



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-21

July 27, 1993

To: Board of Directors (Special Committee on Legislation--Action)
(Executive Committee--Action)

From: General Manager

Subject: Assembly Bill 1384 (Costa)--Extra-territorial Condemnation for
Environmental Mitigation

Report

A local public agency may only exercise its condemnation power to acquire property within its territorial limits, unless there is express statutory authority, or such authority is necessarily implied, to acquire property outside the limits. There is express statutory authority for local entities to acquire property outside their boundaries for water supply and other utility purposes.

In a recent decision, the California Court of Appeal held that the statutory provision allowing condemnation for a utility project within the condemning agency's service area does not automatically extend to acquisition of property located outside the service area for the mitigation of the environmental impacts of the project. Kenneth Mebane Ranches v. Superior Court (1992) 10 Cal.App.4th 276. Rather, the court held that the extra-territorial eminent domain power can only be used for mitigation that is a "legal necessity." The court defined legal necessity narrowly, in effect requiring that the mitigation be a requirement for obtaining approval to construct the project.

The court noted that mitigation measures adopted under the California Environmental Quality Act do not usually constitute legal necessity because CEQA only requires that feasible mitigation measures be undertaken. If the local agency does not have the power to condemn the property needed, then such mitigation is not feasible. However, the court recognized that a regulating agency could make acquisition for mitigation purposes a condition of approval or issuance of a permit. In such cases, the condemnation of property outside the entity's boundaries would be authorized because it would be legally necessary to build the project.

Assembly Bill 1384 purports to codify the Mebane Ranches decision. It would amend the Eminent Domain Law to provide that the power to condemn land outside local entities' boundaries "shall not be implied as an incident of any other statutory power of, or requirement upon, a local public entity to mitigate an environmental impact caused by a project. . . ." The bill does not include any language which retains the "legal necessity" exception recognized in Mebane Ranches. Therefore, as presently drafted, the bill would prohibit all extra-territorial condemnations for environmental mitigation purposes, even where such mitigation is required to obtain approval of a project.

The bill would have a serious adverse impact on Metropolitan's ability to construct projects. Although Metropolitan, as a public agency, is exempt from many of the approval requirements that bind private developers, there are still many approvals and permits which it must receive to build its projects. In particular, permits are required from state and federal agencies when a project will impact habitat for endangered species or affect streams or wetlands. Mitigation of these environmental impacts by preserving other threatened areas is often required as a prerequisite to obtaining these permits. This bill would jeopardize Metropolitan projects when the mitigation required for a permit involves land outside Metropolitan's boundaries. Required permits may be denied, or the cost of projects increased as the cost of acquisition is based on the price the property owner demands rather than fair market value.

Although the Inland Feeder project factual situation is distinguishable from the Mebane Ranch decision, landowners outside Metropolitan's service area, whose interest must be condemned for the project, will attempt to use the decision to resist Metropolitan's acquisition of their property and consequently seek to use it to delay the project. An extensive portion of the pipeline is to be constructed on U. S. Forest Service land outside of Metropolitan's boundaries. Mitigation for impacts are likely to be required in those same areas. Metropolitan may require permits or approvals from as many as eleven federal, state and local agencies. The inability to comply with the mitigation requirements of these agencies due to a lack of condemnation power could bring the project to a halt.

The best protection for Metropolitan's interests would be legislation to reverse the Mebane Ranches decision by statutorily authorizing extra-territorial condemnation for environmental mitigation purposes. At the least the present bill should be amended to include the "legal necessity"

exception which was recognized by the court. Unless such amendments are made the bill should be opposed.

ACWA is seeking such a legal necessity amendment and has requested Metropolitan's support in this effort. A meeting with the author of this bill is scheduled during the week of August 16.

Board Committee Assignments

This letter is referred for action to:

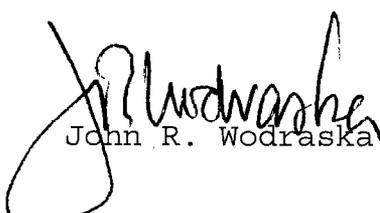
The Special Committee on Legislation because of its authority to review and make recommendations regarding legislation pursuant to Administrative Code section 2571 (a) and (b).

The Executive Committee because of its authority to study, advise and make recommendations on legislation affecting the District pursuant to Administrative Code section 2417 (a).

Recommendation

SPECIAL COMMITTEE ON LEGISLATION AND EXECUTIVE COMMITTEE FOR ACTION.

It is recommended that the Board of Directors express their opposition to Assembly Bill 1384 unless it is amended to provide that local agencies may condemn property outside their boundaries for environmental mitigation purposes, at least when such mitigation is a legal necessity for the project.


John R. Wodraska

AMENDED IN ASSEMBLY JULY 7, 1993

AMENDED IN ASSEMBLY MAY 25, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 1384

Introduced by Assembly Member Costa

March 3, 1993

An act to amend Section 1240.050 of the Code of Civil Procedure, relating to eminent domain, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as amended, Costa. Eminent domain.

Existing law permits local public entities to acquire by eminent domain property outside its territorial limits only where that power is expressly granted by statute or necessarily implied as an incident of one of its other statutory powers.

This bill would provide that the power to acquire property outside local territorial limits by eminent domain shall not be implied as an incident of any other statutory power or requirement for mitigating an environmental impact caused by a project or activity by or for the local public entity *within its territorial limits*.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1240.050 of the Code of Civil
2 Procedure is amended to read:

3 1240.050. (a) A local public entity may acquire by
4 eminent domain only property within its territorial limits
5 except where the power to acquire by eminent domain
6 property outside its limits is expressly granted by statute
7 or necessarily implied as an incident of one of its other
8 statutory powers.

9 (b) Power to acquire property outside its territorial
10 limits by eminent domain shall not be implied as an
11 incident of any other statutory power of, or requirement
12 upon, a local public entity to mitigate an environmental
13 impact caused by a project or activity conducted by or for
14 the local public entity *within its territorial limits*.

15 SEC. 2. This act is an urgency statute necessary for
16 the immediate preservation of the public peace, health,
17 or safety within the meaning of Article IV of the
18 Constitution and shall go into immediate effect. The facts
19 constituting the necessity are:

20 In order to codify without delay the holding in
21 *Kenneth Mebane Ranches v. Superior Court*, 10 Cal. App.
22 4th 276, that mitigation requirements of the California
23 Environmental Quality Act do not imply extraterritorial
24 powers of eminent domain, and to thereby promote state
25 environmental policy encouraging local public entities to
26 provide proper mitigation for significant environmental
27 impacts of their activities at or near the place where the
28 impacts occur, it is necessary that this act go into effect
29 immediately.