

**DEPARTMENT TWELVE  
JUDGE CHRISTINE A. CARRINGER  
707-207-7312  
TENTATIVE RULINGS SCHEDULED FOR  
MONDAY, APRIL 24, 2017**

**SOLANO COUNTY ORDERLY GROWTH COMMITTEE v. COUNTY OF SOLANO, et al.  
Case No. FCS046724  
Consolidated with  
ROCKVILLE HOMEOWNERS ASSOCIATION v. COUNTY OF SOLANO, et al.  
Case No. FCS046739 and  
UPPER GREEN VALLEY HOMEOWNERS v. COUNTY OF SOLANO  
Case No. FCS46752**

Petition for Writ of Mandate

TENTATIVE RULING

Parties are to appear, prepared to respond to the following questions:

1. While the United States Supreme Court established a federal government exemption from collateral estoppel, has any California court other than in dicta found that exemption to apply to municipalities or counties? Do the same concerns cited by the Court apply to smaller state and local government entities, to justify applying that exception, regardless of the proximity of time and the similarity of the issues and the stakes involved?
2. Because the city of Fairfield treatment of SID water was identified as one of the water supply alternatives in the revised EIR in the Upper Green Valley case, wasn't it necessary for Judge Beeman to consider and rule upon the legal certainty of the city of Fairfield treatment of SID water, in ruling on COUNTY's 2015 request for discharge of the CEQA writ granted in that case?
3. Even if collateral estoppel might apply against the COUNTY as to the Judge Beeman's legal uncertainty finding as to Fairfield treatment of SID water, because our case involves a different real party in interest (WOODCREEK), wouldn't this court still need to reach its own determination as to the legal certainty of Fairfield treated SID water as the water supply for this project?
4. Does Measure L's prohibition against the city of Fairfield providing "basic municipal services" include the treatment of water for use outside of city limits? If not, what basic municipal services are prohibited? What municipal services are more basic than supplying and/or treating water?

5. Do the Water Wheeling statutes only require a public agency to allow conveyance of water across its water conveyance system for fair compensation if that water is of similar quality? Is there any mandate to require conveyance through a water conveyance system of non-potable water, or treatment of that water as part of the conveyance process? Is the proposed treatment of non-potable water here by the city of Fairfield subject to the Water Wheeling statutes, to invalidate Measure L to the extent it would preclude both the conveyance and treatment of SID non-potable water?

6. The response brief by COUNTY and WOODCREEK mentioned an alternative source of water supply, from the city of Vallejo, that would avoid the possibility of legal uncertainty to the extent that might exist because of Fairfield's Measure L [Page 11 of response brief, lines 15-22]. Why is there no mention of this alternative and no analysis of it within the EIR itself? If it is not in the EIR, can the court consider it in determining whether COUNTY has adequately identified and analyzed an alternative water supply source?

7. To the extent it is reasonably possible to provide a thorough water supply analysis now, isn't COUNTY required to do so, rather than conditionally approving the project at this phase and deferring such analysis to a later phase of project approval, such as permit issuance?

8. The Fairfield-Suisun Sewer District (FSSD) appears to be precluded from providing services outside of the city limits of Fairfield and Suisun, unless in response "to an existing or impending threat to the health or safety of the public or the residents of the affected territory", and only then if approved by the local agency formation coalition (LAFCO). Even assuming sufficient evidence exists in the administrative record to suggest that septic systems for a few existing homes in the project area are failing, or will fail in the immediate future, can this threat be used to authorize FSSD to provide sewer services that in part will be used for this proposed project, which until constructed cannot possibly cause any "existing or impending threats"? Can the court consider at all the efficiencies of scale or practicalities of using the system extended for this type of emergency also for a new development? Or is this another situation of legal uncertainty, such that an alternative sewer supply system should have been identified and analyzed in the EIR?

9. Is there any prejudice created by a lead agency providing an artificially narrow definition of the purpose and objectives of a project, if it includes for analysis a reasonable range of project alternatives which would have been appropriate for a properly defined project?

10. In evaluating the 18 home project alternative, and rejecting it for economic infeasibility, could COUNTY rely on information about infrastructure costs appearing within the administrative record, and reasonably assume that economies of scale would cause significantly higher costs per home for the smaller project alternative, to serve as substantial evidence that a reasonable person faced with those higher costs would not have proceeded with the

significantly smaller project? Is it reasonable to require more quantification from a developer, when such information could be used by others to put it at a competitive disadvantage in the marketplace? To what extent is it possible for a public entity such as COUNTY to evaluate and assess whether additional quantifications would or would not cause a developer to abandon a smaller scale project, or can COUNTY instead reasonably rely on the developer's stated position on the smaller project alternative?

11. Is it necessary for an EIR to identify each requirement set forth in a general plan or similar planning device and state in some detail how each requirement will be met by the project? Or, if compliance with state statutes, local code, and/or other regulations applicable to all such projects would ensure compliance with certain general plan requirements, can the public agency reasonably conclude without detailed explanation within the EIR that there will be no inconsistencies with those requirements of the general plan?