

# EMINENT DOMAIN

## Be Aware of the Facts



AMERICAN WATER

# EMINENT DOMAIN:

## NOT IN THE PUBLIC INTEREST

Advocates for using the government's power of eminent domain to takeover an investor-owned water utility often justify their idea as being in the public interest. Their public reasons are often to "gain local control", "reduce water rates," and even "return control of water to the public." These emotional messages are often used to justify the first steps on a very slippery slope. "Let's just look into buying the water company," "study it," and "evaluate having the community own the water company" are all terms used to justify spending valuable tax dollars. These are all emotional themes intended to gain public support, and they just don't hold up under scrutiny.

The facts can be found by researching publicly available information on eminent domain cases. Using eminent domain to condemn a private utility will take much longer than proponents state, and the process will be a significant distraction from the issues most important to the public. While the initial funding requests to "just look into it" will appear modest, the costs will escalate rapidly. A few thousand dollars for the first study will result in a request for further study, and added funding.

Before long, millions of valuable tax dollars will be spent, and the ultimate cost to the public will still not be known. The process will divide the community, creating an unfriendly image that will discourage businesses and individuals who are looking for a place to locate.

An eminent domain takeover of a water or wastewater utility is very different from an eminent domain acquisition of land for a road project. Valuation methods and legal factors involved in a utility condemnation are extremely complicated in contrast to establishing a valuation for a piece of land. The amount of time involved and the ultimate cost for properly valuing a utility are very substantial, as is the cost for legal representation.

Eminent domain advocates, as well as consultants and advisors to governments, are likely to substantially underestimate the cost to acquire a utility using eminent domain. The cases illustrated below underscore the extreme disparity between what the public was told would be the cost, and what the actual cost was. It is important to also note that the costs shown do not include legal and expert consultant expenses.

### LESSONS LEARNED: MONTARA, CA

**In 2003 California American Water was required to sell, under threat of eminent domain, the water system serving Montara, CA. On January 2, 2005, Montara resident Don Bacon, an initial supporter of eminent domain, wrote in the Santa Cruz Sentinel, "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."**

## FELTON, CA - The true cost of “local control”

The case of Felton, CA offers an instructive look at what happens to a community when a small, passionate group of individuals are so consumed by emotional arguments that facts no longer matter. Felton is located in Santa Cruz County, approximately eight miles north of the City of Santa Cruz. The investor-owned Felton Water Company began providing water service in the Felton area in 1889. Citizens Utilities acquired the Felton water system in 1962, and in January, 2002 California American Water acquired the water system from Citizens. At the end of 2007 the water system served about 1,330 customer connections.

Shortly following the California American Water acquisition of the water system a small group of individuals began a campaign to takeover the utility in order to obtain “local control” and to reduce rates. The publicly stated cost for the takeover was about \$2 million. Even though American Water stated the system was not for sale, proponents pressed on, convincing the local water district to spend \$75,000 to “study the feasibility of acquiring the water system.” Eventually, more funds were expended for further studies, and a referendum vote approved the sale of \$11 million in bonds to fund the acquisition and other expenses. In February, 2007 an eminent domain petition was filed by the San Lorenzo Valley Water District, and a jury trial to establish value was scheduled for June 2, 2008.

On May 27, 2008, California American Water and the District agreed to a stipulated judgment in favor of the company calling for the District to pay \$13.4 million for the operating assets of the water system. The sale price amounts to 5.7 times the cost initially communicated to the public. But there’s more.

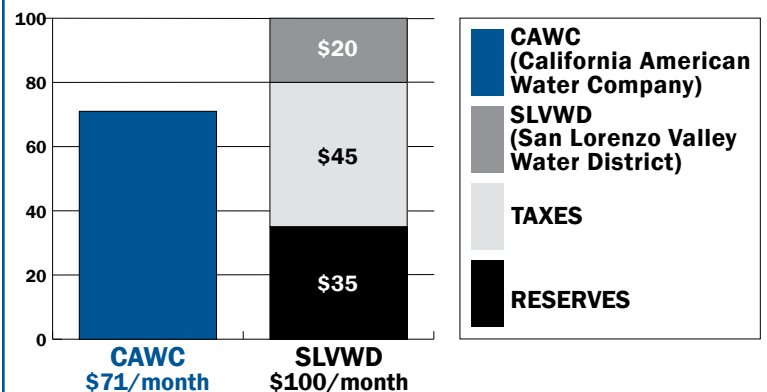
**Local control?** No. One of the first decisions made by the Water District following the change of ownership was to close the local Felton customer service office. The Water District refused to hire any of the local employees.

**Lower water rates?** Yes, BUT property taxes for the average Felton homeowner increased about 20% just to fund the acquisition of the water system. When all costs are taken into account the cost to the average Felton customer increased by about 41% when the ownership change occurred.

**Local control of water rates?** Yes, that did happen. In fact, barely four months after taking ownership, the water district announced plans to raise water rates by 30%.

Certainly, each Felton customer will have a personal view about whether they were provided proper and timely information at each decision point in this six-year saga, or if they feel misled. What is clear is that proponents of the eminent domain takeover initially told the public the water system could be purchased for about \$2 million, and it actually cost \$13.4 million. The mantra of “local control” turned out to be much different than the public was led to understand. Finally, the fact that an adjacent, government-owned water system has lower rates than an investor-owned water system does not mean the investor-owned system has high rates. In the Felton example, it turned out the SLVWD was depleting its reserves in an attempt to keep its rates unrealistically low.

**FELTON RATE COMPARISON**  
The Real Story



The chart above reflects costs to the consumer at the time of close, and before additional increases were imposed.

# Learn the facts about eminent domain.

## Avoid the hard lessons others have learned.

### What the proponents said...

“We can buy our water system, pay San Lorenzo Valley district rates and still be better off.”

*-Felton FLOW, March 16, 2005 in Santa Cruz Sentinel*

“Even in the early years, the difference should only be about \$10 a month.”

*-Felton FLOW doorhanger, July, 2004*

“Overall, I would say the water district considers this settlement a victory for the community of Felton.”

*-J. Mueller, San Lorenzo Valley Water District General Manager, May 30, 2008, Santa Cruz Sentinel*

“We are absolutely thrilled. It was a huge victory for the community.”

*-Chairman of Felton FLOW, June 3, 2008, Lexington, KY Herald-Leader*

### What actually happened...

- **Customer costs increased three times the amount the public was told when ownership changed.**
- **The District paid \$13.4 million for the operating assets of the water system. The sale price amounts to 5.7 times the cost initially communicated to the public.**
- **Victory? Huge victory? Unfortunately, no one told the residents that their water rates would increase 30%, and that taxes would increase 20% to pay for the acquisition.**

### What Felton customers are saying now...

“Felton residents were misled! FLOW lied. SLVWD lied. Mark Stone lied.”

*-Petition drive flyer circulated to oppose water district rate increase, about February, 2009*

“Felton FLOW, SLVWD, and Santa Cruz County officials Jeff Almquist and Mark Stone all assured us that rates would increase only 2.5% each year if we agreed to the takeover.”

*-Felton resident, March 6, 2009 Santa Cruz Sentinel*

“It’s (the rate increase) really to meet our projected future operating costs. We found we were dipping into reserves to make ends meet”

*-J. Mueller, SLVWD General Manager, January 16, 2009*

“Felton ratepayers/homeowners are now saddled with an exorbitant, unaffordable and unsustainable debt. Hundreds of unsuspecting Felton voters trusted FLOW and SLVWD’s claims of rate relief and local control. It didn’t take long for those claims to be proven false.”

*-Felton customer, January 19, 2009, Press Banner*



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