

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Ebinger vs. Yorba Linda Water District**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE****CASE NUMBER:**
30-2016-00829548-CU-JR-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 07/25/16, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from email address on July 25, 2016, at 11:41:39 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

BELL, MCANDREWS & HILTACHK, LLP
BHILDRETH@BMHLAW.COM

KIDMAN LAW LLP
SGUESS@KIDMANLAW.COM

Clerk of the Court, by: *B. Quinich*, Deputy

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 07/25/2016

TIME: 11:26:00 AM

DEPT: C14

JUDICIAL OFFICER PRESIDING: Supervising Judge Robert J. Moss

CLERK: Betsy Zuanich

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2016-00829548-CU-JR-CJC** CASE INIT.DATE: 01/12/2016

CASE TITLE: **Ebinger vs. Yorba Linda Water District**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Judicial Review - Other

EVENT ID/DOCUMENT ID: 72415501

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

This Petition for Writ of Mandate came on for hearing on July 11, 2016.

Having considered the petition and the argument of counsel, the court now issues its decision as follows:
Writ denied.

All requests for judicial notice are granted. The court has reviewed and considered all of the *amicus* letters submitted and overrules the objections thereto.

FACTS: The facts are not in dispute.

On September 17, 2015, the Yorba Linda Water District (hereafter "the District") passed Resolution 15-22 raising water rates for ratepayers in the District. Thereafter, petitioners circulated a referendum petition demanding that Resolution 15-22 be reconsidered by the District and repealed or placed on the ballot for the next regular election. The petition, with the requisite number of signatures, was submitted on October 14, 2015. The District declined to either repeal Resolution 15-22 or place the issue on the ballot for approval by the voters. Petitioner has filed this petition for writ of mandate asking the court to order the District to either repeal the rate increase or put it on the ballot for voter approval.

The consequences of granting this petition would be serious. The prolonged drought has resulted in severe water shortages in California. On January 17, 2014, the Governor of California declared a state of emergency as a result of the statewide drought. The California State Water Resources Control Board imposed an unprecedented water rationing plan which mandated a 36% reduction in water consumption on ratepayers in the District. As a result of the severe water rationing, the District's revenue from water

sales sharply declined. At the same time, the District's operating expenses were largely fixed. Without an increase in rates, the District faced an \$8 million shortfall in fiscal year 2016 and defaulting on debt obligations.

If the petition is granted, Resolution 15-22 would be ineffective unless and until it is approved by a majority of the voters in the next election. The District would be compelled to refund the revenues it has enjoyed since the passage of the resolution and may be unable to meet its existing obligation to provide safe, clean, potable water to the citizens of Yorba Linda.

DISCUSSION: The District is a "county water district" formed and existing under the authority of the County Water District Act. *Water Code § 30000 et seq.* The District is entitled under that act to make legislative enactments as it did in the passage of Resolution 15-22.

Under *California Constitution Art. II, Section 9* voters have the power to approve or reject statutes passed by a legislative body through the use of the referendum process. Under *California Constitution, Art. 11, Section 9*, this right is extended to local jurisdictions. See, generally, *Lindelli v Town of San Anselmo (2003) 111 Cal. App. 4th 1099 at p. 1108.*

Water Code § 30831 makes it clear that ordinances passed by a county water district are subject to the referendum process.

While voters have a right to challenge legislative enactments through the referendum process, that right is not unlimited. *California Constitution, Art. II, § 9* specifically precludes certain types of legislative enactments from the referendum process. Namely, statutes that are urgency statutes, call for elections, provide tax levies, or appropriations for usual and current expenses of the State. Also, while the referendum provisions of the *California Constitution* are generally to be liberally construed in favor of the power reserved to the voters, consideration must also be given to the consequences of applying the rule, and if essential governmental functions would be seriously impaired by the referendum process, the courts should assume in considering the applicable constitutional and statutory provisions that no such result was intended. *Geiger v Board of Supervisors (1957) 48 Cal. 2d 832.*

Here the District argues that Resolution 15-22 was both a tax levy and an urgency measure enacted to respond to the record drought conditions currently existing in California, and thus is not subject to the referendum process. While the court does not agree with respondent that raising of water rates is the equivalent of a tax levy, it is persuaded that Resolution 15-22 was passed as an urgency measure enacted to avoid severe constraints on the District's ability to meet its fixed financial obligations during the current severe drought. This finding, coupled with the finding that the essential governmental function of providing safe, clean, potable water might be impaired if the referendum is allowed to proceed, compel the court to deny the petition.

As the matter took less than eight hours and no request for statement of decision was made before the matter was submitted, no statement of decision is required.

Respondent to prepare the order.

Clerk to give notice by e-Service.