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EMINENT DOMAIN - CALIFORNIA

Property Reserve, Inc. v. Superior Court

Court of Appeal, Third District, California - March 13, 2014 - Cal.Rptr.3d - 2014 WL 978309

The State of California intends to build a tunnel to transport water from the north to the south. Before condemning the land needed for the project, it wants to study the environmental and geological suitability of hundreds of properties on which the tunnel may be constructed. “The difficulty here is that those precondemnation activities may themselves be a taking.”

Pursuant to a statutory procedure that purports to authorize these precondemnation activities, the State petitioned the trial court for orders to enter the affected private properties and conduct the studies. For the geological studies, the State requested authority to enter the properties and conduct borings and drillings in the ground that would leave permanent columns of cement in the bored holes up to depths of 200 feet. The court denied the State’s petition for the geological activities.

It ruled these activities constituted a taking, and they could be authorized only in a direct condemnation action, not by the precondemnation procedure. The trial court, however, granted the State’s petition to enter the affected properties to conduct environmental studies. It effectively granted the State a blanket temporary easement for one year, during which the State may enter the properties and conduct its studies for up to 66 days during the year with up to eight personnel each entry. The court concluded such access and the environmental activities to be performed did not work a taking. As required by the statutory procedure, the court conditioned the environmental entries on the State depositing an amount of money the court determined to be the probable amount necessary to compensate the landowners for actual damage to, or substantial interference with their possession or use of, their properties, which the State’s activities may cause.

On appeal the Court of Appeal concluded that both the geological activities and the environmental activities as authorized will work a taking. The geological activities will intentionally result in a permanent physical occupation of private property, defined constitutionally as a taking per se. The environmental activities will work a taking because they intentionally acquire a temporary property interest of sufficient character and duration to require being compensated.”We also conclude the statutory precondemnation procedure cannot be used to accomplish these intentional takings. If an entity with the power of eminent domain intentionally seeks to take property or perform activities that will result in a taking, the California Constitution requires that entity to directly condemn the affected property interest in an authorized condemnation suit it brings and in which a landowner receives all of his constitutional protections against eminent domain. The statutory precondemnation procedure does not provide such a suit, as it fails to authorize the determination of the value of the property interest intentionally sought to be taken and to do so in a noticed hearing, and it fails to provide for a jury determination of just compensation in that hearing.”