

1 KENDALL H. MacVEY, Bar No. 057676
kendall.macvey@bbklaw.com
2 BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
3 P.O. Box 1028
Riverside, California 92502
4 Telephone: (951) 686-1450
5 Facsimile: (951) 686-3083

EXEMPT FROM FILING FEES, PURSUANT TO
GOVERNMENT CODE SECTION 6103

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG -5 2016

6 JOHN H. HOLLOWAY, Bar No. 181190
john.holloway@bbklaw.com
7 CHRISTOPHER M. PISANO, Bar No. 192831
christopher.Pisano@bbklaw.com
8 BEST BEST & KRIEGER LLP
300 South Grand Avenue, 25th Floor
9 Los Angeles, California 90071
Telephone: (213) 617-8100
10 Facsimile: (213) 617-7480

Sherri R. Carter, Executive Officer/Clerk
By R. Castle, Deputy

11 Attorneys for Plaintiff
12 CITY OF CLAREMONT

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15
16 CITY OF CLAREMONT, a general law
city,

Case No. BC566125

17 Plaintiff,

**CITY OF CLAREMONT'S [PROPOSED]
STATEMENT OF DECISION**

18 v.

Judge: Hon. Richard Fruin
Dept.: 15

19 GOLDEN STATE WATER COMPANY, a
20 California corporation; DOES 1 - 1000;
21 AND ALL PERSONS UNKNOWN
CLAIMING AN INTEREST IN THE
PROPERTY,

Closing Argument:
Date: August 10, 2016
Time: 10:00 a.m.
Dept.: 15

22 Defendants.

First Amended Complaint Filed: June 24, 2015

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. THE CITY OF CLAREMONT SEEKS TO ACQUIRE THE CLAREMONT WATER SYSTEM BY EMINENT DOMAIN..... 1

 A. The Parties: Claremont and Golden State..... 1

 B. The Claremont Water System..... 2

 C. The City’s Project: Public Ownership, Operation and Maintenance of the Claremont Water System 3

 D. Background..... 4

II. LEGAL ISSUES IN THE RIGHT TO TAKE TRIAL 8

 A. Municipalities, Like Claremont, Have Authority to Acquire Water Utilities by Eminent Domain 8

 B. The City’s Findings that the Project is a More Necessary Use and that the Project is Necessary under Code of Civil Procedure section 1240.030 are Presumed to be True 8

 C. More Necessary Use and Public Interest and Necessity are to be Broadly Construed, Encompassing a Broad Spectrum of Public Benefits 10

III. TRIAL AND ISSUES AT TRIAL..... 13

 A. Trial and Witnesses..... 13

 B. Issues at Trial 13

IV. THE FOUR FINDINGS OF THE CLAREMONT CITY COUNCIL SHOULD BE UPHOLD 14

 A. The City’s Acquisition of the Claremont Water System is a More Necessary Use than the Use to Which it is Already Appropriated 14

 B. The Public Interest and Necessity Require the Proposed Project 15

 C. The Project is Planned or Located in Manner Most Compatible With Greatest Public Good and Least Private Injury..... 16

 E. Golden State Has Failed to Rebut the Four Findings Made by the Claremont City Council 17

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

TABLE OF CONTENTS
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

V. THE UNCONTROVERTED EVIDENCE SUPPORTS THE CITY'S ACQUISITION OF THE CLAREMONT WATER SYSTEM BY EMINENT DOMAIN 18

A. Golden State Consistently Fails to Coordinate Water Planning with the City Regarding its Operations..... 18

B. Regional Rates have Resulted in Confusing Water Bills and High Water Rates that are not Tailored to the Needs of the Community..... 20

C. Golden State does not Share or Implement the City's Conservation Goals 25

D. The City of Claremont Has Long Term Water Objectives Which are Not Being Met Under Golden State Ownership of the Claremont Water System..... 26

E. The Uncontroverted Advantages Of Municipal Oversight..... 28

VI. GOLDEN STATE HAS FAILED TO REBUT THE PRESUMPTIONS OF MORE NECESSARY USE AND PUBLIC INTEREST AND NECESSITY 29

A. Municipal Ownership and Operation of the Claremont Water System Will Provide Safe and Reliable Water Service to the Community 29

B. Acquisition of the Claremont Water System by Claremont is Financially Feasible 33

C. The Claremont Water System Suffers from Long Term Deficiencies 36

D. Golden State does not Attempt to Integrate its Planning with the City's Planning Efforts in Order to Meet the City' Goals 39

VII. CONCLUSION..... 40

LAW OFFICES OF
 BEST BEST & KRIEGER LLP
 3390 UNIVERSITY AVENUE, 5TH FLOOR
 P.O. BOX 1028
 RIVERSIDE, CALIFORNIA 92502

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Federal Cases

Hawaii Housing Authority v. Midkiff (1984)
 467 U.S. 229 10

State Cases

Anaheim Redevelopment Agency v. Dusek (1987)
 193 Cal.App.3d 249 9

Bauer v. County of Ventura (1945)
 45 Cal.2d. 276 10

Citizens Utilities Co. v. Superior Court (1963)
 59 Cal.2d 805 8

City of Hawthorne v. Peebles (1959)
 166 Cal.App.2d 758 11

City of North Sacramento v. Citizens Utilities Co. (1961)
 192 Cal.App.2d 482 8

City of Oakland v. Oakland Raiders (1982)
 32 Cal.3d 60 9, 10

City of Saratoga v. Hinz (2004)
 115 Cal.App.4th 1202 10, 11

County of Los Angeles v. City of Los Angeles (2013)
 214 Cal.App.4th 643 9

Gilmer v. Lime Point (1861)
 18 Cal. 229 11

Golden State Water Co. v. Casitas Municipal Water Dist. (2015)
 235 Cal.App.4th 1246, review denied 11, 12

Leshar Communications v. City of Walnut Creek (1990)
 52 Cal.3d 531 26

Los Angeles Railway Corp. v. City of Los Angeles (1940)
 16 Cal.2d 779 11

People v. Van Gorden (1964)
 226 Cal.App.2d 634 11

LAW OFFICES OF
 BEST BEST & KRIEGER LLP
 3390 UNIVERSITY AVENUE, 5TH FLOOR
 P.O. BOX 1028
 RIVERSIDE, CALIFORNIA 92502

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

Postal Telegraph-Cable Co. v. Railroad Comm'n of Cal. (1925)
 197 Cal. 426..... 11

In re Quentin H. (2014)
 230 Cal.App.4th 608..... 12

Sacramento Municipal Utility Dist. v. Pacific Gas & Electric Co. (1946)
 72 Cal.App.2d 638..... 11

Shell California Pipeline Co. v. City of Compton (1995)
 35 Cal.App.4th 1116..... 10, 11

South Bay Irrigation Dist. v. California – American Water Co. (1976)
 61 Cal.App.3d 944..... 8

State Statutes

Code of Civil Procedure § 1240.010..... 8

Code of Civil Procedure § 1240.030..... 8, 9, 10, 12

Code of Civil Procedure § 1240.610..... 9, 10

Code of Civil Procedure § 1240.650(a)..... 9, 14

Code of Civil Procedure § 1240.650(c)..... 9, 10

Code of Civil Procedure § 1245.250..... 9

Code of Civil Procedure § 1245.250(b)..... 9

Code of Civil Procedure § 1260.120..... 1

Government Code § 6250..... 28

Government Code § 7267.2..... 5

Government Code § 37350.5..... 8

Government Code § 38730..... 8

Government Code § 54950..... 28

Government Code § 65300..... 26

Public Utilities Code § 1501..... 1, 29

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Regulations

CPUC General Order 103-A.....28

Constitutional Provisions

California Constitution Article XI, § 725

California Constitution Article XIII D, § 6(b)(1)24

1 Beginning on June 14, 2016, the above-entitled condemnation action came before the
2 Court for trial on Golden State Water Company's ("Golden State") challenge to the right of the
3 City of Claremont ("City" or Claremont") to acquire the Claremont Water System ("System") by
4 eminent domain. In accordance with Code of Civil Procedure section 1260.120, Golden State's
5 objections are to be determined by the Court. Claremont respectfully submits the following
6 proposed statement of decision pursuant to the Court's July 21, 2016 Minute Order.

7 **I. THE CITY OF CLAREMONT SEEKS TO ACQUIRE THE CLAREMONT**
8 **WATER SYSTEM BY EMINENT DOMAIN**

9 **A. The Parties: Claremont and Golden State**

10 Claremont is a general law city composed of roughly 11,000 households and 35,000
11 residents located on the eastern border of Los Angeles County. (Tr. Day 11 PM, 74:10-13.)
12 Claremont is bordered by the cities of Upland to the east, Pomona to the south, and La Verne to
13 the west, and a national forest to the north. (Tr. Day 11 PM, 69:16-21; Ex. 1228-0001.) The City
14 is home to a number of colleges and universities and a mix of small retail and large retail
15 establishments, with some industrial uses. (Tr. Day 11 PM, 74: 19-28.) The City's residents are
16 largely academic and professional and are highly informed and engaged in community issues.
17 (*Id.*; Tr. Day 11 PM, 84:17-25; 86:3-15.) The City and its residents, businesses, and institutions,
18 as well as small portions of Montclair, Upland, Pomona and unincorporated County of Los
19 Angeles, receive their water service from the Claremont Water System, which is owned and
20 operated by Golden State. (Tr. Day 16 AM, 16:16-22; 39:12-40:4.)

21 Golden State is an investor-owned utility ("IOU"), which is regulated by the California
22 Public Utilities Commission ("CPUC"). It operates as a regulated, private monopoly in the areas
23 it serves and is shielded from competition from other water providers. (Tr. Day 7 AM, 38:11-24;
24 Tr. Day 8 AM, 31:28-32:4; Tr. Day 9 AM, 26:25-27:13; *see also* Pub. Util. Code § 1501 *et seq.*
25 [protects investor owned water utilities, but not other regulated utilities such as electric utilities,
26 from competition].) Golden State's parent company, American States Water Company, is
27 publicly traded on the New York Stock Exchange. (Tr. Day 11 AM, 62:11-19; *see* Ex. 1012.)
28 Golden State is one of only nine "Class A" water IOUs in the State (the largest IOUs, consisting

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 of over 10,000 connections), that are regulated by the CPUC. (Tr. Day 7 AM, 39:12-40:11.)
2 Golden State operates 39 independent water systems across the State. (Tr. Day 8 PM, 80:22-
3 81:2.) The Claremont Water System is part of Golden State's Region 3, which encompasses
4 several thousand square miles with nine diverse service areas that stretch across a broad area of
5 Southern California from Barstow and the upper deserts to the northeast down to Calipatria, near
6 the U.S.-Mexican border, and includes portions of Orange County. (Tr. Day 7 PM, 6:23-27;
7 9:23-25 & 10:12-14; Ex. 1416.)

8 The City is represented by Kendall H. MacVey, John H. Holloway, Christopher M. Pisano
9 and James M. Wyman of Best Best & Krieger LLP. Golden State is represented by George M.
10 Soneff, Edward G. Burg, and Dinesh Badkar of Manatt, Phelps & Phillips, LLP.

11 **B. The Claremont Water System**

12 The Claremont Water System consists of a variety of different assets that are dedicated to
13 providing water service to customers in the Claremont Service Area. These assets are described
14 in detail in the City's First Amended Complaint and in descriptions attached to the City's
15 Resolutions of Necessity. (Exs. 1002 and 1003.)

16 The Claremont Water System consists of wells, transmission lines, booster stations,
17 pressure regulating valves, and reservoirs. (Tr. Day 16, 10:2-24.) It has approximately 11,000
18 service connections to residential, commercial, institutional and other customers. (Ex. 1262-
19 0004.) While the vast majority of the facilities and the connections are located within the City's
20 boundaries, there are approximately 300 connections located in small portions of Upland,
21 Montclair and Pomona, and a small unincorporated area of the County of Los Angeles, where
22 Golden State is the exclusive water provider. (*Id.*) Additionally, certain water production
23 facilities dedicated to the Claremont Water System are located outside of City's boundaries. (Tr.
24 Day 16 AM, 13:1-5; Ex. 1262-0004.) These connections and facilities are integrated into the
25 Claremont Water System and are being acquired by the City to provide for uninterrupted
26 operation of the System and continued service to all customers. (Tr. Day 16 AM, 12:2-13:14.)

27 The Claremont Water System relies upon two sources of supply: groundwater and
28 imported water. (Tr. Day 2, 141:2-6.) It obtains imported water principally through the Three

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 Valleys Municipal Water District, in which it shares an ownership interest with the City of La
2 Verne. (Tr. Day 6 PM, 69:8-13.) It obtains groundwater from the Six Basins and the Chino
3 Basin, which are under the oversight of designated Watermasters. (Ex. 1262-20.) It also obtains
4 water from the City of Upland. (Tr. Day 16 PM, 19:10-12.)

5 C. **The City's Project: Public Ownership, Operation and Maintenance of the**
6 **Claremont Water System.**

7 As described in the Resolutions of Necessity authorizing this action and the First
8 Amended Complaint, the City's project is the "public ownership, operation, and maintenance of
9 the Claremont Water System to provide water service to the public." (Exs. 1002-002 and 1003-
10 002.)

11 The project objectives as outlined in the City's 2006 General Plan (Ex. 1016-326), the
12 City's EIR analyzing the City's proposed acquisition of the Claremont Water System (Ex. 229-
13 0009) and as testified to by City officials and experts (Tr. Day 12 AM, 31:20-37:27; Ex. 1228-4;
14 Ex. 1286-6), include:

- 15 • Greater local control of the Claremont water supply and distribution system;
- 16 • Enhanced customer service and responsiveness to Claremont customers;
- 17 • Improved public transparency and accountability in the operation of the Claremont
18 Water System;
- 19 • Greater local control of the rate setting process and rate increases;
- 20 • Elimination of subsidies in rates whereby Claremont residents pay for costs of
21 supplying water in other areas;
- 22 • Ensuring water quality and maintenance of local water infrastructure;
- 23 • Improving fire safety in Claremont;
- 24 • Implementation of the community's goals regarding conservation, and recycling,
25 and sustainability;
- 26 • Clearer, more comprehensive water bills without multiple surcharges;
- 27
- 28

- 1 • Integration of water planning with City land use planning and City decision
- 2 making;
- 3 • Coordination of water system repair projects with other City services and repairs;
- 4 and
- 5 • Protection of the City’s unique historic heritage, including its tree canopy during
- 6 water service and repairs.
- 7

8 While a number of recommended projects to improve System deficiencies (and grants and
9 low interest loan opportunities to finance them) were presented at trial (Exs. 1262-0028 to 0029;
10 1282-0001; 1283), the Project itself does not include any specific capital improvement projects to
11 the Claremont Water System. As stated above, the Project is the acquisition, operation and
12 maintenance of the system by the City to meet the above objectives. Approval of specific capital
13 improvement projects to the Claremont Water System will require full access to the System and
14 its records by the City and its consultants, which access has not been afforded to date. Further,
15 evaluation by the Claremont City Council and the public under the Brown Act and Proposition
16 218 and separate environmental review under the California Environmental Quality Act
17 (“CEQA”) consistent with project objectives will be required prior to final approval of any
18 improvement projects. (Tr. Day 3 PM 77:9-24; Tr. Day 4 AM, 47:19-48:2; Ex. 330-12.) As
19 stated in the “City of Claremont Measure W: Frequently Asked Questions,” “If the City acquired
20 the water system, the City Council would have to approve an overall operational plan guiding
21 future execution that would be vetted, discussed, and adopted in open public meetings.” (Ex.
22 724-5.) This is also consistent with the framework for preparing an operations plan outlined
23 under the terms of the operation agreement between the cities of Claremont and La Verne. (See
24 Ex. 330-4 to 6.)

25 **D. Background**

26 For a long time leading up to the initiation of this condemnation action, the people of
27 Claremont have been concerned about water issues and Golden State’s operation of the
28

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 Claremont Water System, including conservation, sustainability, confusing water bills, lack of
2 transparency in operations, fire safety, and lack of local control, among others. (Ex. 1016-0326.)
3 Dating back to 1995, the City has intervened in Golden State’s rate making cases with the CPUC
4 in an attempt to make Golden State more responsive to the community’s needs. (Ex. 1418-0002;
5 see Ex. 111.) The City’s longstanding concerns about Golden State’s operation of the Claremont
6 Water System are reflected in the City’s 2006 General Plan, which notes that the City began
7 investigating the possible acquisition of the water system in the early 2000s, based on a number
8 of factors, including a “substantial increase in water rates” and “the failure of portions of the
9 water system during the 2003 Grand Prix Fire.” (Ex. 1016-326). The City also investigated the
10 potential acquisition to provide for local control and accountability for water rates and services,
11 stabilization of water rates, elimination of subsidies due to regionalization of water rates, and to
12 ensure water quality and maintenance of local water infrastructure are priorities. (*Id.*)

13 The City sought to implement the 2006 General Plan’s sustainability goals in the 2008 and
14 2013 Sustainability City Plans. (Exs. 1231 and 422.) The Sustainability City Plans outline
15 specific goals relating to water, including “independence from imported water” and to “maximize
16 recharge of local water resources.” (Ex. 1231-0028; 422-25.) Specific actions to accomplish the
17 goals, including when they could be accomplished, the feasibility, and cost, are likewise outlined.
18 (Exs. 1231-0030; 422-28 and 422-29.) The City tracks its progress through its annual
19 “Sustainability Report Card and Background Report.” (Ex. 1227.)

20 After years of unsuccessful attempts to work with Golden State management through the
21 CPUC process and through many meetings with Golden State to address the concerns of
22 Claremont residents, the City concluded it had no choice but to proceed with acquisition of the
23 Claremont Water System. (Tr. Day 12 AM, 29:16-21.) Accordingly, as required by Government
24 Code section 7267.2, the City made an offer to purchase the Claremont Water System in
25 November 2012 (Ex. 347) and thereafter provided an updated offer in October 2013. (See Exs.
26 351 and 1053.) Both offers were rejected.

27 The City held a town hall meeting for its residents regarding the potential acquisition of
28 the Claremont Water System on November 6, 2013, where it discussed a number of issues,

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 including the financial feasibility of the proposed acquisition under several purchase price
2 scenarios. (Tr. Day 10 AM, 5:23-27; Ex. 222.) Golden State held its own community meeting
3 regarding the acquisition on November 19, 2013, where it presented its own feasibility study of
4 the City's proposed acquisition of the Claremont Water System. (Tr. Day 11 PM, 12:19-25; Ex.
5 1432.) Golden State later sued the City for violation of the Public Records Act in connection
6 with the City's town hall meeting. (See Ex. 230.)

7 On March 1, 2014, the City certified an EIR analyzing the environmental impacts of its
8 proposed acquisition and operation of the System. (Ex. 229.) Promptly thereafter, Golden State
9 brought a second lawsuit against the City, this time challenging the City's EIR. (See Ex. 230.)

10 While the City Council had the power to issue bonds for the proposed acquisition, in an
11 effort to confirm public support for this important undertaking, the City Council elected to put an
12 advisory measure on the November 2014 ballot, seeking guidance from the residents of
13 Claremont on whether to issue water revenue bonds to fund the acquisition of the System. The
14 language in the ballot measure was also challenged. After extensive negotiations with Golden
15 State, on August 1, 2014, the City reached an agreement with Golden State that provided for the
16 dismissal with prejudice of Golden State's PRA and CEQA lawsuits against the City.
17 Additionally, under the agreement, the City agreed to changes to the Official Sample Ballot
18 requested by Golden State. (Ex. 230.) For example, while the City had proposed that the ballot
19 measure be limited to the \$55 million of the offer to purchase at the time, Golden State insisted
20 that the ballot measure propose up to \$135 million in acquisition bonds. (Ex. 230.) The City also
21 agreed to certain revisions to the Impartial Analysis of Measure W requested by Golden State.
22 (*Id.*)

23 In compliance with the terms of the settlement agreement, in November 2014, the City
24 Council placed what became Measure W before the voters of Claremont. (Ex. 1425.) The full
25 text of Measure W is below:

CLAREMONT CITY SPECIAL MUNICIPAL ELECTION

W	MEASURE W: Shall the City of Claremont be authorized to issue water revenue bonds up to \$135 million to pay for acquisition of the Claremont Water System and incidental expenses payable only from the water system's revenues?	190	YES → <input type="radio"/>
		191	NO → <input type="radio"/>

1 Included in the Official Sample Ballot, the Impartial Analysis of Measure W states that
2 should bonds be issued up to the full \$135 million authorized in Measure W, “the estimated
3 increase to a fixed capital charge of the water rate on the average single family residence...would
4 be approximately \$28 per month, or \$336 annually.” (*Id.*) Claremont voters overwhelmingly
5 approved Measure W, with nearly 72% voting in favor of the measure. (Tr. Day 19 PM, 94:4-
6 20.) Voter turnout in the City of Claremont was over 52%, which was well above the Los
7 Angeles County and the Statewide turnout percentages for the November 2014 election. (Tr. Day
8 19 PM, 94:21-28.) By approving Measure W by such a significant margin, Claremont voters
9 expressed their willingness to pay for ownership of the Claremont Water System. (Tr. Day 20
10 AM, 48:6-21.)

11 On November 25, 2014, the Claremont City Council adopted two Resolutions of
12 Necessity authorizing the acquisition of the Claremont Water System. (Exs. 1300 and 1301.)
13 Shortly thereafter, on December 9, 2014, the City filed its complaint in eminent to acquire the
14 Claremont Water System. The City later made an additional offer to purchase the System on May
15 19, 2015. (Ex. 228.) Golden State rejected this offer as well. Shortly afterwards, the City
16 amended its Resolutions of Necessity (Exs. 1002 and 1003)¹, and filed a First Amended
17 Complaint on June 24, 2015. Golden State filed an Answer on July 28, 2015.

18 The City then negotiated with the neighboring City of La Verne to operate the Claremont
19 Water System on behalf of Claremont following acquisition. La Verne was selected based on a
20 number of factors, including the close relationship between the cities and the water systems’
21 similar number of connections and shared water sources. (Exs. 1262-0008 to 0009.) The
22 negotiations resulted in an operations and maintenance agreement dated October 13, 2015. (Ex.
23 330.) Relevant portions of the agreement are explained below.

27 ¹ Resolution of Necessity No. 2015-27 (Ex. 1002) authorizes acquisition of the portions of the Claremont Water
28 System located within the City of Claremont. Resolution of Necessity No. 2015-28 authorizes acquisition of the
small portions of the Claremont Water System located outside of the territorial boundaries of the City of Claremont.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 **II. LEGAL ISSUES IN THE RIGHT TO TAKE TRIAL**

2 **A. Municipalities, Like Claremont, Have Authority to Acquire Water Utilities by**
3 **Eminent Domain.**

4 The authority for a municipality to acquire a water utility by eminent domain is
5 indisputable. While the power of eminent domain can only be exercised for a public use (*see, e.g.*
6 Code Civ. Proc., §1240.010), the California Constitution specifically provides that the provision
7 of water is a public use: “The use of all water . . . is hereby declared to be a public use . . .”
8 (Article X, § 5.) The California Constitution further provides that : “[a] municipal corporation
9 may establish, purchase, and operate public works to furnish its inhabitants with light, water,
10 power, heat, transportation, or means of communication.” (Article XI, § 9(a).)

11 Section 37350.5 of the California Government Code grants eminent domain power to
12 cities, stating: “A city may acquire by eminent domain any property necessary to carry out any of
13 its powers or functions.” Section 38730 of the Government Code expressly extends this eminent
14 domain power to acquire property for water supply purposes: “A city may acquire by gift,
15 purchase, or condemnation, water, water rights, reservoir sites, rights of way for pipes, aqueducts,
16 flumes, or other conduits, and all other property and appliances suitable and proper to supply
17 water for the use of the city and its inhabitants.”

18 Over the years, local public entities have condemned entire water systems owned by
19 investor owned utilities to provide public water service to citizens on a number of occasions.
20 (*See, e.g., Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805; *City of North*
21 *Sacramento v. Citizens Utilities Co.* (1961) 192 Cal.App.2d 482; *South Bay Irrigation Dist. v.*
22 *California – American Water Co.* (1976) 61 Cal.App.3d 944.)

23 **B. The City’s Findings that the Project is a More Necessary Use and that the**
24 **Project is Necessary under Code of Civil Procedure section 1240.030 are**
25 **Presumed to be True.**

26 Eminent domain can be exercised only for a public use. Eminent domain may be
27 exercised to acquire property that is already dedicated to a public use when there is a “more
28 necessary use.” The Eminent Domain Law establishes a hierarchy of more necessary use. A

1 public entity's use is a more necessary use if the property to be appropriated to a public use was
2 put to that use by a private party. (*See* Code Civ. Proc., §1240.650(a).) Section 1240.650(c)
3 provides that if the property concerns water public utility property of a private party, there is a
4 presumption in favor of the public entity that its use is a more necessary use. This presumption
5 can only be rebutted or disproved by a preponderance of the evidence. Likewise, with regard to
6 the findings in resolutions of necessity under Code of Civil Procedure section 1240.030, a local
7 public entity's acquisition of water utility property of a private party is similarly presumed to be
8 true. (*See* Code Civ. Proc., §1245.250(b).)

9 In the operative Resolutions of Necessity (Exs. 1002 and 1003), the City found that

- 10 1) the public interest and necessity require the Project;
- 11 2) the Project is planned or located in a manner that will be most
12 compatible with the greatest public good and the least private
injury;
- 13 3) the property sought to be acquired is necessary for the proposed
14 project; (Code Civ. Proc., §§ 1240.030); and
- 15 4) the City's acquisition of the Claremont Water System is a more
16 necessary public use than the us to which it is already appropriated.
(Code Civ. Proc., § 1240.610.)

17 The "decision to condemn," as reflected by the adoption of Resolutions of Necessity, is
18 "a fundamental political question" and "therefore is a quasi-legislative act." (*Anaheim*
19 *Redevelopment Agency v. Dusek* (1987) 193 Cal.App.3d 249, 260.) For that reason, courts are
20 careful not to transgress into "judicial legislation." (*Id.* at 261.) "Deferential review of quasi-
21 legislative activity minimizes judicial interference in the interests of the separation of powers
22 doctrine." (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653-54;
23 see also *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 73; *Anaheim Redevelopment*
24 *Agency v. Dusek, supra*, 193 Cal.App.3d 249, 259 [quasi-legislative findings in a resolution of
25 necessity are subject to arbitrary and capricious standard of review].)

26 By statute, each of the City's four findings above are presumed to be resolved in the
27 City's favor. (Code Civ. Proc., §§ 1240.650(c), 1245.250.) As the challenger to this action,
28 Golden State has the burden to disprove by a preponderance of the evidence the presumptions in

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 favor of the City. (Code Civ. Proc., § 1240.650(c); Stipulation Regarding Plaintiff City of
2 Claremont’s Prima Facie Case; Order, order signed June 15, 2016 (Tr. Day 2, 60:23-61:5).)

3 C. **More Necessary Use and Public Interest and Necessity are to be Broadly**
4 **Construed, Encompassing a Broad Spectrum of Public Benefits**

5 The concept of “more necessary use” is a public use concept. Section 1240.610 of the
6 Code of Civil Procedure expressly refers to a “more necessary *public use* than the use to which
7 the property is appropriated.” (Emphasis added.) As noted in the treatise *Condemnation Practice*
8 in California (3d. ed. Cal. CEB)§ 6.4: “California courts have increasingly tended to adopt the
9 broader public advantage test, which places a lesser burden on the condemnor to justify the public
10 utility of a taking. A public use is defined as ‘a use which concerns the whole community or
11 promotes the general interest its relation to any legitimate object of government.’ (*Bauer v.*
12 *County of Ventura* (1945) 45 Cal.2d. 276, 284.)” This broad public advantage test for public use
13 was re-affirmed by the California Supreme Court in *City of Oakland v. Oakland Raiders* (1982)
14 32 Cal.3d, 60, 69. In other words, more necessary use as an issue of public use should include the
15 consideration of concerns of the *whole community* with respect to any legitimate object of
16 government. (*Id.*)

17 The concept that public use encompasses a broad spectrum of benefits is also in accord
18 with the Fifth Amendment to the United States Constitution. For example, the U.S. Supreme
19 Court found it a legitimate public use to exercise eminent domain for “[r]egulating oligopoly and
20 the evils associated with it . . .” (*Hawaii Housing Authority v. Midkiff* (1984) 467 U.S. 229, 241-
21 42.) Such a spectrum of factors should be equally relevant in finding a “more necessary use.”

22 In turn, the public interest and necessity requirements of Code of Civil Procedure section
23 1240.030 are to be *broadly construed* in favor of the public entity. The Legislative Committee
24 Comment to Section 1240.030 itself broadly interprets the statute, stating:

25 “Public interest and necessity’ include all aspects of the public
26 good including but not limited to social, economic, environmental,
and esthetic considerations.”

27 The Comment has been adopted and cited with approval in *Shell California Pipeline Co.*
28 *v. City of Compton* (1995) 35 Cal.App.4th 1116, 1125, and *City of Saratoga v. Hinz* (2004) 115

1 Cal.App.4th 1202, 1224. The phrase “public interest and necessity” is to be liberally construed in
2 favor of the condemnor. (*City of Hawthorne v. Peebles* (1959) 166 Cal.App.2d 758, 761-763
3 [acquisition of property inside and outside of agency’s jurisdiction for park purposes]; *People v.*
4 *Van Gorden* (1964) 226 Cal.App.2d 634, 636 [acquisition of property for state park purposes];
5 *Shell California Pipeline Co. v. City of Compton, supra*, 35 Cal.App.4th at 1125 [easements
6 acquired for lowering price of gasoline and to transport oil satisfies public interest and necessity
7 requirements]; *City of Saratoga v. Hinz, supra*, 115 Cal.App.4th at 1224 [easement for private
8 road purposes is a public purpose].)

9 Likewise, “[t]he word *necessity*...is not to be used in too limited a sense; it means a want,
10 an exigency, an expediency, for the interest or safety of the State.” (*Gilmer v. Lime Point* (1861)
11 18 Cal. 229, 250, italics in original.) “Necessity” need only be reasonable or practical; it does not
12 mean an absolute or imperative necessity. (*City of Hawthorne v. Peebles, supra*, 166 Cal.App.2d
13 at 761; *Shell California Pipeline Co. v. City of Compton, supra*, 35 Cal.App.4th at 1125.)

14 In the analysis of necessity, courts have broadly consider a number of factors that are
15 relevant to this matter, including: the economic and financial impacts, efficiencies, cost of
16 equipment, the cost of acquisition in comparison to alternative properties, and quality of service.
17 (*See, Sacramento Municipal Utility Dist. v. Pacific Gas & Electric Co.* (1946) 72 Cal.App.2d
18 638, 654 [condemnation of electric utility system for the same use]; *Postal Telegraph-Cable Co.*
19 *v. Railroad Comm’n of Cal.* (1925) 197 Cal. 426, 438; *Los Angeles Railway Corp. v. City of Los*
20 *Angeles* (1940) 16 Cal.2d 779, 787.) Thus, the public interest and necessity requirements are to
21 be broadly construed.

22 The Court of Appeal decision in *Golden State Water Co. v. Casitas Municipal Water Dist.*
23 (2015) 235 Cal.App.4th 1246, review denied July 29, 2015, identified additional factors that can
24 be used in considering public interest and necessity and more necessary public use. In that case,
25 Golden State challenged the public financing of a condemnation of its water system. In ruling
26 against Golden State, the Court of Appeal noted the “failed attempts [for the community] to
27 redress . . . grievances with the state Public Utilities Commission.” (*Id.* at 1249.) It further noted
28 that there was a “single-issue special election that drew in more than half of eligible voters, 87

1 percent of the electorate approved the measure.” (*Id.* at 1250.) The opinion concludes: “Like the
2 trial court, we will not set aside the lawfully expressed will of the voters.” (*Id.* at 1260.)

3 The opinion’s discussion is instructive in setting forth a spectrum of relevant factors in
4 assessing “all aspects of the public good” and community impacts with respect to “any legitimate
5 objectives of government” in condemnation of a water utility, including: 1) elimination of
6 monopolistic profit maximizing by out-of-area corporate owners; 2) customer say over increasing
7 rates; 3) narrowing of water rate disparities between neighboring water providers; 4) elimination
8 of the problem of vast geographic distances between decision makers and ratepayers; 5) public
9 transparency; 7) facilitation of public input before decision-makers; 8) acknowledgement of the
10 electorate’s will. All of these factors, which are equally relevant here, are specifically noted in
11 the *Casitas* opinion.

12 More necessary public use, by its broad interpretation, also logically encompasses the
13 three findings of necessity under Section 1240.030. If there is a more necessary use, the public
14 interest and necessity of the project, the fact that the project is located in a manner compatible
15 with the greatest public good and the least private injury, and that the property is necessary for the
16 project, should automatically be met by logical necessity. By viewing these legal concepts as
17 intertwined, the issue for this Court in this case therefore becomes one comparing the status quo
18 against the Project (i.e., ownership of the Claremont Water System by Golden State against
19 ownership by the City), weighing the full range of public benefits that lead to the Project.

20 Golden State has the affirmative obligation to disprove the presumed facts by a
21 preponderance of the evidence. (*In re Quentin H.* (2014) 230 Cal.App.4th 608, 615, fn. 6.) In
22 other words, Golden State must prove that the acquisition is not a more necessary public use after
23 consideration of the full range of public benefits and factors. As presented at trial, those factors
24 include: Golden State’s operations, the future operations by La Verne, Golden State’s lack of
25 responsiveness to community concerns, concerns over escalating water rates, residents’ desire for
26 local control over the rate setting process, control and prioritization over capital improvements,
27 greater transparency in the operation of the system, coordination of water planning with City
28 planning, ability to finance the acquisition, conservation and sustainability goals; and meaningful

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 public input, among others.

2 **III. TRIAL AND ISSUES AT TRIAL**

3 **A. Trial and Witnesses**

4 In September 2015, the Court bifurcated the trial, with Golden State's right to take
5 challenges to be handled by the Court, and the valuation trial to be determined by a jury in a later
6 phase. Testimony at the right to take trial was limited to the City's right to acquire the Claremont
7 Water System by eminent domain. Golden State offered testimony from eleven witnesses: Tony
8 Ramos, City Manager for the City of Claremont; Jeannette Vagnozzi, former employee of City of
9 La Verne; Daniel Keesey, Public Works Director for the City of La Verne; five Golden State
10 employees: Ernest Gisler, Capital Programs Manager, Denise Kruger, Senior Vice President of
11 Regulated Utilities, Benjamin Lewis, General Manager of the Foothill District, Byran Keith
12 Switzer, Vice President of Regulatory Affairs, and Thomas Traffas, Superintendent for the
13 Claremont Water System; and two independent experts: Michael Hanemann and Stephen Peters.
14 Golden State also called Ms. Kruger in rebuttal.

15 The City offered testimony from thirteen witnesses: Bevin Handel, Public Information
16 Officer for the City of Claremont; Christopher Veirs, Principal Planner for the City of Claremont;
17 Marilee Scaff, representative of the League of Women Voters; Jerry Mesa, Utilities Manager for
18 the City of La Verne; Benjamin Lewis, General Manager of the Foothill District for Golden State;
19 Melvin Hokanson, Deputy Fire Chief, Los Angeles County Fire Department (retired); and seven
20 independent expert witnesses: Dr. George DeShazo, Suzanne Harrell, Nancy Hughes, William
21 Kelly, Donna Ramas, Michael Thornton, and Steven Weissman.

22 The parties stipulated to, and the Court admitted, excerpts of deposition testimony of
23 Robert McVicker and John A. Bohn, as Exhibits A and B, respectively, in lieu of live testimony
24 from those witnesses.

25 **B. Issues at Trial**

26 At trial, the parties presented different visions of the case. The City's vision of public use
27 and public interest and necessity are broadly viewed. In the City's perspective, the public interest
28 and necessity is not limited to financial matters or operations, but includes its ability to pursue the

1 community's planning goals, environmental and conservation goals, control over capital
2 investment decisions, and control over the rate setting process. By contrast, Golden State views
3 public interest and necessity in a limited function relating only to the role of a technical water
4 provider providing safe and affordable water service at reasonable rates. Thus, Golden State
5 sought to rebut the presumptions in the City's favor by demonstrating that the City cannot afford
6 the acquisition, the acquisition will cause an increase in rates, and that La Verne, the City's
7 proposed water systems operator, is not capable. These issues are resolved in the City's favor.
8 At the same time, those issues do not address the full spectrum of public benefits to be
9 considered, which are also resolved in the City's favor.

10 **IV. THE FOUR FINDINGS OF THE CLAREMONT CITY COUNCIL SHOULD BE**
11 **UPHELD**

12 At the hearing on the adoption of the Resolutions of Necessity authorizing the filing of the
13 operative complaint in this action, following a presentation by City staff and public comment on
14 the matter (including consideration of oral and written comments by counsel for Golden State),
15 the Claremont City Council made the following four findings that, based on the evidence
16 presented at trial, remain un rebutted and therefore must be upheld by the Court.

17 **A. The City's Acquisition of the Claremont Water System is a More Necessary**
18 **Use than the Use to Which it is Already Appropriated.**

19 Where, as here, "property has been appropriated to public use by any person other than a
20 public entity, the use thereof by a public entity for the same use or any other public use is a more
21 necessary use than the use to which such property has already been appropriated. (Code Civ.
22 Proc 1240.650 (a).) Here, the City, a public entity, seeks to acquire the Claremont Water System
23 from Golden State, a privately-owned corporation, to provide water service to the public. Thus,
24 the City Council's determination that the Project is for a more necessary use is entitled to
25 deference from this Court. As discussed herein, public use is broadly defined in case law,
26 encompassing uses that promote the general interest or any legitimate object of government.

27 Whether the Court construes "public use" more narrowly, as Golden State argues, or more
28 broadly, consistent with case law, the City has demonstrated that its acquisition, operation and

1 maintenance of the Claremont Water System is a more necessary public use. The City's
2 acquisition is supported by a the full spectrum of benefits to the community, which cannot be
3 ignored by the Court, including: provision for safe, reliable and responsive water service by the
4 City; local control and community input in the setting of rates, policy and budgets under City
5 ownership; revenues from the Claremont Water System remaining within the system, rather than
6 subsidizing other water systems; greater public transparency under City ownership, with
7 decisions made in public meetings accessible to the customers and subject to the Brown Act and
8 Proposition 218; transparent master planning of the System by the City; implementation of the
9 City's goals regarding conservation and sustainability as outlined in the City's General Plan,
10 Sustainable City Plans, and related City ordinances; implementation of the City's customer
11 service/emergency protocols to water service under City ownership; clearer, more
12 comprehensible bills without surcharges; coordination of water planning with City land use
13 planning; compliance with CEQA in planning water projects; coordination of System repairs with
14 City services and City street repairs; protection of the City's historic environmental heritage,
15 including its trees, during System service and repairs; and City ownership of the Claremont Water
16 System for the benefit of its customers.

17 **B. The Public Interest and Necessity Require the Proposed Project**

18 As with public use, "public interest and necessity" have been broadly interpreted by
19 statute and by California courts, to include "all aspects of the public good, including but not
20 limited to social, economic, environmental, and esthetic considerations." Likewise, "necessity"
21 need only be reasonable or practical, rather than strictly necessary.

22 By any standard, the City has shown that the public interest and necessity require the
23 Project, including the following concerns in the community that lead to this action: the disparity
24 in water rates between Claremont and neighboring water systems; lack of responsiveness by
25 Golden State to the concerns of Claremont residents; lack of transparency in Golden State's
26 operation and decision making in the Claremont Water System; escalating water rates in the
27 Claremont Water System; failure of the Claremont Water System in portions of the City during
28 the 2003 Grand Prix Fire; concern over regional ratemaking, whereby Claremont subsidizes other

1 unrelated water systems (and the refusal by Golden State to take the System out of regional
2 ratemaking); confusing Golden State water bills with multiple surcharges, including the Water
3 Revenue Adjustment Mechanism (“WRAM”); and the inability of Claremont residents to
4 meaningfully participate in CPUC proceedings that occur far from the City.

5 Further, the full spectrum of benefits that will be recognized by all customers of the
6 System, demonstrate the public interest and necessity require the Project, including: provision of
7 safe, reliable and responsive water service by the City; local control and community input in the
8 setting of rates, policy and budgets under City ownership; revenues from the Claremont Water
9 System remaining within the System, rather than subsidizing other water systems; greater public
10 transparency under City ownership, with decisions made in public meetings accessible to the
11 customers and subject to the Brown Act and Proposition 218; transparent master planning of the
12 System by the City; implementation of the City’s goals regarding conservation and sustainability
13 as outlined in the City’s General Plan, Sustainable City Plans, and related City ordinances;
14 implementation of the City’s customer service/emergency protocols to water service under City
15 ownership; clearer, more comprehensible bills without surcharges; coordination of water planning
16 with City land use planning; compliance with CEQA in planning water projects; coordination of
17 System repairs with City services and City street repairs; protection of the City’s historic
18 environmental heritage, including its trees, during System service and repairs; and City ownership
19 of the Claremont Water System for the benefit of its customers.

20 C. **The Project is Planned or Located in Manner Most Compatible With**
21 **Greatest Public Good and Least Private Injury**

22 The City’s acquisition of the Claremont Water System is planned and located in a manner
23 that is compatible with the greatest public good and the least public injury. The City is acquiring
24 the entire Claremont Water System, which has already been planned, assembled and laid out by
25 Golden State. While the vast majority of the Claremont Water System is located within the City’s
26 boundaries, the City is also acquiring small portions of the System that are located in the Cities of
27 Upland, Pomona, and Montclair, as well as a small portion of unincorporated Los Angeles
28 County, to ensure that all customers will continue to receive service. The City is also acquiring

1 several existing water service improvements located outside the City's boundaries so as to
2 continue full uninterrupted operation of the System. Thus, by acquiring the System as a whole, as
3 independently operated by Golden State, the project (the ownership, operation and maintenance
4 of the Claremont Water System) is planned and located in a manner compatible with the greatest
5 public good and the least private injury.

6 **D. The Property Being Acquired is Necessary for the Project**

7 For the project, the City is acquiring all of the property that comprises the Claremont
8 Water System used for its operation and maintenance. By definition, the property being acquired
9 is necessary for the project. The property being acquired is described in detail in the operative
10 complaint. As discussed above, such property includes assets and service connections located
11 inside the City and small portions of the Claremont Water System located outside the City, which
12 are necessary for the operation of the Claremont Water System to provide uninterrupted water
13 service to all of its customers. Thus, the property being acquired is necessary for the project.

14 **E. Golden State Has Failed to Rebut the Four Findings Made by the Claremont**
15 **City Council**

16 The City Council has made the above four findings, for which the City is entitled to a
17 presumption in its favor. Each of these four finding remain unrebutted by Golden State,
18 demonstrating that the City is entitled to acquire the Claremont Water System. Golden State
19 supports the status quo of continued operation of the Claremont Water System under CPUC
20 oversight. The City's proposed vision of the public interest and more necessary use is broader
21 than that of Golden State, encompassing the broad spectrum of benefit that can only be realized
22 by the residents of Claremont through the City's acquisition and operation of the Claremont
23 Water System. These benefits include; greater local control of the water supply and distribution
24 system; enhanced customer service under City supervision; improved public transparency and
25 accountability in the operation of the System; greater local control in the rate setting process;
26 improved fire safety; implementation of the City's goals on conservation; and integration of water
27 planning with City planning, among other factors.

28 As discussed in the following sections, there are a number of factors supporting the City's

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 acquisition that are uncontroverted, which alone support the City's right to acquire the Claremont
2 Water System. They include: Golden State's failure to coordinate water planning with the City;
3 regional ratemaking under Golden State that has resulted in rates that are higher than surrounding
4 communities; one-size-fits-all policies despite differences in locale and demographics; confusing
5 bills with multiple surcharges, including WRAM charges; a CPUC regulatory framework that is
6 complex, bureaucratic, costly, geographically distant and lacking in transparency; Golden State's
7 differing conservation goals than those of the City; and the simpler, more transparent municipal
8 ratemaking process available under City ownership. This uncontroverted evidence alone supports
9 the City's acquisition and demonstrates that the presumptions in the City's favor are unrebutted.

10 As to the issues that Golden State has contested at trial, it has failed to rebut the
11 presumption in the City's favor. The evidence at trial confirms that municipal ownership by the
12 City will provide safe and reliable water to the community, acquisition of the Claremont Water
13 System by the City is financially feasible and will not result in unaffordable water rates, and that
14 the Claremont Water System after years of Golden State oversight is in need of improvement.

15 Accordingly, the totality of the evidence presented at trial, both the controverted and
16 uncontroverted evidence, supports upholding the presumptions in favor of the City Council's four
17 findings supporting the acquisition of the Claremont Water System.

18 **V. THE UNCONTROVERTED EVIDENCE SUPPORTS THE CITY'S**
19 **ACQUISITION OF THE CLAREMONT WATER SYSTEM BY EMINENT**
20 **DOMAIN.**

21 The City presented evidence which proves that the Project is in the public interest and
22 necessity and is a more necessary public use. Golden State had the obligation to rebut this
23 evidence, but instead the evidence either went unrebutted or merely acknowledged by Golden
24 State. These uncontroverted factors alone demonstrate that Golden State has not rebutted the
25 presumptions in favor of the City Council's findings in the Resolutions of Necessity.

26 **A. Golden State Consistently Fails to Coordinate Water Planning with the City**
27 **Regarding its Operations.**

28 One of the reasons that the acquisition of the Claremont Water System is in the public
interest is to improve transparency in its operations and in setting water rates. Golden State offers

1 little to no opportunity for public input in proposals and plans that directly impact the community
2 with its system master plans (Ex. 42), capital improvement plans, and rate proposals.

3 Golden State offered testimony at trial on various documents that are required for System
4 planning purposes. Most of those documents are prepared with no input or communication with
5 the City. The Claremont System Water Master Plan,² for instance, is developed entirely without
6 input from the City or its residents. (See Tr. Day 5, 36:13-37:9 [master plan development process
7 described without mentioning local communities opportunity for input].) The draft Master Plan is
8 not made available to the public in any manner; there is no public hearing on the Master Plan; and
9 the community is not asked for any input. (*Id.* at 82:28-84:2.) In fact, Golden State concedes that
10 it makes no effort to inquire of the City or the community about capital programs when drafting
11 the Master Plan. (Ex. A-03:11-21; Tr. Day 6 PM, 28:22-25.)

12 Even when completed, Golden State treats the Master Plan as a confidential document.
13 (Tr. Day 5, 91:15-18.) Golden State makes no effort to share the completed Master Plan with the
14 City. (Tr. Day 6 PM, 28:12-16.) Typically, the public only learns of the contents of the Master
15 Plan when portions of it are presented in CPUC proceedings – disbursed among thousands of
16 pages of documents. (Tr. Day 5, 85:2-17.) Even then, the Master Plan has multiple pages
17 blacked out. (Ex. 130.) When a master plan identifies a deficiency in the System, such as a fire
18 flow deficiency, Golden State does not provide that information to the City. (*Id.* at 93:16-23.)
19 Other documents prepared by Golden State’s consultants, such as a detailed analysis of historic
20 deficiencies in the Claremont Water System, including Golden State’s failure to comply with fire
21 flow and emergency storage standards, are not publicly disclosed by Golden State, and were
22 revealed only through the discovery process in this litigation. (See Ex. 440.)

23 While Golden State’s Urban Water Management Plan (“UWMP”) is open for public
24 hearings, here too, Golden State is not fully transparent. The public meeting for the last
25 Claremont Water System UWMP was held not in Claremont, but in San Dimas, and the draft
26 UWMP was only made available one week beforehand. (Ex. 20-143 to 144.) The meeting was

27 _____
28 ² The Master Plan is a document prepared by the System operator that assess the System’s ability to meet current and
future water needs, and identifies system needs for both long and short term. (Ex. 42-3.)

1 attended by only five people. (Ex. 20-189.) By contrast, water-related meetings at City Hall are
2 consistently well attended. (Tr. Day 11 PM, 86:21-27.)

3 Additionally, Golden State has been reticent with information requested by the City. For
4 instance, when residents ask questions of City staff related to Golden State, those questions are
5 routinely referred to Golden State. (Tr. Day 11 PM, 96:19-21.) Yet, the usual response from
6 Golden State is generally some sort of excuse why detailed information cannot be provided. (*Id.*
7 at 96:8-24.) In many instances, requests for information on capital projects or System conditions
8 are met without response. (*Id.* at 96:26-97:12.)

9 The lack of opportunity for input is also apparent in general rate cases before the CPUC.
10 As part of a utility's general rate case, it proposes capital improvement projects as part of the
11 revenue requirement. (Tr. Day 15 AM, 35:6-14.) The utility, in this case Golden State, outlines
12 what projects will be proposed. (*Id.* at 35:20-22.) The CPUC does not have a formal process to
13 ensure that local communities, like Claremont, have a voice in the planning process. (*Id.* at
14 35:15-19.) After the application is filed, the burden shifts to anybody who wishes to challenge
15 the proposed projects. (*Id.* at 36:11-13.) This creates a "propose/oppose model" for capital
16 projects in which Golden State proposes and others react in opposition. (*Id.* at 365:19-37:3.)
17 This does not allow for proactive input from Claremont constituents over proposed projects and
18 operations that will affect the community. (*Id.* at 38:16-39:2.)

19 **B. Regional Rates have Resulted in Confusing Water Bills and High Water**
20 **Rates that are not Tailored to the Needs of the Community.**

21 The acquisition of the Claremont Water System is also in the public interest because of the
22 comparatively high rates paid by Claremont residents compared to residents of neighboring
23 communities, regionalization of rates, and the process by which rates are determined. By its own
24 admission, Golden State has the highest rates of any neighboring city, and that was so even before
25 Golden State's 2014 rate case. (Ex. 1044-0003; Tr. Day 14 AM, 22:2-20.) Golden State
26 commissioned a rate survey in 2011 that determined Claremont had the highest rates of the
27 surrounding communities. (Ex. 1046-0012; Tr. Day 14 AM, 21:2-25.) As of 2014, Golden State
28 continued to have the highest rates of surrounding communities. (Ex. 1285-0001; Tr. Day 19 PM,

1 83:1-11.) Golden State also has the highest rates in every city in Regions 1 and 3, where a single
2 city is served by Golden State and another water provider. (Ex. 1285-0002 to 0003.) This is true
3 even when the other provider in the same city is also an investor owned water utility regulated by
4 the CPUC. (Ex. 1285-0003, Tr. Day 19 PM, 86:23-88:10.) Rates, including surcharges such as
5 WRAM, which imposes a surcharge if revenues drop because of a drop in water consumption,
6 have been increasing significantly in Claremont. (Tr. Day 3, 67:16-68:3.) There are various
7 methods to measure rate increases, for example on a per unit basis of water, or by customer
8 classes, or by bill impacts on residential customers and increases have been as high as over 100%
9 in ten years. (Tr. Day 17 AM, 64:7-11; 66:1-25.) Golden State estimated in its pending CPUC
10 rate application that bill impacts on a typical residential bill from May 22, 2013 to July 1, 2014
11 exceeded 10%. (*Id.* at 64:17-65:2.) In addition, multiple surcharges make billings confusing and
12 unpredictable. (*Id.* at 69:11-70:11.) Region 3 alone has had 19 accounts by which different
13 charges can be imposed. (*Id.* at 68:2-69:6.)

14 There are numerous drawbacks to the regionalization of rates employed by Golden State.
15 As mentioned, the Claremont Water System is part of Golden State's Region 3.³ Although water
16 systems were combined into regions for ease of rate setting by the water provider, the regions
17 were arbitrarily set. (Tr. Day 17 AM, 63:2-14.) Stating that it is "not appropriate to consolidate
18 widely disparate districts with the specific intent for one to subsidize the other," former CPUC
19 Commissioner Bohn opposed regional rates. (Ex. B-10:15-20.) These concerns are illustrated in
20 Region 3 where diverse, disparate water systems have been combined together for administrative
21 purposes and some systems such as Claremont, end up subsidizing others.

22 Golden State has been able to take advantage of regional rates. Authorized rates of return
23 are set prospectively by the CPUC. (Tr. Day 9 PM, 19:22-28; Day 17 AM, 54:28-55:3; Day 17
24 PM, 42:18-23.) There is no mechanism to issue refunds to consumers for a utility that out earns
25 its rate of return. (Tr. Day 17 AM, 84:11-17; 100:17-25.) Based on Golden State's annual
26

27 ³ The Claremont Water System's 11,249 connections comprise roughly 11.3% percent of the total of Region 3
28 connections. (Tr. Day 17 AM, 62:18-26.)

1 reports for Region 3, it has consistently earned a rate of return in excess of the authorized rate of
2 return set by the CPUC. (*Id.* at 78:3-4; Ex. 1242-0001.) In addition, the Claremont Water
3 System consistently out earns Region 3's actual rate of return and the authorized rate of return in
4 every year except for 2005 and 2010. (Ex. 1242-0003 and 0004.) Comparing the Claremont
5 Water System's rate of return to other systems in Region 3 demonstrates some systems earn more
6 than the rate of return, while others earn less or realize negative returns. (Ex. 1242-0005; Tr. Day
7 17 AM, 98:22-99:1.) Here, the evidence demonstrates that Claremont is subsidizing other service
8 areas in Region 3.⁴ (Tr. Day 17 AM, 100:11-16.)

9 Part of the problem with the regional of rates is that water is a local resource with local
10 concerns. (Ex. B-12:17 to 13:4.) Regardless of who provides water service, consumers are the
11 most immediately impacted by water regulation. (*Id.* at 13:18-14:4.) "[T]he decisions about
12 managing and utilizing water resources are definitely very local." (Tr. Day 15 PM, 20: 14-16.)
13 These decisions depend on local supplies of surface water or groundwater, and infrastructure. (*Id.*
14 at 20:16-18.) Therefore, decisions about water sources is "dictated by local conditions." (*Id.* at
15 20:19-21.) Local operation of a system in which the regulation is locally devised is more likely to
16 be successful. (Ex. 1420-0028, see testimony of Kelly, DeShazo, Weissman, *in passim.*)
17 Nonetheless, Golden State has forced regional rates on its customers, inhibiting the ability to
18 tailor rates to a specific community's needs. Golden State's expert, Dr. Hanemann admitted on
19 cross-examination that if there is one rate structure for residents in different circumstances, then
20 the rate structure is not tailored to the circumstances of the residents. (Tr. Day 10 AM, 39:10-15.)
21 While regional rates benefit Golden State, they harm the residents of Claremont.

22 The inability of communities to tailor the rate structure to their specific circumstances is
23 evident with WRAM. WRAM is a surcharge that is designed to bring in an "amount of money
24 that was under-collected in a prior year" when the revenue targets for customers were not being
25 met by actual customer revenues. (Tr. Day 8 AM, 42:2-19.) In other words, when customers

26 _____
27 ⁴ Golden State has argued that complaints about rates are based on the dislike for tiered rates. The evidence
28 contradicts this. Tiered rates were instituted in 2008. (Tr. Day 17 AM, 91:15-26.) Golden State was out earning its
authorized rate of return before and after the implementation of tiered rates, except for 2005 and 2010. (*Id.* at 92:11-
14, see Ex. 1242.)

1 consume less, Golden State’s revenue drops, permitting Golden State to penalize its customers by
2 imposing WRAM charges. (*Id.* at 44:3-20.) WRAM protects Golden State’s revenue stream,
3 making Golden State indifferent to the level of sales. (Tr. Day 11 PM, 34:21-35:2; Day 15 PM,
4 84:8-16; Ex. 1012-0038.) In response to the Governor’s drought declaration, which called for a
5 25% reduction in water use, Golden State imposed additional WRAM charges. (Tr. Day 8 AM,
6 44:10-24.) These charges are significant. Golden State by advice letter in February 2016 is
7 obtaining almost \$21,000,000 for WRAM for Region 3. (Ex. 1419.) WRAM charges were, and
8 remain, an issue of concern to Claremont residents. (Tr. Day 3, 67:16-19; Day 11 PM, 93:14-22.)
9 The City asked residents to conserve water because of the drought, and yet the residents were
10 penalized because the more they save, the more they had to pay in WRAM charges. (Tr. Day 3,
11 67:16-68:3; Tr. Day 13 PM, 16:10-21.) At the same time, WRAM charges shift the consequences
12 of economic downturn and dropping revenues, such as during the Great Recession, from Golden
13 State to its customers, at a time when customers are trying to cut expenses to weather difficult
14 economic times. Ironically, although WRAM protects Golden State from the risks of economic
15 downturns, Golden State’s authorized rate of return is not lowered for that reduced risk. (Tr. Day
16 8 AM, 45:9-46:16; PM 7:15-9:15.)

17 The CPUC rate setting process also creates perverse incentives for regulated utilities. (Tr.
18 Day 15 AM, 43:2-5.) First, because utilities know that the CPUC will not approve full capital
19 improvement requests, utilities ask for more than they need to function properly. (*Id.* at 43:2-20,
20 see Ex. 1142 -0003 [“This is not a proceeding in which the utility has proposed an artificially
21 inflated revenue requirement...”].) Second, the utilities are incentivized to request more for
22 operational expenses than needed and spend less on operating expenses than the amount approved
23 by the CPUC to maximize its revenue. (*Id.* at 43:21-44:13.) Finally, the utility is allowed to earn
24 a rate of return on its capital investment based on the magnitude of the investments. (*Id.* at 44:14-
25 25.) The practical effect is to encourage utilities to overinvest in infrastructure by building more
26 infrastructure than necessary or spending more on a particular project than necessary to secure
27 higher returns. (*Id.*; 45:2-7.) The result of these incentives is an upward pressure on rates. (*Id.* at
28 44:22-25.)

1 The CPUC process is also bureaucratic and insular. Golden State’s 2014 General Rate
2 Case contains more than 32,000 pages of documents (Tr. Day 7 PM, 13:22-14:2), which are not
3 all available to the public. (Tr. Day 5, 85:22-86:4.) It is very challenging for local governments
4 to participate in CPUC proceedings in any meaningful or effective way. (Tr. Day 15 AM, 26:19-
5 22.) In order to effectively participate in the CPUC rate setting process, a person would have to
6 closely monitor ancillary proceedings and actively participate in those ancillary proceedings. (*Id.*
7 at 29:5-13.) The process is complex without formal discovery rules, and many procedures that
8 are unwritten. (*Id.* at 38:1-12.) This leads to an insular setting where the “regular participants”
9 are an “inside group.” (*Id.* at 37:22-25.)

10 The rate setting process through the CPUC is considerably more complex than municipal
11 rate setting through Proposition 218. Rate setting for Claremont, through the Proposition 218
12 process will put elected officials and voters in charge of rates. (Tr. Day 15 PM, 35:17-23; Tr.
13 Day 14 PM, 81:14-81:18.) In municipal rate setting, the elected officials who make the decisions
14 are directly accountable to the voters. (*Id.* at 35:17-36:2.) By contrast, in the CPUC process, the
15 accountability of the CPUC commissioners is “very indirect.” (*Id.* at 36:3-7.) The profit-
16 maximizing incentives that accompany the CPUC process are non-existent with a municipal
17 owned utility because a municipal utility is not a profit-making entity and because Proposition
18 218 requires that revenues cannot exceed the cost of providing the water service. (*Id.* at 36:22-
19 37:8; Cal. Const., art. XIII D, § 6(b)(1).) The propose/oppose model of the CPUC capital
20 investment process is markedly different with a municipal owned utility. The CPUC process lets
21 a distant government agency select which projects to approve, while under municipal rate setting,
22 the entity that ultimately approves projects is the same entity with broader land use interests,
23 environmental goals, and can look at the nature of the water service. (Tr. Day 15 PM, 37:12-
24 38:2.) This allows the municipal entity to control, not just what should be built, but where it
25 should be built, and how it should be built consistent with the community’s goals and priorities.
26 (*Id.*) By virtue of the centralized nature of the CPUC, its location, the complexity of its process,
27 its processes are not focused on the specific needs of a community. (*Id.* at 38:28-39:10.) These
28 factors demonstrate that the municipal rate setting is “more likely to produce favorable

1 outcomes.” (*Id.* at 69:1-6.)

2 A comparison of the CPUC regulatory process to municipal ownership is contained in the
3 table on the following page as 26.

4 **C. Golden State does not Share or Implement the City’s Conservation Goals.**

5 Golden State ignores Claremont’s sustainability goals to increase its reliance on recycled
6 water. As evidenced in its UWMP, Golden State has no plans to develop recycled water facilities
7 over the next 25 years. (Ex. 20-74 to 75; Tr. Day 19 PM, 47:22-48:9.) In fact, the sole mention
8 of recycled water in the UWMP is a reference to a program being planned by the Claremont
9 Colleges in conjunction with the City. (Tr. Day 19 PM, 47: 22-48: 9; Ex. 20-74 to 75.) From a
10 planning perspective, Golden State’s lack of commitment to recycling is inconsistent with
11 Claremont’s Sustainable City Plan, which seeks to have one to two plants with capacity of a half
12 to one-million gallons a day. (Tr. Day 19 PM, 48:23-49:24; Ex. 1284-5.)

13 In setting policy goals for conservation, the City has the benefit of its regulatory and
14 police powers. The police power grants the City the right to enforce laws for public health,
15 safety, and welfare. (Cal. Const., art. XI, § 7.) Golden State acknowledges that it lacks
16 regulatory authority to adopt ordinances, for conservation purposes or otherwise. (Ex. 20-96; 20-
17 102; 20-104.) By contrast, the City can adopt, and has adopted, regulatory ordinances to restrict
18 watering days (see, Ex. 1078), and has the power to enforce those laws. (See Ex. 1078, Tr. Day
19 12 AM, 23:7-15.) If there is to be effective conservation in the City, it must come from the City’s
20 use of its police powers. As Dr. Hanemann testified, behavioral economics demonstrates that
21 price alone is an insufficient incentive to encourage conservation, “[y]ou need non-price
22 measures...” (Tr. Day 10 AM, 23:3-25:6.) The non-price measures Dr. Hanemann references are
23 the City’s police powers, which Golden State lacks. (See, *Id.* at 62:12-25.) Police power gives
24 the City better control for planning purposes. (Tr. Day 14 PM, 66:6-67:1.) Without full control
25 of the water utility, the City cannot fully integrate planning to promote the public’s health safety
26 and welfare. (*Id.*) There is a disconnect between the City’s plans and its ability to accomplish its

Proposition 218 vs. California PUC Process

Proposition 218:

- Written notice of proposed fee or charge explaining the basis for the fee of charges and time and place of the public hearing (Cal. Const., art. XIII D, 6(a)(1))
- Holding of the public hearing not less than 45 days after mailing notice (Cal. Const., art. XIII D, 6(a)(2))
- Consideration of all protests against the proposed fee or charge (Cal. Const., art. XIII D, 6(a)(1))
- Revenues from the fee or charge are not to exceed what is required to provide the service (Cal. Const., art. XIII D, 6(b)(1))
- Revenues from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed (Cal. Const., art. XIII D, 6(b)(2))
- No fee or charge may be imposed for general governmental services (Cal. Const., art. XIII D, 6(b)(5))
- The fee or charges are to be approved by local elected City Council or Board of Directors (Cal. Const., art. XIII D, 6(a)(1))

CPUC Process:

- Rate case filing every 3 years
- Application for regional rates with multiple regions in one application
- Proceedings in San Francisco
- Must file formal protest or motion to intervene
- Other separate proceedings also affect rates (e.g., cost of capital) requiring separate participation
- Proceedings can last for years
- Produced documents can be 1,000s of pages
- Contested proceedings with discovery, motions, trial and briefs
- *Ex parte* communications with decision maker allowed
- Public participation hearings are discretionary, but not part of evidentiary record
- Model is adversarial: Propose and Oppose
- Costs are passed onto rate payers

(See, generally, testimony of Weissman)

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1
2 plan without having control of the utility. (*Id.*)

3 **D. The City of Claremont Has Long Term Water Objectives Which are Not**
4 **Being Met Under Golden State Ownership of the Claremont Water System.**

5 The City has long-standing concerns about water and water supply issues. This point is
6 explicit in the City's 2006 General Plan. (Ex. 1016-326.) The 2006 General Plan, which took
7 more than two years to complete, represents the community's concerns from 2000 on.⁵ (Tr. Day
8 12 AM, 25:19-23.) The General Plan identifies water concerns including:

9 "...stabilization of water rates. accountability for water services.
10 rising groundwater, lack of water supply in hillside areas, and
11 infrastructure improvements." (Ex. 1016-326.)⁶

12 The meaning of each of these factors was described during the trial. Stabilization of water
13 rates means having rates that stay "somewhat evenly and spread across those years." (Tr. Day 12
14 AM, 26:2-6.) Accountability for water services is "responsibility" and "justification" for rates
15 and service. (*Id.* at 26:7-13.) Claremont residents have expressed concerns about Golden State's
16 lacks of accountability, stemming from the lack of information from Golden State at town hall
17 meetings, in correspondence, and in person contact. (*Id.* at 27:4-18.) Residents desire that
18 decisions about their water service be made by people directly connected with issues locally, who
19 know what the local water issues are, and what the community is like. (*Id.* at 28:3-7.)

20 The General Plan also states that it is the City's objective to "eliminate subsidies that
21 make Claremonters pay for the additional costs of supplying water in desert areas due to a
22 regionalization of water rates." (Ex. 1016-0326.) Residents of Claremont have voiced concerns
23 about the fairness of regional rates. (Tr. Day 12 AM, 28:8-17.) Those concerns lead the City to
24 request that rates for the Claremont Water System not be set on a regional basis. (*Id.* at 28:27-

25 ⁵ In 1940 and 1960, the League of Women Voters urged the City to purchase the water system and it still does today.
(Tr. Day 13 PM, 17:13-16 and 18:12-19.)

26 ⁶ The General Plan is a comprehensive, long-term plan for the development of a city, including any land outside its
27 boundaries that the city believes is related to its planning. (Gov. Code, § 65300, *et seq.*) The General Plan is at the
28 top of the hierarchy of local government's land use regulating; zoning and other land use decisions which must
conform to the general plan. (See, e.g., *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531,
541.)

1 29:1.) The City's multiple requests were rejected by Golden State. (*Id.* at 29:2-3.) The City has
2 in fact opposed regional rates since 2002 in interventions before the CPUC. (Tr. Day 8 AM,
3 19:26-20:12; Ex. 1417.)

4 From the General Plan process, the City learned that the community wanted to be more
5 sustainable. (Tr. Day 12 PM, 8:1-11.) The City set a goal to encourage water conservation, in
6 particular, reducing reliance on imported water, which will reduce the City's energy footprint.
7 (Tr. Day 12 PM, 19:4-26; Ex. 1016-221.) In an effort to accomplish this task, the City has
8 implemented caps on the amount of turf and landscaping through its Water Efficient Landscape
9 Ordinance. (Tr. Day 12 PM 20:25-21:10; Ex. 1280.) The City also has specific policies for
10 groundwater protection to prevent contamination and reduce consumption through various
11 methods. (Ex. 1016-232; Tr. Day 12 PM, 22:10-25:9.) Likewise, the City has specific policies to
12 achieve the highest level of water conservation possible. (Ex. 1016-238 to 239; Tr. Day 12 PM,
13 25:11-28:22.)

14 The City made considerable efforts to meet the objectives and goals in the General Plan
15 prior to initiating this condemnation action. (Tr. Day 12 PM, 29:8-13.) The City has held
16 community forums that allow the community to speak with City Council members about
17 concerns, which in turn have been brought to meetings with Golden State. (*Id.* at 29:22-30:10.)
18 The concerns raised by the City have gone unresolved. (*Id.* at 30:11-13.) The City has also
19 worked, without success, to resolve concerns through the CPUC processes, intervening in general
20 rate cases since 1995. (*Id.* at 30:14-27; Ex. 1418-002, see Tr. Day 8 AM, 27:4-29:1; Ex. 111.)

21 The City's focus on water issues is evident in the City's conservation policies. Those
22 policies are found in the City of Claremont Sustainable City Plans (Exs. 1231, 422), the City's
23 Water Efficient Landscape Ordinance (Ex. 1280), and Ordinance No. 2009-10 establishing Water
24 Conservation and Water Supply Shortage Program and Regulations (Ex. 1018). (Ex. 1284-0002.)
25 For instance, the water conservation ordinance is designed to ensure there is sufficient water for
26 the community in the future by encouraging conservation and triggering restrictions based upon
27 the drought level. (Tr. Day 11 PM, 105:17-106:8; see Ex. 1018.)

28 The City's Sustainable City Plans (Exs. 1231 and 422) demonstrate the City's and the

1 community's long-standing engagement in water issues. The initial plan was developed by a
2 highly educated, diverse, and sophisticated group of stakeholders from the community. (Tr. Day
3 12 PM, 32:24-34:27.) The Sustainable City Plan reiterates goals echoed in the General Plan and
4 expands on them by expressing support for a number of projects, including the Thompson Creek
5 Spreading Grounds Project to increase groundwater recharge. (Ex. 1450; 1231-27, 28 and 30;
6 422-22 to 29.)

7 In sum, the General Plan provides the principles and scope of the City's water vision with
8 a focus on water supply, wastewater, and storm water. (Tr. Day 20 AM, 19:4-13.) Specific
9 objectives are then articulated in the City's Sustainable City Plans. (*Id.*; Exs. 1231 and 422.)

10 The City and its residents' long term goals are ultimately reflected in the Measure W
11 results: In Measure W, 52% of the registered voters turned out to cast a ballot,⁷ of which nearly
12 72% voted in favor of the measure. (Tr. Day 19 PM, 94: 13-26.) This election reinforces the
13 broad understanding that the City and its residents have long considered water issues to be of
14 paramount importance, and are willing to pay to secure ownership of the Claremont Water
15 System to ensure local control and implementation of the City's and the community's goals. (Tr.
16 Day 20 AM, 48:6-21.)

17 **E. The Uncontroverted Advantages Of Municipal Oversight**

18 With acquisition of the water system, there will be greater public transparency. The City
19 is subject to the Ralph M. Brown Act and Public Records Act (Sec. 54950 et. seq. and 6250 et.
20 seq. of the Government Code). Golden State is not subject to such requirements. Decisions on
21 water planning, projects, and rates will have to be made locally and in public. Decision makers
22 will be elected local officials instead of appointed commissioners hundreds of miles away so that
23 customers and constituents will have immediate and face-to-face access to decision-makers and
24 their staff.

25 By the City's acquisition of the Claremont Water System, the residents of Claremont will
26 obtain local control and obtain a voice over water policy and practices, including, rate setting and

27 _____
28 ⁷ Dr. DeShazo testified that Los Angeles County turnout for the November 2014 election was 25%. (Tr. Day 19 PM, 94:26-28.)

1 rate design. Currently, under CPUC General Order 103-A, the City's land use authority over
2 water facilities, including their location, is pre-empted. (Ex. 1015.) Upon acquisition, the City
3 will have full land use authority. (See testimony of Kelly *in passim*.) The City will also be in a
4 position to implement water master planning regarding capital projects, policies and practices,
5 and objectives set forth in its General Plan and the Sustainable City Plan. (*Id.*) It will be able to
6 integrate its police power and land use authority to coordinate conservation and take advantage of
7 multiple water resources, including greater ground water usage and the use of recycled, storm
8 water, and gray water. (*Id.*) It will be able to provide water service from recycled water sources
9 without the threat of liability under Section 1501 *et seq.* of the Public Utilities Code, which
10 authorizes investor owned water utilities to seek damages "... by reason of political subdivisions
11 extending their facilities into the service areas of privately owned public utilities." (*Id.*)

12 **VI. GOLDEN STATE HAS FAILED TO REBUT THE PRESUMPTIONS OF MORE**
13 **NECESSARY USE AND PUBLIC INTEREST AND NECESSITY**

14 Even as to the issues challenged by Golden State in this action, the evidence demonstrates
15 that Golden State has failed to rebut the presumptions in favor of the City Council's findings.
16 Contrary to Golden State's contentions, the City can provide safe and reliable water to the
17 community, the City's acquisition is financially feasible, and Golden State's operation of the
18 Claremont Water System is not beyond reproach.

19 **A. Municipal Ownership and Operation of the Claremont Water System Will**
20 **Provide Safe and Reliable Water Service to the Community.**

21 The City will be able to provide safe and reliable water service after acquisition of the
22 Claremont Water System. The City selected La Verne to operate the Claremont Water System
23 for a variety of reasons, and entered into an operations and maintenance agreement with La Verne
24 (Ex. 330.) The City has a good relationship with La Verne and is already a partner with La Verne
25 on watershed management, police department mutual aid, and other regional issues. (Tr. Day 11
26 PM, 69:27-70:6.) La Verne has operated its own water system since 1911, a system which is
27 comparable in size and scope to the Claremont Water System. (Ex. 217-1.) La Verne and the
28 Claremont Water System rely upon the same water sources, particularly groundwater from Six

1 Basins and imported water from Three Valleys Municipal Water District, in which both cities
2 have an ownership interest. (*Id.*) La Verne also provides safe and reliable water service at rates
3 substantially lower than Golden State. (*Id.*; Ex. 1285-0001.) Based on the totality of the
4 evidence, La Verne can properly operate the Claremont Water System. (Tr. Day 16 PM, 101:18-
5 103:23; see testimony of Mesa and Keeseey *in passim.*)

6 La Verne maintains its system in a responsible manner: it has less main line breaks than
7 the Claremont Water System (Tr. Day 5, 103:15-104:11; Tr. Day 4 PM, 24:8-25:10; see also Ex.
8 220-35); it has more storage capacity than the Claremont Water System (Tr. Day 5, 104:12-23;
9 Tr. Day 16 PM, 79:28- 80: 2; Tr. Day 10 AM, 53:3-11; Tr. Day 13 PM, 88:2-7); and La Verne
10 has lower water loss than the Claremont Water System, and a water loss that is well below the
11 standard of the American Water Works Association (Tr. Day 13 PM, 43:17-25; Tr. Day 9 AM
12 54:25-55:7; Tr. Day 14 AM 15:27-16:12; Tr. Day 16 AM 60:20-61:13). La Verne's
13 pipeline/mainline replacement policy is a repair policy instead of a replace policy because La
14 Verne "does not have any really poor water mains within [its] distribution or transmission
15 systems." (Tr. Day 13 PM, 104:12-21; Tr. Day 13 PM, 107:4-7.) The evidence shows that the La
16 Verne water system is a well operated and well maintained system.

17 The day to day operation of La Verne's system is overseen by Jerry Mesa, a credible and
18 competent water systems operator. Mr. Mesa has been involved in water system operations since
19 1979; he is a certified D5 operator, the highest operator certification available; and he is a T3
20 treatment operator. (Tr. Day 13 AM, 63:22-66:20.) These certifications require Mr. Mesa to
21 maintain certain levels of continuing education every three years. (*Id.*) Mr. Mesa is also a
22 member of the Association of California Water Agencies, American Water Works Association,
23 Orange County Water Association, and is a board member and chair of the education committee
24 of Southern California Water Utility Association, all of which are relevant associations in the
25 field. (*Id.* at 72:5-74:26.) Mr. Mesa also serves as the Vice President of the Six Basins
26 Watermaster. (Ex. 682-1.) Mr. Mesa will be in charge of the day to day operation of the
27 Claremont Water System should the acquisition proceed. (Tr. Day 13 PM, 50:28- 51:6; Tr. Day 4
28 AM, 43: 26-44:7.)

1 As with Golden State’s operations (see Exs. 1192, 1203 and 1208), La Verne has received
2 quality violations. While La Verne has operated its water system over 100 years, only two
3 violations were identified – which were thoroughly discussed by Golden State at trial. While any
4 violations are a concern, these were remedied quickly and efficiently, and no longer pose a danger
5 to La Verne’s residents. In the first instance, in February 2011 La Verne self-reported an E.coli
6 incidence confined to 180 homes. (Tr. Day 4 PM, 38:3-14; Tr. Day 4 AM, 79:10-18.) The State
7 issued a violation in March after the incident had been resolved. (Ex. 301.) After the discovery
8 of E.coli, La Verne contacted the State health department, drafted a boil water order in
9 conjunction with the State, received approval for the boil water order from the State, hand
10 delivered the order, initiated La Verne’s reverse 911 calling programs, and provided bottled water
11 to effected customers. (Tr. Day 4 PM, 38:3-28; 39:27-40:10.) La Verne staff also took action to
12 disinfect and flush the system to eradicate the program. (*Id.* at 39:1-10.) Within four days, the
13 problem had been resolved. La Verne acted as quickly as possible in response to the incident and
14 the State Health Department allowed La Verne to lift the boil water order. (*Id.* at 39:10-19; Exh
15 301.)

16 La Verne has also worked its way through a lead exceedance violation that was much
17 discussed at trial. In October 2012, La Verne’s testing for in home lead exceeded state allowable
18 standards. The State issued a citation for this violation, which required La Verne to increase
19 sampling periods to twice annually and conduct a corrosion control study. (Ex. 287-3.) La Verne
20 met the requirements of the State and made necessary changes to the system to reduce lead
21 exposure. (See Ex. 290.) In 2014, the State reduced lead sampling requirements to once a year,
22 and on June 14, 2016, the State determined that La Verne had “successfully completed three years
23 of lead...tap sampling with no action level exceedance...” and approved La Verne’s request to
24 return to triennial testing. (Exs. 1402 and 1438-0001.) This demonstrates that La Verne’s staff is
25 capable of resolving any problems with the water system.

26 Denise Kruger, Golden State’s Senior Vice President for Regulated Utilities, testified
27 regarding the seriousness of La Verne’s water quality violations. (Tr. Day 10 PM, 50:23-52:23.)
28 The Court finds that although Ms. Kruger has experience in water quality issues, her testimony on

1 this issue is given less weight. Given her interest as an employee of Golden State and a major
2 shareholder in Golden State's parent company, American States Water Company, Ms. Kruger's
3 opinion should be discounted. Additionally, that her opinions were developed while listening to
4 testimony in the Court, casts doubt on the thoroughness of her opinion and detracts from the
5 quality and foundation of her opinions.⁸ Exhibit 1438 demonstrates that the State no longer
6 considers lead levels in La Verne to be an issue of concern, and thus the Court does not give great
7 weight to Ms. Kruger's testimony.⁹

8 The State Health Department keeps a watchful eye on La Verne, as it does all local water
9 systems in the State. Its actions ensure that Californians maintain safe and healthy drinking
10 water. The State will do so for Claremont residents as well. Claremont will also be watching
11 over La Verne, and Claremont will have control and oversight as provided in the Claremont-La
12 Verne operator agreement. (See Ex. 330.) All capital expenditures, operation plans, and rate
13 setting are subject to Claremont's ultimate review and approval. (Ex. 330-12 to 14.) An
14 operating reserve, capital reserve, and enterprise fund must be established. (Ex. 330-11.)
15 Detailed financial records and operation expense projections must be provided by the operator.
16 (Ex. 330-13 and 330-17.) La Verne as operator is required to "respond to customer complaints
17 relative to water quality, leaks, pressure, and all other service related issues." (Ex. 330-7, ¶ 4(d).)
18 La Verne is required to "cooperate and respond to all ... Governmental Authorities with respect
19 to inspections and other regulatory compliance activities." (Ex. 330-7, ¶ 4(f).) La Verne is
20 required "to give prompt written notice to Claremont of any communication from a Governmental
21 Authority alleging any discrepancy or failure of the Claremont Water System to comply with
22 Applicable Law." (Ex. 330-7, ¶ 4(f).) La Verne is required to "[c]onduct all required water
23 quality testing and submit test results to the appropriate Governmental Authorities. Copies of all
24 test results will be provided to Claremont." (Ex. 330-7, ¶ (g).)

25 ⁸ Curiously, although the State Department of Health had approved La Verne for triennial lead testing and the issue
26 had long since been reported and corrected, Ms. Kruger notified the State about the historic lead results during trial.
(See Tr. Day 10 PM 56:19-57:6.)

27 ⁹ While La Verne had also inaccurately completed Consumer Confidence Reports ("CCR") for a period of time, Mr.
28 Mesa has taken over responsibility for the CCRs, and his reporting for 2016 contains no errors. (Tr. Day 13 P.M.,
39:7-16, 42:1-22.)

1 There are important remedies and rights that Claremont has regarding La Verne in the
2 agreement. The agreement is subject to a 5-year term but may be terminated earlier. (Ex. 330-4,
3 ¶ (2).) Thus, if La Verne “fails to respond to an immediate danger to public health,” Claremont
4 may take control to provide safe provision of water service. (Ex. 330-17, ¶ 14(a)(iii).) Also of
5 great significance, La Verne must indemnify, defend, and hold Claremont harmless for La
6 Verne’s failure to honor its obligations under the agreement or to comply with applicable law.
7 (Ex. 330-16, ¶ 12(a).) Thus, Claremont has significant leverage and rights to ensure the
8 Claremont Water System is properly run and to protect the health of Claremont residents.

9 **B. Acquisition of the Claremont Water System by Claremont is Financially**
10 **Feasible**

11 The City and Golden State presented expert testimony on financial feasibility and
12 potential rate impacts. (See testimony of Hughes Day 17 PM, Day 18 AM/PM, and Day 19 AM;
13 Hanemann Day 9 AM/PM and Day 10 AM/PM.) The City prepared a financial feasibility study
14 in November 2013. This study compared rate impacts between municipal and investor owned
15 utility ownership of the Claremont Water System at different purchase price scenarios, assuming
16 acquisition of the system through bond financing. The City’s expert, Nancy Hughes, specializes
17 in financial utility analysis, with over 30 years of experience in preparing utility feasibility and
18 appraisal studies. (Tr. Day 17, PM, 53-67.) She also prepared a fair market appraisal of the
19 Claremont Water System. (*Id* at 80: 1-7.) Relying principally on the income valuation approach,
20 her appraised value of the Claremont Water System in 2013 was \$55,000,000, which was used as
21 the starting acquisition price of her study. (*Id.* at 77: 1-15.) She also made certain bond financing
22 assumptions that were supported by Suzanne Harrell, an expert for the City who specializes in
23 municipal financing in California. (Tr. Day 18, AM 66: 2-25.)

24 Ms. Hughes relied on historical Golden State’s filings with CPUC for the Claremont
25 Water System. (Tr. Day 17 PM, 72:19-27.) She made certain projections from 2013 and
26 assumed an acquisition date of 2016. She then projected forward 30 years to 2046 based upon
27 historic operational expenses and capital expenditures, adjusted by assumptions regarding
28 customer growth, inflation, and other factors. She assumed operational expenses and capital

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 expenditures were the same under investor and municipal ownership. The differences between
2 the two ownerships is that that there are certain expenses, such as rate of return and depreciation
3 expense, that are not included in rates under municipal ownership, but are under investor
4 ownership. At the same time, bond financing is an expense for a 30 year period that would be
5 passed on in rates under municipal ownership but not in the investor ownership rate scenario for
6 the projected 30 years. Ms. Hughes' analysis concluded that because of the differences in
7 municipal and investor owned utility rate making, there would be no rate increase at the
8 \$55,000,000 acquisition price. (Ex. 221, see Attachment A to City's Trial Brief of Aug. 3.)

9 In preparing her appraisal, Ms. Hughes found that because of regional rate making,
10 Golden State enjoys a premium over what rates would be if Claremont Water System was a
11 standalone system. She utilized this rate premium in her valuation of the Claremont Water
12 System, which raised her conclusion of value to \$55,000,000. Without the premium, her
13 conclusion on value would be approximately \$35,000,000. (Tr. Day 17 PM, 77:9-79:15.) In her
14 analysis, she concluded that at \$55,000,000 purchase price, with or without this premium, rates
15 would not go up. (Ex. 221, See Attachment A, City of Claremont's Trial Brief on Financial
16 Models.)

17 Dr. Hanemann, a water economist retained by Golden State for trial, did a similar
18 comparative analysis that mirrored Ms. Hughes's analysis in certain respects. However, Dr.
19 Hanemann concluded that rates would go up with a \$56,000,000 acquisition price, which was
20 based on an appraisal that occurred after Ms. Hughes completed her feasibility study. (See Ex.
21 506 generally, Hanemann testimony *in passim*.) His analysis differs significantly from Ms.
22 Hughes in that he did not rely upon actual historical revenue for the Claremont Water System.
23 Rather, he made estimates for 2016 based on various sources. His revenue estimates for
24 Claremont in 2016 are substantially lower than actual revenues obtained for Claremont and
25 remain below those levels for at least ten years forward. He concludes there is no premium and
26 that rates will go up starting at the \$56,000,000 acquisition price. He also testified that the
27 Claremont Water System, from a cost effectiveness perspective, is sub-optimal and requires
28 subsidization from other rate payers in Region 3. (See Ex. 506, generally: Hanemann testimony

1 *in passim.*)

2 Dr. Hanemann also relied upon Stephen Peters, an expert on bond financing, for his
3 municipal finance assumptions. Although there are some differences between Ms. Harrell and
4 Mr. Peters, they do not appear to be the driving force of disagreement between Ms. Hughes and
5 Dr. Hanemann. Both Ms. Harrell and Mr. Peters agree that bond financing of the acquisition of
6 the Claremont Water System at various acquisition prices is feasible, in that such bonds would be
7 marketable. (Harrell and Peters testimony *in passim.*)

8 Because Dr. Hanemann's analysis is based on estimates that are inconsistent with the
9 actual revenue history of Claremont and are derived from selective sources, his analysis lacks
10 credibility. (Ex. 1428.) His approach assumes that Golden State cannot earn above the
11 authorized rate of return, although the uncontroverted evidence is that Golden State has typically
12 realized an actual rate of return above the authorized rate of return for both Region 3 and
13 Claremont for over a decade. (Exs. 1149 and 1242.) In contrast, Ms. Hughes' projections for the
14 Claremont Water System have been confirmed by the actual performance of the Claremont Water
15 System, as reported by Golden State. (Ex. 1265-0037.)

16 Furthermore, if Dr. Hanemann is correct that the Claremont Water System is sub-optimal
17 in terms of operational performance and there is no premium, his starting point for his analysis of
18 a \$56,000,000 valuation should have been adjusted downward by several millions of dollars. Ms.
19 Hughes' original valuation of \$55,000,000 assumed there was a premium and assumed that the
20 Claremont Water System was in satisfactory working order. (Tr. Day 17 PM, 78: 20-80:18.) In
21 any case, Dr. Hanemann's present value analysis of cost increases resulting from acquisition is
22 consistent with rate increases contemplated in Measure W approved by the voters. His own
23 conclusions, even if they may be exaggerated, therefore show that acquisition is feasible within
24 the parameter of Claremont voters' willingness to pay for system ownership under Measure W.
25 (Tr. Day 20 AM, 68:6-21.)

26 Most importantly, under municipal ownership, rates are being used to acquire an asset,
27 namely the Claremont Water System. In 30 years, when the bonds will be paid off, and with all
28 other factors being equal, rates will go down with public ownership of the Claremont Water

1 System. Under investor ownership, rates will not go down, and no asset will be acquired. Thus,
2 under municipal ownership, rates do more than just pay for water—they pay for a significant
3 asset that will be under public control and subject to local accountability.

4 As testified by the City’s expert Dr. DeShazo, one of the most critical financial challenges
5 that will face the Claremont Water System over the next 30 years is the escalating cost of
6 imported water. These costs will likely dwarf those of the acquisition of the System over a 30
7 year period. (Tr. Day 19 PM, 50:13-17.) In fact, over the last 10 years, imported water through
8 the Metropolitan Water District has increased by 100%. (Tr. Day 19 PM, 32:17-24.) It is widely
9 recognized that one of the most cost-effective ways to minimize the future costs of water supply
10 is though conservation. (Tr. Day 19 PM, 38:22-27.) The three most import tools to combat rising
11 water costs are: maximizing use of groundwater; aggressive conservation; and investment in
12 recycling. (Tr. Day 19 PM, 71:2-23.) Each of these are policies are strongly supported by the
13 City through its general Plan and Sustainable City Plans. (Tr. Day 19 PM, 38:14-39:27.) By
14 contrast, investor owned utilities have little or no incentive to recycle. (Tr. Day 19 PM, 80:13-
15 17.) As testified by Dr. DeShazo, Golden State’s conservation policies are largely derivative of
16 those of the Metropolitan Water District. (Tr. Day 20 AM, 15:13-17.) In sum, it is Dr.
17 DeShazo’s opinion “based on the financial cost and the environmental benefits looking out over
18 30 years and the uncertainties that these systems face and the ability of Golden State under CPUC
19 guidelines versus Claremont, that Claremont city ownership would benefit the ratepayers most
20 effectively.” (Tr. Day 20 AM, 11:11-16; Ex. 1286-5, 6.)

21 **C. The Claremont Water System Suffers from Long Term Deficiencies.**

22 Throughout this trial, Golden State has held the Claremont Water System as a system
23 beyond reproach. Yet there are shortcomings with the Claremont Water System. As testified to
24 by Golden State’s own witness, the Claremont Water System has been “cobbled together” over 87
25 years, resulting in “operational inefficiencies” from the failure to address hydraulic issues over
26 the years. (Tr. Day 10 AM, 42:23-25; Ex. 440-1.) The Claremont Water System has been put
27 together by assembling various pre-existing systems. (Tr. Day 11 PM, 23:4-11; Tr. Day 10 AM,
28 42:26-43:4; 43:21-44:5.) This has led to some 15 different pressure zones that are misaligned.

1 (Tr. Day 5, 25:8-13; 25:19-27.) Many of the problems could have been corrected and should
2 have been corrected. (Tr. Day 5, 80:25-81:27; 81:28-82:21.) The Claremont System Water
3 Master Plan, prepared by Golden State, acknowledges that deficiencies exist in “supply and
4 storage, hydraulic, condition assessment, and water quality.” (Ex. 42-5.) The effect of these
5 different pressure zones is that “reliability and efficiencies have been compromised.” (Tr. Day 16
6 AM, 14:24-27.) Over time, through proposed improvements, the Claremont Water System’s
7 reliability could be improved, and it could be managed “easier” and “less expensive[ly].” (Ex.
8 440-1.)

9 Other aspects of the Claremont Water System need improvement. For instance, when
10 drafting the Master Plan, Golden State does not seek input from the Claremont Water System’s
11 Superintendent, Tom Traffas. (Tr. Day 6 PM, 26:6-8.) Mr. Traffas has never seen the operations
12 plan in writing for the Claremont Water System in the more than twelve years he has been the
13 superintendent of the system. (*Id.* at 26:13-22.) In fact, the Master Plans are not disseminated
14 internally or shared with the City. (Tr. Day 6 PM, 26:20-22; 28:12-6.)

15 The Claremont Water System has incurred 117 main breaks/leaks per year, which is “a
16 high number,” according to Ernest Gisler, a Golden State employee. (Tr. Day 5, 103:27-104:11;
17 Ex. 220-35.) This is attributable to “aging water lines.” (Ex. 220-36.) With the unusually high
18 number of main breaks/leaks, comes a higher amount of unaccounted for or lost water between
19 8% and 9.22%. (Tr. Day 14 AM, 16:9-12; Tr. Day 9 AM, 55:1-5.)

20 The Claremont Water System’s shortcomings were also evident during the 2003 Grand
21 Prix/Padua fire. During that fire, firefighters in the Claraboya neighborhood experienced “dry
22 hydrants” while the fire burned through the neighborhood, destroying homes. (Tr. Day 19 PM,
23 14:2-9.) In technical terms, there was a reliability deficiency in the ability to deliver water to the
24 firefighters.¹⁰ (Tr. Day 16 PM, 21:19-27.)

25 _____
26 ¹⁰ Although Thomas Traffas, a Golden State employee, testified based on hearsay that there was no connection
27 between the fire flow problems with the Claremont Water System and destroying homes (Tr. Day 6 PM, 14:10-13),
28 this testimony was rebutted by Deputy Chief Mel Hokanson, the incident commander for L.A. County Fire
Department. Deputy Chief Hokanson testified that the lack of water prevented firefighters from saving additional
homes. (Tr. Day 19 PM, 15:28-17:2.)

1 Even today, the Claremont Water System has significant emergency water storage
2 problems. Golden State’s outside engineering consultant, Hannibal Blandon,¹¹ raised concerns
3 about the emergency storage. (See Ex. 440.) Mr. Blandon produced a report as of 2014 that
4 found that the capacity of reservoir in Claraboya is “much lower than the minimum required
5 capacity” and “have very limited fire flow capacity.” (Ex. 440-37.) Golden State’s rationale for
6 this insufficient fire protection is summed up by Robert McVicker in a 2013 email, in which he
7 wrote that Golden State “need[s] to be leaner and meaner than the public agencies.” (Ex. 1076-
8 0002.) This deficiency in the system remains unaddressed. (Tr. Day 5, 91:23-28.) In terms of
9 overall storage volume, the Claremont Water System is “significantly below the required
10 standard.” (Tr. Day 16 AM, 33:9-13.) The system is currently deficient by 1,500,000 to
11 2,000,000 million gallons, or is only at 79% to 83% of its necessary storage. (*Id.* at 33:14-28.)

12 In addition to the fact that these major operational deficiencies exist is the disturbing fact
13 that these deficiencies, including those relating to fire and emergency storage, were not publicly
14 and willfully disclosed by Golden State to the Claremont community and instead were uncovered
15 in the litigation process.

16 Golden State compounds operational inefficiencies with inefficiencies in water sourcing.
17 Golden State generally relies upon 40% imported water to service the Claremont area, but it can
18 be as high as 60%. (Tr. Day 19 PM, 67:9-14.) The Claremont Water System is allocated a
19 34.741 percent allotment of the operating safe yield of the Six Basins aquifer. (Tr. Day 6 PM,
20 52:7-25; Ex. 626-55.) In any given year, the operating safe yield can change, but the Claremont
21 Water System’s percent of the allotment remains constant. (Tr. Day 6 PM, 52:11-25.) For 2015,
22 Golden State was allotted 7,182.3 acre feet of allowable production. (Tr. Day 7 PM, 30:17-21;
23 Ex. 548-59.) Yet Golden State produced only 3,887.8 acre-feet, leaving 4,245 acre feet un-
24 produced. (*Id.* at 30:25-31:6; Ex. 548-59.) Because of limited carry-over rights, Golden State
25 lost the right to produce 2,670.5 acre feet of water. (*Id.* at 31:10-19; Ex. 548-59.) The impact to
26 Claremont ratepayers is a higher water bill because the cost of imported water is more expensive

27 _____
28 ¹¹ Mr. Blandon was designated as an expert by Golden State, but was not called to testify. His report (Ex. 440) was admitted into evidence.

1 than groundwater. (Tr. Day 7 AM, 27:2-5.) But because the cost of water is passed onto
2 ratepayers, Golden State is not impacted by its own failure to utilize its groundwater rights.

3 **D. Golden State does not Attempt to Integrate its Planning with the City's**
4 **Planning Efforts in Order to Meet the City' Goals.**

5 Under Golden State's operation of the Claremont Water System, little or no consideration
6 is given to the City's planning goals as outlined in its General Plan and Sustainable City Plan.
7 (Tr. Day 19 PM, 45:4-15; 49:7-28) According to the City's expert Bill Kelly, "you have an
8 absence of integration. You have basically two entities doing planning, one above ground, the
9 City and one below ground, Golden State. No integration, no coordination, no communication.
10 That's a significant disconnect which doesn't allow the City to implement it general plan." (Tr.
11 Day 14 PM, 63:25-64:3.)

12 Despite the significant discussion in the City's General Plan about water issues, it has
13 been largely ignored by Golden State. To that end, Golden State's Robert McVicker testified that
14 Golden State does not ask the City for input when Golden State prepares its Master Plans and that
15 while "the City's General Plan was reviewed" he did not recall "there being anything about water
16 in the general plan. (Ex. A-03:11-21; A-04:2-8.)

17 Furthermore, some progressive polices like gray water reuse and storm water recapture
18 require local land use and permitting authority that Golden State lacks, but the City as the owner
19 of the Claremont Water System could implement. (Tr. Day 19 PM, 50:15-51:4; Day 20 AM,
20 15:21-16:2.) Golden State's 2010 Urban Water Management Plan acknowledges Golden State's
21 lack of authority to implement certain planning policies such as WaterSense Specifications for
22 Residential Developments; enacting building codes to enhance conservation. (Ex. 20-102 to 104.)
23 Golden State has not supported the City's efforts to enact codes or ordinances that support the
24 City's conservation efforts. (See, e.g., Tr. Day 11 PM, 20:12-21:12)

25 By placing the Claremont Water System in City ownership, the City planning and
26 decision making can be fully integrated with water planning, including integration of the water
27 system with existing City sewer operations. Thus, as testified by the City's experts Dr. DeShazo
28 and Mr. Kelly, Claremont's acquisition of the Claremont Water System is in the public's interest

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 because it will allow for integrated planning, promoting the community's social, environmental,
2 and sustainability initiatives. (Tr. Day 14 PM, 55:3-6; 16-21; Ex. 1286-6.)

3 **VII. CONCLUSION**

4 The Claremont community's commitment to have a voice over its water future is deeply
5 rooted, extends over decades, and is demonstrated by the City's legislative acts, such as in
6 adopting its 2006 General Plan and by the City electorate's overwhelming approval of acquisition
7 through Measure W, even when knowing that higher rates were possible. The uncontroverted
8 evidence demonstrates that acquisition of the Claremont Water System will serve a wide
9 spectrum of public benefits that otherwise will never become reality. The evidence is also
10 uncontroverted that Golden State has not been transparent or forthcoming in its water planning
11 and operations in Claremont. In fact, the uncontroverted evidence is that Golden State has been
12 deaf when it comes to the community's concerns. Golden State offers itself as a proven
13 performer and as a model water provider. Even with this narrow vision of itself and its role,
14 Golden State has failed to make its case and failed to rebut the statutory presumptions in favor of
15 acquisition. In this Court, the community's voice will be heard. It is found that the City has the
16 right under eminent domain to proceed with acquisition of the Claremont Water System.

17
18 Dated: _____

Hon. Richard Fruin

19
20 Respectfully submitted,

21 Dated: August 5, 2016

BEST BEST & KRIEGER LLP

22
23 By: Kendall H. MacVey
24 KENDALL H. MacVEY
25 JOHN HOLLOWAY
26 CHRISTOPHER M. PISANO
27 Attorneys for Plaintiff
28 CITY OF CLAREMONT

LAW OFFICES OF
BEST, BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, California 92502. On August 5, 2016, I served the following document(s):

CITY OF CLAREMONT'S [PROPOSED] STATEMENT OF DECISION

By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

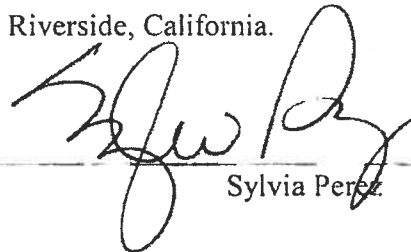
By e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

George M. Soneff, Esq.
Edward Burg, Esq.
Manatt Phelps & Phillips LLP
11355 W Olympic Blvd 8FL
Los Angeles, CA 90064
(310) 312-4000
gsoneff@manatt.com
eburg@manatt.com

*Attorneys for Defendant
Golden State Water Company*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 5, 2016, at Riverside, California.



Sylvia Perez