



MANTECA BULLETIN.com

Friday, June 06, 2008

Prop. 98's failure keeps door open for SSJID forcing PG&E system sale

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California voters made it clear: They have no problem with a government entity taking over a private concern such as PG&E for the public's benefit.

That is how South San Joaquin Irrigation District General Manager Jeff Shields views the results of Tuesday's election that saw Proposition 98 - which would have barred such a move - get trounced.

Proposition 99, the other eminent domain ballot proposition, passed by a wide margin. It prohibits entities from using eminent domain to force the sale of an owner-occupied residence and then reselling it to a private person or a business entity. That means homeowners wouldn't have to worry about a redevelopment agency forcing a sale of their home using eminent domain to allow a retailer or someone else take control of their property other than for public use. It would not prohibit use of eminent domain, however, for a public need such as roads, reservoirs, or other similar projects.

The failure of Prop. 98 means the eminent domain option is still open to SSJID in its bid to assume control of PG&E territory in Manteca, Ripon and Escalon as part of a drive to reduce electrical costs across the board by at least 15 percent.

PG&E and other quasi-public electrical utilities in California facing attempts by local jurisdictions to take away part of their service electricity via eminent domain to reduce energy costs for their constituents were neutral on Prop. 98 even though it could have been a big help in blocking such moves. The reason can be found in the powers vested by the California Legislature over the years into quasi-public agencies such as PG&E. They essentially have been granted eminent domain powers to put in place everything from dams and power plants to power and natural gas lines. Passage of Prop. 98 would have severely curtailed PG&E's ability to act like the government and take land for its power needs.

Prop. 98 also would have interpreted rent control as a taking of private property - what landlords can rent dwellings or mobile home space for - as transferring property value to another person which in this case is the renter.

Prop. 98 was in response to a U.S. Supreme Court decision in 2005 that ruled a Connecticut redevelopment agency had the right to seize private property for retail, shopping centers and other private developments. That was a major departure from how eminent domain had been used to acquire such land primarily for roads, schools and other public projects.

The Manteca Redevelopment Agency, for example, has never used eminent domain although it used the threat of it to secure right-of-way for the Industrial Park Drive extension.

The Manteca RDA has bought private property - after the owner was willing to agree to a price - and then turned around and sold it to a private development. That happened with the Mission Ridge shopping center anchored by Wal-Mart and the Stadium Retail Center anchored by Kohl's Department Store. While the city hasn't used eminent domain to allow such retail projects so far and elected leaders have routinely promised they never would, passage of Prop. 99 now guarantees they won't.

The SSJID is currently working with the San Joaquin Local Agency Formation Commission to move forward with its effort to enter the retail power business after being on the wholesale end for 53 years generating and selling electricity to PG&E. If LAFCO gives their blessing, then the next step is to purchase the PG&E system.

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