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24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 COUNTY OF SAN JOAQUIN

26 CONCERNED CITIZENS COALITION OF)
27 STOCKTON, LEAGUE OF WOMEN)
28 VOTERS OF SAN JOAQUIN COUNTY,)
29 and SIERRA CLUB,)

Case No. CV 020397
~~PROPOSED~~ JUDGMENT
GRANTING PEREMPTORY WRIT
OF MANDATE

30 Petitioners,)
31 v.)
32 CITY OF STOCKTON, CITY OF)
33 STOCKTON CITY COUNCIL, and DOES)
34 1-10,)

Date: August 8-9, 2006
Time: 10:00 a.m.
Dept: 41
Judge: Hon. Elizabeth Humphreys
Filed: March 26, 2003

35 Respondents.)
36
37 OMI/THAMES WATER STOCKTON,)
38 INC., and DOES 11-20,)
39
40 Real Parties in Interest.)
41

DEC 07 2006

1 The hearing on the merits of the Petition for Writ of Mandate filed by the
2 Concerned Citizens Coalition of Stockton, League of Women Voters of San Joaquin
3 County, and Sierra Club (collectively, "Petitioners") in Case No. CV 020397, conducted
4 as a de novo reopened proceeding under Code of Civil Procedure section 662, was held
5 on August 8 and 9, 2006, before the Honorable Elizabeth Humphreys of Department 41
6 of the San Joaquin County Superior Court. Rachel B. Hooper, Amy J. Bricker, Daniel P.
7 Selmi, and Michael von Loewenfeldt appeared as counsel for Petitioners; John Briscoe
8 and Lawrence Bazel appeared as counsel for Respondents City of Stockton and City of
9 Stockton City Council (collectively, "Respondents" or "City"); and James L. Meeder
10 appeared as counsel for Real Party in Interest OMI/Thames Water Stockton, Inc.
11 ("OMI").

12 Having reviewed the entire history of this litigation as set forth by the parties in
13 Binders 1-4, the administrative record, further citations to the law via correspondence
14 from counsel, and the oral arguments of counsel, and the matter having been submitted
15 for decision, the Court issued its Ruling on November 3, 2006 (attached hereto as Exhibit
16 A and incorporated herein), resolving several evidentiary issues and directing that a
17 peremptory writ of mandate and injunction issue.

18 The Court having reviewed the parties' submissions on the merits and their
19 requests for judicial notice, as well as Petitioners' objections to certain evidence, and
20 having heard argument of counsel,

21 IT IS ORDERED, DECREED AND ADJUDGED that:

22 1. OMI's Request for Judicial Notice, joined in part by the City of Stockton, is
23 granted with respect to Requests 1 through 3, denied with respect to Requests 4 through
24 38, denied with respect to Supplemental Requests 1 through 6, and granted regarding the
25 limited issue of remedy with respect to Requests 2 and 4.

26 2. Petitioners' Request for Judicial Notice with respect to Requests/Exhibits 1
27 through 6 is granted.

28 3. Petitioners' Objections to Evidence regarding "outsourcing" contracts and

1 ownership and control transfers approved by the PUC are sustained.

2 4. OMI's Third Request for Judicial Notice is granted with respect to
3 Request/Exhibit 1.

4 5. Petitioners' Objection to Reply Briefs of City and OMI is overruled, and
5 Petitioners' Objection to Extra Record Evidence in City's Reply Brief is sustained.

6 6. Judgment granting a writ of mandate is entered in favor of Petitioners in
7 this proceeding. Judgment is so entered because, as explained in the Ruling filed
8 November 3, 2006, the Court finds that Respondents committed a prejudicial abuse of
9 discretion by failing to comply with the California Environmental Quality Act ("CEQA"),
10 Public Resources Code section 21000 et seq., in connection with Respondents' February
11 19, 2003 approval of Resolution No. 03-0081; this resolution (a) authorized a "Service
12 Contract for Wastewater, Water and Stormwater Utilities Capital Improvements and
13 Asset Management" ("Contract") between the City of Stockton and Real Party in Interest;
14 (b) adopted findings; (c) approved a Notice of Exemption under CEQA; and (d)
15 authorized other actions to implement the terms of the Contract and the purposes of the
16 Resolution; all of which served to transfer the operations of the City of Stockton's
17 municipal water, wastewater and storm water facilities to Real Party in Interest (the
18 activities authorized by Resolution No. 03-0081 and the Contract are hereafter referred to
19 as "the Project"). The Court finds that the Contract is not exempt from CEQA review by
20 Government Code section 5956 or its subsection 5956.6(b)(1), nor by the categorical
21 exemptions in title 14, California Code of Regulations ("CEQA Guidelines") sections
22 15301 and 15302.

23 7. The Court finds that a maximum of 180 days is a reasonable time within
24 which Respondents City and City Council can resume municipal operations and
25 management of the water, wastewater and storm water utilities that were the subject of
26 Resolution No. 03-0081.

27 8. A peremptory writ of mandate directed to Respondents shall issue under
28 seal of this Court, ordering Respondents to do all of the following:

1 a. Within a reasonable time (not to exceed 180 days) from service of
2 the writ of mandate, Respondents must rescind, in its entirety, Resolution No. 03-0081,
3 and all other activities taken by Respondents (i) to approve or implement the Project
4 pursuant to Resolution No. 03-0081, including, but not limited to, rescission of the
5 Contract, and (ii) to adopt a Notice of Exemption for the Project. Nothing in this writ
6 shall render the Contract unenforceable by either party during the period between
7 February 19, 2003 and the date Resolution No. 03-0081 is rescinded and set aside
8 (hereinafter, "Transition").

9 b. Respondents shall not reapprove the Project unless and until
10 Respondents have first prepared, circulated for public comment, and certified an
11 environmental review document that complies with CEQA and the CEQA Guidelines.

12 c. The Court finds (i) that proceeding further with the Project or any
13 portion thereof would prejudice Respondents' consideration or implementation of
14 mitigation measures or alternatives to the Project, and (ii) that proceeding further with the
15 Project could result in an adverse change or alteration to the physical environment, as
16 described in the Ruling. Therefore, until this Court determines that Respondents have
17 taken the actions specified herein to bring their approval of the Project into compliance
18 with CEQA, the Court mandates that Respondents, Real Party in Interest and their agents
19 suspend any and all activities to further implement or further approve the Project, except
20 as necessary (i) to allow for effective operation and management of the municipal water,
21 wastewater and storm water utilities during the Transition (including routine
22 maintenance); (ii) to effect an orderly resumption of the City's operations and
23 management of the utilities within a reasonable time from service of the writ of mandate
24 (not to exceed 180 days); (iii) to prepare the CEQA documents necessary to evaluate the
25 Project in compliance with the writ; (iv) to perform testing and start up (including any
26 additional construction necessary to resolve issues identified during testing and start up)
27 of SW2, WW22, WW32, and WW39, four projects known under the Contract as Initial
28 Capital Improvements (hereinafter, "ICIs") for which construction was completed on or

1 before November 3, 2006, the filing date of this Court's Ruling; and (v) to complete four
2 ICIs committed to in the Contract and known as WW13, W35, ND1, and ND2, each of
3 which (A) is a study not requiring construction, and (B) was substantially completed on
4 or before November 3, 2006, the filing date of this Court's Ruling.

5 d. The writ shall not be interpreted (i) to prohibit the Respondents and
6 Real Party in Interest from completion of formalities relating to ICIs where construction
7 and start up have been completed and the ICI was in service on or before November 3,
8 2006, or (ii) to require Respondents or Real Party in Interest to remove any equipment,
9 structure, or other improvement constructed or installed as a result of the Project.
10 However, nothing in the preceding sentence or elsewhere in the judgment relieves the
11 City of the requirement that it conduct environmental review for the "whole" of the
12 Project prior to its decision, if any, to reapprove the Project. See para. 8.b, supra; see also
13 CEQA Guidelines § 15378. As this Court has found, the whole of the Project here
14 includes the operation of the utilities and the construction of capital improvements
15 (described in the Contract as Capital Modifications or ICIs). See Ruling, p. 5. Due to the
16 nexus between the Project's capital improvements and its operations and management
17 (see id.), and even though construction of some of the ICIs may be completed, the City's
18 environmental review of the Project shall include, inter alia, analysis of any physical
19 changes to the Project's capital improvements that may be necessary in light of the City's
20 environmental review of the Project's operations and management, which review, under
21 CEQA, includes analysis of the operation/management's potential environmental impacts,
22 feasible mitigation for those impacts, and alternatives.

23 9. Respondents shall file an initial return to the peremptory writ of mandate
24 within 10 days of completion of the activities mandated by this judgment. Respondents
25 shall file a supplemental return to the writ of mandate after they have certified an
26 environmental review document for the Project in compliance with CEQA and the CEQA
27 Guidelines, or after Respondents have determined not to reapprove the Project. This
28 Court shall retain jurisdiction over Respondents' proceedings by way of the returns to the

1 peremptory writ of mandate until the Court has determined that Respondents have
2 complied with CEQA or that Respondents have determined not to reapprove the Project.
3 Under Public Resources Code section 21168.9(c), this Court does not direct Respondents
4 to exercise their lawful discretion in any particular way.

5 10. Petitioners shall be awarded their costs of suit. The Court reserves
6 jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to
7 any properly and timely filed motion which Petitioners may make.

8 11. Injunctive relief is granted consistent with this ruling. Until this Court has
9 determined that Respondents have taken the actions specified herein that bring its
10 approval of the Project into compliance with CEQA, Respondents, Real Party in Interest,
11 and their agents, employees, and persons acting in concert with them are enjoined from
12 any and all activities to further implement or to further approve the Project, except as
13 necessary (a) to allow for effective operation and management of the municipal water,
14 wastewater and storm water utilities during the Transition (including routine
15 maintenance); (b) to effect an orderly resumption of the City's operations and
16 management of the utilities within a reasonable time from service of the writ of mandate
17 (not to exceed 180 days); (c) to prepare the CEQA documents necessary to evaluate the
18 Project in compliance with the writ; (d) to perform testing and start up (including any
19 additional construction necessary to resolve issues identified during testing and start up)
20 of SW2, WW22, WW32, and WW39, four projects known under the Contract as Initial
21 Capital Improvements (hereinafter, "ICIs") for which construction was completed on or
22 before November 3, 2006, the filing date of this Court's Ruling; and (e) to complete four
23 ICIs committed to in the Contract and known as WW13, W35, ND1, and ND2, each of
24 which (i) is a study not requiring construction, and (ii) was substantially completed on or
25 before November 3, 2006, the filing date of this Court's Ruling.

26 12. This judgment shall not be interpreted (a) to prohibit the Respondents and
27 Real Party in Interest from completion of formalities relating to ICIs where construction
28 and start up have been completed and the ICI was in service on or before November 3,

1 2006, or (b) to require Respondents or Real Party in Interest to remove any equipment,
2 structure, or other improvement constructed or installed as a result of the Project.
3 However, nothing in the preceding sentence or elsewhere in the judgment relieves the
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10 (see id.), and even though construction of some of the ICIs may be completed, the City's
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12 changes to the Project's capital improvements that may be necessary in light of the City's
13 environmental review of the Project's operations and management, which review, under
14 CEQA, includes analysis of the operation/management's potential environmental impacts,
15 feasible mitigation for those impacts, and alternatives.

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18 Date: DEC 15 2006


Honorable Judge Elizabeth Humphreys

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23 [P:\Stock\Mat4\mwa003.v6 (revised proposed judgment).wpd]