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SUPREME COURT OF THE STATE OF WASHINGTON

CEDAR RIVER WATER AND SEWER DISTRICT *and*
SOOS CREEK WATER AND SEWER DISTRICT,

Appellants/Cross-Respondents,

v.

KING COUNTY,

Respondent/Cross-Appellant, and

SNOHOMISH COUNTY, *et al.,*

Respondents.

APPELLANTS' STATEMENT OF ADDITIONAL AUTHORITIES

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Creek Water and Sewer District*

 ORIGINAL

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Appellants/cross-respondents Cedar River Water and Sewer District and Soos Creek Water and Sewer District submit the following additional authorities on the issues of (i) whether the 21-day time limit under LUPA applies to claims for monetary compensation, (ii) whether trust obligations can be imposed in the absence of language expressing an explicit intent to form a trust, and (iii) whether the constitutional prohibition on “taking” private property without just compensation also applies to a taking of proprietary property of a local government (this issue was not addressed in the briefs but was raised by Justice Gordon McCloud at oral argument):

I. 21-DAY TIME LIMIT UNDER LUPA

Lakey v. Puget Sound Energy, Inc., __ Wn.2d __, __ P.3d __, 2013 WL 865468, ¶¶ 35-38 (Mar. 7, 2013) (21-day time limit under LUPA does not apply to inverse condemnation claim for monetary compensation that could not have been brought before the local jurisdiction’s land use hearing examiner).

II. TRUST OBLIGATIONS IN ABSENCE OF TRUST LANGUAGE

In re Wash. Builders Benefit Trust, __ Wn. App. __, 293 P.3d 1206, ¶¶ 32-35, 40-41 (2013) (despite absence of explicit trust language, Return on Industrial Insurance (“ROI”) enrollment agreements created express trust and imposed trust duties on building industry association,

because association held fund in question not as its own absolute property but to hold and apply it for certain specified purposes).

III. “TAKING” PROPRIETARY PROPERTY OF
A LOCAL GOVERNMENT

United States v. 50 Acres of Land, 469 U.S. 24, 31, 105 S. Ct. 451, 83 L. Ed. 2d 376 (1984) (“When the United States condemns a local public facility, the loss to the public entity, to the persons served by it, and to the local taxpayers may be no less acute than the loss in a taking of private property. Therefore, it is most reasonable to construe the reference to ‘private property’ in the Takings Clause of the Fifth Amendment as encompassing the property of state and local governments when it is condemned by the United States. Under this construction, the same principles of just compensation presumptively apply to both private and public condemnees”) (footnote omitted).

Sacramento Mun. Util. Dist. v. United States, 63 Fed. Cl. 495, 501 (2005) (municipal utility district has standing to assert claims against United States for violation of Just Compensation Clause of Fifth Amendment for breach of contract and taking of real property).

City and County of Denver v. Qwest Corp., 18 P.3d 748, 761 (Colo. 2001) (“It is clear that the Takings Clause encompasses all ‘private’ property, including that owned by state and local governments when

condemned by the federal government. [citing *United States v. 50 Acres of Land, supra*] The recognition of public entities as potential condemnees entitled to compensation, however, does not obliterate the distinction between public and private property and require compensation for all property held by a public entity. It merely recognizes that when a public entity owns property in a proprietary capacity, it is entitled to compensation as any non-public concern”).

Trustees of Dartmouth Coll. v. Woodward, 17 U.S. (4 Wheat.) 518, 694, 4 L.Ed. 629 (1819) (Story, J., concurring) (“It may also be admitted, that corporations for mere public government, such as towns, cities and counties, may in many respects be subject to legislative control. But it will hardly be contended, that even in respect to such corporations, the legislative power is so transcendent that it may, at its will take away the private property of the corporation, or change the uses of its private funds acquired under the public faith”).

See generally 4A *Nichols on Eminent Domain*, § 15.01 (3d ed.).

Respectfully submitted this 14th day of March, 2013.

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