

Opinion: Is anyone in EDC government reading?

By Larry Weitzman

At the Dec. 13 El Dorado County Board of Supervisors meeting, Item 32 was on the calendar for the receiving and filing of 11 five-year studies required for 11 special districts that collect fees pursuant to Government Code Sections 66000 to 66025, otherwise known as the Mitigation Fee Act.

As has been reported there is current litigation regarding EDC's failure to have these reports prepared and filed in a timely manner. The consequence for this failure according to the code sections and pursuant to the recent Fourth District Court of Appeals case of Walker v. city of San Clemente which has become the law in California is the refund of all unexpended fees in the MFA accounts held by the County to the current property owners of record of property upon which those fees were assessed.



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I have studied all of the documents filed by the CAO's office for this meeting including the resolutions for each district and the purported five-year findings. At the hearing an employee from the CAO's office gave the BOS an explanation on how these documents were prepared. She said she gave the various special districts a template for doing their five-year studies and for all the districts, save for the EDH Fire,

Rescue Fire and Cameron Park CSD Parks and Fire, they essentially filed the same page and a half, five-year nexus study. I have learned that county counsel was involved in the preparation of this template.

From the language of this template which is entitled Mitigation Fee Act 5-Year Report the reports for the Diamond Springs Fire, Pioneer Fire, Lake Valley Fire, Mosquito Fire, Garden Valley Fire, Georgetown Fire are almost identical and don't meet the requirements of the MFA, especially pursuant to GCS 66001 (d) (1) (b) which says in part: "the local agency (which is El Dorado County as stated by County Counsel at the same meeting) shall make the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted: (B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged."

There is more to this entire Government Code Section, but I want to concentrate on that one requirement and the word "demonstrate." But first we need to understand what the MFA is all about. It was created about 30 years ago to help local jurisdictions pay for future improvements, such as roads, parks and fire protection, caused by real estate development. No problem there. But it is for future needs caused by development, not maintenance of existing facilities. If a developer builds 1,000 new homes, you might need a new fire station and a park or two. That's the purpose of the MFA. But once built, the money cannot be used for the maintenance or staffing of same. The MFA allows the charging of a fee for each building permit to pay for those things.

But to protect the taxpayers, the MFA put in a five-year finding requirement of which the findings as per subparagraph (B) says to keep collecting the fees the agency has to "demonstrate" a reasonable relationship between the fee and the purpose for which it is charged.

After reading the aforementioned five-year fire district reports, it is obvious that no one, including our \$250,000 a year county counsel read the language in the statute. Here is the entire paragraph B from the Mosquito Fire report (it corresponds to the requirement of paragraph B of the statute) which is almost identical for all intent and purposes to the other five-year reports:

“There is a reasonable relationship between the fee and the purpose for which it is charged, as defined below:

New development will create additional demand on the District’s fire protection and emergency response services, requiring additional facilities and equipment and more frequent replacement of existing equipment to meet the increased demand (spelling corrected) while maintaining the current level of service.”

The foregoing paragraph is hardly a demonstration of a reasonable relationship between the fee and the purpose for which it is charged. There are no demographics, growth studies, need studies based on new development whatsoever. All seven of the small districts, Rescue included didn’t attempt to demonstrate the reasonable relationship between the fee and the purpose. For Rescue, there was a 34-page study, but when it came to that same issue, there was a short paragraph saying the same thing above. But it did correctly state on page 24 of the “study” “Fee revenue may not be used to fund operational, maintenance or repair costs.”

Cameron Park CSD for Parks and Fire used an in-house resolution of the CSD in an attempt to say they did a five-year Nexus study and then attached some financial data meeting the requirements of the completely separate annual report required by GCS 66006 which has nothing to do with the requirements of GCS 66001 (d) (1) and (2). It is almost unbelievable. Perhaps that is why less and less people trust the administrative aspect of their government.

Our new CAO is attempting to comply with the MFA, but what was done at the BOS meeting on December 13, 2016 doesn't cut it. Our CAO is well educated with a Master's degree and he is a bright guy and is trying like gangbusters to straighten out EDC. Politics makes that difficult. But for purposes of complying with the laws including the MFA we have a County Counsel and a staff of about a dozen lawyers. Other counties are now complying with the MFA, why can't EDC? This issue of not filing the appropriate reports was brought to EDC's attention three and a half years ago, and still the problem is not solved. The County has filed appropriate studies in the past, why not now? The reports that have been filed will not stand up to scrutiny. Even EDH Fire who filed what appears to be an appropriate Nexus study also has a problem. The report is not current but was prepared almost four years ago as it is dated 2013-2018 and according to the cover page was adopted Oct. 17, 2013, hardly a current study. EDC deserves better legal representation. That might be a good start.

Larry Weitzman is a resident of Rescue.