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SUPERIOR COURT OF CALIFORNIA
COUNTY OF DEL NORTE

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF DEL NORTE

CITY OF CRESCENT CITY, a
Municipal Corporation,

Plaintiff,

NO: CVUJ 10-1134

vs.

DONNA WESTFALL, et.al.,

Defendants.

STATEMENT OF DECISION

The facts in this matter are undisputed.

The plaintiff, sometimes also referred to as the "City", maintains and operates a wastewater treatment plant (hereinafter WWTP) that was last renovated in 1979. The plant serves the wastewater needs of the City itself as well as a portion of Del Norte County that surrounds the City. It had a design life of 25 years. Since that time standards for the treatment and discharge of wastewater have increased to the point that the Regional Water Quality Control Board (hereinafter the RWQCB) served the City with a number of cease-and-desist orders (hereinafter CDOs) because the operation of the

1 treatment plant was no longer legal. The City worked with and co-operated with the
2 RWQCB in attempts to make whatever modifications or improvements that would result
3 in compliance with the then current standards. As some progress was achieved the
4 RWQCB would rescind or modify the CDOs. It some point however, it became apparent
5 that consistent compliance with requirements could only be achieved by the construction
6 of new larger facilities that would handle not only the existing flows but also the
7 anticipated growth in the City of the next 20 years. A number of alternatives were
8 studied and considered and it was recommended that a new larger facility be constructed.

9 At that time grant funds were no longer available. It was determined however that
10 affordable federal funds would be available from the Clean Water State Revolving Loan
11 Fund (hereinafter SRF) administered by the State of California Water Resources Control
12 Board (hereinafter SWRCB).

13 The planning, engineering and bid process extended over a number of years. There
14 were a number of changes in the process of determining the extent of the new facility and
15 the projected cost that the City could afford to re-pay. At one point the projected cost
16 was \$63 million. The project was scaled back and eventually a plant was approved that
17 would ultimately require a total loan of \$42+ million

18 At its meeting of March 19, 2007, the City voted to accept the bid from a contractor
19 to build the new treatment plant, contingent upon receiving SRF approval. Construction
20 began in May of 2007.

21 As a part of the loan application the City enacted a resolution that included the
22 following:

23 "The City of Crescent City hereby dedicates the following source of
24 revenue (user charges, proceeds of revenue bonds, etc.) to repayment
25 of any and all State Revolving Fund loans on Project No. C-06-4699-110.
26 This dedicated source of revenue shall remain in effect until such loan
(or loans) is fully discharged unless modification or change of such
dedication is approved in writing by the State Water Resources Control
Board."

27 By July 2007, it had been determined that an increase of approximately \$30.00 per
28 month for a single family house hold, and similar increases in multi-family, commercial,

1 and industrial rate user fees, would be necessary to make the payments on the \$42+
2 million SRF loan. As a consequence the City commenced organizing a Proposition 218
3 protest proceeding.

4 Insufficient protests were received and the 218 protest failed.

5 On November 5, 2007 the City, by means of Ordinance No. 729, increased the then
6 monthly sewer fees for single family residential use within the city from \$40.95 to \$48.70
7 starting January 1, 2008; to \$56.70 effective January 1, 2009; to \$63.20 effective January
8 1, 2010; and to \$69.70 effective June 1, 2010. The ultimate total increase would be
9 \$28.15 per month. Similar increases were adopted for the other categories of users.

10 Defendant Westfall and others, calling themselves Citizens Against the \$42.5 Million
11 Debt, had attended a number of council meetings protesting the size and cost of the
12 proposed WWTP as well as the adoption of the ordinances increasing the user fees.
13 That group then gathered signatures in an attempt to require a referendum on the rate
14 increase ordinance. It was determined that disqualifying defects were contained in the
15 petition and the City declined to put the issue on the ballot. At a meeting of the council
16 on December 17, 2007, the protesting group announced their intention to again prepare
17 and submit an initiative petition on the rate increases to put the issue before the voters.

18 It was not until December 2009 that the protesters submitted such petition which did
19 qualify to be placed on the ballot at the general election to be held on November 2, 2010.

20 In the meantime construction of the treatment plant has proceeded, money has been
21 drawn from the loan funds provided by the SRF loan agreement and little remains to be
22 finished for the project to be considered completed.

23 In reviewing the petition to roll back the sewer user rates to the 2007 level, the City
24 determines that its passage would result in a shortfall in revenue in an amount between
25 \$1.9 million to \$2.6 million annually. The City contends that such a magnitude of
26 reduction in revenue would cause the city to violate various provisions of the loan
27 contract. City claims that there is not sufficient revenue from other sources to make the
28 loan payments and meet the other required obligations of the City.

1 As a consequence on March 22, 2010, the City filed its complaint in this matter
2 seeking a declaratory judgment that the rollback initiative would necessarily result in an
3 impairment of the City's SRF loan agreement with the SWRCB to the extent and within
4 the proscription of Article I, Section 10, of the United States Constitution, and for an
5 injunction enjoining the City Clerk of Crescent City from taking any further steps toward
6 placing the rollback initiative on the November 2, 2010 ballot.

7 On June 22, 2010, the City filed a Notice Of Motion For Preliminary Injunction with
8 a hearing date of July 14, 2010.

9 On July 7, 2010, 7 days before the time set for hearing on plaintiff's Motion For
10 Preliminary Injunction, defendant Westfall filed a "SPECIAL MOTION TO STRIKE
11 COMPLAINT AS BEING A SLAPP SUIT (CCP 425.16)". The ultimate purpose of the
12 motion is to deny the City's request for a preliminary injunction and to effect a dismissal
13 of the complaint."

14 "The legislature finds and declares that it is in the public interest
15 to encourage continued participation in matters of public
16 significance, and that this participation should not be chilled through
17 abuse of the judicial process. To this end, this section should be
18 construed broadly." CCP 425.16(a).

19 Although not timely filed, CCP 425.16(f), the motion raises important issues that
20 should be resolved.

21 The trial court is required to engage in a two-stop process to resolve an anti-SLAPP
22 motion. First, the court decides whether the defendant has made a threshold showing
23 that the challenged cause of action is one arising from protected activity. The moving
24 defendant's burden is to demonstrate that the act or acts of which the plaintiff complains
25 were taken in furtherance of the defendant's right of petition in connection with a public
26 issue. Second, if the court finds such a showing has been made, it then determines
27 whether the plaintiff demonstrated a probability of prevailing on the claim. The moving
28 party bears the burden on the first issue; then responding party on the second. Santa

1 Monica v. Stewart (2005) 126 Cal.App. 4th 43.

2 Advocacy for an initiative and adoption of the measure are, without question, a
3 fundamental exercise of the first Amendment right to petition. Courts have long protected
4 the right to petition as an essential attribute of governing. The California Constitution
5 declares that the people have the right to petition government for redress of grievances.
6 That right in California is, moreover, vital to a basic process in the state's constitutional
7 scheme - direct initiation of change by the citizenry through initiative, referendum, and
8 recall. Santa Monica supra.

9 Clearly the first prong of the anti-SLAPP process has been met by defendants.

10 In regard to the second prong, the plaintiffs raise two issues. Firstly it claims that the
11 initiative, if passed would violate the contracts clause of the United States Constitution.
12 "No state shall . . . pass any . . . law impairing the obligation of contracts" U. S.
13 Constitution, Article 1, Section 10.

14 Plaintiffs rely on United States Trust Co. V. New Jersey (1977) 431 U. S. 1 in
15 support of their contention that passage of this initiative would be a violation of the
16 contacts clause. Interestingly, the California Supreme Court in Sonoma County
17 Organization of Public Employees v. County of Sonoma (1979) 123 Cal. 3d 296 cited
18 the United States Trust supra case as authority for upholding the contracts clause where
19 the contract is not between private parties, but obligations of the public entity itself. The
20 First District Court of Appeals in Valencia v. County of Sonoma (2007) 158 Cal. App.
21 644 also held that a contract by the public entity, such as here, once signed, cannot be
22 abrogated by public referendum and is subject to the constitutional constraints on
23 impairment of contracts.

24 The question then becomes one of whether passage of this initiative would work an
25 impairment of the contract the City has entered into to repay the loan and whether the
26 City would prevail.

27 Despite the fact that the witnesses for plaintiff, asserting a sense of responsibility that
28 is welcome from public servants, have all asserted that if the initiative passes, that the

1 loan will be repaid, requires a close examination of the effect that would have on the
2 overall purpose of a public entity, such as the City of Crescent City. That examination
3 leads to the conclusion that plaintiff has demonstrated by the weight of the evidence, a
4 strong probability of prevailing on the cause of action at trial.

5 The initial purpose of establishing a public entity such as a city, or a special district
6 or even a county, is to collectively provide for its members all those matters that each
7 individual can not provide for himself. Police protection, fire protection and basic
8 infrastructure such as roads, a water supply and a septic system. Those aims must be met
9 with a limited means of creating revenue. Should those means be impaired, choices and
10 priorities must be determined.

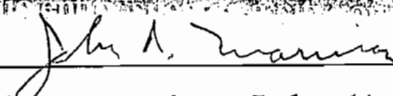
11 The loan payments must be made. The loan agreement recognizes that the State
12 would have available to it numerous means of taking money from the city. The loan
13 agreement as amended in Exhibit B that SWRCB may take such action in a court of
14 competent jurisdiction as it deems necessary to compel the performance of all duties
15 relating to making loan payments. Action taken pursuant to that right shall not deprive
16 SWRCB of, or limit the application of, any other remedy provided by law or by the
17 agreement itself.

18 Although the exact amount of the shortage that would occur is uncertain, depending
19 somewhat on response by SWRCB, there would be a necessary major reduction in the
20 nature and quality of basic services provide to the citizens of the city. Police Department
21 would take a hit; the two paid employee Fire Department would not be able to provided
22 proper equipment to meet their function; the park maintenance activities would be
23 curtailed; street maintenance would fall to the wayside; employee benefits would
24 necessarily be reduced thereby affecting desirability of public employment and adversely
25 affecting the ability to attract and keep qualified employees; the need to increase sales
26 taxes would be present, and if raised would be an increased burden on all persons in the
27 community. The list of adverse consequences that would fall upon each and every
28 member of the community would continue to grow.

1 The alternative consequences to the community of passage of the initiative far out
2 weigh the minimal burden of \$28.15 per household. Under these circumstances the
3 probability of prevailing at trial falls to the side of plaintiffs. The Preliminary Injunction
4 shall issue.

5 ~~initial purposes of establishing a...~~

6 Dated: August 6, 2010



John R. Morrison, Judge (Assigned)

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I am a citizen of the United States and a resident of the County of Del Norte. I am over the age of eighteen (18) years and am not a party to the entitled action; my business address is 450 H St, Crescent City California California.

On Monday, August 9, 2010 I served a copy of the Statement of Decision and Preliminary Injunction filed August 6, 2010 by depositing a true copy in the United States mail in Crescent City, Calif., in a sealed envelope with postage prepaid, addressed as follows:

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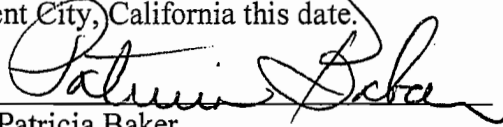
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I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that it was executed at Crescent City, California this date.

DATED: August 9, 2010


Patricia Baker
Judicial Assistant