

Transcript of Proceedings
January 18, 2022

City of Half Moon Bay
vs.
Granada Sanitary District



1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA
3 BEFORE THE HONORABLE CHRISTOPHER G. RUDY, JUDGE
4 DEPARTMENT 7

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6 CITY OF HALF MOON BAY,
7 Plaintiff,
8 v. Case No. 17CV316927
9 GRANADA SANITARY DISTRICT,
10 et al.,
11 Defendants. /

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
Tuesday, January 18, 2022

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(By CourtCall)
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1 Tuesday, January 18, 2022 9:03 a.m.

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PROCEEDINGS

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THE COURT: The matters 1, 2 and 3.

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Actually, the matters at 1 through 5. It's three

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motions but there were two joinders and they're

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competing motions for summary judgment.

8

The case is City of Half Moon Bay v.

9

Granada Sanitary District, et al.

10

Appearances, please.

11

MR. COLANTUONO: Good morning, Your Honor.

12

Michael Colantuono appearing on behalf of Plaintiff

13

City of Half Moon Bay.

14

MR. PARKIN: Good morning, Your Honor. Bill

15

Parkin appearing on behalf of the Granada Community

16

Services District.

17

MS. FITZGERALD: Christine C. Fitzgerald on

18

behalf of Montara Water and Sanitary District.

19

MR. RAMAKRISHNAN: And Erik Ramakrishnan on

20

behalf of Montara Water and Sanitary District.

21

THE COURT: All right. Good morning,

22

everybody.

23

COURT REPORTER: Your Honor, there's also a

24

court reporter on the line, Noelia Espinola.

25

THE COURT: All right. Good morning. Okay.

26

MR. RAMAKRISHNAN: Your Honor, even though

27

we're here for the same party, would you mind if we

28

separate so we can remove our masks?

1 THE COURT: That's fine. All right. Just
2 to let folks know who are appearing by telephone, we
3 have two counsel here in person who made their
4 appearances. And the Court is permitting them to sit
5 at separate tables so that they can address the Court
6 without concern of wearing their masks.

7 Okay. These are motions for summary
8 judgment. The Court issued its rulings. I'm just
9 going to go straight down in terms of which one I call
10 first. The first matter is the motion of Montara.
11 And so it's contested by the City of Half Moon Bay.
12 And the Court is prepared to proceed.

13 And counsel for the City of Half Moon Bay,
14 you may proceed.

15 MR. COLANTUONO: Thank you, Your Honor. I
16 view these as effectively one matter, and I'm happy to
17 make all my arguments at once if that's convenient for
18 the Court.

19 THE COURT: I think it is because these
20 motions are essentially the flip side of one another.
21 And I think it's probably easiest to just argue your
22 position and then we can decide if additional argument
23 is necessary.

24 MR. COLANTUONO: Thank you, Your Honor. Let
25 me start by providing a little context. These shared
26 sewer facilities are common around the country because
27 the federal governments and the state water regulators
28 insisted on them.

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1 These relationships are, shall we say,
2 fraught. Because these are shotgun marriages from
3 which no one can ever escape. There's no family law
4 court to these relationships. They were forced on us
5 in order to fund extensively mandates on a reasonable
6 basis and they're intended to reduce the regulatory
7 burden of the state water resources control board by
8 reducing the number of plants they have to oversee.

9 Originally, Uncle Sam provided some
10 sweeteners in the form of state and federal grants
11 back in the '70s. But as they ratcheted up the
12 environmental demands on these plants over the years,
13 requiring increasingly expensive technology, that
14 money has gone away.

15 You may be familiar with the perpetual
16 disputes between the City of San Jose and the ten
17 agencies that flowed a plant that it owns and operates
18 on a contract basis.

19 SAM's new general counsel was chosen because
20 of its history with a very long dispute involving
21 south Orange County shared sewer facilities.

22 So the frequent disputes in this agency are
23 not necessarily anybody's fault and they're common.
24 However, the tentative ruling makes this relationship
25 worse by entitling two wealthy enclaves to a perpetual
26 subsidy for their capital facilities at the expense of
27 the one community on the coast that provides
28 affordable housing. To the effect that they're going

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1 to raise tenants' bills so that we don't have to make
2 some wealthy coastal landowners pay the fair cost of
3 the services they receive.

4 And I say that not because it's your place
5 to adopt good or bad public policy, I say that because
6 if it's bad public policy, it's not likely of them --
7 of the parties agreed to in the 1970s or more
8 recently. And it also will create really destructive
9 incentives for how the agencies behave in the future.

10 The districts have an incentive to gild
11 lilies that they don't have to pay for, and the City
12 has an incentive to pay for nothing that the federal
13 government doesn't order the plant to do.

14 So, for example, the IPS, the pipeline, is
15 undersized. It can't carry all the flows the
16 districts generate in wet weather. One might argue
17 that was tactical. These two communities don't want
18 any more growth but they don't control county land use
19 policies and they don't control the state legislature.
20 But they can starve new growth by undersizing their
21 sewer capacity, and one might argue that that's what
22 they've done. But they undersized this too much and
23 they have more water and wet flow that can come down
24 that pipe. That's why there was wet water storage
25 added at the District's expense at the top of the
26 pipe.

27 Let's think about the incentives the
28 tentative ruling creates perspective to these three

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1 agencies. The districts want more wet water storage.
2 They need it. We can't allow it to be physically
3 attached to the SAM system, to the regional system,
4 under this tentative ruling. Because if we do, we
5 have to pay 60 percent of its capital costs and we
6 have to pay 60 percent of its maintenance costs.

7 Now, why do I say 60 percent? Those things
8 that are based on flow were at 52 and a half percent
9 on the facts presented to you in the summary judgment
10 motions, and it's creeping up and it's much closer to
11 60 now. We're getting into the weeds a bit and that's
12 helpful. But I'm trying to make a point that this is
13 not good public policy and, therefore, it's not likely
14 to have been the intent of the parties.

15 Now, I want to start by pointing out that
16 the tentative misunderstands the City's arguments
17 because the districts misrepresented City's arguments,
18 and apparently we didn't clarify as much as we might
19 have.

20 We do not argue that the City's duty to pay
21 60 percent of maintenance and operation costs for any
22 facility ends with the useful life of that facility.
23 We know the shotgun marriage is perpetual. We know
24 we're on the hook for 60 percent of the M&L costs and
25 we will pay those costs. We're not trying not to.

26 We argued useful life as a way to
27 distinguish capital expenditures from maintenance and
28 operations responsibility. Now, that distinction

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1 between a capital expenditure and the maintenance and
2 operations or operating expense, is something that the
3 tentative ruling does not reflect understanding of.
4 And the failure to understand that fact put you on the
5 wrong path and made a decision which I think is
6 fundamentally wrong.

7 So let me spend more time than I was able to
8 do in my papers explaining the difference between a
9 capital expenditure and a maintenance and operation
10 expense.

11 This is a spectrum. Let's say you've got a
12 kitchen. If you wipe down the counters with bleach,
13 that's obviously maintenance. If you re-wax wooden
14 tables, that's also maintenance. If you replace the
15 surfaces, the work counters, that might or might not
16 be maintenance. If you're replacing a broken cutting
17 board because it's broken and it can no longer serve
18 the function of a cutting board, that's probably
19 maintenance. If you're replacing plastic countertops
20 with marble, that's an upgrade. That is
21 rehabilitation. That's a capital expenditure. What
22 if the dishwasher breaks? Repairing it is maintenance
23 and repair; replacing it is not.

24 Now, if we go to extending the kitchen or
25 building a whole other kitchen somewhere else, we're
26 obviously into capital expenditure money. Now, where
27 do we divide this spectrum between maintenance and
28 repair that the City has to pay 60 percent of, and

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1 capital expenditures that we don't have to. Well, the
2 answer is this probably arises throughout the law.
3 The distinction between a long-term investment that
4 the owner of the asset should bear and the maintenance
5 and repair responsibility that the current user of the
6 asset should bear arises everywhere from small claims
7 court to civil court.

8 Say, for example, in small claims court, if
9 a tenant ruins a carpet, the landlord is entitled to
10 be reimbursed out of the tenant's security deposit.
11 The cost to replace that carpet. But not the whole
12 cost. We assign off a ten-year life to the carpet and
13 the landlord pays a portion of the cost of the new
14 carpet that reflects the burned years, so to speak.
15 He had an eight-year carpet and now he has a ten-year
16 carpet, he's got to pay for those two extra years
17 because the life was extended by the expenditure.

18 We cited you cases also very common in which
19 a tenant of a commercial building is obliged to repair
20 and maintain it. And there comes a time when it needs
21 a new roof. That roof is in the same place,
22 performing the same function, has the same design,
23 perhaps, the same aesthetic appearance, but it's a new
24 roof. And the cases assign that to the landlord
25 because it extends the life of the building.

26 Now, the distinctions I'm describing are
27 often subtle. Nuanced and complicated. And that's
28 why we end up with lawsuits like this. But the

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1 tentative ruling because of the District's alleging
2 there oversimplifies. You took only the most basic
3 cases of the capital expenditure, a wholly new
4 facility, and omitted words that the tentative
5 acknowledges the parties agreed to in the 1970s, which
6 is rehabilitation.

7 So, for example, we could make the IPS
8 function in a variety of ways. We could completely
9 replace it, which is what we're doing. We're putting
10 a pipe next to the existing pipe. We're
11 rehabilitating the old pipe and the old pipe will be
12 used as a life boat, a safety net. A place to bypass
13 sewage when you need to maintain the new one. So
14 they're ending up with two pipelines.

15 Now, it's true those two pipelines serve a
16 function that the existing one does. But they have an
17 extended life. It's going to be a new 50-year life,
18 probably, and it has more functionality because now
19 they have a way to handle sewage flow when the pipe
20 needs repair other than just storing it at the top of
21 the hill.

22 So this distinction between a capital
23 expenditure and a maintenance expense and the need to
24 distinguish a merely expensive repair for a really
25 long-term repair is fundamental to what the parties
26 agreed to.

27 Their agreement was, you bring your own
28 capital but we'll pull the M&L. And when we pool the

1 M&L, the City paid 60 percent. It wasn't 60 percent
2 originally. We agreed to only half. But we're not
3 grumbling about a 60 percent M&L. We're arguing about
4 what is M&L? What is maintenance and operation? And
5 what is a fundamental rehab that all the law we cited
6 to you distinguishes?

7 So because these distinctions are frequently
8 subtle, the law uses rules of thumb. So I pulled up
9 on the internet this morning, by searching on
10 accounting for lawyers, capital versus operating
11 expense. Some texts that was provided by a company
12 that's called Fundera, which provides accounting
13 software and accounting services to law firms.

14 And they had this to say: What is an
15 operating expense? Basically, anything that goes into
16 the routine operations of your business is considered
17 an operating expense. Next they ask: What is a
18 capital expense? "Capital expenditures/expenses (or
19 CapEx)" -- in accounting shorthand -- "represent an
20 investment made in the business, the benefits of which
21 are expected to last longer than one year.

22 "Some examples of capital expenditures
23 include: Building purchases." Easy enough, that's
24 new. "Vehicle purchases." Maybe that's new, maybe
25 that's not. You're going to need a truck. You always
26 need a truck. "Equipment purchases." Your copier
27 dies, you get a new copier. No new functionality.
28 It's still a copier at the end of the hall. But IRS

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1 treats it as a capital expenditure because it has that
2 longer use of life. "Acquisitions of patents or other
3 intangible assets." And then here's the important
4 one, "Repairs beyond normal maintenance." It says
5 "repairs that upgrade a piece of equipment." Again,
6 you get a better dishwasher, not just a functioning
7 dishwasher. Two-line pipeline, not a one-line
8 pipeline. "Or a building to extend its useful life or
9 repurpose it for a new use."

10 So our briefs aren't on useful life, not
11 because we wanted to get out of our duty to maintain
12 access at the end of the useful life, but because
13 accounting fundamentals use that principle. The IRS
14 uses that principle. And I suggest if you talk to
15 your presiding judge about your court's budget, it's
16 going to distinguish capital from current expenses as
17 well.

18 But I told you when I started this riff on
19 accounting for lawyers, that we use rules of thumb in
20 order to simplify this task that distinguishes when
21 something becomes a capital expenditure and when it's
22 merely a painfully expensive and unwelcome repair.

23 The rule of thumb that this Fundera website
24 cites is that when you capitalize an expense, you are
25 allowed to deduct from the income of the business a
26 portion of that cost over the life of the asset.
27 That's called amortization. You amortize the cost
28 over the life of the asset.

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1 The IRS allows you to depreciate real
2 property that is not a residence of 39 years. So
3 effectively we have a rule of thumb that if it lasts
4 39 years, it's capital.

5 We have other rules of thumb. The
6 prevailing wage loss in California, which requires
7 prevailing wages to be paid to the workforce. If we
8 construct a capital asset of a new courthouse, use a
9 rule of five years. Because if a repair that you're
10 going to do five years or more frequently, like
11 repainting or fixing the nonskid surface on a
12 stairwell, that's maintenance. If it's something you
13 do less often than every five years, that's a capital
14 expenditure. So here we're dealing with a
15 once-in-50-years repair. This line was built in the
16 '70s.

17 The regulations -- the state regulations
18 that Granada cites use a definition that's similarly
19 distinguished maintenance and operation from these
20 larger capital expenditures by using the word
21 rehabilitation, and they refine rehabilitation.

22 And I think that what we're doing to the
23 IPS, the inter pipeline system, for the benefit of the
24 reporter, what we're doing to the IPS is a rehab, at
25 least, if not a complete reconstruction. Because
26 we're taking something that had a 50-year life that is
27 now so broken that it's putting raw sewage in the
28 ocean, and we're rebuilding it for another 50-year

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1 life. We're doubling its utility by double-renewing
2 its life.

3 So let me shift from that basic mistake the
4 tentative made that drives everything else that I find
5 wrong with the tentative to a couple more specifics.
6 There are some factual misunderstandings here too.

7 First, this project does not have a budget
8 of \$4.4 million. It has an initial year cost of
9 \$4.4 million. But we're talking about something on
10 the order of \$20 million.

11 Secondly, the opinion cites one line in the
12 JPA, suggests the parties' goal was uniform rates.
13 Yes, that language is there but they never had uniform
14 rates. Maintenance and operation expenses are
15 allocated to the three agencies based on their
16 respective flows to the plant. So we take 60, they
17 split the remaining 40.

18 Capital costs were never pooled. They paid
19 for the IPS, netted the federal grant that went to
20 them, not us. We paid for a line south of the city
21 that serves the golf course that they never put a
22 penny into. We shared the cost of the ocean outfall.
23 And then when it was decided that there would be one
24 plant, we shared the cost of that plant. So all the
25 capital expenditures were allocated proportionately.

26 In 1996, when the regulators forced
27 expansion of the plant to take it from 2 million
28 gallons a day to 4 million gallons a day, the parties

1 reach an agreement to allocate the capital burden of
2 that expansion among themselves. And Montara couldn't
3 participate because their revenue source was
4 successfully litigated, so they didn't take the
5 capacity.

6 So all of these relationships reflect the
7 fundamental idea you bring your own capital, but we
8 pull the maintenance and operation expense. And I
9 think your decision is largely consistent with that
10 understanding, except you missed the fundamental idea
11 that capital expenses include nonroutine substantial
12 repairs.

13 So every repair involves some new parts.
14 Spark plugs for your car, waxing tabletops, the
15 question is how much. And we answered that how much
16 with respect to utility new life span.

17 Okay. There are no uniform resale rates
18 either. Historically, Montara had the highest rates
19 because they suffered from this economy small scale
20 and distance from the plant. Granada was somewhere in
21 the middle and the City had been lower. Well,
22 recently the City's rates have gone up. But their
23 resale rates -- but the people who live in these
24 communities have never been the same. What we send
25 into SAM has never been the same. The only thing
26 that's been uniform is the rate per volume of flow.
27 But I think you can take that line out of context and
28 misunderstand the goal here.

1 Plaintiff suggests that you're making all
2 three agencies equally on the hook for the IPS costs
3 and costs like it. But, in fact, you're asking city
4 rate payers to subsidize capital costs for two wealthy
5 enclaves that find, politically, oil rates popular,
6 who wouldn't, and also find the infrastructure
7 constraints that prevent new development are even more
8 popular politically in most communities.

9 Let's turn to specific language in the JTA
10 that the tentative relies on. The choice of a single
11 wastewater treatment plant led these parties to agree
12 to pool M&L. It's true, the City did not want to pool
13 M&L initially, but agreed to it in order to get the
14 deal done. But they never agreed to pool capital. No
15 language would ever derive it from this agreement even
16 though they changed to the one treatment plant
17 project.

18 The defendants can cite no language
19 suggesting the parties agreed to pull capital.
20 Instead, they justify capital so narrowly as to make
21 it meaningless. They can't identify a new capital
22 project except in the most trivial way. This is a
23 except for a new and important way.

24 The Court mentions that a new project
25 involves design decision-makers. And that you had to
26 have a scope and quote and figure out what you're
27 going to build, what choices to make. That's a marker
28 of newness. Well, with respect, Your Honor, it's not

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1 a marker of newness.

2 When this agency chose to upgrade and repair
3 and replace the IPS, there were multiple engineering
4 solutions. They could replace it in place like kind,
5 they could slip-sleeve it, put a liner in it, or they
6 could do what they chose to do, put a new line
7 alongside of it, repair the old one as a backup
8 system.

9 The opinion suggests we don't account for
10 the verbosity of the definitions. They are verbose,
11 no doubt. But I don't think there's a
12 misunderstanding here between the tentative and the
13 City about what the agreement says. We pay for -- we
14 don't pay for capital, we do pay for M&L. The mistake
15 is not to understand that capital includes substantial
16 rehabilitation.

17 So the opinion concedes that the JDA defines
18 the word "construction" that we're not obliged for to
19 include reconstruction. If this isn't reconstruction,
20 building a new line next to the old one, fixing the
21 old one and using it as a life boat system, what is?

22 The accounting website I quoted from says it
23 extends the useful life. Well, this plainly does. It
24 has a life span of 39 years, this plainly does. The
25 state regulation definition of rehabilitation, the
26 Granada site, is on our side of this balance. This is
27 plainly that.

28 So this decision, which takes the trivial

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1 case, actually uses the separate required engineering
2 drawings. If that's all we talk about, this agreement
3 would be much shorter. It would simply say, We're
4 pulling everything on this capital plan. And if you
5 ever build anything new, we will need a new agreement.
6 Instead, we got all of this complexity because we know
7 that capital projects are inevitable in the life of
8 projects like this.

9 A couple of points on context. We might
10 want to touch on those regulations. The Intertie
11 pipeline system was needed whether it was one
12 treatment plant or three. They had to get downhill to
13 the outfall. And they built it before the one plant
14 solution was chosen. And they built it with their
15 money, not ours.

16 The City gets no benefit from the ITS flows
17 to the plant. And with respect, the arguments that
18 the districts make suggests we benefit from the plant
19 have an air of desperation about them. And without
20 putting too fine a point on it, stuff doesn't flow
21 uphill. We don't use a pipe that is physically
22 elevated from our city, which is on the coast down
23 below.

24 Why would we have agreed to carry 60 percent
25 of their capital costs not to have the benefit of the
26 shared plant? We got that under the force of a
27 shotgun marriage and they got it too. Not because
28 there are any comparable facilities that they've got

1 to pay 40 percent of, that line south of the city they
2 can surely drain nothing to, so it's an irrational
3 deal that we could not have intended.

4 As for the regulations in 1970s, in broad
5 brush, these describe what you can use Uncle Sam's
6 money for. And Uncle Sam was generous. You can use
7 it for anything that it's going to take to get you to
8 comply with the Clean Water Act. Those regulations
9 describe what the districts can use Uncle Sam's money
10 for. But if the districts offer a completely ironic
11 interruption of those regulations, which the tentative
12 adopts. And that is that because Uncle Sam can pay
13 for it, we agree to pay for it. How does that make
14 any sense?

15 The fact is, this agreement has its own
16 definition of construction. That definition of
17 construction is not consistent with the federal
18 definition that's being offered to us. And the
19 definition of construction plainly includes
20 reconstruction and rehabilitation. So the question
21 becomes, What are they?

22 If this means -- this federal regulation
23 means that we're perpetually at risk for 60 percent of
24 the M&L costs, we agree. We signed up for that.
25 We're not complaining about that. We're just arguing
26 about what's within it and what's not.

27 The tentative suggests that we merely
28 dismissed the federal regulation as having been

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1 rescinded. That, I don't think, is a fair reading of
2 our position. And if we didn't make it clear in our
3 writing, I'll make it clear now, we say that these
4 federal regulations are not likely to have expressed
5 the parties' intent because they use different words.

6 And the fact that they were rescinded after
7 the original agreement but before all of the
8 amendments, and none of the amendments saw a need to
9 change anything at all to reflect this now missing
10 federal law, suggests this now missing federal law is
11 the parties' intent.

12 The course of performance, another basis of
13 your decision -- I could make a lot of points but I
14 sense you've got a calendar to get to and I'll try not
15 to delay you.

16 The course of performance evidence that you
17 relied on does not help you. The reason that it does
18 not help you is that it's equally consistent with the
19 view that we pay for capital -- we do not pay for
20 capital, including rehab. And a view that we -- we
21 pay for -- that includes rehab. There's a
22 line-drawing exercise. And none of the projects that
23 we've built today have really tested your logic much.
24 We expanded the plant. That's an expansion. They
25 added wet water storage, arguably, that's an
26 expansion.

27 The fact that there's capital expenditures
28 in every budget, true enough. We do capitalize things

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1 like new pumps and motors and routers. But if their
2 expense occurred more frequently than every five
3 years, that's still maintenance and operation. So
4 that the core issue is really, is rehab outside?
5 Everybody agrees it is. The question is, what's
6 rehab? The question dealing also can't --

7 THE COURT: Counsel, I don't mean to
8 interrupt you, but I'm just letting you know that
9 you've been going about 25 minutes. And I'm letting
10 you have quite a bit of argument because this is a
11 very important issue and I want to make sure that you
12 express your position fully, but I think you've made a
13 couple of points a couple of times.

14 MR. COLANTUONO: Okay.

15 THE COURT: If you can summarize and wrap it
16 up.

17 MR. COLANTUONO: Thank you for your
18 patience, Your Honor. And I'll do that.

19 Just a couple of points about the
20 course-of-performance evidence. The reason
21 course-of-performance evidence is rarely used in
22 public agency disputes is because contracts with
23 public agencies have to be in writing, approved by the
24 legislative body and signed by the mayor or the board
25 president. We do that to prevent politically
26 unaccountable decisions.

27 Let's say that a city council wanted to
28 subsidize the lifestyle in Montara and Granada. Let's

1 say that's not particularly possible with rent payers
2 in Half Moon. If you do it for us, there's no
3 accountability. Therefore, courts are reluctant to do
4 it for us. They hold us accountable for what we
5 write, what we approve and what we sign.

6 Reliance on SAM's counsel's opinion is a
7 mistake. Why is that? SAM is not neutral. It is the
8 child of a bad marriage and Mom and Dad fight about
9 money all the time and he needs his allowance. SAM
10 needs money to operate. So they'll do anything they
11 can do to defeat gridlock, even if that means
12 conspiring with the two districts to rob the City.

13 At bottom is a public policy problem here.
14 If you make us responsible for somebody else's
15 infrastructure and you make them irresponsible for
16 their infrastructure, bad things happen. They have an
17 incentive to gild the lily. We have an incentive to
18 freeze the system in history. Never let it get any
19 bigger. We got to pay 60 percent of the M&L and 60
20 percent of the capital costs. If we make it harder,
21 whenever you disjoin ownership from maintenance
22 responsibility, you get bad results. One version of
23 that is all of these landlord tenant disputes about
24 what's a roof repair and what is not.

25 I think I probably said -- at this point, I
26 think there's one fundamental error in your opinion,
27 and I encourage the Court to take this under
28 submission. Give it a little thought and particularly

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1 look to the secondary resources about capital
2 expenditures.

3 Unless the Court has questions, I'm happy to
4 take a rest at this time.

5 THE COURT: All right. Thank you, Counsel.
6 I appreciate that.

7 Mr. Parkin, inasmuch as Montara is -- it's
8 Montara's motion and then Montara directly opposing
9 City of Half Moon Bay, I'm going to ask you to go
10 next.

11 MR. PARKIN: Thank you, Your Honor. In
12 terms of the analogies about shotgun marriages and all
13 of that, looking back at the resolution back in the
14 '70s when the City -- the City wanted this. The City
15 wanted it badly. The reality is that all three
16 agencies benefited from consolidation.

17 And there was -- yes, there was grant
18 funding and we were certainly being pushed. We had an
19 injunction. We were all being pushed towards
20 consolidation. There's no question about that.

21 But that's -- that's the reality of what
22 we're living with today. And we all benefit from
23 economies of scale. We're all operating one plant
24 instead of three separate plants.

25 If you take the City's position or
26 interpretation that it makes no sense in the larger
27 picture, and that is if every capital -- first of all,
28 the JPA really doesn't distinguish between capital

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1 projects and when you decide to do capital projects
2 under a project budget or an operations and
3 maintenance budget. But be that as it may, it makes
4 no sense.

5 Because, say, for instance, the plant starts
6 to fail and it needs repair or replacement in some
7 fashion. Then all of a sudden one of the agencies can
8 balk and say, I don't want to pay for this. It's a
9 project budget and, therefore, I'm not going to pay
10 for this.

11 So we are in this together. It is a
12 marriage of convenience more than anything else. And
13 we get together and we fund these improvements. And
14 the City, in its papers, said, Well, the injunction
15 doesn't amend the JPA. But the fact is the JPA was
16 amended right after the injunction was issued. It
17 incorporated the language of the injunction and it
18 actually refers to the injunction. So to argue, as
19 some have, that none of this is relevant here is a
20 mistake.

21 And I'll say also that the maintenance
22 agreements that this City doesn't bring up today but
23 they kept citing in maintenance agreements that we
24 have with SAM, each individual agency has maintenance
25 agreements to maintain its separate facilities, not
26 the joint facilities that SAM owns, but separate
27 facilities.

28 And in there they said, Well, O&M is capped

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1 at a certain dollar amount. Bringing home the point
2 that when the agencies want to cap those improvements
3 in terms of repair and replacement, in terms of
4 operations and maintenance, they know how to do it.
5 They know how to cap it at a dollar amount. There is
6 no such cap in the JPA.

7 And all this talk about wealthy enclaves,
8 first of all, that's not before the Court. But this
9 isn't Montecito. This isn't some -- El Granada and
10 Montara are very small communities with limited
11 resources in reality to fund these projects. And so
12 getting together, again, everyone benefited from
13 economies of scale.

14 In terms of the -- the agreement whether
15 it's simple or not, I think, actually, the agreement
16 is very clear. It's just that it outlines Phase 1,
17 Phase 2, how we got here. But it actually isn't
18 really that complex when you really look at the
19 agreement and totality of the circumstances.

20 And if -- and if you remember, Your Honor,
21 that when the project was first conceived, there were
22 two plans, Plan A and Plan F. And Plan A, we were
23 going to go it alone somewhat. We were sort of
24 together a bit but we were going to go alone in large
25 part. And that's why there are two different types of
26 arrangements in the JPA.

27 Your Honor, I -- and, again, the plant
28 expansion, the wet weather overflow, we did agree

1 separately on how to handle those, but those were --
2 because those were added facilities. It wasn't the
3 existing IPS, repair and replacement. And, mind you,
4 we're not going to be operating two pipelines for
5 those segments of the IPS that need to be replaced or
6 repaired. There's not going to be two pipelines
7 implemented. The pipeline isn't being expanded to
8 accommodate additional growth or additional
9 wastewater. It is simply repair and replacement of
10 the existing facility.

11 Your Honor, I don't know if you have any
12 particular items in Mr. Colantuono's argument that you
13 wanted me to address. I'm happy to address any of
14 those, if anything -- if there was anything in
15 particular there that you wanted me to address.

16 THE COURT: I don't think so directly. So
17 unless you have something further you'd like to argue,
18 I'm going to ask joining counsel if they would like to
19 express their thoughts.

20 MR. COLANTUONO: Thank you, Your Honor.

21 MR. RAMAKRISHNAN: Erik Ramakrishnan on
22 behalf of Montara Water and Sanitary District. I
23 don't really have much to add. I read your tentative
24 and --

25 (Reporter clarification.)

26 MR. RAMAKRISHNAN: I was just saying that I
27 don't have much to add here. I think Your Honor's
28 tentative -- the Court understands the issues. We

1 heard a lot about the distinction between capital and
2 maintenance budgets. But the two types of budgets
3 that the JPA speaks to are a general and project. And
4 I think the tentative got it correct and that the
5 Court clearly understood the distinction. And so I am
6 prepared to submit on the tentative unless Your Honor
7 has questions for me.

8 THE COURT: Thank you. All right.

9 MS. FITZGERALD: I have nothing to add --
10 thank you, Your Honor. I have nothing to add in
11 addition to co-counsel's statements. And except for
12 one comment about how the City is describing Montara
13 and Granada as other people, other people's money as
14 the City's neighbors. We're partners. All three
15 member agencies are partners in a JPA agreement. And
16 they all agreed to share responsibility for this
17 consolidated system. Each party bargained for an
18 exchange of benefits. They each made promises. And I
19 think there the resulting JPA is extremely clear. The
20 Court's analysis is spot-on. Thank you.

21 THE COURT: All right. I'm going to take
22 the matter under submission.

23 Ms. Espinola, I'd like a copy of the
24 transcript and I'll think about the arguments.

25 MR. PARKIN: Thank you, Your Honor. We'll
26 be sure to get you a copy of the transcript.

27 THE COURT: All right. Thank you.

28 (Proceedings concluded at 9:39 a.m.)

Transcript of Proceedings

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: January 21, 2022



NOELIA ESPINOLA
CSR NO. 8060

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