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Yolo bucks trend for Conaway

Politicians often fear fallout from eminent domain court battles.

By Mary Lynne Vellinga -- Bee Staff Writer

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Yolo County politicians are known for marching to a different beat than those on the Sacramento side of the river.

But by pursuing eminent domain against the owners of the sprawling Conaway Ranch, they have taken "different" to a whole new level, stepping into territory that many elected officials around the country strive mightily to avoid.

Even in other counties similarly dedicated to preserving agriculture and open space - Marin, Napa and Sonoma come to mind - going to court to force someone to sell a 17,300-acre working ranch would be an anomaly.

"It's a power that doesn't get used very often; we're always in awe when it happens," said David Hansen, acquisition director for the Marin County Open Space District. "To see one the size of this Yolo County one was a bit of a surprise."

Eminent domain, a power enshrined in the U.S. Constitution, grants government entities the right to force property owners to sell land needed for public use or benefit.

These days, eminent domain power is used mainly to rebuild run-down neighborhoods or to obtain land for roads, trails, parks, sewers or other public infrastructure.

The question of whether government's eminent domain powers should be scaled back has been getting a lot of attention in Congress and state legislatures since the U.S. Supreme Court in June upheld the right of a Connecticut city to condemn

private houses to build a new office park.

In California, a group of Republican lawmakers is pushing for a statewide initiative that restricts the use of eminent domain.

Politically, eminent domain has become a hot potato. And politicians generally try to avoid getting burned.

"I don't think we've done an eminent domain action in the past five years, and it's getting to the point where I don't think a public elected board could even handle it," said Craig Britton, general manager of the Bay Area's Midpeninsula Regional Open Space District.

"It's hard for an elected group when you have your constituents yelling and screaming at you," Britton said.

Historically, various levels of government pulled together vast tracts of open space by forcing landowners to sell. Ed McMahon, senior resident fellow with the Urban Land Institute, said the national park system was largely created this way.

But in recent years, eminent domain has fallen out of favor as a land preservation tool, in part because of the property owner resentment that often accompanies its use.

"We have done very little acquisition of open space by eminent domain in the past 15 years. Most open space programs around the country now operate on a willing seller basis," McMahon said.

The reasons are varied. Eminent domain is not popular in Congress, and farmers hate it, said Mike Eaton, director of The Nature Conservancy's local Cosumnes River and Delta conservation project.

He said conservation groups "generally shudder at the mention" of eminent domain because it tilts the playing field against sellers.

Some government entities charged with preserving open space and farmland have even signed away their eminent domain rights to win support from farmers with whom they have to negotiate.

The Midpeninsula Regional Open Space District is one such entity. In order to get landowners to support its plan to expand along the San Mateo coastline, the district agreed to give up its eminent domain powers in the expanded territory.

Sonoma County, too, eschews the use of eminent domain to preserve open space,

said Andrea Mackenzie, general manager of Sonoma County Agricultural Preservation and Open Space District.

When the district was created by a 1990 ballot measure that established a quarter-cent sales tax to pay for open space acquisition, it specifically forbade the use of eminent domain.

"To this day, we can only work with willing sellers, whether it's to buy conservation easements or to buy land outright," Mackenzie said. "By and large, the landowners we deal with are conservation minded and interested in conserving their property."

Yolo's supervisors say they've been forced to adopt a drastically different posture than Sonoma and other counties.

They say the ownership group that bought Conaway Ranch for \$60 million last year is interested in development - not conservation, a contention disputed by the owners. Supervisors also maintain they need to secure the ranch's rich water rights for Yolo County's future.

Supervisor Mike McGowan said he didn't realize how unusual Yolo's eminent domain action was until after the board authorized it in June 2004. The previous owner, National Energy and Gas Transmission, formerly PG&E Properties, had rejected the county's offer to negotiate a purchase, opting to sell the land under a sealed bid.

"At the time, it just seemed obvious to us that it was the right thing to do, and we didn't do much of an evaluation of what others might do or what others might think," McGowan said.

The Conaway ownership group has a different view. It vehemently disputes the county's development concerns.

The ownership group consists mainly of developers, but its members say they, too, want to conserve the ranch, much of which lies in the Yolo Bypass flood protection project. There's money to be made in selling conservation easements on the land, continuing existing oil and gas leases, and farming.

They say they're willing to negotiate with the county to reach a solution that stops short of the county buying the property.

"We've made a strong case and we continue to hold out hope that the county will seek a compromise that achieves the objectives both sides are after without spending taxpayer dollars," said Tovey Giezentanner, a spokesman for the Conaway Preservation Group, the ownership entity.

McGowan, however, said the developers are "blowing smoke" when they contend they want to preserve the ranch as open space.

He and Supervisor Helen Thomson said they're willing to risk the eventual political fallout - if any - from their action.

"You have to go ahead and do what you think is the right thing to do," Thomson said.

Giezentanner argued that longtime public officeholders McGowan and Thomson have become arrogant by virtue of holding relatively safe seats.

"The political environment in Yolo County is so one-sided; you don't have debate between conservatives and Democrats over there, you have debate between one side of the Democrats and the other," he said.

"They think they aren't threatened by any politics and all they need is a judge to sign off."

How Yolo County's voters view the Conaway Ranch situation remains unquantified except for polls commissioned by the dueling sides - which predictably produced conflicting results.

Some residents said they don't know quite what to think.

"You hear little snippets of both sides and you think, what aren't they telling me?" said Geneva Drew, a lifelong Woodland resident who was working behind the counter last week at The Gifted Penguin, a popular gift shop downtown.

Farther down Main Street at The Next Chapter, a bookstore, owner Vicky Panzich said she supports the county because of the water issue. "I think it's a good use of eminent domain - to ensure that water rights remain within the county," she said.

The supervisor who may face the most fallout from his support of the eminent domain action is Frank Sieferman, a former rancher and millwright elected in 2002. Sieferman represents Woodland, which is generally considered more conservative than Yolo County as a whole.

Sieferman faces a potential election challenge next year from current Woodland Mayor Matt Rexroad, a professional Republican political consultant.

"I think Frank gets a couple of points for standing up," McGowan said. "He knows how tough this is. There's no question this will be an issue for him."

Rexroad said he doesn't necessarily oppose the county's purchase of Conaway Ranch, but questions why it is using eminent domain to buy the entire thing and continue its current use.

"I've never really had the question answered: Could the county just use eminent domain to get the water rights?" Rexroad asked. "I don't know the answer to that question."

Sieferman, for his part, said Conaway Ranch hasn't topped his constituents' list of concerns.

"I find there's more support out there for the county's preservation efforts than for the developers who came and bought it after the eminent domain action started," Sieferman said.

One big, unanswered question is how much Yolo County will have to pay for the ranch. The Rumsey Band of Wintun Indians, operator of the Cache Creek Casino Resort, has agreed to help the county with upfront financing. But Yolo probably will have to pay the money back.

Yolo Superior Court Judge Timothy Fall has ruled that the county has the right to force the owners of Conaway Ranch to sell. It will be up to a jury to determine the land's fair market value. Trial has been set for June 13.

Britton, head of the Midpeninsula Open Space District, said juries tend to treat public agencies unkindly when setting the price for land. In the past, when his district has used its eminent domain power, it has nearly always settled before going to court.

"I don't think a jury trial is the best way for a public agency to get a reasonable price," he said.

Former Republican U.S. Rep. Doug Ose, a supporter of property rights who until recently represented Yolo County in Congress, opined that the ranch's water rights alone could be worth \$100 million.

"My point has been ... if they buy this land, and the county borrows the money to do it, what programs do they need to reduce or eliminate to pay the interest on this loan?" Ose said.

McGowan said he isn't worried. "We're looking forward to going to trial," he said. "We're convinced the jury will give us a price we can afford."

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