

Water and eminent domain: a volatile mix



by **JOHN HOWARD** posted 03.02.2015

A Southern California city has launched eminent domain proceedings to take over the private water agency that has served the community for more than 80 years – an unusual move, even in California, where fights over water are common.

Claremont, responding in part to residents' complaints about rates and politicians' demands for local control, filed suit in December against the Golden State Water Co., a private entity that serves 38 communities across California. The company's rates, which affect some 11,000 connections in Claremont that serve about 30,000 people, are regulated by the state Public Utilities Commission. Golden State, responding to the city, urged that the suit be dismissed. Initial court conferences are pending in Los Angeles Superior Court.

A 2004 report cited by the city found that Claremont had the highest rates of 10 surrounding communities surveyed, and that rates doubled between 2008 and 2013.

The Claremont move, authorized by a unanimous city council vote, followed years of local discussion and study, much of it targeting rates and the desire of local residents to control their own system.

A 2004 report cited by the city found that Claremont had the highest rates of 10 surrounding communities surveyed, and that rates doubled between 2008 and 2013, with another rate hike sought in 2014. Rising rates during the past decade have energized eminent domain backers.

“On average, Claremont’s water rates are \$50 more than La Verne’s for the same amount of water,” according to a statement provided by the city. “La Verne is used for comparison because of its similar size, population, and water sources. Claremont has more wells producing less costly water than La Verne but surprisingly La Verne water rates are lower.”

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Golden State notes that water rates reflect myriad cost-of-service factors, including capital construction, maintenance, quality control, financial reserves, debt service and distribution, and that city-by-city comparisons may not be definitive. The estimates also may not accurately take into account the cost of borrowing the funds to finance the acquisition.

“If the goal of acquiring the system is to charge lower water rates, then the effort should be abandoned because that goal is not a feasible outcome through the condemnation process,” according to an exhaustive study cited by foes of Claremont’s eminent domain effort and prepared by Stratecon, a prominent planning and consulting firm specializing in water issues.

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As an investor-owned water purveyor, Golden State is a utility and regulated by the California Public Utilities Commission, which means that rates are approved by the PUC and not by local elected officials.

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“There are certain standards that we have to meet as part of our PUC regulation,” said Denise Kruger, Golden State’s senior vice president.

Local critics of the current system note that the PUC sets the rates regionally and does not take a community’s individual characteristics into account, which they believe breeds unfairness. “This regional approach to setting fees allows communities with less favorable conditions to be subsidized by communities such as Claremont,” the city said in an analysis. Claremont is located within Region 3, which stretches from Los Alamitos to the higher desert, the city said.

The dispute between Golden State and Claremont draws attention to a little-known but crucial segment of California’s complex water system — the private water companies that provide supplies to cities and towns.

In a state of about 38 million people, investor-owned water companies serve some 6 million customers, or about 16 percent of the population. Many of the private entities, some of which date to the 19th century, were hired by communities to provide services that were too expensive for small towns to do on their own.

The California Water Association, a trade group for the private companies, represents some 115 investor-owned utilities, including Golden State, which has about 280,000 connections, or meters. Other investor-owned companies include the San Jose Water Company, which was founded in 1866 and now serves about a million customers, and California Water Service, which serves about 2 million customers in the west.

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Claremont’s eminent domain action is a complex legal proceeding that will take at least a year — and probably much longer — to resolve. Ultimately, the courts may set the value of Golden State’s assets in Claremont.

Not surprisingly, there is a difference of opinion here.

“The city offered \$55 million,” said Golden State attorney George Soneff. “We think it’s multiples of that. We have told the public that it is certainly very far north of \$100 million.”

Moreover, the costs of real estate and water rights must be factored in. “If you were to try and build the system (today), it would cost more than \$200 million,” he added. Golden State also says that severing the Claremont piece of their system can hurt other property that the company runs.

Claremont voters, by better than a 2-to-3 margin, approved up to \$135 million in revenue bonds to raise the money to purchase the system. Depending on the ultimate price of the system, the acquisition would add about \$28 to the monthly bill at the average single-family residence, or about \$336 a year, according to a ballot measure analysis provided by the city.

If the city runs the system, rates would be set and approved by the city council, not by PUC regulators. Day-to-day management of the municipal system would be handled not by Claremont but by nearby La Verne’s water officials, under one plan considered by Claremont.

Eminent domain proceedings against a community own water agency are rare in California, but not unprecedented.

In 2008, a private entity that served Felton in Santa Cruz County under various names since 1889 was taken over by the San Lorenzo Valley Water District in a contentious process akin to a hostile takeover. Unlike the Claremont case, which involves a city taking a water agency, the Felton case involved a water company being taken over by a public water agency.

In Claremont, the eminent domain filing culminated years of local unrest.

“This is a groundswell of the community,” said city spokeswoman Bevin Handel. “Our residents came before the council saying we needed to do something about these rates.”