

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

TOWN OF APPLE VALLEY,

Plaintiff and Appellant,

v.

APPLE VALLEY RANCHOS WATER,
et al.

Defendants and Respondents.

E078348

(Super. Ct. No. CIVDS1600180)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez,
Judge. Reversed.

Greines, Martin, Stein & Richland, Edward Xanders, and Timothy T. Coates; Best
Best & Krieger, Kendall MacVey, Christopher Pisano, and Guillermo Frias, for Plaintiff
and Appellant.

Manatt, Phelps & Phillips, Edward G. Burg, Michael M. Berger, George M.
Soneff, David Moran, Benjamin Shatz, and Joanna S. McCallum, for Defendant and
Respondent, Apple Valley Ranchos Water.

No appearance for Defendants and Respondents, Jess Ranch Water Company, and
Jess Ranch Development Company.

I.

INTRODUCTION

The Town of Apple Valley (TAV) sought to condemn via eminent domain a private water utility system. In November 2015, TAV passed two resolutions of necessity (RON) to acquire the water system, which was then owned by Carlyle Infrastructures Partners and operated by Apple Valley Ranchos Water (AVR). In January 2016, TAV filed this eminent domain action to acquire the water system. A day later, Carlyle's sale of the water system to respondent Liberty Utilities closed.

After extensive proceedings, including a 67-day bench trial held between late 2019 and early 2021, the trial court issued a Statement of Decision (SOD) finding that TAV did not have the right to acquire the water system. The court thus entered judgment and an award of attorney's fees for Liberty. TAV timely appealed.

We reverse for two main reasons: (1) the trial court applied the wrong standard of proof and, in turn, failed to give the appropriate deference to TAV's decision and underlying findings, and (2) the trial court improperly based its decision entirely on post-RON facts and events, namely, Liberty's conduct after TAV adopted the RONs. The matter is remanded for further proceedings consistent with this opinion.