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MEMORANDUM

To: Jim Leidigh, President
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From: Robert E. Thurbon

Re: 22 EDU Allocation; Auburn Valley Community Services District (DISTRICT) v. Auburn Country Club (ACC), Placer County Superior Court Case No. SCV0022319; Final Judgment Entered August 29, 2009.

Date: November 13, 2021

I. INTRODUCTION AND FACTUAL STATEMENT

As part of its responsibilities as a Community Services District, the District is responsible for the delivery of water and the provision of sewer services to homes and businesses within the jurisdictional boundaries of Community Services District, including but not limited to ACC. The District is also responsible for maintaining the water system. To maintain the system, the District is entitled to and does in fact charge the property owners, including but not limited to ACC, for actual usage of water by meter readings and the operations and maintenance of the system. The District delivers, and ACC does in fact accept, water from the District and uses the water system that requires operation and maintenance.

The District also provides sewer services to the property owners as well as to ACC. The District is responsible for operating and maintaining the sewer system. To operate and maintain the system, the District charges the property owners, including but not limited to the ACC, for the operations and maintenance of the system. The District delivers, and ACC does in fact accept, sewer services from the District.

In 2003, the Auburn Valley Public Financing Authority issued the Series 2003 Local Agency Revenue Bonds pursuant to Articles 1 through 4 (Commencing with Section 6500) of Chapter 5, division 7, Title 1 of the Government Code of the State of California by which the District received funding to operate its wastewater system for the benefit of the community including but not limited to ACC. Pursuant to the terms of the bonds and the financing documents, each parcel of property within

the boundaries of the District including the ACC was assessed a particular amount in order to make repayments on the bond.

Throughout the intervening years, depending on club ownership, claims were made alleging that the 22 EDU allocation by which the club is charged its pro rata share for water and sewer system operations and maintenance was improperly determined and therefore, allegedly, the 22 EDU allocation was and continues to be unlawfully utilized as a basis for charging the club its pro rata share of sewer system operations and maintenance. That issue was decisively, fully and finally laid to rest in August of 2009, when judgment in favor of the District was entered by Placer County Superior Court Case No. SCV 0022319, Auburn Valley Community Services District, Plaintiff and Cross-Defendant v. Auburn Country Club, Defendants and Cross-Complainant.

II. PLACER COUNTY SUPERIOR COURT CASE No. SCV0022319; FINAL JUDGEMENT ENTERED AUGUST 29, 2009 AND ACC'S CAUSE OF ACTION FOR WRIT OF MANDATE, VIOLATION OF PROPOSITION 218 AND SECTION 66013 CHALLENGING THE 22 EDU ALOCATION

ACC's third cause of action in the lawsuit was based on an alleged violation of Proposition 218 and Government Code Section 66013 claiming the District imposed fees or charges on ACC in excess of actual and proportional costs to the property. The evidence established and the Court found that the District did in fact comply with the provisions of Proposition 218 and Government Code Section 66013, that ACC failed to timely challenge any assessment on the Club's property and that the charges were proper. The Court further found that ACC could not establish that it was being charged in excess of its proportionate use (the 22EDU issue) and was seeking to enforce by writ of mandate, the exercise of discretion by the district, something that is not enforceable by writ of mandate.

The Court found that Proposition 218 did not require that the District perform a reallocation of EDUs and thus a reassessment of charges on all parcels of property within the CSD boundaries. Rather, Prop. 218 is a procedural and notice statute and requires that any assessment on property be supported by an engineer's report, that the record owner of each parcel be given written notice of the assessment including the amount chargeable to the particular parcel, the duration of the payments, the reason for the assessment, the basis upon which it was calculated and the date, time and location of a public hearing on the assessment. ACC asked the Court to compel the District to perform a new engineer's study in order to reassess the EDUs that were previously allocated to the Club and all other properties within the Districts boundaries, something the Court rejected finding that such action is not required by Prop. 218.

The evidence submitted at trial, and the findings of the court established that neither ACC or anyone else ever timely brought a Proposition 218 challenge to any component of the Districts revenue bond issuance or to any imposition or increase of fees and charges for water or sewer services. Proposition 218 itself does not contain a statute of limitations provisions and therefore the court looks to the relevant statute of limitations (SOL) to determine the timeliness of any claim attacking an assessment, fee or charge on the basis of Proposition 218. The SOL that applied to an attack on an assessment, fee or charge under proposition 218 was 120 days. For legal challenges to the issuance of

bonds on any basis, the statute of limitations was 6 months. The three-year statute of limitations that was argued by ACC in the litigation applied to taxes and was distinguished from proposition 218 assessments, fees and charges.

Even if ACC or any community member had timely brought a challenge to the validity of either the issuance of the bonds under any theory, including an alleged proposition 218 violation and/or a challenge to the imposition of the water and sewer operations and maintenance charge or any subsequent increase over the years to those charges, the proposition 218 analysis would be as follows:

Under proposition 218, fees and charges for water and sewer services were expressly exempt from the voting requirements of Proposition 218. Proposition 218 further distinguished assessments from water and sewer fees and charges. The distinction between assessments and fees and charges is that assessments under proposition 218 required a balloting process which includes a majority protest provision, not an actual vote by the voters, and the imposition or increase of fees and charges for water and/or sewer services are not subject to either the balloting process or the voting process. Instead, fees and charges for water and sewer services are subject to notice of public hearing and written protests. Only assessments are subject to determination based on an engineer's report performed by a licensed engineer, such as the report utilized for the establishment of an actual assessment district. Fees and charges were not subject to the same establishment requirements as assessments; they were different under proposition 218 and treated differently in the protest and/or voting procedures.

ACC claimed that the District violated section 66013 of the Government Code when it allocated 22 EDU's to ACC for purposes of the bond and sewer operations and maintenance. ACC further alleged that the violation is based upon the fact that ACCs actual usage of water and therefore actual flow into the system is less than the amount used by the District in initially allocating the EDU's. The District hired an engineering firm, PSOMAS Engineering, to develop plans for the new wastewater treatment plant. In anticipation of an assessment district under the improvement Bond act of 1915, an engineer from PSOMAS presented an engineer's report to the then Board of Directors, which was adopted by the Board in an open and public meeting on March 4, 1999 that included a calculation that 22 EDU's were allocated to ACC. The calculation was based on the County pre-determined maximum capacity per household equal to 250 gallons per day and flow data that was collected over a four-quarter period from ACC by a company contracted by PSOMAS, Aqua Sierra.

Within the boundaries of the District each residence is assigned a maximum flow into the plant of 250 gallons per day whether a particular residence uses that amount or not. They are charged for the maximum capacity allowed, no consideration is given as to whether that amount is used or not used. The plant was designed for a maximum capacity of 164 EDU's which consisted of 142 homes, either existing or future development, and ACC which was allocated 22 EDU's. During the trial, the owner of ACC at the time the EDU allocation was made, testified that he was fully aware of the 22 EDU allocation and conceded that he did not protest the allocation. He further testified that there was an ongoing relationship between the ACC and the District regarding EDU's, that the allocation was based on a formula set by the County, that everything having to do with the design of the plant, including the allocation of EDU's had to be approved by the County, and that once the allocation was made it was

accepted.

Another engineering firm, 7H, prepared plans to develop the wastewater treatment plant based on the maximum capacity of 164 EDU's, which were accepted by the state (proven by Exhibit U, entered into evidence by the court) and that in order to finance the construction of the new plant, Revenue Bonds (not Assessment District Bonds) were issued in 1991 by the District. Pursuant to the terms of the bonds, the District is obligated to collect fees or charges for the wastewater service to not only pay for the bonds but also to support operation and maintenance of the plant. The Indenture Agreement was entered into evidence at trial. As a part of the Revenue Bond process the District, at noticed public meetings, adopted a series of resolutions on February 1 and March 8, 2001 including a resolution that established capacity charges for parcels within the jurisdictional boundaries of the District to be charged on a monthly basis from fiscal year 2002 through 2021 and amounts set forth on a Capacity Charge Schedule, attached to the resolution and also entered into evidence at trial. The bonds were subsequently refinanced and subsequent owners of ACC did not submit any evidence of a written majority protest because there was none.

A "capacity charge" as defined by Government Code section 66013 is "a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense relating to its use of existing or new public facilities". The 22 EDU capacity charge for purposes of bond financing is not a special assessment. It is not a unique and separate benefit that attaches to the Country Club property beyond sewer benefits that attach to the entire community. 22 EDU's reflect the proportionate share of the service and is a capacity charge as contemplated by section 66013, and is the same service and not a unique or special service that is provided to all properties within the jurisdictional boundaries of the District.

Subsequent to the litigation, club ownership has periodically argued that the "proportional cost of the services attributable to the club's parcel or the reasonable cost of providing the service" equals the actual usage and that since the current actual usage is less than when the EDU's were initially allocated, the EDU's should be reallocated based on the current "actual use". As determined by the Court and as binding on the District and the Club, regardless of its current name and ownership, the proportional cost of the service attributed to the parcel **does not represent actual usage but represents the capacity of flow allowed by ACC** to the plant. As the Court found, the "service attributable" to ACC is not what the ACC **actually uses** but is instead a maximum allowable usage allocation.

The plant was designed for a maximum flow capacity. The data taken into consideration in designing the plant represented the homes in existence at the time, future development of residences, and the ACC at its maximum capacity during the litigation. The then Club owner fought to keep the 22 EDU engineer's report out of evidence and fought to keep the flow studies out of evidence. Nevertheless, evidence was submitted establishing that the engineer's report was properly adopted, there was extensive testimony about collection of flow readings which were relied on by PSOMAS engineering and ultimately the State of California in adopting its Waste Discharge Order. Specifically,

Paragraph 10, page 2 of the State's Waste Discharge Order adopts the districts flow data finding the average daily waste flow at the time of adoption attributable to the club facilities was 5445 gallons.

It was undisputed at the time of trial that the 22 EDU allocation was based on the 250 gallons per day standard imposed by Placer County. 5445 gallons per day of flow equals 21.78 EDU's. At the time of trial ACC offered no evidence to demonstrate the inaccuracy of the measurements or to challenge the findings and conclusions reached by the state in adopting the 22 EDU's as part of the Waste Discharge Order. The plant was designed to service a maximum flow from ACC equal to 22 EDU's. This is not a potential or future use of the service as prohibited by California Constitution Article XIII D Section 6, but is in fact service that is actually used by, or immediately available to be used by ACC.

The Court, found in favor of the District and **denied** ACCs claim that the 22 EDU allocation was improperly determined, was unlawful because ACC uses less flow than the maximum amount allocated, or otherwise unlawful for any reason.

III. EFFECT OF PLACER COUNTY SUPERIOR COURT DECISION

The doctrine of res judicata known as "claim preclusion" bars parties from relitigating the same cause of action between the same parties in a subsequent action. The aspect of res judicata known as "collateral estoppel" or "issue preclusion" bars a party from relitigating any issue necessarily adjudicated in a prior final judgment see *Rice v. Crow* (2000) 81 CA 4th 725, 734. As explained in *Adam Bros. Farming, Inc. v. County of Santa Barbara* (9th Cir. 2010) 604 F. 3d 1142, 1148-1149, "[u]nder California law, res judicata precludes a party from relitigating (1) the same claim, (2) against the same party, (3) when that claim proceeded to a final judgment on the merits in a prior action". Since the issue between ACC (and its successor ownership) regarding the legality of the 22 EDU allocation was resolved with a final judgment between ACC and the District, that judgment has preclusive effect upon litigation asserting the same facts. *Pollock v. University of Southern California* (2003) 112 Cal. App.4th 1416, 1427-28.

Only a final judgment, such as the one we have in this case, can serve as a basis for invocation of the doctrine of res judicata or collateral estoppel. When a defendant prevails, such as the District did here as a Cross-Defendant, litigating ACCs claim that the 22 EDU allocation was unlawful, the judgment constitutes a bar to any further suit on the same cause of action *Busick v. WCAB* (1972) 7 C.3d 967. ACC, or its successors in interest, are barred from relitigating the previous cause of action in ACCs lawsuit seeking to invalidate the 22 EDU allocation.

Res judicata is distinguishable from collateral estoppel or "issue preclusion." Collateral estoppel operates on ***issues*** rather than causes of action. A prior judgment such as the one we have here, operates as an estoppel or a conclusive adjudication of the specific issue, the claimed illegality of the 22 EDU allocation, that was actually litigated and determined in the prior litigation. *Taylor v. Hawkinson* (1957) 47 C.2d 893.

Finally in addition to the doctrine of res judicata and more importantly perhaps, the statute of limitations within which any person challenging the 22 EDU allocation was required to bring any action to challenge that allocation, expired long ago. As the court found, and as was fully established in the trial record, ACC, or any other interested person for that matter, failed to bring an action challenging the 22 EDU allocation within the mandatory statute of limitations. The statute of limitations to challenge the 22 EDU allocation expired almost 2 decades ago. The implementation and ongoing charges based on the lawfully determined and approved 22 EDU allocation does not revive the statute of limitations, or otherwise create a new or different claim or cause of action permitting legal challenge.

IV. CONCLUSION

The statute of limitations within which any person challenging the 22 EDU allocation was required to file their action in court, long ago expired. The untimely challenge by ACC resulted in complete adjudication of the EDU allocation issue. Even if the statute of limitations had not already expired, relitigation of the issue would be barred by the doctrine of res judicata, including claim preclusion and collateral estoppel.