Opinion: The cost of incompetence in EDC

By Larry Weitzman

In the case of Austin v. El Dorado Hills County Water District which is commonly known as EDH Fire, the El Dorado County Superior Court issued a tentative ruling on Nov. 3 as to their demurrer to the Austin complaint, trying to knock the case out on a significant technicality known as the statute of limitations (SOL), claiming in their demurrer that their (the Austin's) complaint was not timely filed as it was filed beyond the SOL.

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EDH Fire said the law is that the lawsuit must be filed within in one year or at best within three years of the date that the Nexus study was required to be filed pursuant to the Mitigation Fee Act. It was basically the same demurrer the court ruled against the county and EDHCSD on Oct. 20, but being a separate defendant, EDH Fire gets its own shot at the apple.

However, in a much shorter ruling (11 pages), the court tentatively ruled again as it did before, that the one-year and the three-year SOL does not apply. It's clear, concise reasoning, besides distinguishing the one- and three-year SOL as to its specific applicability in the case here, said that on page 7 of its ruling "Section 66001(d)(2) mandates the

governmental agency to refund all funds held in an account or impact mitigation fund where the local agency fails to meet its mandatory duty to make findings every five years. That duty to refund is not limited to money on deposit in the account or fund as of the date of default in making the required five-year findings. Therefore, it is reasonable to construe that statute as imposing a continuing requirement to refund all funds collected after that date until the required findings are made. Such a construction would provide the local agency with a continuing incentive to make the findings despite the passage of the date to make such findings and support the legislative intent to impose the five-year findings requirement to prevent a local agency from collecting and holding a development fee for an extended period without a clear and demonstrable plan to use the fee for the purpose it was imposed. The appellate court in Walker, supra, touched on the issue in its discussion of the Legislature's intent relating to the refund requirement. "The five-year findings requirement establishes a mechanism … to guard against unjustified fee retention" by a local agency (Home Builders, supra, 185 Cal.App.4th at p. 565, 112 Cal.Rptr.3d 7; see Garrick, supra, 3 Cal.App.4th at p. 332, 4 Cal.Rptr.2d 897)."

In other words, this "Nexus" study reporting mandate required every five years was a safeguard to prevent retention of unneeded money by the government and that was the intent of the legislation and that's why the reporting requirement was inserted into the legislation, to prevent exactly what is happening here, the continued collection of money with impunity. That would fly in the face of the MFA legislation. If after one year of a failure to file a demonstration of the need to collect these fees, by the operation of the one-year SOL, the local agency would be relieved of this requirement? No local agency would ever file a "Nexus" because as after a year they would be relieved of that responsibility. Such illogic would be the antithesis of the heart and intent of the MFA.

It is basic contract law (and the MFA is a contract of sorts, mutual promises given for a local agency to collect money from property owners who wish to build) that every time a statement is sent of a debtor or every time a payment is made, it re-starts the SOL. Every time the local agency collects money under the MFA without meeting the five-year Nexus study requirement it has an immediate duty to refund that money collected. If it spends money after the five-year date without a Nexus study, it is in violation of the MFA and that money is required to be refunded pursuant to the MFA. A new SOL arises on each illegal act by the violating agency. That is what the court said.

Mike Ciccozzi keeps telling the Board of Supervisors that the county will win on appeal. He is advising the county to spend hundreds of thousands and maybe millions of dollars to fight a losing battle as this case will have to be first tried on the facts, with county documents as evidence that admit the failure to file the five-year Nexus studies. Only then can the county appeal. The county now has a big problem. It appears to have no defense. In the Walker case as cited by the court, the city of San Clemente said in its pleadings that if they lose, it would be effectively a feeding frenzy for lawyers. That's a poor excuse for not following the law, and in fact using the law is a way to make sure government bureaucrats do their jobs.

If the county loses this case – and it doesn't look too good for them – Ciccozzi says they should appeal even though their chance on appeal is slim to none. What does he care? It's not his millions of dollars, it's yours and bureaucrats love to spend your money in wasteful ways. So, what's new? Delay just costs the county, meaning your money, but he doesn't want anything bad to happen before this Austin case gets to the point where the county (you) must pay the piper and he gets a four-year contract extension.

Any board member, especially Mike Ranalli and Sue Novasel who

are up for re-election, that votes to rehire Ciccozzi, needs to be fired. I spoke before the BOS in February 2015 and told the board, including Novasel, that this was going to happen, and he did nothing. I wrote about it the next month. Still nothing. Novasel and the rest of the BOS are mimicking Capt. Edward Smith of the Titanic.

The board should first read the tentative ruling carefully (its written in very plain English; google El Dorado Superior Court Dept. 9 and look for the tentative rulings from Oct. 20 and Nov. 3) and understand why the county has almost no chance of success, zero, zip, nada. Get an independent outside opinion. Ciccozzi's opinion is worthless because of his huge and obvious self-interest. Then find a real lawyer for county Counsel, maybe a Lou Green clone, but anybody other than Robyn Drivon and Michael Ciccozzi.

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