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FOUR QUESTIONS ON CONDEMNATION

Activists looking to use eminent domain to take over a privately-owned, professionally-operated water utility make the condemnation process sound easy and straightforward. But the reality is much different. As several real-world examples show, condemnation is a very long, complicated, and expensive legal process that often results in broken promises, higher costs and negative impacts for residents.

Here are four questions communities need to ask before following activists down the condemnation rabbit hole.

WHAT IS CONDEMNATION?

Many communities have water utilities that are privately-owned businesses. Condemnation is a government takeover of this privately-owned property. Since privately-owned utilities are typically not for sale, local governments often must turn to eminent domain laws to attempt a hostile takeover.

WHY DO SOME COMMUNITIES PURSUE CONDEMNATION?

Even though private utilities are regulated by a state public utility commission (PUC) and have higher Safe Drinking Water Act compliance rates than government-run systems, some activists hold an emotional, ideological view that water systems should only be owned and operated by the local government.

These activists typically try to recruit followers by knowingly making inaccurate claims and quoting misleading "studies" that ignore important facts and fail to tell the full story. Activists often falsely claim that rates will decrease under government ownership and that the community will benefit from "local control" of the water system.

WHAT IS THE CONDEMNATION PROCESS LIKE?

The condemnation process is inherently a political and legal dispute. The process typically begins with a local government spending taxpayer dollars to hire a financial consultant and legal team to appraise the water system, determine its market value and assess how to finance a takeover. Usually a series of bids or offers are made by the municipal government to the private owner of the utility. These bids are typically extremely low and not reflective of the fair market value of the system. The owner of the utility may make counter offers or simply state that the system is not for sale.

Should a local government pursue eminent domain – a hostile takeover of the system – the legal process usually takes several years to complete and can cost taxpayers millions of dollars. This process ends in court, where a judge or jury must rule on the municipality's legal right to take the system and the final value. Typically this court-determined final value of the water system is much higher than the municipality originally projects. In fact, local governments often abandon takeover efforts, even after spending millions in taxpayer dollars, when they learn the final cost of the water system from the courts.

WHAT ARE SOME EXAMPLES OF COMMUNITIES THAT CONSIDERED OR PURSUED CONDEMNATION?

Here are some illustrative case studies:

Felton, CA

In 2008, after activists and some community leaders promised fewer and lower rate increases under government control, voters passed a bond to take over the water system via eminent domain.[i] While critics like Food & Water Watch call Felton a "great victory" and applaud the public takeover,[ii] government control has not been good for consumers. From the beginning, the town's estimates of the purchase price for the system were dramatically undervalued. In fact, the final purchase price was more than six times what the town had estimated.[iii] After eight years of government control from 2008 to 2016, water rates in Felton have effectively doubled.[iv] And as the government operator has proposed additional rate increases, local residents can no longer rely upon a transparent California PUC rate-setting process.[v]

Montara, CA

In 2003, the Montara system was under threat of condemnation and California American Water was required to sell it. Voters approved a $19 million bond to acquire the water system[vi], and the Montara Sanitation District took over operation on August 1, 2003.[vii] In January 2005, Montara resident Don Bacon – originally a takeover supporter – authored a Santa Cruz Sentinel opinion piece that cited several negative results of the purchase: "The takeover resulted in the property owners here spending millions to have the same water system and service we always had. For the next generation or two, property owners will pay a bond tax that in most cases far exceeds what they could ever pay in water bills. It is equivalent to a 24 percent increase in a property's assessed (taxable) value for the rest of many homeowners' lives. Customers pay the same rates now as they did to Cal-Am, yet taxes have increased dramatically. Groaning under the debt, service suffers: The District had to cut capital improvement funds and reserves to balance its budget, while rates are expected to go up in the near future." [viii]

Big Bear, CA

The City of Big Bear purchased the local water system from Southern California Water Company, a subsidiary of Golden State Water Company, in 1989. The government estimated the water system would cost $10.3 million to purchase, but the final price was $28 million. The city had to issue a $35 million bond to finance the takeover.[ix] Despite promises of rate decreases and lower costs, consumers paid more in their bills and in taxes as a result of the condemnation.[x]

Visalia, CA

The water system in Visalia has been owned and operated by California Water Service (Cal Water) since 1927. In November 2015, the City of Visalia notified Cal Water of its intention to complete an appraisal of the water system, which is typically the first step in the takeover process.[xi] In response, Cal Water stated that its system was not for sale, "whether the City opts to spend taxpayer dollars on an appraisal or not."[xii]

In the face of the takeover effort, Cal Water defended its record in Visalia, citing how the company has invested millions into the water system and typical Visalia water bills have increased much more slowly than similar nearby communities.[xiii] A public opinion survey showed Visalia voters opposed to the takeover by a margin of more than 3 to 1, with 77% agreeing that government agencies should not use eminent domain without serious cause.[xiv] Given this, the Mayor and City Council dropped the effort.[xv]

Missoula, MT

Over a span of several years, the City of Missoula made multiple bids to purchase Mountain Water Company, the local water system, from an affiliate of The Carlyle Group. By early 2015, Carlyle had rejected both a $65 million bid and a subsequent $50 million bid from the city.[xvi] Both of these bids were well below the system value estimates of both Carlyle and the city water commissioner.[xvii]

After having their bids rejected, the city sued. As the legal battle worked its way through the courts, the city accumulated more than $6 million in legal costs.[xviii] In addition, any final purchase cost of the water system will include Mountain Water's legal fees, which as of the summer of 2016 amounted to $7.8 million.[ixix] Notably, when the city first pursued a takeover, it estimated the total legal cost of condemnation to be $400,000.[xx]

The Montana Supreme Court finally cleared the way for the government takeover in August 2016, ending a process that even the leader of the takeover effort said "felt expensive and long."[xxi] While the City's experts argued that the system was only worth $43 million, the court determined that the system was worth $88.6 million.[xxii] It is expected that the final cost passed onto taxpayers – including fees, expenses and interest – will exceed $100 million.[xxiii]

Mooresville, IN

In August 2010, the Mooresville Town Council voted to pursue a takeover of the water system owned by Indiana American Water.[xxiv] At the time, the Council believed it could purchase the system for $6.5 million.[xxv] However, the effort was abandoned after a two-year legal battle at an unspecified cost to taxpayers once an Indiana jury valued the system at $20.3 million.[xxvi]

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