtwhistle (1999) 21 Cal.4th 973, 977 [90 Cal. Rptr. 2d 260, 987 P.2d 727]; see Klajic I, supra, 90 Cal.App.4th at p. 997.)

b. Assembly Bill No. 134 amended the Agency Enabling Act by adding an independent authority to sell water at retail without regard to the requirements of section 12944.7, subdivision (b).

The crucial language before us is that of section 15.1, subdivision (a)(1) of the Agency Enabling Act. It provides, “Notwithstanding subdivision (b) of Section 12944.7 of the Water Code [construed in Klajic I to require a contract and PUC oversight] and Section 15 of this act [granting the Agency right to sell water at wholesale only], but subject to paragraph (2), the agency may exercise retail water authority only within the following boundaries . . . .” (Ibid., italics added.)

“Notwithstanding” means “without prevention or obstruction from or by” or “in spite of” (Webster's 3d New Internat. Dict. (unabridged Dict. 1993) p. 1545, italics added) or “despite” (Webster's 10th New Collegiate Dict. (1995) p. 795).

The statutory phrase “notwithstanding any other law” has been called a “ ‘term of art’ ” (People v. Franklin (1997) 57 Cal.App.4th 68, 73–74, [66 Cal. Rptr. 2d 742]) that declares the legislative intent to override all contrary law. (People v. Tillman (1999) 73 Cal.App.4th 771, 784–785 [86 Cal. Rptr. 2d 715], and cases cited therein.) By use of this term, the Legislature expresses its intent “ ‘to have the specific statute control despite the existence of other law which might otherwise govern.’ [Citation.]” (People v. Franklin, supra, at p. 74; People v. Tillman, supra, at p. 785; see Macedo v. Bosio (2001) 86 Cal.App.4th 1044, 1050–1051, fn. 4 [104 Cal. Rptr. 2d 1]; In re Marriage of Cutler (2000) 79 Cal.App.4th 460, 475 [94 Cal. Rptr. 2d 156], [“notwithstanding any other provision of law” “signals a broad application overriding all other code sections”].) The more narrow phrase “notwithstanding

subdivision (a)” expresses the legislative intent to “carve out an exception only to subdivision (a) ... .” (People v. Flannery (1985) 164 Cal. App. 3d 1112, 1120 [210 Cal. Rptr. 899].)

Here, section 15.1’s “notwithstanding” language is specific, referring to the requirements in section 12944.7, subdivision (b) and the grant only of wholesale water authority to the Agency in section 15 of the Agency Enabling Act. Section 15 of the Agency Enabling Act prevents the Agency from, and section 12944.7, subdivision (b) sets forth specific conditions for, selling water at retail. Newly enacted section 15.1 now authorizes the Agency to sell water to the ultimate consumer within a specified geographic area “notwithstanding” or despite the prerequisites to that authority in section 12944.7, subdivision (b) and the prohibition in section 15 of the Agency Enabling Act. As a later enacted statute that includes the phrase “notwithstanding subdivision (b) of Section 12944.7,” section 15.1 of the Agency Enabling Act necessarily controls over section 12944.7, subdivision (b). (People v. Franklin, *supra*, 57 Cal.App.4th at pp. 73–74.)

The import of section 15.1 of the Agency Enabling Act is clear and unambiguous. (See *In re Marriage of Cutler*, *supra*, 79 Cal.App.4th at p. 475.) By using the statutory term of art “notwithstanding,” the Legislature intended to have the specific grant of retail water authority to the Agency control, despite the existence of the two statutes which would otherwise govern and limit that right. (People v. Franklin, *supra*, 57 Cal.App.4th at pp. 73–74.) The import of the language of section 15.1 of the Agency Enabling Act is that it is an independent grant of retail water authority. By requiring the Agency first to comply with the contract requirements of section 12944.7, subdivision (b) before selling water at retail under section 15.1 of the Agency Enabling Act, the trial court ignored the “notwithstanding” clause.

Our holding is bolstered by the next phrase in section 15.1, “but subject to paragraph (2).” Paragraph 2 protects the Newhall County Water District’s existing interests in the same geographical area. In this context, “subject to paragraph 2” means “governed by” or “affected by” paragraph 2. (Black’s Law Dict. (6th ed. 1990) p. 1425, col. 2.) Read in its entirety, considering the juxtaposition of all of the predicate phrases, section 15.1 subdivision (a)(1) establishes the Agency’s retail water authority independent of Water Code section 12944.7, subdivision (b) and section 15 of the Agency Enabling Act, but governed by the requirements of paragraph 2 of section 15.1. Had the Legislature desired to make section 15.1, subdivision (a)(1) merely a geographical limitation to be added to the prerequisites of section 12944.7, subdivision (b), as parsed by the trial court, then it would have stated that section 15.1 of the Agency Enabling Act was “subject to” section 12944.7, subdivision (b), or omitted the “notwithstanding” clause altogether. Although the Legislature knows how to do that, it did not in this case. Hence, section 15.1, subdivision (a)(1) is a grant of retail water authority within specific geographical boundaries, independent of the prerequisites of section 12944.7, subdivision (b) and the limitation of section 15 of the Agency Enabling Act, but subject to the rights of the Newhall County Water District as set out in paragraph (2).

Having concluded the meaning of section 15.1 of the Agency Enabling Act is clear and unambiguous, we need not resort to the legislative history. 7 (Wilcox v. Birtwhistle, *supra*, 21 Cal.4th at p. 977.) We note, however, that our reading of the statute comports with the declaration contained in the Legislative Counsel’s Digest, that “[t]his bill [Assembly Bill No. 134] would authorize [the Agency] to exercise retail water authority ... .” (Legis. Counsel’s Dig., Assem. Bill No. 134 (2001–2002 Reg. Sess.), italics added.) Although Assembly Bill No. 134 underwent upwards of nine permutations, all but the first two versions of the bill reflected the legislative intent that section 15.1, subdivision (a)(1) would “authorize the agency to exercise retail water authority ... .” (Legis. Counsel’s Dig., Assem. Bill No. 134 (2001–

2002 Reg. Sess.) Moreover, this specific grant was conferred, not in section 12944.7, subdivision (b), which applies generally to any wholesale water agency, but in the Agency's own enabling act. The location of this portion of Assembly Bill No. 134 indicates the legislative plan to circumvent the hurdle to retail authority caused by the Agency's takeover of the Water Company. Furthermore, the Agency sponsored Assembly Bill No. 134 while it was embroiled in this litigation over the meaning of section 12449.7, subdivision (b)'s prerequisites to obtaining retail water authority. We doubt the Agency would have expended the time and resources to have the bill enacted merely to add another limitation to retail authority on top of section 12944.7, subdivision (b)'s requirements.

## FOOTNOTES

7 We granted respondents' motion to take judicial notice of the legislative history of Assembly Bill No. 134. However, because we conclude the language of Assembly Bill No. 134 is clear and unambiguous, we need not consider the legislative history in resolving the issue presented to us. (*Wilcox v. Birtwhistle*, supra, 21 Cal.4th at p. 977.)

To summarize, section 15.1, subdivision (a)(1) is an independent grant of retail water authority to the Agency, despite any prerequisites to such authority contained in subdivision (b) of section 12944.7. The only limitations are those listed in section 15.1. Thus, the trial court erred in ruling the Agency was required first to fulfill the contractual requirements of section 12944.7, subdivision (b) before it could sell water to the ultimate consumer.

3. Assembly Bill No. 134 was intended to apply prospectively only.

Assembly Bill No. 134 (2001–2002 Reg. Sess.) also added a declaration of intent to section 12944.7, subdivision (b). Section 5 of Assembly Bill No. 134 states: “The Legislature finds and declares that because Sections 1, 3, and 4 of this act, which amend Section 12944.7 of the Water Code and the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), are prospective, the Legislature expresses no opinion with regard to any court actions filed prior to July 1, 2001.” (Italics added.) By this declaration, the Legislature gave a nod to the ongoing litigation in *Klajic I* and sought not to interfere with the outcome of the first appeal. The Legislature nonetheless granted the Agency authority to sell water to the ultimate consumer independent of section 12944.7, subdivision (b), commencing January 1, 2002, when the statute became effective. 8

## FOOTNOTES

8 See Senate Local Government Committee analysis of Assembly Bill No. 134: “Asking the Legislature to clearly authorize the Agency to be in the retail water business while a challenge is pending in the Second District Court of Appeals [sic] might be construed as a legislative assent to the Agency's purchase of the private water company. To avoid that inference, the Committee may wish to consider an amendment declaring that in passing the bill, legislators express no view on the pending litigation. [¶] [Moreover,] [a]n accepted rule of statutory construction is that legislation has a prospective effect. The 1990 Kelley bill [adding Water Code section 12944.7, subdivision (b)] allowed water wholesale agencies to go into the retail water business but only under specific conditions. [Assembly Bill No.] 134 allows the Castaic Lake Water Agency to be the retail water purveyor in the area served by the Santa Clarita Water Company. [Assembly Bill No.] 134 amends both the 1990 law and the Agency's own

principal act. The Committee may wish to consider an amendment that clearly declares that the bill is prospective and not retroactive in any way.” (Sen. Local Gov. Com., Analysis of Bill No. 134 (2001–2002 Reg. Sess.) as amended June 11, 2001, p. 3, italics added.)

4. The order awarding attorney fees must be reversed.

The Agency asks us to reverse the award of attorney fees, granted pursuant to Code of Civil Procedure section 1021.5. “[W]here an appellate court reverses a judgment ordering issuance of a writ of mandate, ‘[i]t follows’ that the trial court’s section 1021.5 attorney fees award must also be reversed. [Citations.]” (National Parks & Conservation Assn. v. County of Riverside (2000) 81 Cal.App.4th 234, 238 [96 Cal. Rptr. 2d 576].) Respondents obtained a favorable result in the trial court based on the court’s conclusion that the Agency’s transaction with the Water Company resulted in a merger of the two entities that did not comply with subdivision (b) of section 12944.7’s prerequisites to selling water to the consumer.

Based on our construction of section 15.1 of the Agency Enabling Act, we reverse the judgment and direct the trial court to vacate the writ. Consequently, respondents have ultimately been unsuccessful in their efforts to stop the Agency from selling water at retail. It is therefore automatic that the section 1021.5 attorney fee award must be reversed. (Id. at p. 239.)

#### DISPOSITION

The judgment is reversed. The trial court is directed to vacate its order granting the petition and enter an order denying the petition. The attorney fee award is reversed. Each party to bear its own costs on appeal.

Klein, P. J., and Croskey, J., concurred.

**Exhibit “D”**

**“The Contract”**

**SUBMITTED AS A SEPARATE ATTACHMENT  
TO THE FILING  
AND LABELED AS “EXHIBIT D”**