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### Financing

## Landowners Sue Nearby Vallejo, Calif., Over Water System Bills, Possible Sale of Utility



By Joyce E. Cutler

Jan. 27 — Landowners sued Vallejo, Calif., alleging the city breached its fiduciary duty by pushing all costs for an aging water system onto residents outside the city limits (*Green Valley Landowners Ass'n v. City of Vallejo*, Cal. Super.Ct., No. FCS042938, filed 1/23/14).

The original Lakes Water System was constructed in the early 1890s to provide water for the city of Vallejo. For about 100 years, the city shared the use and cost of the system with about 809 nonresident families and property owners in rural Solano and Napa Counties.

In 1992, Vallejo passed an ordinance requiring these nonresident families and property owners served by the water system to pay the entire cost of its operation, instead of splitting costs among 30,809 customers, including those within the city's limits.

"Water rates for the non-resident customers skyrocketed as a result," the lawsuit said.

A second ordinance in 2009 further raised rates, with landowners facing a potential \$7,000 annual bill should Vallejo sell the system to a private, investor-owned entity, the filing said.

"In essence, after constructing a large-scale waterworks project for its own municipal benefit, Defendant unilaterally divested itself from the LWS and left a handful of disenfranchised non-residents to pay for the cost of operating the entire municipal waterworks system," the lawsuit filed Jan. 23 said.

The lawsuit in the California Superior Court, Solano County, seeks \$11,996,971 in damages.

The city, however, in a Jan. 23 statement, said the lawsuit is a plaintiffs' bargaining tool position.

### Lack of Maintenance

LWS, which consists of three reservoirs and large, municipal-sized transmission pipes designed to convey water more than 20 miles to Vallejo, is one of the oldest municipal water systems in California, the lawsuit said. Part of the system was built on land within the unincorporated areas in Solano and Napa counties.

Despite receiving surcharges and connection fees to fund maintenance, the lawsuit said Vallejo failed to maintain the infrastructure with most of the system 30-50 years beyond its useful life and in need of \$24 million in immediate replacement costs. Additional replacements within the next decade will cost \$6 million.

"Defendant intends to pass these deferred capital costs, plus the ordinary costs of operating the LWS, onto just 809 non-resident connections" for a system designed for tens of thousands more people, the lawsuit said.

### Bargaining Position

Claudia Quintana, Vallejo city attorney, said in a statement that California tightened its water standards "years ago and this resulted higher costs for water in the Lakes Water System area, due in part to a \$7.25 million debt to pay for statutorily required improvements to the water treatment plan that provides water to customers specifically located in the Green Valley area. In prior years, customers residing in less-affluent Vallejo subsidized customers in the Green Valley system, but legally, that subsidy had to stop."

Residents in Green Valley have a higher estimated median income and homes that are valued higher than those of Vallejo residents, the city said.

Vallejo had the system appraised at \$10.5 million-\$13.9 million, not including the non-watershed land, Quintana said.

"However, GVLA wants the system and adjoining land owned by the City turned over to them for free," she said.

Vallejo filed for federal Chapter 9 bankruptcy protection in May 2008 citing labor costs, the declining housing market, and its limited ability under California law to increase taxes. The water system was not included.

### No Demand

"There is no demand in the complaint that the City sell the water system to the GVLA or the customers, or that the system be given to the customers for 'free,'" Stephen Flynn, Law Offices of Stephen M. Flynn in San Francisco, told Bloomberg BNA.

"I can say that the lawsuit seeks approximately \$12 million in damages," Flynn, a resident of Gordon Valley that receives water from the system, said in a Jan. 24 e-mail. "I can also say that if the court orders Vallejo to share in the future costs of the water system, its liability over the next ten years alone would be approximately \$60 million (which includes the cost of operating the system, plus \$30 million in deferred capital improvements which must be made to the system)."

The lawsuit pleads breach of contract, breach of covenant of good faith and fair dealing, breach of duty to charge a reasonable water rate and seeks injunctive relief preventing the sale of the system to a private party which the landowners allege will result in a tripling of already inflated water bills.

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