

S289391

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

TOWN OF APPLE VALLEY,

Plaintiff and Appellant,

v.

APPLE VALLEY RANCHOS WATER, et al.,

Defendants and Respondents,

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Appeal From The San Bernardino County Superior Court  
Honorable Donald Alvarez, Judge  
Case No. CIVDS1600180

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**THE TOWN OF APPLE VALLEY'S CONSOLIDATED  
ANSWER TO AMICUS BRIEFS**

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## INTRODUCTION

The Town of Apple Valley (“the Town”) provides this consolidated answer to the five amicus briefs supporting petitioner/respondent Liberty Utilities (Apple Valley Ranchos) Corp. (“Liberty”), submitted by: (1) Pacific Gas and Electric Company (“PG&E/Br.”); (2) Southern California Edison Company and San Diego Gas & Electric Company (“SCE-SDG&E/Br.”); (3) California Water Association (“CWA/Br.”); (4) Golden State Water Company (“GSWC/Br.”); and (5) California-American Water Company (“CAWC/Br.”) (collectively “Liberty’s amici”).

This answer also references the three amicus briefs supporting the Town, submitted by: (1) Monterey Peninsula Water Management District (“MPWMD/Br.”); (2) the City of San Francisco and the California State Association of Counties (“CSF-CSAC/Br.”); and (3) Association of California Water Agencies; League of California Cities; California Municipal Utility Association; California Special Districts Association; South San Joaquin Irrigation District (“Cal Cities & Water Agencies-Districts/Br.”) (collectively, “the Town’s amici”).

Nothing raised by Liberty’s amici warrants rejecting the Court of Appeal’s analysis that the deferential review standard for quasi-legislative decisions applies to the 1992 amendments.

## ARGUMENT

### I. Liberty’s Amici Erroneously Ignore This Case’s Specifics And This Court’s Limited Review Grant.

Liberty’s amici largely ignore the specifics of what occurred in the trial below and the nature of the trial court’s statement of decision. Like the trial court’s decision, one would not know from reading the amicus briefs why the Town seeks condemnation or the trial’s unprecedented, out-of-control nature. For two reasons, those specifics are highly relevant and cannot be ignored.

First, unlike *PG&E*, which interpreted the 1992 amendments in a writ proceeding without a trial or actual application of standards, this case involved a 67-day trial that illuminated the real-world problems with private utilities’ broad construction of the 1992 amendments. What transpired here, at the administrative *and* trial levels, illuminates why the Court of Appeal got it right. (§ I.A, post.)

Second, although the Court of Appeal relied on four independent grounds in reversing the trial court’s judgment (*Town of Apple Valley v. Apple Valley Ranchos Water* (2025) 108 Cal.App.5th 62, 83-93 (*TAV*); Town’s Answer Brief On The Merits (“Town’s ABOM”) 26-32), this Court granted review on only one—which standard of review applies to the rebuttable presumptions added by the 1992 amendments, i.e., the conflict between *TAV* and *Pacific Gas & Electric Co. v. Superior Court* (2023) 95 Cal.App.5th 819 (*PG&E*) as to whether gross abuse of discretion or independent judgment applies. Yet Liberty’s amici urge

arguments that exceed the limited review grant, venturing into areas the Town has not briefed to this Court and should be off limits. (§ I.B, post.)

The Court should ignore those arguments, in particular any suggestion they provide “an independent basis for affirmance of the trial court.” (CAWC/Br. 4.) Even if this Court rejected the Court of Appeal’s standard of review holding, the alternative grounds for reversal would remain binding and require a remand to the trial court. (Town’s ABOM 27-34.) Under no circumstances can the trial court’s judgment dismissing the condemnation complaint be affirmed.

**A. This case’s specifics cannot be ignored.**

The condemnation trial in this case was unprecedented in multiple ways that made it worlds apart from any other in California history. Not only did the trial court apply independent judgment review to a quasi-legislative decision, the trial court broke new ground by:

- conducting a 67-day trial, by far the longest condemnation trial in California history;
- treating the 55,000-page administrative record as inadmissible and irrelevant;
- treating the Town’s objectives, findings, and supporting evidence as irrelevant;
- letting Liberty present whatever evidence it wanted, which ignored the Town’s objectives and included five years of

post-RON events that had nothing to do with the Town's reasons for condemnation, but then limiting the Town to what its RONS stated;

- issuing a statement of decision (mostly written by Liberty) that ignored the Town's objectives and supporting evidence for acquiring the utility and instead recited a host of Liberty-supplied highly-disputed policy findings that would defeat any utility condemnation, such as findings that Public Utility Commission oversight is preferable to municipal ownership, municipal ownership increases water rates, and Proposition 218 is ineffectual; and
- adding insult to injury by awarding Liberty \$13.2 million in litigation expenses.

(Town's ABOM 14, 18-26 & fn. 3, 29-32, 74; *TAV*, *supra*, 108 Cal.App.5th at pp. 72-74, 90-93.)

There is not even a hint that the Legislature intended for utility condemnations to devolve into such a free-for-all. Yet this is where the private utilities' interpretation—that trial courts simply conduct a trial without any deference to the local government's administrative decision—can and did lead. While the Legislature certainly provided utilities special protection by letting them introduce extra-record evidence to challenge RONS (unlike anyone else facing an intraterritorial taking), that doesn't mean it intended what transpired here—a process that makes utility condemnations too unlikely, too uncertain, and too expensive for public entities to realistically pursue.

As the public-entity amici supporting the Town explain, the trial here demonstrates “the real-world and highly-negative implications” of *PG&E*’s interpretation, particularly if the independent judgment standard is broadly construed: “Under *PG&E*, the Town’s experience would be the norm, not the exception, with every future condemnation of a private utility devolving into a war of attrition, years of protracted litigation and discovery, and tens of millions of dollars in legal fees. This would necessarily be an asymmetrical effort, with well-heeled private utilities having a marked and obvious advantage over public agencies. Faced with this daunting, expensive, and exceptionally uncertain effort, local authorities might well forego acquiring private utilities, even when their constituents demand it, and in contravention of public agencies’ inherent authority to condemn.” (MPWMD/Br. 8-9.)

Liberty’s amici ignore these problems. Instead of addressing what actually transpired, they proffer hyperbole about utility condemnations being inordinately complex. One even suggests the trial’s 67-day length confirms “the complexity” of such condemnations. (SCE-SDG&E/Br. 10.) But the trial only took this unprecedented, startling length because the trial court erroneously made it complex, by deeming the administrative record inadmissible, treating the RONS’ findings as irrelevant, and concluding “[i]t is *up to Liberty* to decide what evidence it believes is relevant to meeting its burden of proof.” (1AA/958;

2AA/1124-1125, italics added; 3AA/2356-2439; Town's ABOM 24-26.)

Those rulings let Liberty present whatever evidence it wanted without restrictions on time period or topic, forced the Town to re-create the administrative record and support for its findings/objectives, and forced the Town to marshal evidence to counter Liberty's ever-shifting evidence/theories (which ignored the RON's basis and instead focused on Liberty's post-RON conduct). All without any clear indication the Legislature intended this unprecedented free-for-all.

Liberty's amici also claim the "more necessary public use" element is "uniquely complicated" for utility condemnations because "[t]he government is trying to condemn property to put it to the exact same public use that already exists." (SCE-SDG&E/Br. 12-13, style normalized.) That's more hyperbole. Water use "is a public use" (Cal. Const., art. X, § 5) and, yes, the Town, if it becomes owner, will continue the same use of providing water. But the "more *necessary*" use question should have been an easy "yes" because the Town seeks ownership to further important public-policy objectives *that no private utility, including Liberty, can achieve*. That includes using the water system to further water-recycling plans (which the private owners had opposed), integrating and coordinating water service with the Town's sewer and trash utilities, improving fire prevention and increasing environmental review (which doesn't

apply to private owners), and coordinating water usage with development needs. (Town’s ABOM 21-22; see § VI.A, *post.*)

Given the wildfires and droughts plaguing California, such objectives arguably epitomize “more necessary” uses, as well as “necessity” and “public interest.” Yet Liberty’s amici ignore these objectives, as did the trial court’s statement of decision and Liberty’s briefs.

Liberty’s amici also couch utility-condemnation RONS as some cookie-cutter process that precludes viable opposition. They claim they are “in the best position” to make comprehensive presentations rather than “the government agency’s staff” but often have “just three minutes to explain to the governing body” why condemnation is against public interest. (SCE-SDG&E/Br. 1, 3, 9-10; see *id.* at 14 [staff presentations “bound to be incomplete,” “inaccurate,” and “biased”].)

Yet, as the Town’s 55,000-page administrative record demonstrates, RONS typically involve lengthy governmental studies and approvals, and technical and environmental review. Utilities are not shut out from the process or powerless to oppose. (E.g., *City of San Jose v. Great Oaks Water Company* (1987) 192 Cal.App.3d 1005, 1009-1010.) They have virtually unlimited war chests, and utility condemnations don’t happen unannounced. Here, for example, Liberty decided in 2014 to acquire Apple Valley Ranchos Water (AVRW) despite knowing the Town was considering condemnation. It had ample opportunity to oppose:

- The Town provided AVRW a purchase offer in June 2015, and after AVRW declined, timely notified AVRW/Liberty of the RON-adoption hearing and an opportunity to comment on a draft environmental impact report. (1AA/764, 772-789; AR/12982-12983, 13215-13217.) AVRW/Liberty responded with a lengthy letter detailing objections (most of which Liberty re-asserted at trial). (1AA/764, 790-798; see also 1AA/829-837.)

- AVRW/Liberty attended the RON hearing in full force. Its supporters made up roughly half the audience, and 12 of the 15 people providing comment. (AR/2250-2289, 13449-13450.) Liberty's counsel, president, executive vice president, and vice president/general manager each discussed Liberty's objections (and introduced Liberty's objection letter into the record); and they warned that Liberty would mount a costly fight. (AR/2160, 2250-2254, 2260-2262, 2273-2279, 13349-13374.)

- After Liberty's purchase of AVRW became final, Liberty filed its answer to the Town's condemnation complaint and included objections that the RONs violated CEQA. (1AA/765.) Liberty also filed a mandamus action, claiming the Town violated CEQA—a petition the court denied. (1AA/765; 3AA/2095-2096.)

- Liberty spent \$1.3 million unsuccessfully opposing a special election in which nearly 60% of the Town's citizens authorized the Town to incur up to \$150 million in debt to acquire the utility. (8RT/1869-1873; TEs/3537-55, 3533-51, 3623, 3624.)

Liberty’s amici further ignore that the trial court’s statement of decision largely rested on public-policy findings (supplied by Liberty) that generally fall outside judges’ purview. The only amicus who acknowledges the court made policy determinations states: “Not surprisingly, the court determined that the protections afforded customers by the PUC oversight process better protect the public’s interests than simply allowing a local municipality to raise rates whenever – and by whatever amount – it chooses.” (SCE-SDG&E/Br. 14.)

But that determination is *very* surprising. It’s a public-policy finding that only the Legislature or other governmental bodies should make. PUC oversight is a hotly contested issue, and there is abundant evidence that PUC oversight is severely flawed, particularly for this property. (MPWMD/Br. 11 [noting criticisms of PUC oversight, including by state legislators]; 3AA/1738-1747, 1999-2008 [summarizing Town’s evidence].)

Moreover, Proposition 218, adopted in 1996, refutes amici’s suggestion that municipalities can raise rates “whenever” and by “whatever amount.” Proposition 218 amended the Constitution to prohibit public entities (unlike private owners) from charging utility-related fees that exceed utility-operating costs and from using them for any other purpose, such as a general fund. (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 640-647.)

That’s why Liberty sought to sidestep Proposition 218 by successfully asking the trial court to adopt Liberty’s proposed

finding that “Proposition 218’s ‘right to object’ to proposed rate increases is more of a theoretical paper right.” (3AA/2407; Town’s ABOM 23-24 & fn. 3.) Yet that’s another policy determination.

Amici’s standard of review argument transforms unelected judges into local legislators/policymakers even though they are not experts in local policy or utility ratemaking. Judges should not make such determinations, particularly on a case-by-case basis based on a utility’s hired-gun experts.

This trial eviscerated longstanding separation-of-powers principles by transforming the trial judge into a policymaker.

\* \* \*

The Court of Appeal had a benefit that the *PG&E* court lacked—a real-world example of where the utilities’ characterization of the 1992 amendments could lead. There is no way the Legislature intended what happened at this trial.

**B. Liberty’s amici exceed the limited review grant.**

As the Town explained and the Court of Appeal’s opinion makes clear, the Court of Appeal held that “*regardless of what standard of review applies*, the trial court made a series of related errors in applying the rebuttable presumption to the evidence that the court deemed relevant and admissible.” (*TAV, supra*, 108 Cal.App.5th at p. 90, italics added; see Town’s ABOM 27-31.)

The Court of Appeal held that, whether a trial court reviews for gross abuse of discretion or exercises independent

judgment, the judgment dismissing the Town’s eminent domain complaint must be reversed because the trial court erroneously: (1) ignored the RON’s findings, objectives, and supporting evidence; (2) let Liberty rely on post-RON events that were not part of the Town’s evaluation, while confining the Town to its RON; and (3) concluded it lacked discretion to remand the case to the Town to consider post-RON events. (*TAV, supra*, 108 Cal.App.5th at pp. 90-93 & fn. 8; Town’s ABOM 25-32.) After the Town explained these alternative holdings in its answer to Liberty’s petition for review, this Court limited its review grant to resolving which standard of review applies.

The Town’s answer brief warned against Liberty using its reply to exceed the limited review grant. (Town’s ABOM 32-34.) Although that warning applies to amici too, Liberty’s amici still wade into the alternative-ground waters.

***Proper application of the independent-judgment standard.*** Liberty’s amici, after asserting that “[t]he Town’s brief discusses the ‘independent judgment’ standard,” argue—citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805 (*Fukuda*) and other cases—that the independent-judgment standard in Code of Civil Procedure section 1094.5 “is not apt” because “it generally *restricts* evidentiary review to material found in the administrative record.” (PG&E/Br. 44-45, original italics; see Liberty’s Reply, p. 16 [arguing that *Fukuda*, “cited by the Town and the Court of Appeal (ABOM 28-30)” is “inapposite” because

(section 1094.5 petitioners are generally bound by the administrative record].)

The argument is inappropriate and wrong.

*First*, the Town’s answer brief solely discussed *Fukuda* in explaining—in the Statement of the Case—the Court of Appeal’s alternative holdings that *even if the independent judgment standard applied* the trial court still misapplied the rebuttable presumption. (Town’s ABOM 26-32.) The Argument section explained that, given the Court’s limited review grant, the Town was *not* addressing those alternative grounds. (*Id.*, 32-34.)

*Second*, independent review under section 1094.5 doesn’t rest on courts only considering the administrative record; it equally applies where courts admit and consider extra-record evidence “that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing.” (§ 1094.5, subd. (e).)

*Third*, amici ignore the foundation for this Court’s *Fukuda* holding. In holding that trial courts cannot ignore an agency’s actual findings and evidence but instead must presume they are correct and treat them as the starting point (which the court didn’t do here), this Court didn’t focus in *Fukuda* on whether the record included or excluded extra-record evidence. It relied on pre-section 1094.5 case law that recognized courts must accord “a strong presumption of correctness” to agency findings with the challenger having the burden of proof—holdings that reflected “the statutory presumption [in Evidence Code section 664] that

[an] ‘official duty has been regularly performed.’” (*Fukuda, supra*, 20 Cal.4th at pp. 817, 819-820.)

Evidence Code section 664 and presumptions of correctness apply here with equal force no matter which review standard applies. Eminent domain law required the Town to adopt its RONS, and courts must presume the Town’s findings and supporting evidence are correct. The rebuttable presumptions affecting the burden of proof in (sections 1245.250(b) and 1240.650(c) should be construed consistently with Evidence Code section 664’s presumption, which the Legislature has long classified as a “presumption[] affecting the burden of proof.” (See Evid. Code, § 660; *Fukuda, supra*, 20 Cal.4th at pp. 820-821.) As *Fukuda* demonstrates, no matter which review standard applies, the trial court erred in ignoring the Town’s findings, objectives and evidence.

***Consideration of post-RON evidence.*** Liberty’s amici further stray into off-limits territory by claiming trial courts applying the 1992 amendments’ rebuttable presumptions “must necessarily” consider “factual changes and relevant evidence” that *post-date* the RON. (PG&E/Br. 44.) They note courts might not assess RONS until years after adoption, describing *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93 (*Marina Towers*) as a case where a 2003 RON was “assess[ed] in 2009.” (PG&E/Br. 44.)

This argument implicates another off-limits alternative ground for reversing the judgment that applies no matter which

review standard governs. *PG&E* never addressed the propriety of letting utilities challenge RONS based on post-RON events—here, a new owner’s post-RON operation of the utility. As the Court of Appeal recognized, these circumstances implicate a host of statutory, case-law and public-policy considerations that are irrelevant to the standard of review, including:

- Reliance on post-RON events contravenes eminent-domain *pleading* requirements. “[W]hen a property owner-defendant answers an eminent domain complaint, the answer must ‘state the specific ground upon which the objection is taken and, if the objection is taken by answer, *the specific facts upon which the objection is based.*’” (*TAV, supra*, 108 Cal.App.5th at p. 92, quoting § 1250.350, italics added; see *San Mateo County v. Bartole* (1960) 184 Cal.App.2d 422, 433 [facts “must be specifically alleged to attack the resolution of public interest and necessity”]; GSWC/MJN 267.)

As the Court of Appeal recognized, the trial court erred in letting Liberty rely at trial on post-RON circumstances that were never pled and didn’t exist when the Town sued: “Courts should not allow a party challenging an eminent domain decision to base its defense exclusively on post-RON facts and developments that the party did not plead in its answer.” (*TAV, supra*, 108 Cal.App.5th at p. 93.)

- Even extraterritorial cases, on which Liberty founded its standard-of-review arguments, always determined the necessity elements based on the claimed necessity existing when

the municipality adopted the RON. (See *San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885, 890-891, 898-899 (*Grabowski*); *City of Los Angeles v. Keck* (1971) 14 Cal.App.3d 920, 922-923, 926-927 (*Keck*); *City of Carlsbad v. Wight* (1963) 221 Cal.App.2d 756, 758-764 (*Wight*.) These cases recognized that the pleading requirement exists because “[c]ondemnors are entitled to know *at the outset* whether the [pursuit] of a project will be placed at risk by a potentially meritorious challenge to the ‘right to take.’” (*Grabowski*, at p. 894, fn. 5, italics added.)

- Until the trial here, *no case* has ever allowed a property owner to challenge a taking based on post-RON events. (*TAV, supra*, 108 Cal.App.5th at pp. 91-93.) *Every* condemnation case in California, including extraterritorial takings, has focused solely “on the circumstances existing when the public entity adopted its RON.” (*Id.* at p. 93.)

- Letting courts consider post-RON events flouts the RON’s role as “the fundamental predicate to the entire condemnation process” and its purpose of “ensur[ing] that the public entity makes a careful and conscientious decision about the need for the project and the need for the property *before* it condemns private property.” (*Marina Towers, supra*, 171 Cal.App.4th at pp. 107, 114, original italics.) “A RON would be meaningless if it ‘could be validated by post hoc events’” and “would likewise be meaningless (and a complete waste of public resources) if it could *be invalidated* with exclusively post-RON

evidence.” (*TAV, supra*, 108 Cal.App.5th at p. 93, quoting *Marina Towers*, at p. 114, italics added.)

- Amici’s reliance on *Marina Towers* as “assessing” 2003 RONS in 2009 (PG&E/Br. 44) is misplaced. 2009 was the date of the Court of Appeal’s decision; the *trial court’s* ruling was in 2005, only 1½ years after the first RON. (171 Cal.App.4th at p. 103.) Regardless, *Marina Towers* did not hold that gaps between a RON’s adoption and the date of trial or appellate decisions makes post-RON events relevant; it held the opposite—that post-RON events *are irrelevant*. (*Id.* at p. 114.)

\* \* \*

The Court of Appeal’s alternative holdings rest on multiple (correct) considerations that cannot be shoehorned into this Court’s limited review grant based on snippets in amicus briefs or Liberty’s reply. The judgment dismissing the Town’s condemnation complaint must be reversed no matter how this Court resolves the standard of review question.

## **II. The 1992 Amendments’ Plain Language Does *Not* Unambiguously Compel *PG&E’s* Interpretation.**

### **A. The language is ambiguous.**

Liberty’s amici assert that the 1992 amendments’ plain language *unambiguously* establishes that trial courts reviewing the necessity and “more necessary” use elements of a utility-condemnation apply independent review, not the gross abuse of discretion standard for quasi-legislative acts. (PG&E/Br. 15

["meaning is clear"], 40 [legislative history irrelevant given "statute's clear language"]; CWA/Br. 1 ["statute is clear"], 13 [same]; GSWC/Br. 10 ["plain and unambiguous"].)

They are wrong for multiple reasons:

(1) Liberty's amici contend that the adoption of rebuttable presumptions means the Evidence Code necessarily defines how the proceeding unfolds and therefore a utility need only present a preponderance of evidence that the municipality cannot meet the statutory necessity requirements. (CWA/Br. 1; PG&E/Br. 15; SCE-SDG&E/Br. 5; see also PG&E/Br. 31 ["those provisions never specify that the burden of proof is anything other than the preponderance of the evidence"].) But that contention, as the Court of Appeal recognized, improperly "conflates the burden of proof with the trial court's standard of review." (*TAV*, *supra*, 108 Cal.App.5th at pp. 88-89.)

The mere existence of a rebuttable presumption affecting the burden of proof does *not* mean a court must apply independent review, let alone conduct a full-blown de novo trial. California courts apply deferential review standards to quasi-legislative decisions even where the proceedings involve rebuttable presumptions affecting the burden of proof. (See *Inyo Citizens for Better Planning v. Inyo County Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 13 (*Inyo*) [trial court correctly applied substantial evidence review to CEQA challenge to general plan despite rebuttable presumption shifting burden of proof]; *Johnston v. Sonoma County Agricultural Preservation & Open*

*Space Dist.* (2002) 100 Cal.App.4th 973, 985, 988-990 [even though section 1240.680 of eminent-domain statutes creates a rebuttable presumption affecting burden of proof, trial court properly rejected mandamus challenge to public agency’s easement-conveyance decision because substantial evidence supported decision].)<sup>1</sup>

The presumptions affecting the burden of proof added in 1992 comport with the traditional deference accorded quasi-legislative acts challenged in court: “A presumption exists that an administrative action *was supported by substantial evidence*. [Citation.] The burden is on *the [objecting party]* to show there is no substantial evidence whatsoever to support the findings of the [agency].” (*Inyo, supra*, 180 Cal.App.4th at p. 13, italics added, first bracket added, second original.) The presumption affecting the burden of proof places the burden of proof on the utility, the same as if the utility challenged the decision as a mandamus plaintiff.

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<sup>1</sup> See also *California Resources Production Corp. v. Antioch City Council* (2024) 107 Cal.App.5th 481, 494-498 (applying Evidence Code section 664’s rebuttable presumption in upholding public entity’s decision as not arbitrary or irrational); *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1184-1185 (section 1085 deferential review governed merits review of city’s adoption of housing element despite rebuttable presumption of housing-element validity; trial court only reviews whether element contains mandated statutory elements, not wisdom of city’s “conclusions about local housing issues, needs, and concerns”).

Thus, a rebuttable presumption’s mere existence doesn’t establish independent review, let alone unambiguously so.<sup>2</sup> AVRW/Liberty conceded this in its pre-RON objection letter to the Town (attached to Liberty’s answers to the Town’s complaint) by arguing—consistent with the Town’s view—that *the substantial-evidence standard governs* the required necessity findings. (See 1AA/792 [“There is no substantial evidence how the Town’s proposed acquisition is ‘required’ by the public interest and necessity”], *ibid.* [“There is no evidence that...”], 795 [“There is no substantial evidence to show that the Town’s ownership is a more necessary public use than operation of the water system by the existing ownership”]; see 1AA/790-798, 829-837.) Liberty later switched to claiming independent review applies. That shift indicates ambiguity, not clarity.

The rebuttable presumptions in (sections 1245.250, subdivision (b) and 1240.650, subdivision (c) dovetail with the rebuttable presumption affecting the burden of proof set forth in Evidence Code section 664. “The presumption that an official

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<sup>2</sup> Liberty’s amici miss the point by citing cases where courts noted a preponderance of evidence overcame a rebuttable presumption. (PG&E/Br. 29-30, fn. 3.) With only one exception, those cases don’t involve contexts where a governmental entity already made an administrative decision; they involved trials/hearings on issues that *originated* in the trial court. The one exception is *Perales v. Department of Human Resources Development* (1973) 32 Cal.App.3d 332, which was a pre-*Fukuda* section 1094.5 mandamus case involving a quasi-adjudicatory decision. *Perales* didn’t involve a quasi-legislative decision, so it doesn’t involve the same separation-of-powers issue as here.

duty has been regularly performed (Evid. Code, § 664) shifts the burden of proving the foundational issue of trustworthiness of the official action to the party objecting to the court's reliance on the official action." (*Inyo, supra*, 180 Cal.App.4th at p. 13.) But, again, the mere existence of section 664's presumption does not mean the trial court exercises independent judgment. (*Ibid.* [objecting party had burden to prove substantial evidence did not support agency's administrative findings].)

Even courts applying "independent judgment" review to agency decisions recognize that section 664 requires deferentially starting with the agency's findings as correct, as opposed to a de novo trial where the agency's findings are irrelevant. (*Fukuda, supra*, 20 Cal.4th at pp. 820-821; accord, *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82, 96; see PG&E/Br. 43 [arguing "de novo" review should apply here].)

A decision's *nature*, such as whether it is quasi-legislative or quasi-adjudicatory, usually determines the review standard, not simply whether a rebuttable presumption exists. The reason that's true for quasi-legislative decisions is straightforward: "[E]xcessive judicial interference with [a public entity's] quasi-legislative actions would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572 (*Western States*)).

For example, where, as Liberty did here (1AA/765, 804), the owner objects in its answer to a condemnation complaint that the municipality failed to comply with CEQA, deferential CEQA review standards govern that objection, rather than the trial court exercising independent judgment. (*Burbank-Glendale-Pasadena Airport Auth. v. Hensler* (1991) 233 Cal.App.3d 577, 587-589 (*Hensler*) [objection in answer to condemnation complaint triggered deferential CEQA standard of “whether substantial evidence supports the agency’s determination”].) Merely asserting an objection doesn’t trigger independent judgment review.

(2) Liberty’s amici also argue that the Legislature adopted extraterritorial-takings standards for utility condemnations because the utility-taking rebuttable presumption affecting the burden of proof is “nearly identical” to the extraterritorial-taking presumption affecting the burden to produce evidence. (GSWC/Br. 61; see PG&E/Br. 32 [arguing “the same” rule for extraterritorial takings applies].) But, as the Court of Appeal recognized, the Legislature adopted *different* language and courts should assume “that if the Legislature wanted *the same* law to apply to extraterritorial and public utility takings, then it would have used *the same* language in sections 1245.360, subdivisions (b) and (c).” (*TAV, supra*, 108 Cal.App.5th at p. 85, italics added.) The use of different language signifies a different intent. (*In re Jennings* (2004) 34 Cal.4th 254, 273.) At a minimum, it creates an ambiguity.

Also, far from being “nearly identical” (GSWC/Br. 61), the “two presumptions are significantly different” (*Farr v. County of Nevada* (2010) 187 Cal.App.4th 669, 680), with a presumption affecting the burden of proof “impos[ing] a much more onerous burden” (*In re G.Z.* (2022) 85 Cal.App.5th 857, 884). “Unlike presumptions affecting the burden of producing evidence, which exist merely to expedite resolution of disputes, [a] presumption affecting the burden of proof is a presumption established *to implement some public policy* other than to facilitate the determination of the particular action in which the presumption is applied....” (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 695, italics added.)

Adoption of a presumption affecting the burden of proof indicates that the Legislature concluded, *for public policy reasons*, that courts must treat utility condemnations more deferentially than extraterritorial takings. It does not indicate the Legislature intended the same review standard.

(3) In suggesting the statutory language clearly establishes independent review, Liberty’s amici also gloss over section 1245.255’s express reference to the “gross abuse of discretion” standard—the deferential standard for quasi-legislative decisions and the only review standard mentioned in the eminent domain statutes—and that the eminent domain statutes never specify independent review. (Compare § 1094.5, subs. (c), (d) [specifying instances where the trial court can “exercise its independent judgment on the evidence”].)

Liberty’s amici suggest that review standard is irrelevant here because Liberty never filed a section 1085 mandamus petition and instead objected to the Town’s complaint. They claim: “Showing a gross abuse of discretion in the underlying resolution of necessity is not the only path to challenging a proposed taking,” and they emphasize that section 1250.360 allows objections “*regardless* of whether the plaintiff has adopted a resolution of necessity” and section 1250.370 allows objections “if the public entity ‘has not adopted a resolution of necessity that conclusively establishes’ the public necessity elements.” (PG&E/Br. 37, original italics.)

Those statutes, however, do not state—let alone mean—that independent review governs all objections or that RONS become irrelevant when defendants assert objections.

Instead, section 1250.360 merely specifies objections that apply regardless of whether a RON is required. Defendants can assert those listed objections in contexts where RONS are required *and also* where they are not required. The latter context, for example, encompasses situations where nonpublic-entity plaintiffs (which don’t have to prepare RONS) can bring condemnation proceedings, such as investor-owned utilities, property owners needing utility easements, and quasi-public entities such as private cemeteries, non-profit hospitals, and non-profit colleges. (See § 1245.320 [listing quasi-public entities with eminent domain rights]; Civ. Code, § 1001, subd. (b) [“[a]ny owner of real property”]; Pub. Util. Code, §§ 610-624 [investor-

owned public utilities]; *Robinson v Superior Court* (2023) 88 Cal.App.5th 1144, 1160-1161 [RON requirement doesn't apply to investor-owned public utilities]; Recommendation Proposing The Eminent Domain Law (Dec. 1974) 12 Cal. Law Revision Com. Rep. (1974) p. 1634 [eminent domain right in California “not limited to governmental entities and public utilities”].)

Section 1250.370, in turn, specifies objections that can be asserted only where a RON *was* required (so it doesn't encompass cases with non-public-entity plaintiffs) and the RON does not “conclusively establish[]” section 1240.030's necessity elements. Objections are asserted at a case's beginning by demurrer or answer (and when by answer, must identify the specific facts). (§ 1250.350.) Thus, a RON would only conclusively establish the statutory elements at a case's commencement (eliminating the right to assert objections under section 1250.370) *if* the defendant already had prevailed in a section 1085 proceeding brought under section 1245.255. Absent such a decision, section 1245.255 specifies that a “gross abuse of discretion” challenge can be asserted *as an objection* to a right to take. (§ 1245.255, subd. (a)(2).)

Nothing in sections 1250.360 or 1250.370 indicates that, where the law requires RONs, merely asserting an objection untethers the objections to the required RON and renders it irrelevant. Nor do they indicate that the standard of review for objections permitted by section 1245.255 (or an objection to any other quasi-legislative decision, such as a CEQA analysis) would

flip from “gross abuse of discretion” to independent review if asserted as an objection to a complaint, rather than by section 1085 mandamus proceeding.

In fact, pre-1992 cases uniformly *rejected* the Liberty amici’s suggestion that parties can alter review standards for takings by objecting to the condemnation complaint instead of suing in mandamus. (E.g., *Hensler, supra*, 233 Cal.App.3d at pp. 577, 587-589 [deferential standard for CEQA issues—“whether substantial evidence supports the agency’s determination”—applies whether defendant raised CEQA non-compliance as objection to condemnation complaint or by section 1085 cross-complaint]; *Anaheim Redevelopment Agency v. Dusek* (1987) 193 Cal.App.3d 249, 258, 260-261 (*Dusek*) [RON reviewed for gross abuse of discretion whether owner objected in condemnation proceeding or brought mandamus action: “It would be incongruous to impose a more deferential standard of review on a pretrial challenge by writ of mandate but expand the scope of review...when the challenge is raised as a defense to the eminent domain proceedings”]; *Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 25-26 [defendants’ decision to object to RON in condemnation proceeding, not by mandamus petition, “is a procedural matter only” that doesn’t “relax[] the requirement” that challenger prove the agency’s decision lacks substantial evidence].)

Post-1992 decisions uniformly recognize the same. (E.g., *Inglewood Redevelopment Agency v. Aklilu* (2007) 153

Cal.App.4th 1095, 1114; *City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1221.)

As such cases recognize, it is doubtful the Legislature intended to let utilities circumvent RONS' quasi-legislative nature through artful pleading. At a minimum, the right to assert a section 1245.255 "gross abuse of discretion" challenge by objection (§ 1245.255, subd. (a)(2)) further defeats *PG&E's* conclusion that the 1992 amendments *unambiguously* establish independent review for utility condemnations.

(4) Liberty's amici assert that letting utility owners "prevail only by showing a gross abuse of discretion ... would render the rebuttable presumption superfluous" because "[e]ither the property owner would fail to show a gross abuse of discretion and lose entirely, or the utility owner would succeed in showing an abuse of discretion and that showing would erase the rebuttable presumption." (PG&E/Br. 38.) That misses the point. The Legislature added section 1245.255 in 1975 to ensure that owners who historically could not challenge a RON could now challenge it as a gross abuse of discretion by mandamus or objection to a condemnation complaint. *But that challenge was limited to the administrative record.* (See Town's ABOM 43.)

So, yes, in non-utility-condemnation cases involving intraterritorial takings, if the property owner establishes a gross abuse of discretion based on the administrative record, the RON is invalid and the condemnation proceeding comes to a halt; and if the administrative record does not show a gross abuse of

discretion, the RON's necessity findings are conclusive and the owner can only contest the taking based on other objections.

In the utility-condemnation context, in contrast, the 1992 amendments' rebuttable presumptions allow private utilities to present extra-record evidence to challenge RONs. But RON findings remain quasi-legislative. If the utility can show a gross abuse of discretion, whether based on the administrative record or extra-record evidence, the condemnation proceeding comes to a halt. And if the utility cannot make that showing, it can only contest the taking based on other objections. That doesn't render the presumption "superfluous."

(5) The 1992 amendments did not eliminate or change the RON requirements for utility condemnations, nor add any utility-condemnation carve-out to section 1245.255. For this reason, too, the plain language doesn't indicate—certainly not clearly so—that the Legislature intended to require public entities to continue enduring the time-consuming, expensive process of adopting RONs for utility condemnations only to have an objection to the condemnation complaint strip the RON of deference. Why require municipalities to go through that expensive and time-consuming process of preparing RONs only to let trial courts ignore them?

\* \* \*

The contention of Liberty's amici that the 1992 amendments' plain language *unambiguously* establishes

independent review is wrong. The plain language raises as many questions as it does answers.

The Court of Appeal correctly recognized that the plain language does not unambiguously compel the utilities' interpretation and that its standard of review holding "better harmonizes the statutory language, legislative history, and relevant case law" than *PG&E's* plain-meaning analysis. (*TAV, supra*, 108 Cal.App.5th at p. 89.)

**B. Liberty's amici disregard the presumption that the Legislature will *clearly* demonstrate an intent to overthrow long-established law, such as deference for quasi-legislative decisions.**

Liberty's amici criticize the Court of Appeal for focusing "on such extra-textual matters as the state of the law before the enactment of the relevant statutory provisions," including longstanding law that intraterritorial takings are quasi-legislative acts entitled to deference. (PG&E/Br. 36.) They deem such law irrelevant because "[a]lthough the Town may be entitled to undertake quasi-legislative acts, the state Legislature ... has spoken, and so what matters in this case is what the Legislature *actually said*." (PG&E/Br. 39, original italics.)

Beside ignoring the ambiguity in what the Legislature "actually said," amici ignore that courts should not view the 1992 amendments in a vacuum. This Court has repeatedly held that courts cannot understand the intent behind such amendments without considering the settled law at time of enactment.

(Town’s ABOM 41-43.) Only one of Liberty’s amici, Golden State Water Company, acknowledges this principle:

“[T]here is a ‘well-established presumption that the Legislature, when amending a law or enacting a new law, is aware of and takes into consideration existing law.’ (*Rudick v. State Bd. of Optometry* (2019) 41 Cal.App.5th 77, 87.) ‘[T]he Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes “in the light of such decisions as have a direct bearing upon them.” (*People v. Overstreet* (1986) 42 Cal.3d 891, 897 [citation omitted].)”

(GSWC/Br. 14-15.)

The Town relied on this presumption in emphasizing that it was settled before 1992 that intraterritorial RONS were quasi-legislative decisions accorded deference under separation-of-powers principles. (Town’s ABOM 35-45.) Golden State Water Company relies on the presumption as a pretext to present new legislative-history materials. (See GSWC/Br. 14-16; see § VI.B, *post.*)

But Golden State’s legislative-history foray ignores a separate component of this same presumption: When the Legislature chooses to depart from long-established legal principles, it will *clearly* say so: “[I]t is not to be presumed that the legislature in the enactment of statutes intends to overthrow

long-established principles of law unless such intention *is made clearly* to appear either by *express declaration* or *necessary implication*.” (*Los Angeles County v. Frisbie* (1942) 19 Cal.2d 634, 644, italics added.)

As this Court artfully puts it: “The Legislature ‘does not, one might say, hide elephants in mouseholes.’” (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171; accord, *Western States, supra*, 9 Cal.4th at pp. 571-572 [if the Legislature intended a “drastic” change, “it would have expressed this intent more clearly in the statute itself”].)

The presumption that the Legislature will *clearly* flag departures from long-standing law applies throughout the statutory-interpretation process—from construing text to considering extrinsic evidence. “In deciding whether a statutory scheme alters or displaces the common law, [courts] *begin* with a presumption that the Legislature did *not* so intend.” (*McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241, 249, italics added.) If possible, courts “construe statutory enactments as consonant with existing common law and reconcile the two bodies of law.” (*Ibid.*) “[S]tatutes generally should not be construed to alter or abrogate the common law. We have said that a legislative purpose to do so must clearly and unequivocally appear.” (*Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 669.)

If the plain language doesn’t “*conclusively*” repudiate the longstanding rule (*Brodie v. Workers’ Compensation Appeals Bd.*

(2007) 40 Cal.4th 1313, 1328, italics added), the court examines whether legislative history “show[s] *unmistakably* that the Legislature intended” to depart from traditional rules (*Martinez v. Combs* (2010) 49 Cal.4th 35, 52, italics added).

Absent that clear showing, the presumption *against* implied change controls. (*McMillin, supra*, 4 Cal.5th at p. 249.) That’s particularly apt where the established rule protects separation-of-powers concerns; courts should “construe statutes to avoid “constitutional infirm[ities].”” (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 477.)

Since, as shown above, the 1992 amendments’ text doesn’t unmistakably show an intent to replace the gross abuse of discretion standard, legislative history becomes relevant. But the presumption the Legislature will clearly delineate major departures from existing law applies to legislative history too. Despite Liberty’s amici’s efforts to shoehorn their preferred interpretation into the legislative history (PG&E/Br. 40-42, 47-48; CWA/Br. 6-12; GSWC/Br. 10-14), no legislative history *unmistakably* shows the Legislature intended to subject utility-condemnation RONS to non-deferential review. As the Court of Appeal summarized:

“Case law made clear before the 1992 amendments that courts review intraterritorial takings, whatever their nature, for a gross abuse of discretion. Yet, there is no indication in the amendments’ legislative history that the Legislature intended to supplant

that standard of review and replace it with a non-deferential standard of review that allows courts to independently review a public entity's quasi-legislative act of deciding to take a private utility. The Legislature ““would [not] have silently, or at best obscurely, decided so important and controversial a public policy matter and created a significant departure from the existing law.” (*In re Christian S.* (1994) 7 Cal.4th 768, 782 ....)”

(*TAV, supra*, 108 Cal.App.5th at p. 89, modification in original; see *id.* at p. 87 [“We have scoured the legislative history and have found nothing that suggests that, by enacting the 1992 amendments, the Legislature intended to so fundamentally alter the courts’ role in reviewing eminent domain decisions concerning public utilities”].)

Under the controlling presumption, ambiguities in the text and legislative history require *rejecting* the utilities’ interpretation. Their interpretation, as the Town’s amici explain, rests on multiple *implied* modifications of settled law. (See Cal Cities & Water Agencies-Districts/Br. 16-17 [noting *PG&E/Liberty* assume six *implicit* substantive changes].)

Liberty’s amici further miss the point by critiquing Jackie Speier’s comments as “too vague to provide any real assistance.” (CWA/Br. 6.) Speier’s comments are not too vague. (Town’s ABOM 61-63.) Yet even if they were, the legislative history would remain too inconclusive to *compel* Liberty’s interpretation.

The legislative history must unmistakably show an intent to depart from longstanding treatment of quasi-legislative decisions. It doesn't.

Under the governing presumptions, any lack of clarity in the text and legislative history supports the Court of Appeal's construction, which accommodates the deference long accorded quasi-legislative decisions.

### **III. The 1992 Amendments' Legislative History Supports The Court of Appeal's Holding.**

Speier's published comments in the Assembly Journal warrant special consideration because the Legislature granted her unanimous consent to publish. (*TAV, supra*, 108 Cal.App.5th at pp. 78, 86; Town's ABOM 62.) Liberty's amici try to dismiss Speier's comments as "too vague to provide any real assistance" (CWA/Br. 6.) But if Speier's comments are "too vague" to provide assistance, why would the Legislature have unanimously approved her publishing them?

The Court of Appeal correctly recognized that Speier's comment about a "procedural change" that "does not affect basic rights but *only allows introduction of evidence on the subject of the presumption*" must be viewed in the context of then-existing law and the deference accorded quasi-legislative acts. (*TAV, supra*, 108 Cal.App.5th at p. 86, italics original.)

Liberty's amici disagree, claiming "a shift in the standard of review does not qualify as an impact on 'basic rights'" and the

only “‘basic rights’ at issue in eminent domain cases are the government’s power to condemn private property for public use when necessary, and the property owner’s constitutional right to receive just compensation.” (CWA/Br. 6; see PG&E/Br. 42 [Speier’s comment means the Town “continues to possess the ‘basic right’ to pursue condemnation”].) Amici do not, and cannot, provide any authority for this sweeping proposition.

Treating Speier’s comment as simply meaning a public entity can still seek condemnation renders the remark meaningless. A decision to strip municipalities of deference for their decision would hardly be a mere procedural change.

Liberty’s amici also emphasize that the Legislature adopted the 1992 amendments out of concern that “public entities may act in their own financial self-interest when they seek to take existing utility property” and “might just desire to take a utility because of the potential income it may generate.” (PG&E/Br. 41; see *id.* at 16 [“As the Legislature explained, a public entity may perceive a financial incentive to take an operational utility because of the steady stream of revenues that it provides”].)

The Town, however, *agrees* that this concern motivated the Legislature to let utilities present evidence beyond the administrative record. Under the Court of Appeal’s holding that gross abuse of discretion review applies, utilities can still present extra-record evidence to show the municipality merely wants the revenue stream. It is also worth noting that the California

electorate's adoption of Proposition 218 in 1996 largely mooted concerns about public entities taking utilities for that purpose. (See p. 18, *ante*.)

Lastly, Liberty's amici ignore that the Legislature's concern about municipalities taking well-run utilities simply to seize revenues is irrelevant here. The Town seeks condemnation to further public-policy objectives that Liberty and private utilities cannot do, such as integrate the water system with the Town's sewer and trash utilities, improve fire prevention, water recycling and environmental review, and coordinate water usage with land-use development. No legislative history indicates an intent to abandon the deference California has long accorded such compelling objectives.

#### **IV. Public Policy And The 1992 Amendments' Purpose Supports The Court Of Appeal's Holding.**

In claiming public policy supports trial courts exercising independent judgment over utility condemnations, Liberty's amici assert that "[p]roviding utility service is complicated and resource-intensive" and the "risks of error are extremely serious," including "threats to public safety, potential loss of essential services, and erosion of the State's broader policy goals." (PG&E/Br. 16.) They suggest local governments lack the same expertise and knowledge as investor-owned utilities. (PG&E/Br. 50-56; SCE-SDG&E/Br. 2-3; CWA/Br. 11.)

The assertions ring hollow. Nothing in the 1992 amendments' text or legislative history indicates the Legislature added the rebuttable presumptions out of such concerns.

Amici's claim that local governments cannot safely or properly operate utilities is fiction. (See CSF-CSAC/Br. 17-22, 24 [explaining "San Francisco's century-long history of operating electric utilities"].) That's particularly true for water utilities because 85% of Californians receive water from *publicly-owned* providers. (10RT/2411-2413; TE/3613-7; TE/282-4; Cal Cities & Water Agencies-Districts/Br. 9-10 [noting amici California Municipal Utilities Association represents 84 publicly-owned utilities that provide 75% of water service to Californians].) If there is any class of utility providers with the most experience/expertise, it is *local government* water providers. Far from being dangerous, what the Town seeks is the norm across California.

Local governments also have far greater knowledge and expertise than private utilities when it comes to considering and balancing public interests, rather than simply maximizing investor profits as privately-owned utilities do. Many have long operated their own utilities, as the Town has done for sewer and trash services, and know best how to integrate new utilities into existing ones, improving economies of scale and crucial government services such as fire prevention and recycled water. They know local development trends, needs and objectives better than private utilities and how to best coordinate with other local

government entities, such as school districts, to ensure appropriate utility services.

Local governments also are better positioned to balance community concerns than judges. Their better ability to “weigh the [private owner’s] property interests” against policies designed to “improve the quality of life for their larger constituency” is why California law treats intra-territorial takings as quasi-legislative. (*Dusek, supra*, 193 Cal.App.3d at p. 260.) “The decision to take property is a ‘fundamental political decision’ which requires the condemning entity to consider and balance public policy concerns, use its expertise and superior knowledge of its jurisdiction, and weigh constituent concerns.” (*TAV, supra*, 108 Cal.App.5th at p. 83.) Judges lack such experience and knowledge.

Liberty’s amici also ignore this Court’s explanation in *Western States* that “[t]he appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other” and “[q]uasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review *is more deferential...*” (9 Cal.4th at pp. 575-576, italics added.)

Amici’s contention that the Legislature jumped entirely to the other end of the spectrum overlooks guiding principles that “courts must not usurp legislative power and thereby violate the separation of powers provision in the Constitution” (*Western*

*States, supra*, 9 Cal.4th at p. 572) and should avoid undermining the local electorate’s “lawfully expressed will” approving a condemnation (*Golden State Water Co. v. Casitas Municipal Water Dist.* (2015) 235 Cal.App.4th 1246, 1260).

From a public-policy standpoint, the 1992 amendments are best viewed as a compromise that lets private utilities present evidence beyond the administrative record while maintaining deference for the local government’s decision. (Town’s ABOM 56.) To avoid “excessive judicial interference with [a public agency’s] quasi-legislative actions,” the amendments should be construed as allowing trial courts to consider extra-record evidence in determining whether there was a gross abuse of discretion, rather than empowering judges to act as local policymakers by “weigh[ing] conflicting evidence and determin[ing] who has the *better* argument....” (*Western States, supra*, 9 Cal.4th at pp. 572-574, italics added.)

**V. There Is Nothing Meaningless, Absurd, Or Unworkable About Courts Considering New Evidence While Deferentially Reviewing Quasi-Legislative Decisions.**

Liberty’s amici argue that adopting the Court of Appeal’s standard-of-review holding would render “meaningless” the rebuttable presumptions and a utility’s “ability to introduce evidence” (CWA/Br. 7; PG&E/Br. 15-16) and make the 1992 amendments “at most, window dressing” because before 1992 all property owners already had the right to challenge a RON’s

findings “for lack of substantial evidence/abuse of discretion.” (CWA/Br. 4.) It would, they claim, give utilities the right to “introduce meaningless evidence that cannot, as a matter of law, supplant the agency’s findings” unless it rises to the level “of establishing the basis for a challenge under section 1245.255, which, again, utilities could do in any event, without regard for SB 1757.” (CWA/Br. 5.)

Not so. Yes, before 1992, private utilities (and other property owners) could already challenge RONS for a gross abuse of discretion under section 1245.225. *But they were limited to the administrative record.* The 1992 amendments gave utilities a powerful evidentiary right that no other property owners subject to intraterritorial takings have: The right to present extra-record evidence to challenge RONS.

That’s *not* mere window dressing. As the Town’s amici explain: “[T]he ability to introduce evidence ... is a meaningful protection for private utility property owners. Extrinsic evidence can be used to either discredit a [RON] or demonstrate a lack of substantial evidence supporting a [RON’s] determinations of necessity. Extrinsic evidence can also be used to show that the supporting facts and data in the record are incorrect or faulty, that the methodology used is disfavored or discredited, that the analysis is flawed or illogical, or that the assumptions relied on are erroneous.” (Cal Cities & Water Agencies/Districts Br. 30-31; see Town’s ABOM 59.)

Liberty’s amici nonetheless argue that the Court of Appeal’s holding “runs headlong into the canon against absurdity” by “creat[ing] a ‘rebuttable’ presumption that arguably could *never* be rebutted” (PG&E/Br. 33, original italics) because courts applying substantial evidence review “cannot weigh the evidence” (CWA/Br. 7).

The argument necessarily fails because no absolute bar exists against courts considering extra-record evidence in section 1085 mandamus actions, and courts that consider such evidence *still review for a gross abuse of discretion*—arbitrariness or lack of substantial evidence.

For example, as the Town’s brief noted, extra-record evidence (including expert testimony) is routinely admitted in cases challenging development mitigation fees, and courts allow extra-record evidence in challenges to quasi-legislative decisions where the property owner could not have presented the evidence at the administrative hearing or the record is inadequate “to permit meaningful review.” (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 254-258 [trial court applied traditional-mandamus review standards despite allowing/resolving competing expert testimony on stadium design]; Town’s ABOM 57-58.) These cases defeat amici’s suggestion that the introduction of extra-record evidence

is irreconcilable or incompatible with gross abuse of discretion review.<sup>3</sup>

Similarly, this Court recognized in *Western States* that the Legislature can authorize the use of “extra-record evidence in traditional mandamus actions challenging quasi-legislative administrative decisions.” (9 Cal.4th at p. 571.) It recognized that “[e]xtra-record evidence is admissible” in such proceedings when it “could not be produced at the administrative level ‘in the exercise of reasonable diligence’” and it did “not foreclose the possibility that extra-record evidence may be admissible ... under unusual circumstances or for very limited purposes not presented in the case now before us.” (*Id.* at p. 578.)

At the same time, this Court mandated that trial courts considering extra-record evidence when evaluating quasi-legislative decisions still must apply deferential review given

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<sup>3</sup> See also *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 298, 308 (extra-record expert evidence considered while deferentially reviewing quasi-legislative adoption of development-impact fees); *City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1052-1053, 1056, 1061 (same); *Outfitter Properties, LLC v. Wildlife Conservation Bd.* (2012) 207 Cal.App.4th 237, 244, 251 (extra-record evidence considered while assessing whether quasi-legislative decision was “arbitrary, capricious, or entirely lacking in evidentiary support”); *Manderson-Saleh v. Regents of University of California* (2021) 60 Cal.App.5th 674, 692-696 (extra-record declarations considered; applying substantial-evidence review to agency’s findings); *California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443, 1445 (extra-record evidence considered; applying section 1085 mandamus standards).

separation-of-powers concerns: They must assess the evidence to determine whether the quasi-legislative decision “was rational” but cannot “freely consider” the evidence and “transform the highly deferential substantial evidence standard of review” into “a de novo standard” as to “whether [the quasi-legislative decision] was the *wisest* decision....” (*Western States, supra*, 9 Cal.4th at pp. 571-572, italics added).

Case law thus refutes amici’s contentions that the Court of Appeal’s standard of review is absurd or unworkable. California courts have admitted extra-record evidence where the objecting party lacked sufficient opportunity to present opposition at an administrative hearing, while still applying the deferential review traditionally accorded quasi-legislative decisions.

Liberty’s amici overstate the “no weighing” concept. As the Town previously explained, trial courts reviewing agency decisions for substantial evidence “must consider ‘*all* relevant evidence,’ including ‘evidence that *fairly detracts* from the evidence supporting the agency’s decision,’ which ‘necessarily involves *some weighing* of the evidence to fairly estimate its worth.’” (Town’s ABOM 58-59, quoting *Cate v. State Personnel Bd.* (2012) 204 Cal.App.4th 270, 281, italics added.) Contrary to amici’s contention (PG&E/Br. 35), the decision ultimately *is* about reasonableness. “Substantial evidence has been defined as relevant evidence that a reasonable mind might accept as

adequate support for a conclusion.” (*Inyo, supra*, 180 Cal.App.4th at p. 13.)<sup>4</sup>

The “no weighing evidence” principle doesn’t preclude trial courts from determining whether a reasonable basis exists for a utility condemnation based on the administrative record and extra-record evidence. Amici exclaim that utilities “could fully rebut the presumption that the taking is required” yet still lose if an agency merely has “minimal” evidence. (PG&E/Br. 34-35.) But if extra-record evidence shows no reasonable person would find the evidence adequate, the RON fails.

Trial courts, however, cannot do what the trial court did here—weigh the evidence *independently* and then determine for itself whether a different decision should prevail as *equally* or *more* reasonable. They cannot set aside a quasi-legislative decision on “the ground that an opposite conclusion would have been equally or more reasonable”; their task is to determine whether the decision is adequately supported, not “determine who has the better argument.” (*Vineyard Area Citizens for*

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<sup>4</sup> See *Napa Valley Unified School Dist. v. State Bd. of Education* (2025) 110 Cal.App.5th 609, 625 (“common formulation of the substantial evidence test asks whether a reasonable person could have reached the same conclusion on the evidence”); *Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 328 (review for arbitrariness or substantial evidence “both require a *reasonable basis* for the decision,” italics original); *North Coast Rivers Alliance v. Marin Municipal Water Dist. Board of Directors* (2013) 216 Cal.App.4th 614, 642-643 (court reviewing agency’s CEQA findings determines whether a “reasonable mind” might accept the evidence as sufficient).

*Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.)

Liberty, for example, had the right under the gross abuse of discretion standard to put on extra-record evidence to show that the condemnation would not actually further the Town's objectives, such as improved fire-prevention and water recycling, and coordinated land-use development. But that's not what Liberty did. Because no such evidence exists, Liberty side-stepped the Town's objectives by arguing the independent judgment standard applies so it could introduce whatever evidence—and discuss whatever issues—it wanted.

Again, there's *no* evidence in either the 1992 amendments' text or legislative history that the Legislature intended a standard that would eviscerate—for the first time ever—how California *always* has treated quasi-legislative decisions.

## **VI. Amici's New Arguments Do Not Defeat The Court Of Appeal's Standard Of Review Holding, Let Alone Allow Affirmance Of The Trial Court's Judgment.**

Two amicus briefs authored by Liberty's former trial and appellate counsel in this case and PG&E's former counsel in *PG&E*, separately raise new issues that Liberty never presented to this Court or the Court of Appeal, and that *PG&E* never addressed:

(1) a brief for California-American Water Company contends that even if the Court of Appeal were correct that

“[p]rinciples of judicial deference to quasi-legislative acts” govern the public necessity elements in section 1240.030, they don’t apply to the “more necessary public use” requirement in section 1240.610 (CAWC/Br. 11); and

(2) a brief for Golden State Water Company contends that “pre-1992 [legislative] history confirms that the Court of Appeal’s interpretation of the 1992 amendments is incorrect.” (GSWC/Br. 11.)

Most of what these amici now assert is brand new to both cases, including 690 pages of legislative history that (except for a few pages regarding the 1992 amendments) amici’s counsel never presented to the Court of Appeal here or in *PG&E* when previously representing Liberty and PG&E.<sup>5</sup> These new arguments should be ignored or at least treated with a dose of skepticism. Their belated assertion unfairly denied other impacted entities the ability to respond. For example, a rebuttable “more necessary use” presumption applies to the State of California, not just local public entities. (See § 1240.640, subd. (b).) Raising this issue for the first time in an amicus brief denied the State the opportunity to respond.

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<sup>5</sup> Liberty’s former counsel never discussed the “more necessary public use” requirement at oral argument even though the Court of Appeal provided a full-blown tentative beforehand (which tracked the final opinion). Liberty’s rehearing petition also ignored it. (1/27/2025 Petition for Rehearing.)

CAWC touts its new “more necessary public use” argument as “an independent basis for affirmance of the trial court.” (CAWC/Br. 4.) It’s not. Even if the Court considered these new arguments, neither resolves the alternative grounds on which the Court of Appeal reversed. (See *TAV*, *supra*, 108 Cal.App.5th at pp. 90-93; Town’s ABOM 27-32.) No matter which review standard applies, the trial court still did not correctly apply the rebuttable presumptions as it ignored the Town’s objectives, findings and evidence and relied largely on post-RON events. (*Ibid.*)

The Court of Appeal’s reversal of the trial court’s judgment must be upheld irrespective of amici’s new arguments.

**A. The new “more necessary public use” argument.**

CAWC asserts an argument that its current counsel never raised when representing Liberty in both the trial court and the Court of Appeal. It contends that even if the deferential standard for quasi-legislative decisions governs section 1240.030’s necessity elements, it still wouldn’t apply to section 1240.610’s “more necessary public use” requirement. (CAWC/Br. 11.) CAWC argues that “the presumptions of more necessary public use, unlike the presumptions of public necessity, *do not arise from a resolution of necessity or from any other quasi-legislative act.*” (CAWC/Br. 11, original italics.)

The argument is wrong. (§ A.1, *post.*) And, even if it had merit, it would be irrelevant here. (§ A.2, *post.*)

**1. Where, as here, a RON is required, the “more necessary public use” element is part of the public entity’s quasi-legislative necessity determinations.**

CAWC claims there is no “room for doubt” that its argument is correct because section 1250.360, subdivision (f), specifies that defendants can always object to an eminent domain complaint as not satisfying the “more necessary public use” requirement. (CAWC/Br. 11-12.) But, as noted previously, section 1250.360 sets forth objections that can be made both when a RON is required and when it isn’t required. The statute doesn’t extricate the “more necessary public use” requirement from the RON process where, as here, a RON is statutorily required and the RON *must* address the “more necessary public use” element.

Section 1240.610 mandates that where the condemning party seeks to acquire property already “appropriated to public use” (such as a utility), the taking must be for “a more necessary public use” than the current use and “the complaint, *and the resolution of necessity if one is required*, shall refer specifically to this section.” (Italics added.)

Public entities seeking condemnation must adopt RONs. (§§ 1240.040, 1245.220.) Thus, municipalities seeking to acquire public utilities for the same use must determine administratively, *and expressly state in their RON*, that the condemnation is for a “more necessary public use” in addition to making the necessity findings specified in section 1240.030.

CAWC tries to circumvent this requirement by claiming it merely reflects the public entity's need to state the statutory basis of its right to take, rather than the public entity making "quasi-legislative 'findings' on whether the more necessary public use has been established." (CAWC/Br. 24-25.) The required statement, according to CAWC, "is not to establish the public entity's view that the taking is in fact statutorily authorized...." (*Id.* at p. 24.) Really? There would be no reason to require the public entity to state in the RON that the condemnation is for a more necessary use without requiring the public entity to actually conclude or believe it was for "a more necessary" use in addition to expressly finding section 1240.030's elements.

These are all *required* elements of the same RON when a taking is for the same use; and each is a finding of public *necessity*. (Compare §§ 1240.030, 1240.610.) One cannot determine whether the use is *more* necessary without analyzing the public entity's quasi-legislative reasons for proceeding with the condemnation, including its quasi-legislative decision that it is necessary under section 1240.030. Applying the wrong review standard to a public entity's necessity findings would inexorably infect any assessment of the "more necessary public use" element.

CAWC distorts matters by citing cases recognizing that courts independently determine whether condemnations are for "public use." (CAWC/Br. 23.) "Public use" is a *constitutional* requirement that courts must determine. (*People ex rel. Department of Public Works v. Chevalier* (1959) 52 Cal.2d 299,

304.) There’s no “public use” question here—the Constitution declares the “use of all water... to be a public use.” (Cal. Const., art. X, § 5.) The issue here is “more *necessary*” public use, a statutory requirement that rests on *necessity*.

Nor is there even a balancing of competing public uses here, such as where a public entity wants to condemn a park to make it a landfill. The condemnation is for the *same* public use—water—and so determining “more necessary” use requires evaluating *the extent* of the public necessity for using the water embraced in the Town’s objectives and findings.

CAWC’s suggestion that the public entity need not find/conclude the taking is for a more necessary use in this context, or that the “more necessary” question can be divorced from the public entity’s necessity determinations, makes little sense. Where the taking is for the same public use, any assessment of “more necessary” use necessarily depends on the public entity’s determinations as to why public interest and necessity justify the condemnation.

What transpired in this case, which followed normal RON procedures, demonstrates the point. Far from the “more necessary use” requirement being irrelevant to the Town’s quasi-legislative RON findings:

- The Town’s notice to AVRW/Liberty about the upcoming RON-adoption hearing advised (among other things) that the hearing would address section 1240.030’s necessity findings *and* whether the public use described in the RON

“is a more necessary public use than the use to which the property is appropriated.” (1AA/826.)

- AVRW/Liberty’s opposition letter argued that “[t]he Town cannot make *the findings* necessary to adopt a [RON],” including the requirement that the Town’s use must be “a more necessary use.” (1AA/833-834, 837, italics added.)
- The Town’s RONs, after expressly making the necessity findings required by section 1240.030, stated that the Town “further *finds and determines*” that the Town’s proposed use “is a more necessary public use within the meaning of California Code of Civil Procedure sections 1240.610 and 1240.650...” (TE/3651-002, italics added; TE/3652-002, italics added.)

(See also *PG&E, supra*, 95 Cal.App.5th at p. 827 [district’s RON included “more necessary public use” finding]; *Los Angeles Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1031 [same; County’s RON].)

If the Town’s findings regarding section 1240.030’s necessity elements require deference as quasi-legislative—*the assumed premise of CAWC’s new argument*—then the RON’s “more necessary” use finding requires the same deference. It’s part of the same quasi-legislative process and reflects the Town’s “inherently legislative” weighing of the private utility’s property interests against the Town’s objectives of “improv[ing] the quality of life for [the Town’s] larger constituency.” (*Dusek, supra*, 193 Cal.App.3d at p. 260.) These are “fundamentally political

questions” as they involve considerations “over the basic local government water policy” and the “kind of life that would prevail” in the municipality. (*Wilson v. Hidden Valley Municipal Water Dist.* (1967) 256 Cal.App.2d 271, 281.)

CAWC’s suggestion that the “more necessary use” presumption doesn’t arise here from a quasi-legislative decision defies reality. Where, as where, RONS are required and must address the “more necessary public use” element, the rebuttable presumptions in *both* section 1240.650, subdivision (c), and (section 1245.250, subdivision (b), involve quasi-legislative necessity decisions that warrant deference.

CAWC confuses matters by noting the “more necessary public use presumptions are established by statute for all cases....” (CAWC/Br. 19.) RON requirements, and any related presumptions, are also created by statute. And in the context presented here, the RON *must* reference the “more necessary public use” element. § 1240.610.)

CAWC also notes that section 1245.230 doesn’t expressly refer to the “more necessary public use” requirement. (CAWC/Br. 21-22). But that statute sets forth requirements that apply to *all* RONS, including RONS where the “more necessary public use” requirement would *not* be in play. (See § 1245.230.) The separate “more necessary public use” element (as well as any other elements that do not apply to *all* RONS) is incorporated into the RON requirements through the statute’s reference to “[i]n addition to other requirements imposed by law.” (See *ibid.*)

Instead of focusing on the 1992 amendments' legislative history and the specific context here of a public entity taking a privately-owned public utility for the same use, CAWC sprinkles its argument with legislative-history and case snippets that don't involve this context. But the context matters. The Legislature added section 1240.650, subdivision (c)'s rebuttable presumption in conjunction with adding (section 1245.250, subdivision (b)'s rebuttable presumption. The utility-condemnation amendments were inherently related.

Before 1992, for purposes of the “more necessary public use” requirement, the Legislature deferred to a public entity’s decision to take a public utility for the same use as a quasi-legislative decision *that could not be challenged*. The taking was conclusively deemed a “more necessary use”: “Where property has been *appropriated to public use* by any person other than a public entity, the use thereof by a public entity for the same use or any other public use *is a more necessary use* than the use to which such property has already been appropriated.”

(§ 1240.650, subd. (a), italics added; see Stats. 1975, ch. 1275, § 2.)

This treatment comported with the deference historically accorded quasi-legislative decisions. (*Chevalier, supra*, 52 Cal.2d at p. 306 [conclusive presumptions reflected principle that courts generally “have nothing to do with questions of necessity, propriety or expediency in exercises of the power of eminent domain”].)

In 1992, when the Legislature switched the rule for privately-owned electric, gas and water utilities from conclusive to rebuttable, it did so in connection with making the same shift in (section 1245.250, subdivision (b)). Both amendments addressed an area where the Legislature had historically accorded deference to public entities given separation-of-powers concerns but carved out special, limited rebuttable presumptions for certain utilities. The presumptions are inherently related.

Accordingly, if the Court of Appeal correctly concluded that “[p]rinciples of judicial deference to quasi-legislative acts” apply to the rebuttable presumption for necessity findings as CAWC assumes for purposes of its argument (CAWC/Br. 11), those principles logically govern the “more necessary use” presumption too. Thus, even accepting CAWC’s characterization that the Court of Appeal treated the “more necessary” use element as “an additional public necessity element,” the Court of Appeal got it right. (CAWC/Br. 17.)<sup>6</sup>

CAWC’s newly-minted argument to extricate the Town’s “more necessary public use” finding from the Town’s quasi-legislative necessity findings fails. “More necessary public use” in this context is a necessity issue, which is a legislative/political

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<sup>6</sup> The trial court did the same; its necessity rulings drove its “more necessary use” ruling. It found that public interest and necessity did not require the project and therefore the project was not a “more” necessary use. (3AA/2374, 2377, 2380, 2388-2389, 2392, 2405, 2410-2411, 2429, 2432.)

issue, not a constitutional “public use” issue requiring independent review.

**2. Regardless which review standard applies, Liberty never rebutted the “more necessary use” presumption.**

CAWC’s new argument fails for another reason: As noted previously, compliance with the “more necessary public use” requirement should have been an easy “yes” here no matter which review standard applies. At a minimum, Liberty never rebutted the presumption as it ignored the Town’s objectives.

In determining what is a “more necessary” public use, the definition of “public use” is instructive. “California courts have increasingly tended to adopt the broader public advantage test, which places a lesser burden on the condemnor to justify the public utility of a taking. A public use is defined as ‘a use which *concerns the whole community* or promotes the *general interest* in its relation to any legitimate object of government.’ (*Bauer v. County of Ventura* (1955) 45 Cal.2d 276, 284.)” (Condemnation Practice in California (Cont.Ed.Bar 3d ed. 2025) § 6.4A, italics added.) This Court has likewise “defined ‘public use’ as ‘a use which concerns *the whole community* or promotes the *general interest* in its relation to any legitimate object of government.” (*City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 69, italics added.)

In addition, “[p]ublic use and necessity are to be construed liberally in favor of the condemnor.” (*Shell Cal. Pipeline Co. v.*

*City of Compton* (1995) 35 Cal.App.4th 1116, 1125.) “Public interest and necessity’ include all aspects of the public good including but not limited to social, economic, environmental, and esthetic considerations.” (Legis. Com. Comments–Senate, reprinted at West’s Ann. Code Civ. Proc., foll. § 1240.030.)

Accordingly, a “more necessary” public use would be one that better serves the “whole community” and a legitimate public purpose than the existing use, when considering social, economic, environmental, and esthetic considerations. The 1992 amendments’ legislative history supports that view, as it indicates the Legislature replaced the conclusive “more necessary use” presumption for utility condemnations with the rebuttable presumption to prevent municipalities from acquiring utilities simply to generate income. (Liberty’s MJN/26 [Senate Committee on Judiciary: some condemnations involve “healthy, responsive utilities which provide excellent service to their ratepayers at the lowest possible rates” and in that instance, “a public entity might seek to condemn a utility because the utility will generate income for the entity”].)

Liberty’s amici emphasize this same point. (CAWC/Br. 33, fn. 14 [citing same language]; PG&E/Br. 41 [Legislature concerned “public entities may act in their own financial self-interest when they seek to take existing utility property” and “just desire to take a utility because of the potential income it may generate”].)

Irrefutably, that's *not* what this case is about. The Town's proposed condemnation readily satisfies the "more necessary public use" element no matter which review standard applies. The Town's principal public-policy objectives involved things *that Liberty and other private utilities cannot do*, such as water recycling, increasing fire-prevention and environmental review, integrating and coordinating the water utility with the Town's existing publicly-owned trash and sewer utilities, and coordinating water usage with land development. (Town's ABOM 21-22.) Liberty has no right to use the Town's wastewater; and its predecessor threatened to sue the Town over its water-recycling plans. (*Id.* at 19-20.)

The Town was *not* pursuing condemnation to generate income. Liberty never rebutted the Town's objectives under any test. It simply ignored them. As the Court of Appeal recognized, the trial court's failure to address the Town's valid public-policy objectives requires reversal of the judgment no matter which review standard applies.

**B. The new legislative history argument.**

Liberty and the Town submitted the germane legislative history to the Court of Appeal and this Court—the legislative history of the 1992 amendments.

GSWC, now represented by Liberty's former trial and appellate counsel, submits an amicus brief that presents/discusses 579 pages culled from a 6200-page compilation obtained from the Legislative Intent Service regarding bills *in*

1975 and 1978, not the 1992 amendments. (GSWC/Br. 1-63; GSWC/MJN 9.) Even putting aside that *none* of these materials or arguments were presented below, they do not show the Court of Appeal erred.

In trying to discern legislative intent through legislative history, courts can consider what legislators said when adopting the specific statute at issue—here the 1992 amendments. But GSWC’s submitted history includes snippets buried in lengthy materials for bills that are 14-17 years old. GSWC urges the rule that the Legislature, when amending statutes, is presumed “to be aware of existing laws and judicial decisions....” (GSWC/Br. 15.) But that presumption applies to *settled law*. Legislators are not presumed to know about committee comments or legislative history for bills enacted decades ago.

Regardless, GSWC relies on the pre-1992 legislative history to make sweeping comments about the 1992 amendments’ purported meaning that *no* legislative history—either for the 1992 amendments or the 1975/1978 statutes—unmistakably establishes (see § II.B), and that in many instances the legislative history and the statutory text belie. For example:

(1) GSWC emphasizes section 1230.040 (GSWC/Br. 28-29), which states: “Except as otherwise provided in this title, the rules of practice that govern civil actions generally are the rules of practice for eminent domain proceedings.” Section 1230.040, “continue[d] the general principle that eminent domain proceedings are to be governed by the same rules as civil actions

generally” expressed in its predecessor statute, section 1256, which “incorporated Part 2 of the Code of Civil Procedure....” (Legis. Com. Comments—Assembly, reprinted at West’s Ann. Code Civ. Proc., foll. § 1230.040.) Section 1256 stated: “Except as otherwise provided in this Title, the provisions of Part II of this Code [of Civil Procedure] are applicable to and constitute the rules of practice in the proceedings mentioned in this Title.” (GSWC/MJN 40 [§ 1256].)

Section 1230.040, and its predecessor section 1256 merely address rules of practice, however, not standards of review. Proving the point: The same civil-action rules of practice principle *equally governs mandamus proceedings*, including those applying *the deferential review standards for quasi-legislative acts*. (See § 1109 [“Except as otherwise provided in this Title, the provisions of Part II of the Code are applicable to and constitute the rules of practice in the proceedings mentioned in this Title”].)

The mandamus statute, section 1109, is identical to former section 1256, section 1230.040’s predecessor, because the Legislature enacted them with the “common purpose” of “mak[ing] the ‘rules of practice’ in *all of these special proceedings identical*, so far as not otherwise specially provided, with those prevailing in civil actions generally.” (*Holman v. Toten* (1942) 54 Cal.App.2d 309, 316, italics added.)

Just as the incorporation of civil practice rules into section 1085 mandamus proceedings doesn’t mean a court applies independent review, their incorporation into eminent domain

proceedings doesn't establish courts apply independent review. GSWC misses the point by quoting snippets indicating that juries decide the constitutional question of just compensation but courts determine other issues. (GSWC/Br. 30.) As section 1085 mandamus actions (special proceedings like condemnation proceedings) make clear, the absence of a jury-trial right doesn't establish independent review.

(2) GSWC emphasizes that, starting in 1913, the Legislature treated RON necessity determinations as conclusive, except for only one context: extraterritorial takings. (GSWC/Br. 32-45.) GSWC concedes that the Legislature deemed RONs for intraterritorial takings "conclusive" because they were "quasi-legislative" findings. (GSWC/Br. 32-33.) But it then skips an analytical step by citing snippets indicating that non-conclusive findings can be "judicially review[ed]" (GSWC/Br. 35, bold omitted), are "justiciable" (GSWC/Br. 39) or "subject to judicial review" (GSWC/Br. 40), or may be "contest[ed]" (GSWC/Br. 43).

GSWC equates moving from "conclusive" to "subject to judicial review" as establishing independent non-deferential review applies. It doesn't. That the Legislature authorized judicial review doesn't answer the separate question of what "standard of review a trial court is to employ." (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653-655 [Court of Appeal, after finding authorization for judicial review, held city's conduct was "a quasi-legislative act" and trial court erred in "conduct[ing] an independent review of the

evidence and reach[ing] its own conclusions regarding what was necessary or convenient”).) A court must *first* determine whether the Legislature authorized judicial review, rather than conferring absolute or conclusive discretion on a government entity; if authorization exists, the court *next* must “consider the standard of review... to employ.” (*Ibid.*)

GSWC conflates the two steps. It ignores that intraterritorial RONS remain quasi-legislative decisions that California has always accorded deferential review.

Section 1245.255’s enactment demonstrates the point. As *Dusek* recognizes, the Legislature made RONS “justiciable” in section 1245.255 “without undermining the historical deference accorded legislative determinations of necessity.” (*Dusek, supra*, 193 Cal.App.3d at p. 255.) In fact, the Law Revision Commission unsuccessfully urged that the Legislature keep intraterritorial takings “conclusive” rather than adopt section 1245.255’s exception, noting that an intraterritorial taking:

“lies entirely within the sound discretion of the public entity which had been entrusted with the responsibility of making precisely this sort of decision. To allow a judge to *substitute his own wisdom for that of the public body*, which has made its decision after public hearings and taking into account the needs of the whole community (including environment, budget, recreation, and the like) *is to*

*destroy the fundamental separation of legislative and judicial functions.”*

(GSWC/MJN 568, italics added.)

Although the Legislature enacted section 1245.255 in 1992 over the Commission’s objections, the Commission further confirmed when the Legislature amended section 1245.255 in 1978 that (a) RON adoptions are “legislative rather than quasi-judicial in nature”; (b) the same “standard for judicial review” governs challenges to RONs in condemnation proceedings as in section 1085 mandamus proceedings; and (c) courts in both proceedings should examine whether the local government’s action was “arbitrary, capricious, or entirely lacking in evidentiary support, or whether it has failed to follow the procedure and give the notices required by law” but they cannot “*substitute [their] judgment as to the findings and determinations made in the [RON]....*” (GSWC/MJN 577-579, italics added; see *Dusek, supra*, 193 Cal.App.3d at pp. 255-257 [explaining 1978 amendment].)

Thus, it was clear prior to the 1992 amendments’ adoption that the Legislature’s treatment of intraterritorial RONs as “conclusive” and subsequent enactment of section 1245.255’s “gross abuse of discretion” exception, stemmed from the Legislature according RONs deference as quasi-legislative decisions. The presumption that the Legislature will *clearly* establish the abrogation of such longstanding principles defeats Liberty’s amici’s argument that the Legislature eliminated that

deference for utility condemnations. (See § II.B, *ante.*) “Just because an eminent domain decision is justiciable does not mean courts need not defer to the public entity due to separation-of-powers considerations.” (*TAV, supra*, 108 Cal.App.5th at p. 85.)

(3) GSWC tries to avoid the Legislature’s reference to “gross abuse of discretion” by arguing “[t]he Legislature understood that section 1245.255 exists in order to permit owners of property *subject to a conclusive presumption* to bring limited challenges.” (GSWC/Br. 44-45, bold omitted, original italics.) That misses the point. Yes, the Legislature focused on conclusive presumption cases when enacting section 1245.255—because the only exception at the time was for extraterritorial takings. But the Legislature did not expressly limit section 1245.255 to conclusive presumption cases. And when it added the utility-condemnation rebuttable presumption in 1992, it did not carve out utility condemnations from section 1245.255 or clearly indicate, in the text or legislative history, that the gross abuse of discretion standard doesn’t apply to utility condemnations.

Indeed, GSWC acknowledges in a footnote that section 1245.255 *does* apply to utility condemnations but then asserts no utility would ever choose that route “over the full evidentiary trial permitted by sections 1250.360 and 1250.370.” (GSWC/Br. 46, fn. 26.)

No legislative history indicates, let alone with the clarity the law requires, that the Legislature intended to jump from “no review” of utility condemnations, to “gross abuse of discretion”

review, to trial judges effectively becoming de facto legislators/policymakers by independently evaluating utility condemnations.

(4) GSWC tries to explain away the Legislature’s longstanding disparate treatment of extraterritorial RONS by arguing it had nothing to do with “limitations on [a public entity’s] legislative authority.” (GSWC/Br. 55, bold omitted.) GSWC improperly conflates two questions: whether authorization exists for a local government’s decision and whether that decision is quasi-legislative as it involves weighing *constituents’* public-policy interests.

The Court of Appeal correctly recognized that intraterritorial and extraterritorial takings have a fundamentally different separation-of-powers footing. (*TAV, supra*, 108 Cal.App.5th at pp. 76-78, 84-86.) Public entities generally “cannot exercise their power outside their jurisdictional boundaries.” (*Id.* at pp. 77-78, citing *Wight, supra*, 221 Cal.App.2d at p. 760.) As to eminent domain, they can “acquire... only property within [their] territorial limits” unless express or implied statutory authorization exists for an extraterritorial taking. (§ 1240.050.) Extraterritorial portions of utilities fall within that exception. (*City of North Sacramento v. Citizens Utilities Co. of California* (1961) 192 Cal.App.2d 482, 487; § 1240.125.)

GSWC claims such implied/express authorization for extraterritorial takings transforms them into quasi-legislative

decisions: “An extraterritorial taking, if authorized, is a valid quasi-legislative act.” (GSWC/Br. 59.) That’s false.

As the Town explained in rebutting Liberty’s similar argument, whether the Legislature has authorized the taking “has nothing to do with whether, for separation-of-powers purposes, a municipality’s intraterritorial-taking decision is a legislative/quasi-legislative act.” (Town’s ABOM 49.) “The latter question depends on the *nature* of the municipality’s decision,” such as whether the municipality is making “a ‘fundamental political decision’” by using its “superior knowledge of *its jurisdiction*” and “*constituent* concerns” to balance public-policy concerns. (*Id.*, quoting *TAV*, *supra*, 108 Cal.App.5th at p. 83, first italics in original, rest added.) Extraterritorial takings fall outside that political process. Even GSWC’s newly-submitted legislative history shows that, by indicating the Legislature:

- historically treated necessity findings as “conclusive” because necessity “is essentially a legislative question that is more appropriately determined by the responsible public officials than by the courts” (GSWC/MJN 454) and the public entity “tak[es] into account the needs of the whole community” and courts must maintain “the fundamental separation of legislative and judicial functions” (GSWC/MJN 568); and

- limited the section 1245.255’s exception in 1975 to “gross abuse of discretion” because intraterritorial RONS are “legislative” and courts must avoid “substitut[ing] [their] judgment” for the public entity’s decision. (GSWC/MJN 577-579.)

GSWC emphasizes legislative-history snippets indicating that extraterritorial property owners lack “an effective voice in the affairs and decision-making” of the condemning public entity and the public entity might choose to benefit its own constituents and protect its political interests by saddling extraterritorial owners with a project. (GSWC/Br. 57-58.) GSWC also emphasizes *Keck*’s language that California law treats extraterritorial takings differently because the condemning public entity lacks “full knowledge of conditions, locations, and the public good” regarding extraterritorial property and is not politically “accountable” to extraterritorial owners. (GSWC/Br. 58-59, quoting *Keck, supra*, 14 Cal.App.3d at p. 925.)

But those “knowledge and accountability” snippets further confirm that a public entity’s decision vis-a-vis extraterritorial property owners is *not* a political or quasi-legislative decision. A local government only legislates for its own constituents who can respond through the electoral process. “[A]n extraterritorial takings is not a quasi-legislative act of a coequal branch of government that is entitled to deference....” (*TAV, supra*, 108 Cal.App.5th at p. 78.)

## CONCLUSION

The Court should affirm the Court of Appeal's "standard of review" holding.

Dated: April 24, 2026

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## CERTIFICATION

Pursuant to California Rules of Court, rule 8.520(c)(1), I certify that this Consolidated Answer To Amicus Briefs contains 13, 990 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: April 24, 2026

*/s/ Edward L. Xanders*

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Edward L. Xanders

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