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County doesn't have the authority for eminent domain

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There has been much discussion about the acquisition of the Conaway Ranch by the county. The discussion, however, relates to the advisability of such a takeover, but does not in any way deal with whether or not the county is entitled by law to exercise the power of eminent domain to accomplish the takeover. That issue, however, is all-important because without such authority the county simply cannot as a matter of law be allowed to take over the property. All of the arguments in favor of such a takeover would then be immaterial.

Several people have questioned the advisability of such a takeover and indicated that the county can through its zoning laws prohibit the use of the land for anything other than agricultural purposes. The defendant owner of the property in their answer did allege that the purposes set forth in the complaint were not covered by statute. In my article in The Daily Democrat on July 26, I pointed out the same thing. However, there is more that should be said regarding this as it is the single most important issue in this entire matter.

Section 1250.310 requires "a general statement of the public use for which the property is to be taken" and "a reference to the statute that authorizes the plaintiff to acquire the property by eminent domain." The latter statute is section 25350.5 of the Government Code, which briefly states "The board of supervisors of any county may acquire by eminent domain any property necessary to carry out any powers or functions of the county." The crucial word is "necessary." In other words, if they have no other way to accomplish their purpose, they can then resort to eminent domain, but not otherwise. The county does not have a choice in the matter, but must conform to the law. However, the county in its complaint alleged that the county as a legal subdivision of the State of California

"... is thereby legally vested by Government Code section 25350.5 with authority to acquire by eminent domain property necessary to carry out the powers and functions of the county including acquiring property for the public use of preserving natural resources, including open space, agricultural uses, water rights and supply, and flood control lands."

There is obviously nothing whatsoever in section 25350.5 Government Code that sets forth any specific powers and functions of the county for which the use of eminent domain is authorized in order to carry them out. The only requirement that justifies eminent domain to carry out a county function, therefore, is that there is no other way that the county can carry out its purpose and function, and that to do so it is necessary to resort to eminent domain. The test then is whether or not the county can carry out its functions without resorting to eminent domain. If it can do so, then it has no authority whatsoever to resort to eminent domain. Consequently, the matter must be examined on that basis.

In a previous article I stated that the County Board of Supervisors already has the authority to approve or disapprove all development, the authority to establish its general plan and zoning laws and authorize, or deny any changes in those laws. The ranch owners must conform to those laws. That authority allows the county to zone all of the Conaway Ranch as agricultural and thus not available for development. Under the circumstances, it would then be absurd for the ranch owners to sell the water rights to purely agricultural land as they would no longer be able to farm it economically and the land value would drop considerably; and, of course, they would not be able to develop it. In other words, the county does have complete control through its zoning laws such that no land could be improperly used. Consequently, through proper zoning by the county for use of the land for only agricultural purposes, the water rights and supply, and the preservation of natural resources would all be, and have been, completely protected. There would, therefore, be no legal justification whatsoever for the use of eminent domain by the county. Consequently, the county's complaint in eminent domain should be dismissed as it has no legal justification whatsoever under section 25350.5 CCP.

The case of *Kelo vs. New London*, decided by the United States Supreme Court on June 23, 2005, has often been referred to as authorizing any taking for development purposes even though some of the property was not

blighted; and that it meant that property could be taken for any reason. The property was in a carefully considered development area. Arrangements had already been made for acquisition and sale of the property through a developer. It was not going to be acquired and then held indefinitely by the city as owner so as to prevent development. The court held that as part of the development area it was subject to eminent domain and could be used for development purposes. This does not, however, mean that eminent domain can be used in any situation.

Our case is the exact opposite of one having a development program. Instead it seeks to keep the status quo with the county owning the property indefinitely! There is no statute or case law that authorizes such a course of action. Furthermore, the restriction of section 25350.5 Government Code applies in California in all cases of eminent domain not specifically authorized by statute. In such cases the county may resort to eminent domain if it is "necessary to carry out any of the powers or functions of the county." The key word is "necessary." If it is not necessary, then eminent domain cannot be used. In our case and as set forth above, there is no authority whatsoever for the use of eminent domain. Proper action should be taken by interested parties to bring an end to this process and allow the landowners to go along with their business.

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