

United Walnut Taxpayers Litigation Update Solar Project Motion for Preliminary Injunction  
01/04/2016

Bill and Mike,

I wanted to update you on the status of the Taxpayers' lawsuit.

New Motion for Leave to Amend Complaint:

On December 23, 2015, the Taxpayers filed a new motion for leave to amend their complaint. This will mean that the opposition we filed to the original motion for leave to amend on December 18<sup>th</sup> will need to be refiled to specifically target the new motion for leave to amend. Our due date to file the opposition is this Thursday and will largely present the same arguments in the previously filed opposition. The opposition is due this Thursday and Mike will need to sign a new declaration authenticating Mt. SAC records.

The new motion for leave to amend is aimed at raising allegations the solar project as awarded to Borrego Solar Company is not in compliance with CEQA as the solar project has materially changed since the 2012 supplemental EIR, which requires a new EIR. I do not believe this allegation has merit. The Taxpayers have also expanded the allegations related to the award of the lease-leaseback contract to Tilden-Coil. The Taxpayers have named Tilden-Coil as a defendant rather than a real party in interest as they seek to disgorge all payments to Tilden-Coil under the lease-leaseback contract related to the Parking Facility project, both prior to and after the preliminary injunction was in place. We have a strong argument the Taxpayers do not have legal standing to request disgorgement, only Mt. SAC has that right. We will also press our argument the preliminary injunction should be dissolved as it was improper for Judge Lavin to have issued it.

Motion for Preliminary Injunction to Stop Solar Project

On December 23<sup>rd</sup> the Taxpayers also filed a motion for preliminary injunction to halt the solar project. Our opposition is due this Thursday and will likely require a declaration from Mike and possibly our environmental consultant. The motion argues the solar project violates CEQA and City of Walnut zoning and building laws. Our opposition will build on the analysis contained in my letter to City of Walnut's special counsel Barbara Leibold and argue the solar project is exempt from local zoning and building laws and is in compliance with CEQA. Under separate cover, I will forward to you my most recent letter to Ms. Leibold addressing the zoning and CEQA issues concerning the solar project.

Please let me know if you have any questions.

Sean

Sean B. Absher

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